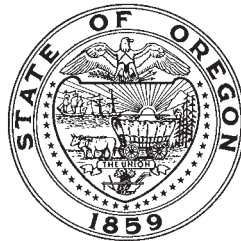


OREGON BULLETIN

Supplements the 2013 *Oregon Administrative Rules Compilation*

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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

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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OTHER NOTICES

REQUEST FOR COMMENTS PROPOSED APPROVAL OF CLEANUP AT OREGON RAIL HERITAGE FOUNDATION SITE

COMMENTS DUE: 5 p.m., Friday, March 1, 2013

PROJECT LOCATION: Near intersection of SE Sherman and SE Water Ave., Portland, OR

PROPOSAL: Consistent with ORS 465.320, the Oregon Department of Environmental Quality seeks comments on proposed approval of cleanup actions at the Oregon Rail Heritage Foundation Restoration Facility and Interpretive Center in southeast Portland, Oregon.

HIGHLIGHTS: The newly-constructed Oregon Rail Heritage Foundation center is located on 2.7-acre property that historically served as a lumber and construction storage yard. The center was built over an area of wood waste fill from the former Inman-Poulsen Lumber Mill (1889–1950s) that historically operated on adjacent property. Testing of soil and groundwater on and around the site identified low levels of soil and groundwater contamination. Soil contamination appears to be from fill placed on-site, and groundwater contamination from off-site sources. On-site subsurface soil gas measurements identified levels of methane above protective standards established by DEQ. The site owners entered into DEQ's Voluntary Cleanup Program in September of 2011 for oversight of methane mitigation efforts as part of the center construction, and management of contaminated media encountered during the construction. In 2012, the owners completed construction of the facility which incorporated a low-permeable gas barrier beneath the building floor and foundation combined with a sub-slab soil gas collection system. Recently-completed testing shows that the methane mitigation system is operating as designed. DEQ evaluated residual risks from soil contamination measured on the site and concluded that there is not risk to current or future site occupants or visitors. A program of further methane monitoring and institutional controls will be implemented to ensure future protection of human health at the site. The site no further action decision will be considered conditional given institutional controls that remain.

HOW TO COMMENT: Send comments by 5 p.m., Friday, March 1, 2013, to DEQ Project Manager Chuck Harman at DEQ's Northwest Region Office at 2020 SW Fourth Ave., Suite 400, Portland, OR 97201, or by email at harman.charles@deq.state.or.us, or by fax to 503-229-6899

To review the project file, call Dawn Weinberger at 503-229-6729 for an appointment.

To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to www.deq.state.or.us/lq/ECSI/ecsi.htm, then enter '5641' in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled '5641' in the Site ID/Info column.

THE NEXT STEP: The DEQ project manager will review all comments received and determine if a no further action determination and project closure is appropriate. If DEQ receives no comments that warrant delaying a no further action decision, DEQ will issue a final letter confirming the decision.

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

People with hearing impairments may call 711.

CHANCE TO COMMENT ON... PROPOSED CLEANUP APPROVAL, FORMER ESQUIRE MOTORS PROPERTY, 1853 SW JEFFERSON MULTNOMAH COUNTY, OREGON (ECSI #4906)

COMMENTS DUE: March 1, 2013

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Depart-

ment of Environmental Quality (DEQ) invites public comment on its proposal to approve a soil cleanup, issue a No Further Action Decision, and remove the site property from the Confirmed Release List and Inventory of hazardous substance sites.

ADDITIONAL INFORMATION: Additional information is available on-line via DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet at <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>. Enter 4906 in the "Site ID" box and click "Submit" at the bottom of the page. Next, click the link labeled 4906 in the Site ID/Info column. Next, click on the "View" under "web-docs" to review site documents. You can also review the administrative record at DEQ's Northwest Region office located at 2020 SW 4th Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call (503)229-6729; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mark Pugh, Project Manager, DEQ Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201 or via email at: pugh.mark@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on March 1, 2013.

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 at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.

REQUEST FOR COMMENTS CERTIFICATION OF COMPLETION FOR FORMER CIRCLE 9 DRYCLEANER GROUNDWATER CONTAMINATION, CORVALLIS, OREGON

COMMENTS DUE: March 2, 2013

PROJECT LOCATION: The former Circle 9 Drycleaners is located in the Circle 9 Plaza at 960 NW Circle Boulevard in Corvallis Oregon. The site consists of tax lots 00300, 00304, 00306, and 00307 as described on Map No. 110526AC, Township 11 South, Range 5 West, Section 26 (the "Property").

PROPOSAL: DEQ is proposing to certify as complete the settlement with a potentially liable party, ROBERT C. WILSON TRUST AND RCW PROPERTIES, LLC (Wilson) for reimbursement of investigation, wellhead treatment, and oversight costs associated with the Lawndale Areawide groundwater investigation. The settlements was in the form of a consent judgment pursuant to ORS 465.325(4). The settlement required Wilson to pay DEQ \$220,000 to reimburse DEQ for the cost of investigating the release and installing the treatment systems on individual wells in the Lawndale Neighborhood, and a portion of the future operation costs for these systems. In return, Wilson received a release from liability, a covenant not to sue from the State and contribution protection as to third parties regarding the matters addressed by the settlements. Wilson met its requirements to pay DEQ \$220,000, and DEQ proposes to certify the consent judgment as complete. On February 1, running through March 2, 2013, DEQ will provide public notice and opportunity to comment on proposed settlement.

HIGHLIGHTS: A drycleaner operated on the Property from around 1978 to around 1990. During historic dry cleaner operations at the Property, hazardous substances were released at and from the Property. Between 2002 and 2007, Wilson conducted multiple rounds of soil and groundwater investigation under DEQ supervision. During the investigation, soil and groundwater contamination were found on the site. A soil cleanup occurred in 2008, followed by mitigation measures to prevent chlorinated solvent vapors (from dry-cleaning chemicals) from entering the buildings on site. In 2009, DEQ discovered multiple nearby wells were contaminated with chlorinated solvents at levels that are not safe to drink. DEQ believes these chemicals originated at the former Circle 9 Drycleaners facility. DEQ provided bottled water to affected residents and then hooked up residents to carbon filtration units to ensure safe household water supplies. DEQ will need to maintain these treatment systems for the foreseeable future.

OTHER NOTICES

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

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. If DEQ then determines to certify the consent judgment as complete, a copy of the certification of completion will be filed with the Benton County Circuit Court. The court must approve the certification for it to be complete.

REQUEST FOR COMMENTS PROPOSED CERTIFICATION OF COMPLETION FOR LAKEWOOD ESTATES GROUNDWATER CONTAMINATION, AURORA, MARION COUNTY

COMMENTS DUE: March 2, 2013

PROJECT LOCATION: The Lakewood Estates Groundwater Contaminant plume passes beneath four contiguous properties in Aurora Oregon: Ballweber Industries, located at 19447 Grimm Rd. NE; Elixir Industries, located at 19527 Grimm Rd. NE; Two Tax Lots, identified as 4 1W 27A TL100 and 200; and Lakewood Estates, a housing development consisting of about 100 homes with separate physical addresses.

PROPOSAL: DEQ is proposing to certify as complete a settlement with a potentially liable party, Elixir Industries, for reimbursement of investigation, wellhead treatment, and oversight costs associated with the Lakewood Estates investigation. Elixir Industries does not concede that they contributed to the groundwater contamination. The settlement was a consent judgment pursuant to ORS 465.325(4). The settlements required Elixir to pay DEQ \$500,000 to reimburse DEQ for the cost of investigating the release and installing the treatment system on the Lakewood Estates Well. In return, Elixir Industries received a covenant not to sue from the State and contribution protection as to third parties regarding the matters addressed by the settlements. Elixir paid DEQ \$500,000, as agreed in the consent judgment. On February 1 running through March 2, 2013, DEQ will provide public notice and opportunity to comment on proposed settlement.

HIGHLIGHTS: In 1989, chlorinated solvents were detected in the Lakewood Estates community water supply well. DEQ installed a water treatment system on the well in 1991 to ensure the residents had safe water to drink. Between the original treatment system installation and the subsequent several rounds of investigation, DEQ spent over \$900,000. DEQ has identified Elixir Industries, LLC, which is located immediately south of the Lakewood Estates property, as a potentially responsible party, along with a nearby carpet cleaning business called Ballweber Industries. The exact source of the contamination has never been determined. Concentrations of chlorinated solvents in the Lakewood Estates have declined naturally since 1989, and no cleanup actions have been taken, and none are needed.

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

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. If DEQ then determines to certify the consent judgment as complete a certification will be filed with with the Marion County Circuit Court.

REQUEST FOR COMMENTS PROPOSED CLEANUP APPROVAL AT RAIN COUNTRY CONSTRUCTION IN EAGLE CREEK

COMMENTS DUE: 5p.m., March 4, 2013

PROJECT LOCATION: 23020 and 23340 SE Eagle Creek Road, Eagle Creek, OR

PROPOSAL: The Department of Environmental Quality proposes to issue a No Further Action determination based on results of site investigation and cleanup activities performed at the Rain Country Construction site located at 23020 and 23340 SE Eagle Creek Road in Eagle Creek. DEQ has determined that the cleanup is complete and residual petroleum contamination does not pose risks to human health and the environment exceeding the acceptable levels defined in ORS 465.315.

HIGHLIGHTS: The construction company occupied the property in approximately 1995. The southern lot was previously owned by a regional fuel retail business with numerous service stations in the area. The property was used as a truck maintenance facility to support the service station operations. Two underground storage tanks containing diesel and fuel oil were associated with the facility. The two tanks were decommissioned in 1992 under DEQ Facility ID Number 4239. Two samples were reportedly collected but no contamination was found and the analytical data is not available.

In 2010, a total of 116 tons of petroleum-contaminated soil was removed from a drum storage area and an area near the large shop building where an inside drain had released petroleum to the sub-surface. The inside drain was permanently closed. Inaccessible petroleum contamination remaining below the building was estimated to be 250 cubic yards. Remaining petroleum contamination is below risk-based concentrations for workers at the site but not for people living on the site.

Petroleum-impacted groundwater was found below much of the shop building and the immediate vicinity but concentrations were generally below risk-based levels. A water supply well for the site is located nearby but a sample from the well did not indicate contamination. The property is zoned rural residential, however the new owner has no plans for residential use and its location, next to a shooting range, suggests that residential use is unlikely.

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: The DEQ Conditional No Further Action Recommendation Memo and other project file information are available for public review, by appointment, at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call Dawn Weinberger at 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Summary information and documents mentioned above are available in DEQ's Environmental Cleanup Site Information database on the Internet; go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 5608 in the Site ID box and click submit" at the bottom of the page. Next, click the link labeled 5608 in the Site ID/Info column. Please send written comments to Project Manager Robert Williams, at the address listed above or to williams.robert.k@deq.state.or.us. To be considered, DEQ must receive written comments by 5 p.m., March 4, 2013. If DEQ receives a written request from ten or more people or from a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the No Further Action determination. In the absence of comments, DEQ will issue the No Further Action determination for the Rain Country Construction site.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach

OTHER NOTICES

(503) 229-6488 or toll free in Oregon at (800) 452-4011; fax to 503-229-6945; or email to deqinfo@deq.state.or.us. People with hearing impairment may call 711.

DEQ PROPOSES NO FURTHER ENVIRONMENTAL CLEANUP ACTION AT WILLAMETTE NATIONAL FOREST, BLUE RIVER UPPER COMPOUND, BLUE RIVER, OREGON

COMMENTS DUE: March 1, 2013

PROJECT LOCATION: Near Blue River, Oregon on forest road #2620-130 in Section 21; T16S, R4E; W.M. Lane County.

PROPOSAL: DEQ proposes to approve the cleanup of pentachlorophenol-contaminated soil at the Blue River Upper Compound property in the Willamette National Forest. DEQ requests public comment on its recommendation that no further investigation or cleanup action is needed for the former wood post treatment area on this property.

BACKGROUND: For detailed project information please see a copy of the final report prepared by the USDA Forest Service's consultant, on DEQ's website at: <http://www.deq.state.or.us/wdr/?p=26160>

DEQ's proposed NFA determination applies to a portion of the USDA Forest Service Blue River Upper Compound property where wood signposts were occasionally treated with pentachlorophenol solution.

Several environmental site assessments previously documented environmental concerns related to a small area of less than 1,500 square feet in an undeveloped portion of the property.

Petroleum hydrocarbons (e.g., diesel-range organics and heavy oil-range hydrocarbons), pentachlorophenol, dioxin, and furan were detected in certain soil samples collected in the area of former wood post treatment.

About 320 cubic yards of contaminated soil were excavated and properly disposed at an approved landfill in 2012. Residual levels of contamination in post-excavation confirmation samples are below levels that could be a threat to human health or the environment.

DEQ considers the area of the former wood post treatment to be safe for residential, commercial, or industrial uses.

HOW TO COMMENT: Written comments must be received by March 1, 2013. Comments should be submitted to DEQ's Eugene office, 165 East 7th Street, Eugene, Oregon 97401 or by e-mail at aitken.greg@deq.state.or.us. Questions may also be directed to Greg Aitken at the Eugene address or by calling him at 541-687-7361

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

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 Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Amend rules related to renewal and application. Adopt rules for contracting and SB 126 (2011 session)

Date:	Time:	Location:
3-12-13	1:30 p.m.	670 Hawthorne Ave. SE Suite 220 Salem, OR 97301

Hearing Officer: Dan Linscheid

Stat. Auth.: ORS 672.255

Other Auth.: ORS 670.310

Stats. Implemented: ORS 672.002–672.325

Proposed Adoptions: 820-001-0025, 820-050-0010

Proposed Amendments: 820-010-0200, 820-010-0204, 820-010-0205, 820-010-0206, 820-010-0207, 820-010-0208, 820-010-0212, 820-010-0213, 820-010-0214, 820-010-0215, 820-010-0225, 820-010-0226, 820-010-0415, 820-010-0425, 820-010-0427, 820-010-0480, 820-010-0520, 820-010-0635, 820-010-0720, 820-015-0026, 820-020-0040.

Last Date for Comment: 3-12-13, Close of Hearing

Summary: OAR 820-001-0025 — Adopts language to state that the Board adopted the Department of Justice Public Contracts Manual including reference to ORS 279A, B, and C, and OAR Chapter 137, Divisions 46 and 47 as its purchasing and contracting policies and became effective May 8, 2012.

OAR 820-050-0010 — Adopts language to define “water right examination” and adopts requirement for a CWRE to obtain 10 PDH units (SB126, 2011 Session).

OAR 820-010-0200 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from \$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0204 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from

\$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0205 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from \$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0206 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from \$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0207 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from \$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0208 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from \$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0212 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from \$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0213 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from \$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0214 — Housekeeping; Revises the total fee for application as a result of the decrease in annual renewal fee (from \$90.00 to \$75.00 effective with the June 2012 biennial renewal period) and renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0215 — Housekeeping; Renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0225 — Adds language to clarify if all necessary documents are not received by the deadline, the application package will be considered withdrawn.

OAR 820-010-0226 — Adds language to clarify if all necessary documents are not received by the deadline, the application package will be considered withdrawn.

OAR 820-010-0415 — Housekeeping; Renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0425 — Housekeeping; Renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0427 — Housekeeping; Renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0480 — Revises language to clarify examinees are subject to the NCEES 2012 version of the Examination Administration Policies.

OAR 820-010-0520 — Housekeeping; Renames the “take-home” examination to a “take at home” examination.

OAR 820-010-0635 — Deletes language related to the NCEES Registered Continuing Education Providers Program as they no longer exist.

OAR 820-010-0720 — Revises language to include that a licensee, firm, or other organization advertising for or offering to perform the services provided in ORS Chapter 537 must employ a Certified Water Right Examiner (CWRE).

OAR 820-015-0026 — Revises language to clarify the process to request a grace period if a registrant has failed to satisfy the Continuing Professional Development requirements by 15 PDH or fewer.

NOTICES OF PROPOSED RULEMAKING

OAR 820-020-0040 — Revises language to clarify prohibited examination conduct.

Rules Coordinator: Mari Lopez

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

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

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Board of Licensed Professional Counselors and Therapists Chapter 833

Rule Caption: Changes to registered intern supervisor and distance supervision requirements.

Stat. Auth.: ORS 675.705–675.835

Stats. Implemented: ORS 675.705–675.835

Proposed Amendments: 833-050-0081

Last Date for Comment: 3-8-13, 5 p.m.

Summary: Sets new requirements for distance supervision of registered interns. Revises the role of supervisors of registered interns.

Rules Coordinator: Becky Eklund

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

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

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Board of Nursing Chapter 851

Rule Caption: To bring language in line with previous versions, and the intent of the Board.

Date:	Time:	Location:
2-21-13	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Kay Carnegie, Board President

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.442

Proposed Amendments: 851-062-0100

Last Date for Comment: 2-19-13, 5 p.m.

Summary: The purpose of the revision to Division 62 is to bring the language in line with previous versions of the rule, and the intent of the Board.

Rules Coordinator: Peggy A. Lightfoot

Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

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Rule Caption: To clarify and add language related to faculty and preceptor qualification requirements.

Date:	Time:	Location:
2-21-13	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Kay Carnegie, Board President

Stat. Auth.: ORS 678.150

Other Auth.: ORS 678.031

Stats. Implemented: ORS 678.150

Proposed Amendments: 851-050-0000, 851-050-0009

Last Date for Comment: 2-19-13, 5 p.m.

Summary: The purpose of these revisions is to clarify the definition of an Oregon Based Nurse Practitioner Program, remove name of registration form, and to add language to clarify faculty and preceptor qualification requirements for clinical practicum in Oregon for Nurse Practitioner students enrolled in a non-Oregon based graduate program.

Rules Coordinator: Peggy A. Lightfoot

Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

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Rule Caption: To clarify and add language related to faculty and preceptor qualification requirements.

Date:	Time:	Location:
2-21-13	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Kay Carnegie, Board President

Stat. Auth.: ORS 678.150

Other Auth.: ORS 678.285

Stats. Implemented: ORS 678.285

Proposed Amendments: 851-052-0040

Last Date for Comment: 2-19-13, 5 p.m.

Summary: The purpose of these revisions is to remove name of registration form, and to add language to clarify faculty and preceptor qualification requirements for clinical practicum in Oregon for Certified Registered Nurse Anesthetist students enrolled in a non-Oregon based graduate program.

Rules Coordinator: Peggy A. Lightfoot

Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

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Rule Caption: To clarify and add language related to faculty and preceptor qualification requirements.

Date:	Time:	Location:
2-21-13	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR

Hearing Officer: Kay Carnegie, Board President

Stat. Auth.: ORS 678.150

Other Auth.: ORS 678.031

Stats. Implemented: ORS 678.150

Proposed Amendments: 851-054-0060, 851-054-0100

Last Date for Comment: 2-19-13, 5 p.m.

Summary: The purpose of these revisions is to remove name of registration form, to add language to clarify faculty and preceptor qualification requirements for clinical practicum in Oregon for Clinical Nurse Specialist students enrolled in a non-Oregon based graduate program, and to remove references to repealed rules.

Rules Coordinator: Peggy A. Lightfoot

Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

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Rule Caption: To eliminate references to the third-party monitoring entity that is part of HPSP.

Date:	Time:	Location:
2-21-13	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Kay Carnegie, Board President

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Proposed Amendments: 851-070-0005, 851-070-0030, 851-070-0040, 851-070-0050, 851-070-0100

Last Date for Comment: 2-19-13, 5 p.m.

Summary: The purpose of these revisions is to eliminate references to the third-party monitoring entity that is part of the Health Professionals' Services Program (HPSP) which was removed from statute in 2012 HB 4009.

Rules Coordinator: Peggy A. Lightfoot

Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

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Construction Contractors Board Chapter 812

Rule Caption: Update cite references, change to pre-licensure training, provider experience, and change record retention.

Date:	Time:	Location:
2-26-13	11 a.m.	West Salem Roth's IGA Santiam Rm. 425 Glen Creek Rd. Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Rob Yorke
Stat. Auth.: ORS 670.310, 701.122, 701.235 & 701.992
Stats. Implemented: ORS 670.310, 701.005, 701.056, 701.063, 701.068, 701.073, 701.088, 701.102, 701.105, 701.122, 701.131 & 701.238

Proposed Amendments: 812-002-0640, 812-005-0180, 812-006-0100, 812-006-0150, 812-006-0200, 812-006-0250, 812-006-0300, 812-006-0350, 812-006-0400, 812-006-0450

Last Date for Comment: 2-26-13, 11 a.m.

Summary: OAR 812-002-0640, 812-005-0180, Div. 6 heading, 812-006-0150, 812-006-0250, 812-006-0300, 812-006-0350, and 812-006-0400 are amended to make it clear the training is needed before a new contractor becomes licensed. This helps clearly differentiate between the continuing education required for renewal and the pre-licensure education required prior to licensure.

812-006-0100 and 812-006-0450 are amended to revise cite references and to make it clear the training is needed before a new contractor becomes licensed. This helps clearly differentiate between the continuing education required for renewal and the pre-licensure education required prior to licensure.

812-006-0200 is amended to make it clear the training is needed before a new contractor becomes licensed. This helps clearly differentiate between the continuing education required for renewal and the pre-licensure education required prior to licensure. And is amended to change the length of time a pre-licensure training provider must keep their records from five years to six years to match the Pre-Licensure Training Authorization Agreements providers sign and to match current contracting statutes. The rule is also amended to require that trainers have at least four years work experience or four years of education, or any combination of both, in the subject areas that they instruct. The amendment is consistent with the rule for residential continuing education (see OAR 812-021-0025(6)(b)).

Rules Coordinator: Catherine Dixon
Address: Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310
Telephone: (503) 934-2185

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Department of Agriculture
Chapter 603

Rule Caption: Amends rules language to match national standard, updates testing requirements and improves readability.

Stat. Auth.: ORS 561, 571 & 632
Stats. Implemented: ORS 561, 571 & 632
Proposed Amendments: 603-051-0855, 603-051-0856, 603-051-0857, 603-051-0858, 603-051-0859

Last Date for Comment: 2-22-13, 5 p.m.

Summary: The proposed amendments to the rules adjust the language and definitions used to match those in the "state level model regulatory standard: Virus-tested certification program for Prunus, Malus, Pyrus, Chaenomeles, and Cydonia nursery stock production systems." The proposed amendments also update the requirements for nematode testing, for growing registered plants from tissue culture, and for record keeping by program participants, while improving the readability of the regulations.

Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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

Rule Caption: Amending the 2011 Oregon Electrical Specialty Code for arc-fault circuit interrupter provisions.

Date: 2-19-13 **Time:** 10 a.m. **Location:** 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: Dennis Clements

Stat. Auth.: ORS 183.335, 455.030, 455.110, 455.610 & 479.730
Stats. Implemented: ORS 183.335, 455.030, 455.110, 455.610 & 479.730

Proposed Adoptions: Rules in 918-305
Proposed Amendments: Rules in 918-305

Proposed Repeals: Rules in 918-305

Last Date for Comment: 2-22-13, 5 p.m.

Summary: This proposed rule expands the requirement for arc-fault circuit interrupter (AFCI) protection in dwelling units. The proposed rule also adds an exception to the required AFCI protection for branch circuits supplying one or more outlets serving in a single room of a dwelling unit.

Rules Coordinator: Richard J. Baumann
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 373-7559

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Rule Caption: Clarifies continuing education requirements for licensees, corrects scrivener's errors.

Date: 2-19-13 **Time:** 9:30 a.m. **Location:** 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: James Hanson
Stat. Auth.: ORS 455.117
Stats. Implemented: ORS 455.117
Proposed Amendments: 918-030-0100, 918-030-0120, 918-030-0125, 918-030-0130, 918-030-0135

Last Date for Comment: 2-22-13, 5 p.m.

Summary: 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
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 373-7559

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

Rule Caption: Workers' compensation rules governing medical fee schedules, medical services, and managed care organizations

Date: 2-21-13 **Time:** 9 a.m. **Location:** 350 Winter St. NE
Labor & Industries Bldg.,
Rm. F (Basement)
Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.248, 656.325, 656.704, 656.726(4)
Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.260, 656.325

Proposed Amendments: Rules in 436-009, 436-010-0210, 436-010-0230, 436-010-0265, 436-010-0330, 436-015-0008, 436-015-0080, 436-015-0110

Last Date for Comment: 2-22-13, Close of Business

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

- Adopt updated medical fee schedules (Appendices B, C, D, and E) and resources for the payment of health care providers.
- Specify that payments for certain hospital outpatient imaging services are limited to the maximums allowed under the physician fee schedule (Appendix B), and are therefore not subject to a hospital's cost/charge ratio.

NOTICES OF PROPOSED RULEMAKING

- Clarify that an insurer must provide an explanation for any reductions in reimbursements to a worker for the worker's claim-related expenses.

- Clarify conditions under which billings may be returned for correction.

- Increase the maximum allowable payments for four chiropractic manipulation CPT® codes: 98940, 98941, 98942, and 98943.

- Prescribe payment criteria for time-based CPT® codes for physical medicine and rehabilitation services.

- Increase the maximum hours payable to a physician (selected by the director) for review of medical records and examination of a worker, and increase the maximum allowable payment for the resulting report.

- Establish a maximum allowable payment for a copy of medical records in an electronic format.

- Define interpreter services to include reasonable time spent on necessary paperwork.

- Revise requirements for information an interpreter must include on an invoice.

- Clarify that the durable medical equipment, prosthetics, orthotics, and supplies fee schedule does not apply when an ambulatory surgery center's cost of an implant is more than \$100.

- Update the agency contact/routing information insurers must include on notices of the right to administrative review for each explanation of benefits.

The agency proposes to amend OAR chapter 436, division 010, "Medical Services," to:

- Specify limitations on an employer or insurer representative's right to attend a worker's medical examination, and describe conditions for release of medical records to the representative.

- Clarify treatment plan requirements for services of ancillary medical service providers.

- Prescribe treatment plan requirements for services of licensed massage therapists.

- Clarify that the director may appoint a physician or panel of physicians to review medical treatment or services disputes under ORS 656.260, involving workers enrolled in a managed care organization.

The agency proposes to amend OAR chapter 436, division 015, "Managed Care Organizations," to:

- Clarify that the director may appoint a medical service provider or panel of providers to review the medical records or examine a worker as needed to resolve a medical treatment or services dispute involving a worker enrolled in a managed care organization.

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: Earned Time Credit for Inmates

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-421.122, 423.020, 423.030 & 423.075

Proposed Adoptions: 291-097-0220, 291-097-0225, 291-097-0230, 291-097-0235, 291-097-0245

Proposed Repeals: 291-097-0023, 291-097-0031

Proposed Ren. & Amends: 291-097-0005 to 291-097-0200, 291-097-0010 to 291-097-0210, 291-097-0015 to 291-097-0215, 291-097-0020 to 291-097-0240, 291-097-0025 to 291-097-0250, 291-097-0030 to 291-097-0255, 291-097-0040 to 291-097-0260, 291-097-0050 to 291-097-0265, 291-097-0060 to 291-097-0270, 291-097-0070 to 291-097-0275, 291-097-0080 to 291-097-0280, 291-097-0090 to 291-097-0285, 291-097-0100 to 291-097-0290,

291-097-0120 to 291-097-0295, 291-097-0130 to 291-097-0300, 291-097-0140 to 291-097-0305

Last Date for Comment: 3-8-13, 5 p.m.

Summary: These rule amendments are needed to further clarify changes made to ORS 421.121 with regard to 30% earned time. This statute was amended to further restrict inmates from 30% earned time based on the crime of conviction as well as prior criminal history. Furthermore, it provides a sunset to 30% earned time for crimes committed on or before 6/30/2013.

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 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:
2-21-13	10 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 181.537, 409.050, 411.060, 411.070, 411.081, 411.083, 411.085, 411.122, 411.300, 411.400, 411.404, 411.632, 411.660, 411.704, 411.706, 411.710, 411.816, 412.006, 412.009, 412.014, 412.024, 412.049, 412.124, 414.231

Other Auth.: 42 USC 602(a); 7 CFR 273.9(d); 45 CFR 261.2(n)(2)(i); Public Law 111-291 (section 101(f)(2))

Stats. Implemented: ORS 181.537, 183.452, 409.010, 409.610, 411.060, 411.070, 411.081, 411.083, 411.085, 411.087, 411.122, 411.300, 411.400, 411.404, 411.632, 411.704, 411.706, 411.710, 411.816, 412.001, 412.006, 412.009, 412.014, 412.024, 412.049, 412.124, 414.712, 414.826, 414.831, 414.839, 420.014, 420.054, 657A.340, 2011 Or. Laws 604

Proposed Adoptions: 461-025-0301

Proposed Amendments: 461-001-0015, 461-025-0300, 461-105-0020, 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, 461-155-0290, 461-155-0291, 461-155-0295, 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

Proposed Repeals: 461-165-0190

Last Date for Comment: 2-22-13, 5 p.m.

Summary: 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 adopted 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 461-105-0020 about responsibilities of clients is being amended to more accurately describe who is responsible for following the requirements of this rule. The rule has applied to clients and their spouses but is being amended to specify the clients to which the rule applies.

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 rela-

NOTICES OF PROPOSED RULEMAKING

tive who is a participant in JOBS Plus is excused from the requirement to cooperate.

ORAR 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.

ORAR 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.

ORAR 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.

ORAR 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. ORAR 461-135-0780 is being updated to reflect new Pickle Amendment calculation multipliers for 2013. ORAR 461-145-0220 is being updated with a new home equity value exclusion amount, raising the exclusion limit from \$525,000 to \$536,000. ORAR 461-155-0250 is being amended to reflect new OSIPM financial eligibility standards, and eliminate the OSIPM-AB income standard. ORAR 461-155-0270 and 461-155-0300 are being amended to reflect new income standards as a result of SSA cost of living adjustments. ORAR 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.

ORAR 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.

ORAR 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 is also being amended to make permanent the changes adopted by temporary rule effective January 1, 2013.

ORAR 461-155-0290 about income standards for the QMB-BAS program, ORAR 461-155-0291 about income standards for the QMB-DW programs, and ORAR 461-155-0295 about income standards for the QMB-SMB and QMB-SMF programs are being amended to reflect changes to the federal poverty level for 2013, which will in turn raise the income standards for Medicare Savings Programs.

ORAR 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.

ORAR 461-160-0030 about deductibility of costs from income, ORAR 461-160-0055 about medical costs that are deductible, ORAR 461-160-0410 about use of income and income deductions in the SNAP program when there are ineligible or disqualified group members, ORAR 461-160-0415 about medical deductions in the SNAP program, ORAR 461-160-0420 about shelter cost in the SNAP program, and ORAR 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 ORAR 461-110-0370.

ORAR 461-160-0193 about direct provider payments for TANF child care is being amended to align with the repeal of ORAR 461-165-0190. Under these changes, child care payments paid directly to a client are no longer allowed.

ORAR 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.

ORAR 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.

ORAR 461-165-0190 about payments paid directly to a client is being repealed to align with changes to ORAR 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.

NOTICES OF PROPOSED RULEMAKING

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. Some of these amendments make permanent earlier temporary rule amendments adopted on November 6, 2012 and December 28, 2012.

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

The Department 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.

Written comments may be submitted until February 22, 2013 at 5:00 p.m. Written comments may be e-mailed to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS-Self-Sufficiency Programs, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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

Rule Caption: Medicaid Nursing Facilities.

Date:	Time:	Location:
2-19-13	1:30 p.m.	500 Summer St. NE, Rm. 160 Salem, Oregon 97301

Hearing Officer: Staff

Stat. Auth.: ORS 410.070

Other Auth.: 42 CFR 447, 434, 438, & 1902(a)(4)

Stats. Implemented: ORS 410.070

Proposed Amendments: 411-070-0005, 411-070-0091

Last Date for Comment: 2-21-13, 5 p.m.

Summary: The Department of Human Services (Department) is proposing to permanently amend the Medicaid nursing facility rules in OAR chapter 411, division 070 to identify Provider Preventable Conditions (PPCs), clarify the Department's non-payment policy for PPCs, and require nursing facilities to begin to report each PPC through the Department's Medicaid Management Information System (MMIS).

Effective July 1, 2012, the Centers for Medicare and Medicaid Services (CMS) prohibited federal payment for any amounts expended to provide medical assistance for health care acquired conditions. To implement non-payment policies for PPCs, including health care-acquired conditions and other provider-preventable conditions, CMS identified a minimum set of conditions for non-payment, including infections and events.

Effective September 1, 2012, the Department implemented temporary rules for Medicaid Nursing Facilities identifying the PPCs and implementing non-payment policies for PPCs as directed by CMS. The Department is now proposing to make the temporary changes permanent.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 945-6398

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**Department of Oregon State Police,
State Athletic Commission
Chapter 230**

Rule Caption: Remove medical disqualification for losing four fights from OAR.

Stat. Auth.: ORS 463.113

Stats. Implemented: ORS 463.025 & 463.047

Proposed Amendments: 230-020-0330

Last Date for Comment: 2-20-13, 5 p.m.

Summary: The Oregon State Athletic Commission (OSAC) Medical Advisory Committee reviewed rule 230-020-0330 2 (b) and has concluded that the rule requiring medical disqualification after four consecutive losses has no medical basis related to competitor safety.

The Oregon State Athletic Commission placed calls to both Nevada and New Jersey regulatory bodies regarding medical disqualification for Mixed Martial Arts (MMA) competitors for any number of consecutive losses and the results were that neither of the jurisdictions have any written rule or regulations regarding this.

Additionally, the OSAC checked with the Association of Boxing Commissions (ABC) regarding any information they may have regarding medical disqualification for consecutive losses in MMA. The Director of the Association of Boxing Commissions, Tim Lueckenhoff, responded that he had no knowledge of any other jurisdiction having such a rule and that in his opinion he would not support such a rule.

Conclusion: It is proposed that this rule OAR 230-020-0330 2 (b) on the basis of the above collected information, having no medical basis and no support as an Industry Standard, should be removed from OAR 230-020-0330.

Rules Coordinator: Shannon Peterson

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

Telephone: (503) 934-0183

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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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.252, 807.270, 813.510 & 809.440

Stats. Implemented: ORS 25.780, 807.062, 807.240, 807.250, 807.270, 809.265, 809.380, 809.390, 809.440, 813.100, 813.500, 813.510, 813.602, 813.608, 813.610, 813.612 & 813.614

Proposed Amendments: 735-001-0050, 735-064-0005, 735-064-0020, 735-064-0060, 735-064-0100, 735-064-0110

Last Date for Comment: 2-21-13, Close of Business

Summary: ORS 807.240(5) allows DMV to suspend or revoke a hardship permit upon satisfactory evidence of a violation of any lim-

NOTICES OF PROPOSED RULEMAKING

itation, 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 proposes to amend 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. DMV also proposes to amend this rule to specify that a hardship permit that is suspended may be reinstated when the person meets the requirement and pays a reinstatement fee, and to provide an administrative review when a hardship permit is suspended.

DMV also proposes to amend 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 is currently allowed only for a hardship permit.

DMV also proposes to amend 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 insurance company that a requirement for a hardship or probationary permit has been withdrawn.

DMV also proposes to amend 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 proposes to also amend 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.

Proposed amendments to OAR 735-064-0005 and 735-064-0100 update references and make other changes for consistency and clarity.

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

Telephone: (503) 986-3171

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Oregon Board of Naturopathic Medicine Chapter 850

Rule Caption: Amending Natural Childbirth Certificate Rule to clarify qualifications and License status.

Stat. Auth.: ORS 685.125

Other Auth.: ORS 685.135

Stats. Implemented: ORS 685.135

Proposed Amendments: 850-035-0230

Last Date for Comment: 2-22-13, 9 a.m.

Summary: The amendments to this rule will clarify some of the requirements for obtaining an initial certification in natural childbirth. It will also define the allowance for those licensees with current certification in natural childbirth to request an inactive status.

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

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Oregon Department of Education Chapter 581

Rule Caption: Allows for reconsideration of agency final orders relating to special education complaints.

Date:	Time:	Location:
2-22-13	9 a.m.	Department of Education 255 Capitol St. NE Salem OR

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 343.041

Stats. Implemented: ORS 343.041

Proposed Amendments: 581-015-2030

Last Date for Comment: 2-28-13, 5 p.m.

Summary: 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 issued a final order within 60 days of receiving a complaint.

The rule amendments allow for a party to ask the Department for a reconsideration of the final order. Pursuant to federal guidance the rule does not allow the Department of stay the final order pending disposition of the reconsideration request.

Rules Coordinator: Cindy Hunt

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

Telephone: (503) 947-5651

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Rule Caption: Implements kindergarten assessment.

Stat. Auth.: ORS 326.051 & 329.485

Stats. Implemented: ORS 329.485 & section 14, chapter 37, Oregon Laws 2012 (Enrolled House Bill 4165).

Proposed Adoptions: 581-022-2130

Last Date for Comment: 2-28-13, 5 p.m.

Summary: 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 schools year.

Rules Coordinator: Cindy Hunt

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

Telephone: (503) 947-5651

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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 October 1, 2012

Date:	Time:	Location:
2-15-13	10:30 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301

Hearing Officer: Cheryl Peters

Stat. Auth.: ORS 192.527, 192.528, 413.042 & 414.065

Other Auth.: HB 2100

Stats. Implemented: ORS 192.527, 192.528, 414.010, 414.065 & 414.727

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 410-141-0520

Last Date for Comment: 2-20-13, 5 p.m.

Summary: 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

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: Align with OAR chapter 461, division 155 medical eligibility rules

Date:	Time:	Location:
2-15-13	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 413.042 & 414.065

Proposed Amendments: 410-120-0006

Proposed Repeals: 410-120-0006(T)

Last Date for Comment: 2-20-13, 5 p.m.

Summary: 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

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, Oregon Educators Benefit Board Chapter 111

Rule Caption: Establishing language on employees returning to a benefit eligible status

Date:	Time:	Location:
2-21-13	10 a.m.	OEBB Boardroom 1225 Ferry St. SE Salem, OR 97304

Hearing Officer: OEBB Staff

Stat. Auth.: ORS 243.860–243.886

Stats. Implemented: ORS 243.864(1)(a)

Proposed Adoptions: 111-040-0011

Last Date for Comment: 2-28-13, 5 p.m.

Summary: Adoption of 111-040-0011 will establish language in rule on eligible employees returning to a benefit eligible status for any reason other than a termination of employment.

Rules Coordinator: April Kelly

Address: Oregon Health Authority, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301

Telephone: (503) 378-6588

Oregon Health Insurance Exchange Chapter 945

Rule Caption: Administrative Charges and Fees

Date:	Time:	Location:
2-27-13	10 a.m.	167760 SW Upper Boones Ferry Rd., Training Rm. Durham. OR 97224

Hearing Officer: Gregory Jolivette

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.105

Proposed Adoptions: 945-030-0010, 945-030-0020, 945-030-0030, 945-030-0040

Last Date for Comment: 3-6-13, 5 p.m.

Summary: Establishes the process for adoption of administrative charges and fees. Establishes the 2014 administrative charge to be paid by participating insurers.

This is a second notice on this proposed rule because Cover Oregon has added a second hearing and extended the comment period.

Rules Coordinator: Gregory Jolivette

Address: Oregon Health Insurance Exchange, 16760 SW Upper Boones Ferry Rd., Suite 200, Durham, OR 97224

Telephone: (503) 373-9406

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Oregon Health Licensing Agency Chapter 331

Rule Caption: Amend title of standard body piercing trainee license to temporary trainee license.

Stat. Auth.: ORS 676.607, 676.615

Stats. Implemented: ORS 676.615, 690.365

Proposed Amendments: 331-900-0020, 331-900-0025, 331-900-0050, 331-900-0055, 331-905-0011, 331-905-0013

Last Date for Comment: 2-28-13, 5 p.m.

Summary: Amend title of standard body piercing trainee license to temporary trainee license to align with statutory authority. Currently the license is listed as a trainee license and the statute does not give authority to issue trainee licenses.

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 Housing and Community Services Department Chapter 813

Rule Caption: Adopts the Attorney General's Mediation Confidentiality Rules

Date:	Time:	Location:
2-26-13	10 a.m.	725 Summer St. NE Rm. 124A/B Salem OR 97301-1266

Hearing Officer: Sandy McDonnell

Stat. Auth.: ORS 36.220 to 36.238

Stats. Implemented: ORS 36.224

Proposed Adoptions: 813-004-0001, 813-004-0002

Proposed Repeals: 813-004-0001(T), 813-004-0002(T)

Last Date for Comment: 3-8-13, Close of Business

Summary: 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

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

Telephone: (503) 986-2012

NOTICES OF PROPOSED RULEMAKING

Oregon Medical Board Chapter 847

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

Date: 2-22-13
Time: 12 p.m.
Location: 1500 SW 1st Ave., #620
Portland, OR 97201

Hearing Officer: Kathleen Haley

Stat. Auth.: OAR 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: 2-22-13, Close of Hearing

Summary: 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 office-based surgery facilities; 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 housekeeping 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: Addition of a public member to the EMS Committee

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265 & 682.245

Proposed Amendments: 847-035-0011

Last Date for Comment: 2-21-13, Close of Business

Summary: Proposed rule amendment adds a position for a public member to the EMS Advisory Committee.

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: Require all Emergency Medical (First) Responders to have signed standing orders from a medical director

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

Proposed Amendments: 847-035-0030

Last Date for Comment: 2-21-13, Close of Business

Summary: Proposed 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 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

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

Telephone: (971) 673-2667

Rule Caption: License renewal registration certificates may be provided electronically

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.175, 677.265, 677.510

Proposed Amendments: 847-008-0040

Last Date for Comment: 2-21-13, Close of Business

Summary: The proposed 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 proposed rule amendment also reorganizes the subsections, streamlines the language, and contains general grammar and housekeeping 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: Renumbers rule requiring fingerprint background checks and clarifies that fingerprints must be legible

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 181.534, 677.100 & 677.265

Proposed Ren. & Amends: 847-020-0155 to 847-008-0068

Last Date for Comment: 2-21-13, Close of Business

Summary: Proposed rule amendment would move (renumber) the rule on criminal records checks from Division 020 to Division 008 to accurately show that it applies to all Board applicants and licensees. Proposed rule amendment also clarifies that the submitted fingerprints must be legible.

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: Clarifies that electronic records are "health information" and corrects a statutory reference

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 192.553, 192.556, 192.558, 192.563, 192.566 & 677.265

Proposed Amendments: 847-012-0000

Last Date for Comment: 2-21-13, Close of Business

Summary: Proposed 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

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

Telephone: (971) 673-2667

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Rule Caption: Drug dispensing, distribution and administration requirements

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.010, 677.089, 677.510 & 677.515

Proposed Amendments: 847-015-0025

Last Date for Comment: 2-21-13, Close of Business

Summary: Proposed rule amendment establishes documentation standards for drugs dispensed, distributed or administered; clarifies that distribution, as defined by the Board of Pharmacy, is distinct from dispensing; and clarifies that a physician supervising a physician assistant with drug dispensing authority without first registering as a dispensing physician is a violation of the rule.

Rules Coordinator: Nicole Krishnaswami

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

Telephone: (971) 673-2667

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Reorganizes and updates the rules on licensure
Stat. Auth.: ORS 677.100, 677.132 & 677.265
Stats. Implemented: ORS 677.010, 677.100, 677.110, 677.120, 677.132, 677.190 & 677.265
Proposed Amendments: 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, 847-020-0185, 847-020-0190, 847-020-0200
Proposed Repeals: 847-020-0180
Last Date for Comment: 2-21-13, Close of Business

Summary: Overall, the proposed 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 proposed 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
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: Amend rule to reflect the most recent Social Security annual compensation limitations.

Date:	Time:	Location:
2-26-13	3 p.m.	PERS Board Rm. 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075, & 2007 OL Ch. 499 & 774
Proposed Amendments: 459-017-0060

Last Date for Comment: 3-1-13, 5 p.m.
Summary: Under ORS 238.082, a Tier One or Tier Two retired member may work fewer 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 and continue to receive retirement benefits.

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).

OAR 459-017-0060 must be modified to 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
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281
Telephone: (503) 603-7713

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Oregon University System,
Oregon State University
Chapter 576

Rule Caption: Updating Rule Concerning Time, Manner and Place for Speech Activities

Date:	Time:	Location:
2-22-13	1 p.m.	Memorial Union, Rm. 208 Oregon State University, Corvallis, OR

Hearing Officer: Beth Giddens
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Repeals: 576-005-0035, 576-005-0040
Last Date for Comment: 2-22-13, Close of Business

Summary: OSU is updating the rule to make it consistent with legal requirements and OSU practice.
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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Oregon University System,
University of Oregon
Chapter 571

Rule Caption: Amend OAR 571-060-0005 to include 2013 summer session room and board rates.

Date:	Time:	Location:
2-19-13	9 a.m.	Erb Memorial Union, Walnut Room University of Oregon Eugene, OR

Hearing Officer: Kathie Stanley
Stat. Auth.: ORS 351 & 352
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: 2-20-13, 12 p.m.
Summary: The University administration has determined that the adoption of the amendment to the summer residence hall room and board rates will be necessary in order to provide the basis for funding to cover the expenses for providing UO on-campus housing and dining.

Copies of the proposed amendment to the rates may be obtained from Amanda Hatch, Rules Coordinator, at ahatch@uoregon.edu or (541) 346-3082.

Rules Coordinator: Amanda Hatch
Address: Oregon University System, University of Oregon, 1226 University of Oregon, Eugene, OR 97403-1226
Telephone: (541) 346-3082

NOTICES OF PROPOSED RULEMAKING

Oregon Youth Authority Chapter 416

Rule Caption: A routine review of agency Administrative Rules concluded these rules are no longer needed.

Stat. Auth.: ORS 420A.025

Stats. Implemented:

Proposed Repeals: 416-465-0000, 416-465-0010, 416-465-0020, 416-465-0030, 416-465-0040

Last Date for Comment: 2-22-13, Close of Business

Summary: These agency rules regarding obtaining offender DNA samples are being repealed as the Oregon Youth Authority no longer obtains such samples. Samples may be obtained by the law enforcement agency attending upon the court, or the Department of Corrections.

Rules Coordinator: Winifred Skinner

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

Telephone: (503) 373-7570

Travel Information Council Chapter 733

Rule Caption: Amend existing Procedural Rules and adopt new model rules of procedure.

Stat. Auth.: ORS 377.835

Stats. Implemented: ORS 183.335, 183.341, 648.005, 192.410-192.505, 36.100-36.238

Proposed Adoptions: 733-001-0010, 733-001-0015, 733-001-0025, 733-001-0030, 733-001-0035

Proposed Amendments: 733-001-0000, 733-001-0005

Last Date for Comment: 2-22-13, 4 p.m.

Summary: 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, adopt the Attorney Generals Model Rules, declare an Assumed Business Name, formalize Public Records requests, and establish requirements of confidentiality for dispute resolution and mediation.

Rules Coordinator: Diane Cheyne

Address: Travel Information Council, 1500 Liberty St. SE, Suite 150, Salem, OR 97302

Telephone: (503) 378-4508

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Rule Caption: Update the professional standards effective date
Adm. Order No.: BOA 1-2013
Filed with Sec. of State: 1-8-2013
Certified to be Effective: 1-8-13
Notice Publication Date: 11-1-2012
Rules Amended: 801-001-0035
Subject: The professional standards as used throughout OAR chapter 801 are those that are in effect as of January 1, 2013.
Rules Coordinator: Kimberly Sisk—(503) 378-2268

801-001-0035 Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of January 1, 2013.

Stat. Auth.: ORS 183.332 & 673.410
Stats. Implemented: ORS 183.337 & 673.410
Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 1-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 1-2009, f. 12-15-09 cert. ef. 1-1-2010; BOA 1-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 1-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2013, f. & cert. ef. 1-8-13

Board of Architect Examiners Chapter 806

Rule Caption: Changes registration renewal cycle to coincide with calendar year.
Adm. Order No.: BAE 5-2012
Filed with Sec. of State: 12-19-2012
Certified to be Effective: 12-31-12
Notice Publication Date: 12-1-2012
Rules Amended: 806-010-0090
Subject: Changes individual architect registration renewal cycle to coincide with calendar year. This is a regulatory streamlining measure designed to make renewal of registration and tracking and reporting continuing education less cumbersome for licensees who maintain registration in multiple jurisdictions.
Rules Coordinator: Jim Denno—(503) 763-0662

806-010-0090 Renewal of Architect Registration

(1) The renewal deadline for architect registration certificates ending in odd-numbers is July 1, 2013. For all subsequent renewals, the renewal deadline for architect registration certificates ending in odd-numbers is December 31st of odd-numbered years. The renewal deadline for architect registration certificates ending in even-numbers is July 1, 2014. For all subsequent renewals, the renewal deadline for architect registration certificates ending in even-numbers is December 31st of even-numbered years. Architect registration certificates issued by this board expire at the end of the established grace periods in ORS 671.080. To renew, the registrant must:

(a) Submit a current renewal form, fully completed and received in the board office on or before the renewal deadline of the year in which the registration expires;

(b) Pay all required renewal fees, including any applicable late fees, specified in OAR 806-010-0105; and

(c) Provide any required evidence that the requirements for continuing education in OAR 806-010-0145 have been met.

(2) If a registrant fails to have a certificate renewed on or before the renewal deadline of the year in which the registration expires the registrant is delinquent. The registrant may renew the certificate during the established grace periods by submitting a complete renewal, as follows:

(a) Not later than July 31st of the year 2013 or 2014 in which the registration expires, including payment of the renewal fee and any applicable late CEH reporting fee. For all subsequent renewals, not later than the 30th day after the renewal deadline, including payment of the renewal fee and any applicable late CEH reporting fee; or

(b) After July 31st, but before August 30th of 2013 or 2014 in which the registration expires, including payment of the renewal fee, the late renewal fee, and any applicable late CEH reporting fee. For all subsequent renewals, after the 30th day after the renewal deadline, but before the 61st

day after the renewal deadline, including payment of the renewal fee, the late renewal fee, and any applicable late CEH reporting fee.

(3) On August 30th following the renewal deadline in 2013 or 2014, and on the 61st day following the renewal deadline in all subsequent years, the certificate of the registrant who fails to provide a complete renewal application and pay all applicable fees shall become inactive in Oregon. Reinstatement to active status must be in accordance with the provisions of OAR 806-010-0060.

Stat. Auth.: ORS 670 & 671.125
Stats. Implemented: ORS 671.080
Hist.: AE 18(Temp), f. 10-4-77; AE 21, f. & ef. 12-20-77; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 3-1992, f. & cert. ef. 6-30-92; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03; BAE 2-2008, f. 3-7-08, cert. ef. 7-1-08; BAE 2-2012, f. & cert. ef. 8-13-12; BAE 5-2012, f. 12-19-12, cert. ef. 12-31-12

Board of Licensed Professional Counselors and Therapists Chapter 833

Rule Caption: License portability
Adm. Order No.: BLPCT 1-2013
Filed with Sec. of State: 1-11-2013
Certified to be Effective: 2-1-13
Notice Publication Date: 12-1-2012
Rules Amended: 833-020-0051, 833-020-0081, 833-030-0041, 833-040-0041
Subject: Amends supervised clinical experience and national exam requirements for license applicants applying by reciprocity from another state.
Rules Coordinator: Becky Eklund—(503) 378-5499, ext. 3

833-020-0051 Reciprocity Method

(1) The reciprocity method is for applicants who seek acceptance of education and supervised clinical experience previously used to obtain a comparable license in another jurisdiction. The reciprocity method requires the applicant to document that the education and experience requirements under which the applicant obtained a comparable license held in another state are equivalent to the standards required for Oregon licensure as a professional counselor or as a marriage and family therapist.

(2) The Board will review each application designating the reciprocity method to determine if licensing is appropriate. The Board will compare the minimum standards in effect in the other jurisdiction when it granted a license with the current education, clinical experience, and examination standards required for Oregon licensure.

(3) Application for licensure must be submitted to the Board office in accordance with OAR 833-020-0011.

(4) The application must also include verification of from the sending state that applicant:

(a) Has a current, active license in that state;

(b) The license is comparable to the Oregon license requested;

(c) Applicant's license from other state is not temporary, probationary, expired, revoked, or suspended;

(d) The applicant has not been disciplined, including a reprimand or letter of concern; and

(e) Documentation of the education, clinical experience, and examination requirements for licensure in that state at the time licensure was granted.

(5) The applicant's license in the other state must have:

(a) Required at least a graduate degree in counseling, a graduate degree in marriage and family therapy, or a related degree. A related degree must have systemic coursework for a license as a marriage and family therapist;

(b) Been issued to an applicant whose qualifying degree meets Majority Standards for Graduate Degrees specified in OAR 833 Division 60;

(c) Required passage of a state or national competency exam; and

(d) Been obtained by a method of application that involved state review of documentation of education and clinical experience under adopted standards, and not obtained through reciprocity; act of portability; mutual recognition; recognition of non-governmental, professional certification or membership; waiver of any of the education, experience, or examination requirements; or "grandparenting".

(6) Five years or more of licensed clinical experience in another state may substitute for a maximum of 15 semester or 20 quarter credits of academic education required for licensure. Clinical experience may not substitute for diagnosis training.

ADMINISTRATIVE RULES

(7) Completed supervised clinical experience performing direct client counseling or marriage and family therapy, which must have included no less than:

(a) At least 2,000 hours in at least two years or the equivalent for licensed professional counselor;

(A) A minimum of 1,000 hours of the required 2,000 must be direct client contact;

(B) A maximum of 1,000 hours of the required 2,000 may be from supervision, consulting, reporting

(b) At least 2,000 hours earned in at least 3 years must be in the presence of a client for licensed marriage and family therapist.

(8) Five or more years of post license clinical experience may substitute for 1,000 hours of the required, supervised direct client contact hours required for Oregon licensure.

(9) The applicant must meet the examination requirements specified in:

(a) 833-020-0081 and 833-030-0041 for licensure as a professional counselor; or

(b) 833-020-0081 and 833-040-0041 for licensure as a marriage and family therapist.

(10) Documentation of acceptance on the national credentials registry for professional counselors may substitute for education and experience requirements for licensure as a professional counselor.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10;

BLPCT 1-2011, f. 1-13-11, cert. ef. 2-1-11; BLPCT 1-2013, f. 1-11-13, cert. ef. 2-1-13

833-020-0081

Examination

(1) All applicants must pass a competency exam and a law and rules exam approved by the Board.

(2) Applicants who have passed the competency exam within 10 years prior to applying for licensure are not required to retake the exam.

(3) Applicants applying by the reciprocity method who have passed the exam 10 years or more prior to applying for licensure in Oregon must:

(a) Retake the exam; or

(b) Document a minimum of 40 clock hours of continuing education in the core curriculum areas specified in OAR 833, division 60. Continuing education that substitutes for passage of the exam must be completed within two years prior to licensure.

(4) Registered interns may take the competency exam any time during their registered internships.

(5) Failure to document passage of an acceptable competency examination or failure to register and attempt to pass the competency portion of the state examination at least once per year will result in denial of licensure.

(6) Applicants must pass the competency exam within two years after meeting experience requirements for licensure.

(7) Applicants who fail to pass the competency portion of the state exam after taking the exam three times, must:

(a) Complete graduate level coursework in the content areas failed in the exam;

(b) The graduate level coursework must be completed from:

(A) A program accredited by CACREP, CORE, or COAMFTE; or

(B) A regionally accredited college or university;

(c) Re-apply for licensure.

(8) Applicants are allowed 30 days, from the date the board sends the law and rules exam to the applicant, to complete and return the law and rules portion of the state examination. Failure to complete and return the examination to the Board office will result in closure of the application.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11;

BLPCT 1-2013, f. 1-11-13, cert. ef. 2-1-13

833-030-0041

Examination Requirement for Licensure as a Professional Counselor

(1) All applicants for licensure as a professional counselor must pass an examination consisting of two separate sections: a competency section and an Oregon law and rules section.

(2) To qualify for licensure as a professional counselor under ORS 675.715(5), an applicant must pass one of the following competency examinations within 10 years from the date of application for licensure prescribed by the Board or have passed other approved alternative exams:

(a) National Counselor Examination;

(b) Certified Clinical Mental Health Counselor Examination;

(c) Certified Rehabilitation Counselor Examination; or

(d) Other exams as approved by the Board.

(3) Applicants applying via the reciprocity method may meet the competency exam requirements specified in 833-020-0081.

(4) To qualify to sit for the competency examination, a LPC applicant must:

(a) Submit an application; and

(b) Meet the graduate program and coursework requirements in OAR 833 division 60.

(5) Candidates will pay exam and exam administration fees to the prescribed examination providers.

(6) Passing scores will be:

(a) Established by the National Board of Certified Counselors for applicants who plan to take the exam after applying for Oregon licensure.

(b) Established by the agency verifying passage of its examination for applicants who took a state competency exam before applying for Oregon licensure.

(7) The Board will notify examinees, in writing only, of the results of their examination.

(8) Following passage of the approved competency examination, the Board requires passage of an Oregon state law and rules examination with a passing score determined by the Board.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 1-2013, f. 1-11-13, cert. ef. 2-1-13

833-040-0041

Examination Requirement for Licensure as a Marriage and Family Therapist

(1) All applicants for licensure as a marriage and family therapist must pass an examination consisting of two separate sections: a competency section and an Oregon law and rules section.

(2) To qualify for licensure as a marriage and family therapist under ORS 675.715(5), an applicant must pass a competency examination prescribed by the Board or have passed other approved alternative exams, within 10 years from the date of application for licensure.

(3) The Board prescribes as the competency section the computerized marital and family therapy examination of the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) in association with the Professional Examination Service.

(4) Applicants applying via the reciprocity method may meet the competency exam requirements specified in 833-020-0081.

(5) To qualify to sit for the competency examination, a LMFT applicant must:

(a) Submit an application; and

(b) Meet the graduate program and coursework requirements prescribed in OAR 833 division 60.

(6) Candidates will pay exam and exam administration fees to the prescribed examination providers.

(7) Passing scores will be:

(a) Established by the AMFTRB for applicants who plan to take the exam after making application for Oregon licensure; or

(b) Established by the agency verifying passage of its examination for applicants who have completed an approved alternative examination.

(8) The Board will notify examinees, in writing only, of the results of their examination.

(9) Following passage of the approved competency examination, the Board requires passage of an Oregon state law and rules examination, with a passing score as determined by the Board.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10;

BLPCT 1-2013, f. 1-11-13, cert. ef. 2-1-13

Board of Optometry Chapter 852

Rule Caption: Rule revisions governing optometry for clarity and changes in standards of practice and agency budget.

Adm. Order No.: OPT 1-2013

Filed with Sec. of State: 1-3-2013

Certified to be Effective: 1-3-13

Notice Publication Date: 12-1-2012

Rules Adopted: 852-050-0022

Rules Amended: 852-001-0001, 852-001-0002, 852-005-0005, 852-005-0015, 852-005-0030, 852-010-0005, 852-010-0015, 852-010-0020, 852-010-0022, 852-010-0023, 852-010-0030, 852-010-0035,

ADMINISTRATIVE RULES

852-010-0051, 852-010-0080, 852-020-0029, 852-020-0031, 852-020-0035, 852-020-0045, 852-020-0050, 852-020-0060, 852-020-0070, 852-050-0001, 852-050-0005, 852-050-0006, 852-050-0012, 852-050-0013, 852-050-0014, 852-050-0016, 852-050-0018, 852-050-0021, 852-050-0025, 852-060-0025, 852-060-0027, 852-060-0060, 852-060-0065, 852-060-0070, 852-070-0005, 852-070-0010, 852-070-0016, 852-070-0020, 852-070-0025, 852-070-0030, 852-070-0035, 852-070-0045, 852-070-0055, 852-080-0020, 852-080-0025, 852-080-0030, 852-080-0040

Rules Repealed: 852-005-0040, 852-070-0040, 852-070-0050

Rules Ren. & Amend: 852-070-0060 to 852-070-0054

Subject: Oregon Board of Optometry, December 21, 2012 Changes to OAR Chapter 852

Overall: Comprehensive review of Chapter 852 for plain language, clarity, consistency and grammar. Technical edits and housekeeping throughout.

Division 1: Updated and new definitions to reflect changes in standards of practice and terms.

Division 5:

0005: Revised 2011-13 Biennium budget to reflect limitation increase for under-funded payroll expenses and Board decision to upgrade computer systems and software within available fund reserves.

0015: Clarifies Board member compensation to reflect policy decisions of Board.

0030: Removes "temporary" status of adoption of State of Oregon contracting policies.

0040: Repealed, as required by 2011 HB 2381, bringing OBO staff under DAS HR Policies and Procedures on January 1, 2012.

Division 10:

0005: Clarifies that Board may delegate duties to Executive Director. Removes conflict with public meetings law.

0015: Clarifies current requirements for application for examination and licensure.

0020: Increases passing score on Oregon optometric law and administrative rules examination from 75 to 80.

0022: Clarifies current requirements for application for endorsement examination and licensure.

0023: Increases passing score on Oregon optometric law and administrative rules examination from 75 to 80.

0030: Clarifies responsibility for advertising not in compliance with Oregon law.

0051: Makes clear that patient records may be kept in an accessible electronic format. Adds provision for patient record transfer in the event of the death of an optometric physician. Clarifies that patient records and prescriptions cannot be withheld for lack of payment.

0080: Adds optional purchase of copy of portable multiple practice location license for \$25. Restores language for sliding fee scale for multiple failures to comply with rule.

Division 20:

0029: Clarifies required and optional prescription information; allows use of electronic signature. Makes optional the inclusion of number of contact lens refills and the FTC requirements for setting a limit.

0031: Clarifies federal and state requirements that patients do not need to request their prescriptions. Clarifies that direct communication includes mail.

0035: Expands definition of immediate family to include domestic partners, stepchildren and in-laws.

0045: Deletes obsolete provision for compliance prior to January 1, 2012.

0060: Clarifies responsibility for the delegation of the duties of an optometrist to employees and defines direct supervision of those employees.

0070: Deletes obsolete provision for compliance prior to January 1, 2009.

Division 50

0001: Removes obsolete provisions and definitions for optometric physicians' licenses.

0005: Clarifies licensing and posting requirements for practice locations. Adds new provision for optional purchase of additional copy of portable multiple location license for \$25. Clarifies that photocopies of licenses are prohibited.

0006: Clarifies that complete license renewals must be received or postmarked by due date. Adds language regarding Prescription Drug Monitoring Program fund. Puts seven-year limit on look-backs for failure to timely renew license.

0012: Clarifies that complete license renewals must be received or postmarked by due date. Clarifies that suspension notices for inactive licensees will be sent by first-class mail. Requires reactivation requests to be made on a Board-supplied form and with required proof of meeting requirements for pharmaceutical agents. Reiterates requirement for criminal background check.

0013: Clarifies licensing rights and responsibilities of licensees serving in and separating from active military service.

0014: Requires reinstatement requests to be made on a Board-supplied form. Reiterates requirement for criminal background check.

0016: Details requirements for reporting places of practice. Increases timeline for doing so from "immediately" to "within 14 days." Allows multiple means of reporting, adding e-mail and electronic signatures.

0021: Clarifies optometric physician's rights and responsibilities in volunteer service.

0022: Enables 2012 law provisions in ORS 676.340 and 676.345 for new liability limitations for volunteers. Establishes registration program and process.

0025: Removes provision that Board will provide an individual with their own criminal offender records, as this is prohibited by Oregon State Police and the Law Enforcement Data System.

Division 60:

0025: Adds practicing optometry in a location not reported to the Board to the list of causes for disciplinary action.

0027: Adds to the list of unprofessional conduct to include: advertising professional methods or superiority; claiming "board certification" without defining by what board; failing to train employee and supervise work delegated by optometric physician; prescribing scheduled drugs improperly; interfering with the Board's enforcement activities; deception in application or renewal; altering or falsifying patient or business records to avoid discipline; asking for sexual history except when medically necessary; failing to follow federal and state requirements for prescription release to patient; failure to retain patient records or provide them to the Board on request; and failure to report own or other licensee's prohibited or unprofessional conduct, arrests or convictions as required by law.

0065: Changes required answers to charges as part of notices to parties in contested cases to comport with changes in Attorney General's Model Rules of Procedure.

0070: Changes requirements for hearing requests and answers to comport with changes in Attorney General's Model Rules of Procedure.

Division 70

0010: Clarifies that licensees may carry forward excess continuing education hours from the prior year upon written request to the Board. Adds new provision granting one hour of CE credit per year for attendance at an official meeting of the Board.

0040: Removes obsolete provision for separate \$20 CE fee; costs are already included in overall renewal fee.

0050: Removes obsolete provision; the Board no longer provides CE directly to licensees.

0055: Clarifies responsibilities of CE sponsors to proctor attendance and provide original source documentation to attendees.

0060: Renumber to 0054 and move above 0055. Reflects changes in categories of CE approved by the Council on Optometric Practitioner Education.

Division 80

ADMINISTRATIVE RULES

0030: Clarifies that level of certification regarding pharmaceutical agents is printed on license. Encourages use of Oregon Prescription Drug Monitoring Program, for which licensees already pay during renewal.

0040: Clarifies process for certification to use pharmaceutical agents. Removes requirement that CPR certification renewal include a hands-on component. Removes obsolete provision for licensees prior to April 1, 2006.

Rules Coordinator: Nancy Sellers—(503) 399-0662, ext. 23

852-001-0001

Notice of Proposed Rule

Before the adoption, amendment, or repeal of any permanent rule, the Board of Optometry must give notice of the proposed adoption, amendment, or repeal in the following ways:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360, at least 21 days before the effective date of the rule.

(2) By e-mailing or mailing a copy of the notice to persons on the Board of Optometry's distribution list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule.

(3) By mailing a copy of the notice to the legislators specified on ORS 183.335(15) at least 49 days before the effective date of the rule.

(4) By mailing a copy of the notice to:

- (a) Oregon Optometric Physicians Association; and
- (b) Capitol Press Room.

(5) By posting the notice of rulemaking along with the proposed administrative rule text on the Board's website.

Stat. Auth.: ORS 182, 183 & 683

Stats. Implemented: ORS 183.341(4) & 182.466

Hist.: OE 24, f. 1-19-76, ef. 1-20-76; OE 3-1982, f. & ef. 3-25-82; OP 3-1994, f. & cert. ef. 10-11-94; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 1-2013, f. & cert. ef. 1-3-13

852-001-0002

Definitions

As used in this division:

(1) "Appurtenances" means an accessory or auxiliary device to ophthalmic frames.

(2) "Bandage contact lens" means a continuous-wear soft contact lens used as a therapeutic bandage.

(3) "Base of operations" is the practice location from which the optometric physician utilizes a mobile facility or a portable unit.

(4) "Board" means the Oregon Board of Optometry.

(5) "Contact lens" means a lens designed to fit over the cornea of the eye.

(6) "Firm" means an individual or firm technically and financially qualified to perform certain types of work classified as personal services.

(7) "Lapsed" means license is no longer valid because of failure to renew in a timely manner.

(8) "Lenses" means pieces of glass or other transparent substances that have two opposite surfaces that are used singly or in combination to aid the human eye in focusing rays of light. These devices are not "contact lenses," which are designed to fit directly on the surface of the eye (cornea).

(9) "Mobile facility" is a vehicle that is equipped to render optometric services where an optometric physician examines or treats patients inside the vehicle.

(10) "Ophthalmic contact lens" means a contact lens with or without refractive power, including a plano lens or a cosmetic lens.

(11) "Optometric physician" means a person who is licensed to practice optometry in the state of Oregon, and is synonymous with "doctor of optometry" and "optometrist."

(12) "Patient" means a person who receives optometric attention, care, or treatment by an optometric physician or an assistant under the direct supervision of an optometrist.

(13) "Portable unit" means optometric equipment the optometric physician transports to a fixed location (e.g., nursing home, assisted living facility, private residence) to render services to the patient.

(14) "Practice location" is a physical site or mobile facility where an optometric physician provides services.

(15) "Prescription" means the written prescription, which an optometric physician must immediately release to the patient at the time the doctor would provide spectacles or contact lenses without additional examination.

(16) "Spectacles" means ophthalmic frames and lenses.

(17) "Therapeutic contact lens" means a contact lens that contains a topical therapeutic pharmaceutical agent listed in Division 80.

Stat. Auth.: ORS 182 & 683

Stats. Implemented: ORS 182.466, 683.010 & 683.335

Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 1-1992(Temp), f. & cert. ef. 5-6-92; OP 2-1992, f. & cert. ef. 10-21-92; OP 4-1994, f. & cert. ef. 10-11-94; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 1-2008, f. 6-25-08, cert. ef. 7-1-08; OPT 1-2013, f. & cert. ef. 1-3-13

852-005-0005

Budget

The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2011-2013 Biennium Budget of \$682,349 covering the period from July 1, 2011 through June 30, 2013. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$682,349 for the effective operation of the Board. The Board will not exceed the approved 2011-2013 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) & (2). Copies of the budget are available from the Board's office and are also posted on the Board's website.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 182.462(1) & (2)

Hist.: OPT 1-1999, f. 6-4-99, cert. ef. 7-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13

852-005-0015

Board Member Compensation

(1) Board members of the Oregon Board of Optometry are authorized by law to receive compensation for time spent in performance of their official duties, at the rate adopted in Board policy. This compensation amount is in addition to any eligible reimbursement of travel expenses.

(2) Board members and employees of the Board are authorized to receive actual and necessary travel or other expenses incurred in the performance of their official duties as determined by the Board. Mileage reimbursement is at the rate established by the Internal Revenue Service for privately owned vehicles.

(3) No Board member is required to accept compensation or reimbursement of travel or other expenses while performing official duties as a Board member.

Stat. Auth.: ORS 292 & 182

Stats. Implemented: ORS 182.466(3) & 2009 OL Ch. 535 (HB 2058)

Hist.: OPT 2-2009, f. & cert. ef. 12-11-09; OPT 1-2013, f. & cert. ef. 1-3-13

852-005-0030

Contracting

The Oregon Board of Optometry adopts by reference the State of Oregon's contracting policies. These rules are contained in the Oregon Administrative Rules, Chapter 125, Divisions 20, 300, 310, 320, 330, 360.

Stat. Auth.: ORS 670.350 & 683

Stats. Implemented: ORS 670.350 Sec. 3 (4)

Hist.: OPT 5-1998, f. 6-29-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0005

Board Meeting

(1) The Board must hold regular meetings at least once each year at such time and place as the Board may designate. Notice of the time and place of regularly scheduled, special and emergency meetings will be given to the individuals on the Board's distribution list.

(2) A majority of the total number of the Board constitutes a quorum for the transaction of business. However, an affirmative vote of the majority of the total number of Board members is necessary to make a Board decision.

(3) The President is authorized to take action between Board meetings, such as reactivation of licenses, interpretation of policy or procedure, or other such items, subject to ratification by the Board. The Board may delegate such authority to the Executive Director. All such actions must be noted in the agenda for the next meeting of the Board and be presented for ratification in the order of business at that meeting.

(4) The vice-president of the Board may carry out the functions of the president when the president is unable to perform the required duties.

Stat. Auth.: ORS 683.270(11)

Stats. Implemented: ORS 683.270

Hist.: OE 2, f. 12-5-57; OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0015

Application for Examination and Licensure

(1) Each applicant must meet educational qualifications and must comply with the requirements of ORS 683.040 before the applicant will be accepted for examination and licensure.

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(2) Applications for licensure as an optometric physician in Oregon must be directed to the office of the Board.

(3) The application is complete upon receipt by the Board of:

(a) A signed application form;

(b) A copy of the official final transcript from an accredited college of optometry indicating receipt of the doctor of optometry degree;

(c) A copy of the record establishing satisfactory completion of a course in pharmacology as it applies to optometry from an institution approved under ORS 683.040(2) when applicable;

(d) Verification of the passage of the examination of the National Board of Examiners in Optometry (NBEO);

(e) Receipt by the Board's office of the \$200 application fee;

(f) Written confirmation sent directly from the licensing entity of each other state in which the candidate has ever been licensed that the candidate for licensure has not been sanctioned for violating the laws, rules and standards of ethics of that jurisdiction;

(g) Documentation of completion of the required continuing optometric education;

(h) Documentation of current CPR certification, as required in OAR 852-80-0040;

(i) Proof of meeting the requirements of OAR 852 Division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI);

(j) Proof of passage of the Oregon optometric law and administrative rules examination; and

(k) Satisfactory results of a criminal records background check as defined in OAR 852-050-0025.

(4) Any application received from an optometrist who has been sanctioned by another optometric licensing jurisdiction is individually reviewed and considered by the Board.

Stat. Auth.: ORS 683.182

Stats. Implemented: ORS 683.140, 683.060, 683.270 & 182.466

Hist.: OE 2, f. 12-5-57; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1994, f. & cert. ef. 7-22-94; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0020

Rules for Examination and Licensure

(1) Pursuant to ORS 683.060(2), the Board will require a passing score on Parts I, II, III, (PAM and Clinical Skills) and TMOD (Treatment and Management of Ocular Disease) of the National Board of Examiners in Optometry (NBEO) examination. NBEO standards for passing the NBEO examination are acceptable to the Board.

(2) The applicant for examination and licensure must:

(a) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank for adverse actions on each person making an application for licensure;

(b) Submit documentation of continuing education hours as required in OAR 852 Division 70;

(c) Pass, by a score of 80 or better, a Board-approved written examination relating to Oregon optometric law and administrative rules within the 12 months before date of Oregon licensure. Because the Administrative Rule and Law examination is not clinical in nature, there is no waiting period before an examination retake. If the examination is not available through the National Board of Examiners in Optometry, the Board will set location(s), date(s) time(s) and fees for administration of the examination.

(3) Any applicant whose conduct constitutes cheating or subverting of the process of the evaluation of professional competency by the Board or by an examiner may be dismissed from the examination and denied licensure.

Stat. Auth.: ORS 182 & 683

Stats. Implemented: ORS 683.060, 683.270 & 182.466

Hist.: OE 2, f. 12-5-57; OE 8, f. 4-23-71, ef. 5-25-71; OE 2-1979, f. & ef. 10-29-79; OE 2-1984, f. & ef. 7-14-84; OE 1-1985, f. & ef. 7-9-85; OP 1-1987, f. & ef. 4-30-87; OP 12-1988(Temp), f. & cert. ef. 8-30-89; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 6-1998, f. 12-28-98, cert. ef. 1-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0022

Application for Endorsement Examination and Licensure

(1) Each applicant must meet educational qualifications and must comply with the requirements of ORS 683.040 before the applicant is accepted for examination and licensure.

(2) Applications for licensure as an optometric physician in Oregon must be directed to the office of the Board.

(3) The application is complete upon receipt by the Board of:

(a) A signed application form;

(b) Confirmation that the applicant holds a license for the practice of optometry obtained by examination in another state in the United States, and the applicant is TPA certified by that state;

(c) Written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction;

(d) Verification of the passage of the examination of the National Board of Examiners in Optometry (NBEO) or its equivalent;

(e) Documentation of continuing optometric education;

(f) Receipt by the Board's office of the application fee;

(g) Proof of meeting the requirements of OAR 852 Division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI); and

(h) Satisfactory results of a criminal records background check as defined in OAR 852-050-0025.

(4) Any application received from an optometrist who has been sanctioned by revocation of license by another optometric licensing jurisdiction is individually reviewed and considered by the Board.

NOTE: Because of the unique scope of practice for Oregon optometric physicians,

Oregon does not have reciprocity licensing agreements with any other state(s).

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.040, 683.060, 683.220, 683.270 & 182.466

Hist.: OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0023

Rules for Endorsement Examination and Licensure

Pursuant to ORS 683.220 the Board may grant to an applicant a license by endorsement for the practice of optometry if the applicant:

(1) Holds a license for the practice of optometry obtained by examination in another state in the United States;

(2) Has been continuously engaged in the practice of optometry for not less than two years immediately preceding the application to the Board;

(3) Has educational qualifications the Board considers equivalent to the educational requirements necessary for licensing by the Board at the time the applicant commenced the practice of optometry. The educational requirements include a passing score on Parts I, II, III, (PAM and Clinical Skills) and TMOD (Treatment and Management of Ocular Disease) of the National Board of Examiners in Optometry (NBEO) examination or its equivalent, as determined by the Board. NBEO standards for passing the NBEO examination are acceptable to the Board;

(4) Submits documentation satisfactory to the Board of continuing optometric education hours equivalent to the requirements established by OAR 852-070;

(5) Provides written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank for adverse actions on each person making an application for licensure by endorsement;

(6) Pays the licensure by endorsement application fee of \$300; and

(7) Passes, by a score of 80 or better, a Board-approved written examination relating to Oregon optometric law and administrative rules within the 12 months previous to date of Oregon licensure. Because the Administrative Rule and Law examination is not clinical in nature, there is no waiting period before an examination retake. If the examination is not available through the National Board of Examiners in Optometry, the Board will set location(s), date(s) time(s) and fees for administration of the examination;

(8) Provides proof of meeting the requirements of OAR 852 Division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI);

(9) Receive satisfactory results of a criminal records background check as defined in OAR 852-050-0025;

(10) Any applicant whose conduct constitutes cheating or subverting of the process of the evaluation of professional competency by the Board

ADMINISTRATIVE RULES

or by an examiner may be dismissed from the examination and denied licensure.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.220, 683.270 & 182.466
Hist.: OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0030

Advertising

(1) All advertisement of ophthalmic goods or services must comply with the Oregon Unlawful Trade Practices Act, ORS 646.605 et seq., and 676.110 — Use of Titles Importing Health Care Profession.

(2) The licensee whose practice is being advertised is responsible for the contents of each advertisement. If the licensee is an employee of another Oregon-licensed optometric physician or allowed professional corporation, the employer also may be held responsible.

(3) In any advertised price a licensee must include:

(a) The type of lenses being offered, whether single vision, multifocal, or other;

(b) Whether the price includes frames and lenses;

(c) Whether the price includes an eye examination; and

(d) Whether the price includes all dispensing fees.

(4) In the case of contact lenses, any statement of price must specify the type of lenses, limits of care, and any additional materials provided.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 646.605, 683.140 & 683.270
Hist.: OE 2, f. 12-5-57; OE 8, f. 4-23-71, ef. 5-25-71; OE 11, f. 5-19-72, ef. 6-1-72; OE 17(Temp), f. & ef. 1-21-74; OE 19, f. 3-14-74, ef. 4-11-74; OE 21, f. 7-24-74, ef. 8-25-74; OE 1-1983, f. & ef. 1-27-83; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0035

Agreements, Understandings and Contracts

(1) No optometric physician may enter into or continue any agreement, understanding, or contract of any kind with any person or group of persons or pursue any course of conduct whereby said licensee:

(a) Expressly or impliedly agrees to refer said patient back to such person so referring for any service or purchase of materials; or

(b) Expressly or impliedly agrees that if patients are referred by said person, the licensee will not supply optometric materials to patients similar to the optometric material supplied by said referring person; or

(c) Expressly or impliedly agrees to give anything of value to said person or a person designated by the licensee as consideration for said referral.

(2) Nothing in this rule or ORS Chapter 683 may be construed to affect the right of a licensee to become a member of a panel of a prepaid vision care plan and agree to any of the requirements thereof, provided said plan is organized on an actuarial basis and is lawfully organized and operated according to the appropriate statutes of the State of Oregon, and further provided that such plan permits all optometric physicians licensed to practice in the state to become a member of such panel subject to the same or equivalent conditions.

(3) Nothing in this rule may be construed to prohibit or affect referrals between persons authorized to practice medicine or optometry in the state of Oregon.

(4) The violation of this rule subjects the violator to all of the penalties provided by the provisions of ORS 683.140.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.270
Hist.: OE 6, f. 5-11-64; OE 7, f. 2-3-69, ef. 2-25-69; OE 8, f. 4-23-71, ef. 5-25-71; OE 20, f. 7-24-74, ef. 8-25-74; OE 1-1983, f. & ef. 1-27-83; OE 2-84, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0051

Records

(1) Optometric physicians must keep complete and accurate records for each patient, including, but not limited to, case histories, examinations, diagnostic and therapeutic services, prescriptions, instructions for home therapies, referral recommendations and any other information required to make the record complete. Patient records must be sufficiently detailed and legible so that an appropriate provider could continue care without requiring additional information and without detriment to the patient. It is unprofessional conduct to keep incomplete or inaccurate records for a patient.

(2) Retention Schedule: A patient's records must be kept in an accessible print or electronic format. The records must be controlled by an Oregon-licensed optometric physician and kept for a minimum of seven years from the date of the last office visit or pertinent clinical notation on the record. If a patient is a minor, the records must be kept seven years or until the patient is 21 years of age, whichever is longer.

(3) When changing practice locations, closing a practice location or retiring, an optometric physician must retain patient records for the required amount of time or transfer the custody of patient records to a doctor of optometry licensed and practicing optometry in Oregon. Transfer of patient records pursuant to this section of this rule must be reported to the Board in writing immediately upon transfer, but not later than the effective date of the change in practice location, closure of the practice location or retirement. It is unprofessional conduct for a doctor of optometry not to retain patient records or fail to transfer the custody of patient records as required in this rule.

(4) Upon the death or disability of an optometric physician, the administrator, executor, personal representative, guardian, conservator or receiver of the former optometrist must notify the Board in writing of the management arrangement for the custody and transfer of patient records. This individual must ensure the security of and access to patient records by the patient or other authorized party, and must report arrangements for permanent custody of patient records to the Board in writing within 90 days. Transfer of patient records to another Oregon-licensed optometric physician must occur within one year of the death of the optometric physician.

(5) Optometric physicians must provide copies of records or detailed summaries of records to patients or to persons designated by patients upon the appropriate written and signed request of the patient. Requested records must be sent within 14 business days of the request.

(6) Optometric records do not include personal office notes of the optometric physician or personal communications between referring or consulting physicians.

(7) Optometric physicians must preserve a patient's records from unauthorized disclosure and may release them only as authorized by federal and state laws and rules.

(8) Optometric physicians may establish reasonable charges to patients for copies of their records and for faxing prescriptions by long distance phone services, or for any unusual mailing or handling costs per ORS 192.521

(9) Optometric physicians must release copies of patient prescriptions without additional charges and may not withhold release of patient records or additional copies of prescriptions for lack of payment for prior services or goods.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140(3), 683.270(1)(k) & 182.466
Hist.: OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1995, f. 10-31-95, cert. ef. 11-1-95; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2013, f. & cert. ef. 1-3-13

852-010-0080

Schedule of Fees

The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

(1) Active License (see also 852-050-0006):

(a) Annual renewal — \$323, of which \$298 is for the active optometry license and \$25 is the Prescription Drug Monitoring Fund fee collected by the licensing body on behalf of the Oregon Health Authority.

(b) Additional practice location license with printed location address — \$45 each.

(c) Portable multiple practice location license — \$90.

(d) Copy of portable multiple practice location license — \$25

(e) Failure to meet renewal date: Late renewal fee — \$50 first failure, \$75 second failure, \$100 subsequent failure(s).

(f) Lapse in CPR certification during licensing period — \$50.

(g) Failure to notify the Board of practice locations or address of record — \$50 first failure, \$100 second failure, \$200 subsequent failure(s).

(2) Inactive License (see also 852-050-0012):

(a) Annual renewal — \$98.

(b) Late renewal fee — \$15.

(c) Failure to notify the Board of address of record — \$50 first failure, \$100 second failure, \$200 subsequent failure(s).

(3) Application for Licensure:

(a) Application for Examination and Licensure — \$200.

(b) Application for Endorsement Examination and Licensure — \$300.

(c) Application for TPA Certification — \$75.

(d) Law and Administrative Rule Examination — \$75.

(e) Wall Display Certificate — \$30.

(4) Other Fees:

(a) License Verification — \$20.

(b) List of Licensees — \$25, \$50.

(c) Reactivation of License — \$100.

(d) Reinstatement of License — \$100.

(e) Law and Administrative Rules Booklet — \$25.

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(5) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, or other person or entity has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683 & 182 & 431

Stats. Implemented: ORS 683.270, 182.466 & 431.972

Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 2-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13

852-020-0029

Prescription Content

(1) Prescription specifications must be reasonably based on the patient's vision and eye health concerns and must include all information required to ensure the patient receives the designated ophthalmic products.

(2) Spectacle prescriptions must include the following information:

(a) Patient's name;

(b) Examination date;

(c) Prescription issuance date (the date on which the patient receives a copy of the prescription);

(d) Optometric physician's name, license number, practice location address, telephone number and facsimile (fax) number and handwritten or electronic signature. If using another doctor's printed or electronic prescription form, prescribing doctor must legibly print his or her own name and license number on prescription form before signing;

(e) Sphere, Cylinder, Axis and/or ADD;

(f) Any special features, which may include but are not limited to: type of bifocal, trifocal or progressive lens style, prism, material, tints, coatings or edge polish; and

(g) A reasonable and clinically-prudent expiration date.

(3) Contact lens prescriptions must include the following information:

(a) Patient's name;

(b) Examination date;

(c) Prescription issuance date (the date on which the patient receives a copy of the prescription);

(d) A reasonable and clinically-prudent expiration date;

(e) Optometric physician's name, license number, practice location address, telephone number and facsimile (fax) number, and handwritten or electronic signature. If using another doctor's printed or electronic prescription form, prescribing doctor must legibly print his or her own name and license number on prescription form before signing;

(f) Sphere, Cylinder, Axis and/or ADD;

(g) Lens base curve or series;

(h) Lens diameter, if applicable;

(i) Lens material and/or brand name;

(j) Any special features that may include but are not limited to: type of bifocal, trifocal or progressive lens style, prism, material, tints, coatings or edge polish;

(k) The maximum number of refills, if specified by the optometric physician. If specified, the contact lens prescription becomes invalid upon the patient's ordering of the maximum number of refills, unless extended by the optometrist. The quantity of lenses or refills specified in the prescription must be sufficient to last through the prescription's expiration date. If a lesser quantity of lenses or refills is specified in the prescription, the prescriber must have a legitimate medical reason for doing so, and the Federal Trade Commission requirements on writing a prescription for less than one year must be met; and

(l) Any limitations, including wearing schedule and follow-up care.

(4) Contact lens prescriptions must be written in a manner that allows the patient to have the prescription filled by an office or outlet of their choice.

(5) A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, if the same contact lens is manufactured by the same company and sold under multiple labels to individual providers, the seller may fill the prescription with an equivalent contact lens manufactured by that company under another label.

(6) Therapeutic pharmaceutical prescriptions must conform to the administrative rules of the Oregon Board of Pharmacy regarding prescription format.

Stat. Auth.: ORS 182 & 682

Stats. Implemented: ORS 182.466, 683.010(2), 683.030(3) & 683.335

Hist.: OPT 1-2004, f. & cert. ef. 3-8-04; OPT 1-2013, f. & cert. ef. 1-3-13

852-020-0031

Prescription Release

(1) An optometric physician must immediately give the signed written prescription to the patient at the time the doctor would provide specta-

cles or contact lenses without additional examination, even if the patient does not request the prescription.

(2) Upon direct communication from the patient or anyone designated to act on behalf of the patient, an optometric physician must release or verify the patient's prescription to a third party.

(3) If a patient has not completed a contact lens fitting, the prescription released need only meet the spectacle prescription requirements.

(4) As used in this section, the term "direct communication" includes communication by telephone, facsimile (fax), mail or electronic mail.

(5) An optometric physician may not:

(a) Require purchase of contact lenses or spectacles from any party as a condition of providing a copy of the prescription or verification of the prescription;

(b) Require payment in addition to or as a part of the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription or verification of a prescription; or

(c) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.010, 683.335 & 182.466

Hist.: OPT 1-2004, f. & cert. ef. 3-8-04; OPT 1-2013, f. & cert. ef. 1-3-13

852-020-0035

Prescribing

(1) An optometric physician may use, prescribe, dispense or administer controlled substances in Schedules III-V only to a person with whom the doctor has a bona fide physician-patient relationship.

(2) An optometric physician may not use, prescribe, dispense or administer Schedule III-V controlled substances to himself/herself.

(3) An optometric physician may not use, prescribe, dispense or administer Schedule III-V controlled substances to an immediate family member except in emergency situations. "Immediate family member" means spouse, domestic partner, child, stepchild, sibling, parent, in-law or other individual for whom an optometric physician's personal or emotional involvement may render the doctor unable to exercise detached professional judgment in reaching diagnostic or therapeutic decisions.

(4) It is unprofessional conduct for an optometric physician to use, prescribe, dispense or administer controlled substances in Schedules III-V outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

(5) All drugs dispensed by an optometric physician must be labeled with the following information:

(a) Name, address and telephone number of the optometric physician;

(b) Date;

(c) Name of patient for which the drug is dispensed;

(d) Name of the drug, strength, the quantity dispensed. When a generic name is used, the label must also contain the name of the manufacturer or distributor;

(e) Direction for use;

(f) Required precautionary information regarding controlled substances;

(g) Such other and further accessory cautionary information as required for patient safety; and

(h) An expiration date after which the patient should not use the drug. Expiration dates on drugs dispensed must be the same as that on the original container unless, in the optometric physician's professional judgment, a shorter expiration date is warranted. Any drug bearing an expiration date may not be dispensed beyond the said expiration date of the drug.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k), 182.466 & 689.225

Hist.: OPT 2-2005, f. & cert. ef. 4-8-05; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 1-2013, f. & cert. ef. 1-3-13

852-020-0045

Requirements for Business Entity Organization

The following provisions apply to licensed optometric physicians in Oregon organizing as a business entity and are in addition to the provisions for a professional corporation, limited liability company and partnership outlined in ORS Chapters 58, 63, 67, and 70.

(1) Definitions. As used in these administrative rules, unless the context requires otherwise:

(a) "Business entity" means:

(A) A professional corporation organized under ORS Chapter 58, predecessor law or comparable law of another jurisdiction;

(B) A limited liability company organized under ORS Chapter 63 or comparable law of another jurisdiction;

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(C) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS Chapter 67 or comparable law of another jurisdiction; or

(D) A limited partnership organized under ORS chapter 70, predecessor law or comparable law of another jurisdiction.

(b) "Majority ownership interest" means more than 50 percent of:

(A) The issued voting stock of a professional corporation;

(B) The members of a limited liability company; or

(C) Participation in the profits of a partnership.

(c) "Organizational document" means:

(A) The articles of incorporation of a professional corporation, or comparable document of another jurisdiction;

(B) The articles of organization of a limited liability company, or comparable document of another jurisdiction;

(C) The partnership agreement and, for a limited liability partnership, its registration, or comparable document(s) of another jurisdiction; or

(D) A certificate of limited partnership, or comparable document of another jurisdiction.

(d) "Owner" means a voting shareholder of a professional corporation, member of a limited liability company, or partner of a partnership.

(e) "Principal" means a person who is a director of a professional corporation, manager of a limited liability company, or general partner of a limited partnership.

(2) Requirements for business entities organized to practice optometry:

(a) The majority ownership interest must be held by optometric physicians licensed in this state to practice optometry:

(A) A majority of the principals must be optometric physicians who are licensed in this state to practice optometry;

(B) All officers except the secretary and treasurer, if any, must be optometric physicians who are licensed in this state to practice optometry. Any two or more offices may be held by the same person;

(b) A professional corporation may be a shareholder of a professional corporation organized for the purpose of practicing optometry solely for the purpose of effecting a reorganization as defined in the Internal Revenue Code;

(c) The Oregon Board of Optometry has the discretion to allow business entities to apply for a waiver of the majority ownership requirement provided full disclosure of business ownership is provided to the Board, a plan and timetable is presented for a transition to meet the requirements of this rule, and the Board finds that the health and welfare of the patient is the first priority of the optometric physicians and business entity; and

(d) Upon a finding that a holder or owner of an optometric practice has failed to comply with the provisions of this rule or the regulations prescribed by the Board pursuant to the practice of optometry, the Oregon Board of Optometry may consider the failure to comply with this rule as a violation of this rule which may subject a holder or owner to discipline pursuant to ORS 683.140.

Stat. Auth.: ORS 58, 63, 683

Stats. Implemented: ORS 58.367, 63.074, 683.270(11)

Hist.: OPT 1-2010, f. & cert. ef. 9-20-10; OPT 3-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13

852-020-0050

Scope of Practice

(1) Optometric physicians in Oregon may perform procedures to diagnose or treat the eye. They may not perform invasive or laser surgery, sub-Tenon, retrobulbar, intraocular or botulinum toxin injection, or administer intravenous or general anesthesia. Nothing in these rules may be construed to prohibit an optometric physician from co-managing invasive surgery or laser surgery. Co-management is defined as the sharing of peri-operative responsibilities between the medical and optometric physician.

(2) The Oregon Board of Optometry considers procedures to be within the scope of optometric practice, as defined in ORS Chapter 683, when all of the following questions can be answered in the affirmative. Any procedure that meets these qualifications is considered within the scope of optometric practice in Oregon:

(a) Does this procedure involve the eye or the scope of functions of the eye?

(b) Can this procedure be done without invasive surgery?

(c) Can this procedure be done without laser surgery?

(d) Can this procedure be done without closure by suture?

(e) Can this procedure be done either without pharmaceutical agents or with pharmaceutical agents categorized in Division 80?

(f) Can this procedure be done without sub-Tenon, retrobulbar, intraocular or botulinum toxin injection?

(g) Can this procedure be done without conscious sedation, deep sedation or general anesthesia?

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.010 & 182.466

Hist.: OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2013, f. & cert. ef. 1-3-13

852-020-0060

Optometric Physician Responsibility, Supervision, and Delegation

(1) The optometric physician carries the sole responsibility for the patient's care. Delegation of duties does not discharge an optometric physician's responsibility for the accuracy and completeness of the work delegated.

(2) An optometric physician may delegate tasks that are not prohibited to well-trained technicians who are employed by and under the direct supervision of an optometric physician or medical doctor actively practicing at that location.

(3) Direct supervision as used in ORS 683.030 means the employee's activities are overseen and approved by an optometric physician or medical doctor practicing at that location and with an appropriate intervention protocol in place.

(4) An optometric physician may not delegate ophthalmoscopy, gonioscopy, final central nervous system assessment, final biomicroscopy, final refraction, or final determination of any prescription or treatment plans.

(5) An optometric physician may not delegate final tonometry for a patient who has glaucoma.

(6) Therapeutic procedures involving pharmaceutical agents may not be delegated other than to instill medication or provide educational information as instructed by the optometric physician.

Stat. Auth.: ORS 182 & 683

Stats. Implemented: ORS 683.010(2), 683.030(3) & 182.466

Hist.: OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 1-2013, f. & cert. ef. 1-3-13

852-020-0070

Optometric Physician Educational and Professional Standards

To meet the expanded optometric scope of practice and current standard of care in Oregon, all optometric physicians must have demonstrated qualification and have obtained certification to use topical and nontopical therapeutic pharmaceutical agents for the practice of optometry.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.210(1), 683.270(1)(k) & 182.466

Hist.: OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0001

License Required

(1) Unless otherwise exempted by Oregon law, all persons practicing optometry in the state of Oregon must possess a valid, unrevoked, active status Oregon license.

(2) Retired, non-practicing, or non-resident doctors of optometry may hold an inactive status license.

(3) Those who have been granted an inactive status license by the Board are exempt from ORS 683.100 and OAR 852-50-0016, which require the licensee to report each place of business to the Board:

(a) Inactive licensees are required to maintain a current mailing address of record with the Board; and

(b) Inactive licensees failing to notify the Board in writing of any changes to their address of record before moving are subject to a fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure.

Stat. Auth.: ORS 683

Stats. Implemented: ORS 683.070, 683.100, 683.120 & 683.270

Hist.: OP 3-1993, f. & cert. ef. 10-27-93; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0005

License and Certificate of Registration

(1) Upon becoming licensed to practice optometry in the state of Oregon, each licensee will receive a single practice-location license, which is valid only for the address of the primary practice location. This original and current license must be posted conspicuously where it can be seen by any patient. Each licensee is required to pay a license renewal fee on or before the license renewal date established by the Board. The licensee will be given written notification of the license renewal period at the time of licensure.

(2) If a licensee engages in practice in more than one location, the licensee must acquire and conspicuously display the additional current

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license for and at that practice location. Upon written application of the licensee, the Board will issue such number of additional licenses upon receipt of \$45 for each license, each individually addressed for a specific practice location. The licensee must renew each practice location annually during the license renewal period.

(3) In lieu of acquiring an additional office license for each additional practice location, a licensee may elect to acquire a portable multiple office license that allows the licensee to practice at an unlimited number of additional reported practice locations:

(a) Upon written application of the licensee and receipt of an additional \$90 fee, the Board will issue a portable license for practicing at multiple locations. This license will be printed with one address, identified by the licensee. The licensee must renew this license to practice at multiple locations each year during the license-renewal period;

(b) A licensee may purchase additional originals of a portable multiple location license for \$25 each, which will be printed with the same address as the first original portable multiple location license;

(c) While practicing at any location, an original and current license must be conspicuously displayed at all times in an area where it can be seen by any patient;

(d) Photocopies of licenses are void and are prohibited; and

(e) The licensee must notify the Board of each practice location before commencing work at that location.

(4) The Board will print the licensee's status (active or inactive, T, AT or ATI certified, etc.) on the license.

(5) Any optometric physician actively licensed to practice in Oregon may purchase an optional personalized Wall Certificate of Registration signed by the Board for a fee of \$30.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Hist.: OE 11, f. 5-19-72, ef. 6-1-72; OE 14, f. 2-20-73, ef. 3-1-73; OE 2-1980, f. 12-23-80, ef. 12-29-80; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1994, f. & cert. ef. 7-22-94; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 4-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0006

Annual Renewal of Active License

(1) Active licensees must annually renew their license to practice optometry:

(a) Annual license-year renewal periods are established by the Board based upon birth dates of licensees;

(b) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(2) Complete license renewal applications are due on the first day of the month of license expiration (month of licensee's birth date) and must be received in the Board's office or be postmarked by the due date.

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Payment for the correct license renewal fee(s);

(c) Documentation of completion of the required continuing optometric education; and

(d) Documentation of current CPR certification, as required in OAR 852-80-040.

(4) The Board, as a courtesy, mails license year renewal forms to the licensee's current reported address of record. However, it is the licensee's responsibility to ensure timely renewal.

(5) A licensee who is not more than 30 days delinquent in renewing the license may renew upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent, the license is automatically suspended upon 30-day notice sent to the licensee via certified mail, as required by ORS 683.120(2).

(6) If a licensee is more than 60 days delinquent in renewing the license, the licensee may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(7) The annual fee for the renewal of a license to practice optometry is \$298. In addition to the license renewal fee, the Board is required by ORS 431.972 to collect an additional \$25 annual fee from each optometry licensee for the Electronic Prescription Drug Monitoring Fund which is remitted to the Public Health Division of the Oregon Health Authority as required by law.

(8) In any seven-year period, any licensee whose complete license renewal and fee is not received or postmarked by the first day of the month

of license expiration is subject to a late payment fee of \$50 for the first failure, \$75 for the second failure, and \$100 for any subsequent failure. This late payment fee must be received before the license will be issued.

(9) Any licensee whose Board-required CPR certification lapsed at any time during the licensing period is subject to a lapsed CPR fee of \$50. This fee must be received before the license will be issued.

Stat. Auth.: ORS 683 & 182 & 431

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270, 182.466 & 431.972

Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 5-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0012

Inactive Status License

(1) Eligible licensees may be granted an inactive status license upon written request and payment of inactive license fee, if renewal is due. If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(2) To remain in inactive status, a licensee must renew annually. Annual license-year renewal periods are established by the Board based upon birth dates of licensees.

(3) Complete license renewal applications are due on the first day of the month of license expiration (month of licensee's birth date) and must be received in the Board's office or be postmarked by the due date.

(4) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee; and

(b) Payment for the correct license renewal fee(s).

(5) The Board will, as a courtesy, send license year renewal forms to the inactive status licensee's current reported address of record.

(6) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent, the license is automatically suspended upon 30-day notice sent to the licensee by first-class mail.

(7) A licensee who is more than 60 days delinquent in renewing the license may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(8) The renewal fee for inactive status licensees is \$98.

(9) An inactive status licensee whose license renewal fee is postmarked after the first day of the month of license expiration is subject to a late payment fee of \$15. This late payment fee must be received before the license will be issued.

(10) To reactivate a license to practice optometry in Oregon, an inactive status licensee must complete the following requirements:

(a) Submit a signed Reactivation Request form;

(b) Pay the difference between the inactive and active status license renewal fees;

(c) Submit proof of continuing education hours equivalent to Oregon requirements for the previous licensing period;

(d) Submit documentation of current CPR certification, as required in OAR 852-80-040;

(e) Submit proof of meeting the requirements of OAR 852 Division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI), unless this information has been previously provided to the Board;

(f) Submit the inactive license certificate issued for the current licensing period;

(g) Provide the Board's office with the address of the intended primary practice location in the state of Oregon;

(h) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank for adverse actions on each person making an application for licensure;

(i) Pass any required criminal background check;

(j) Pass the Oregon optometric law and administrative rules examination if the applicant last held an active status license in Oregon more than

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two years before the date the Board confirms receipt of the completed application; and

(k) If the request for reactivation occurs within one year from the date of being placed in inactive license status by the Board, the applicant must pay an additional \$100 reactivation fee.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 6-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0013

Uniformed Services

(1) No licensing fees will be assessed while the licensee is on active duty with the Uniformed Services of the United States:

(a) As a courtesy, the Board will send annual renewal forms to the licensee's current reported address of record. To avoid being placed into lapsed license status, the licensee must return a completed and signed renewal form with proof of active duty status to the Board within stated timelines;

(b) Licensees under this rule who are moved into lapsed status by the Board may be reinstated at no cost by meeting the requirements of this rule; and

(c) Nothing in this rule may be construed to waive any other reinstatement or reactivation requirements for Oregon licensure.

(2) Written notification to the Board is required within 60 days of the date of discharge in order to change the license to its former status without fee or penalty. If notification is received by the Board more than 60 days from the date of discharge, but within the license renewal period in which the discharge becomes effective, the license may be changed to its former status by paying all fees and penalties appropriate for a license of that status.

(3) If a licensed optometric physician fails to notify the Board in writing of the change of status within 60 days from the date of discharge, or within the license renewal period in which the discharge becomes effective, whichever is the longer period of time, that person must take an examination and pay the examination fee as required by ORS 683.060.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0014

Reinstatement of License

(1) A person who has been previously licensed by the Board may have the license reinstated to its former status if the person:

(a) Voluntarily surrendered the license to the Board and at the time of so doing was in good standing and not under investigation, notice for proposed disciplinary action, or final order of the Board; or

(b) The license was suspended due to nonpayment of the license renewal fee or late fee and at the time of suspension the licensee was not under investigation, notice for proposed disciplinary action or final order of the Board.

(2) To reinstate an Oregon Optometry license an optometric physician must:

(a) Submit a signed Reinstatement Request form;

(b) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank for adverse actions on each person making an application for licensure;

(c) Pass any required criminal records background check;

(d) Pay delinquent fees as determined by the Board;

(e) Pay the reinstatement fee of \$100; and

(f) Submit documentation of current CPR certification, as required in OAR 852-80-0040, if licensed to use Nontopical TPAs;

(g) The requirements in (2)(b) and (2)(e) above may be waived by the Board if the license is not more than 60 days expired.

(3) Reinstatement of a license to active status also requires:

(a) Passage of the Oregon optometric law and administrative rules examination if it has been more than two years since the person held an active status license in Oregon; and

(b) Submission of proof of continuing education hours equivalent to Oregon requirements for the previous license renewal period.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.120, 683.270 & 182.466
Hist.: OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0016

Notice of Place of Practice

(1) Each active licensee must notify the Board in writing of each place of practice before engaging in practice at that location, and ensure that he or she holds any required additional practice location or portable multiple practice location license if practicing in more than one location. If the licensee is practicing in a mobile facility or with portable unit, the licensee must report the Base of Operations and specific locations of such practice to the Board in compliance with this rule.

(a) Within 14 days of termination of practice at any location, licensee must notify the Board in writing, including information on the custody of any patient records generated by the licensee at that location.

(b) Written notification from a licensee to the Board must be signed, and may be made by mail, fax or scanned e-mail attachment. Standard e-mail notification from the licensee's professional or personal e-mail will be accepted with an electronic signature that is composed of the licensee's full legal name and optometry license number, followed by the last four digits of the licensee's Social Security number.

(2) Failure to notify the Board in writing of practice location(s) and any address change(s) in accordance with (1) above may subject the licensee to a fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.070, 683.100, 683.120 & 683.270
Hist.: OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0018

Official Address of Record

(1) In accordance with ORS 683.100, each optometric physician must notify the Board in writing of the doctor's primary practice location, which is automatically recorded as the licensee's official address of record for mailing purposes. The licensee may change the official address of record to a home address or another address by notifying the Board in writing of the new mailing address. All correspondence from the Board will be sent to the designated official address of record. The official address of record must include a street address. Post office boxes are not acceptable unless a street address is included with it.

(2) Failure to notify the Board in writing of a change in the licensee's official address of record in accordance with (1) above may subject the licensee to a fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0021

Nonprofit Services

An actively licensed doctor of optometry in Oregon who volunteers to provide professional services to a charitable nonprofit corporation may request the additional practice location license required for that location from the Board at no charge.

(1) Nonprofit corporation means a charitable corporation as described in section 501(c)(3) of the Internal Revenue Code and determined by the Oregon Board of Optometry as providing optometric services by volunteer licensed doctors of optometry to populations with limited access to eye care at no charge or at a substantially reduced charge.

(2) "Voluntary basis" means working of one's own free will and without payment for services.

(3) Any entity that owns or operates a nonprofit charitable clinic that provides eye care services must name an actively licensed Oregon optometric physician as its vision services director who is subject to the provisions of ORS 683 and OAR 852. This director is responsible for the patient records on eye care services for the clinic.

(4) Any licensed optometric physician who works at a nonprofit clinic described in (1) above must:

(a) If the optometric physician has not obtained a portable multiple practice location license, the doctor must obtain an additional practice location license from the Board to practice at this location. This license may not

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be used for practicing optometry at any other location. The request for this license must be in writing and include practice location address, name and contact information of the nonprofit corporation, and name and contact information of the vision services director. There is no fee for obtaining this license from the Board;

(b) Comply with all other provisions of ORS 683 and OAR 852, including reporting start and end dates of providing services at any practice location.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k) & 182.466
Hist.: OPT 2-2005, f. & cert. ef. 4-8-05; OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0022

Liability Limitations for Volunteers

(1) An active status licensee may register with the Board at no additional charge to qualify for the provisions of ORS 676.340, which provides registrants with specific exemptions from liability for the provision of optometric services to defined charitable organizations without compensation under the terms of the law.

(2) Registration requires submission of a signed form provided by the Board in accordance with ORS 676.345 (2).

(3) Initial registration will expire at the licensee's next annual license renewal date, and annually thereafter. It is the licensee's responsibility to ensure his or her active registration in this program; no notice will be sent regarding expiration of licensee's registration.

(4) Nothing in this section relieves licensee from the responsibility to comply with all other provisions of ORS 683 and OAR 852, including reporting start and end dates of providing services at any practice location.

(5) Patients treated under the provisions of ORS 676.340 and 676.345 in no way waive their rights to file complaints against the doctor of optometry with the Board, and the Board retains all rights and responsibilities under OAR 852 Division 60.

Stat. Auth.: ORS 676, 683
Stats. Implemented: ORS 676.340, 676.345, 683.140 & 683.325
Hist.: OPT 1-2013, f. & cert. ef. 1-3-13

852-050-0025

State Criminal Records Check and Fitness Determination

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees to determine if they have a history of criminal behavior such that they are not fit to be granted or hold 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 criminal history of applicants for an initial license or renewal, licensees applying to reinstate or reactivate a lapsed license, or licensees under investigation to determine the fitness of an applicant or licensee. This information must be provided on prescribed forms made available by the Board. The Board will submit information to the Oregon Department of State Police Law Enforcement Data System to conduct an Oregon Criminal History Check.

(4) The Board determines 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, 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 a licensee is determined to be unfit, the licensee's license may not be renewed, reactivated, or reinstated. 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) Except as otherwise provided in section (2), in making the fitness determination the Board considers:

(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

(F) A recommendation of an employer.

(6) All requested background checks include Oregon data. In some circumstances, national criminal data collection may be required.

(7) In order to conduct the Oregon 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. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to 676.175(1).

(9) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and that is in compliance with ORS 670.280. The Board may also consider any arrests, court records, or other information that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(10) 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 183.413-183.470. 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. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board will conduct a new criminal history check upon request from the applicant or licensee.

(11) 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 683, 182, 181, 676
Stat. Implemented: ORS 683.140; 683.270; 182.466; 181.534; 676.303
Hist.: OPT 7-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13

852-060-0025

Disciplinary Action

(1) When disciplining an optometric physician or any other person, the Oregon Board of Optometry may do any of the following:

(a) Deny an initial license;

(b) Suspend, refuse to renew or revoke a license;

(c) Impose probation on any licensee;

(d) Limit the practice of any licensee; and

(e) Take other disciplinary action as the Board in its discretion finds proper, including the assessment of the costs of the disciplinary proceedings as a civil penalty or assessment of a civil penalty not to exceed \$10,000 for each violation, or both.

(2) The Board may discipline any optometric physician or person, where appropriate, for the following causes:

(a) Conviction of a felony or misdemeanor where such an offense bears a demonstrable relationship to the duties of an optometric physician. The record of conviction, or a copy thereof certified by the clerk of the court or by the judge in whose court the conviction is had, is conclusive evidence of such conviction;

(b) Practicing optometry without a license;

(c) Securing a license by practicing fraud or deceit upon the Board;

(d) Unprofessional conduct, or gross ignorance or inefficiency in the practice of optometry;

(e) Failing to comply with the requirements of continuing education;

(f) Obtaining any fee by fraud or misrepresentation;

(g) Employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by ORS 683.010 to 683.335;

(h) Advertising optometric services or treatment or advice in which untruthful, improbable, misleading or deceitful statements are made;

(i) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances;

(j) Permitting another person to use the optometrist's license;

(k) Using advertisements that do not indicate that a licensed optometrist is practicing at the advertised location or locations or advertis-

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ing optometric services without having a licensed optometrist at the location or locations;

- (l) Advertising professional methods or professional superiority;
- (m) Violating the federal Controlled Substances Act;

(n) Prescribing controlled substances without a legitimate optometric purpose, or without following accepted procedures for examination of patients or for record keeping;

(o) Failing to report to the Board any adverse action taken against the optometrist or person by another licensing jurisdiction, health regulatory board, peer review body, health care institution, professional optometric society or association, governmental agency, law enforcement agency or court for acts similar to conduct that would constitute grounds for disciplinary action as described in this section;

(p) Having been disciplined by any health regulatory board of another state based on acts similar to acts described in this section. A certified copy of the record of disciplinary action is considered conclusive evidence of the action;

- (q) Any violation of the provisions of ORS 683.010 to 683.335; or
- (r) Practicing optometry in a location not reported to the Board.

(3) The Board must report all disciplinary action taken by the Board to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

Stat. Auth.: ORS 683; ORS 182
Stats. Implemented: ORS 683.140, 683.180, 683.270 & 182.466
Hist.: OE 2, f. 12-5-57; OE 14, f. 2-20-73, ef. 3-1-73; OE 1-1979, f. & ef. 3-8-79; OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; Renumbered from 852-010-0025, OPT 4-2005, f. & cert. ef. 12-8-05; OPT 1-2013, f. & cert. ef. 1-3-13

852-060-0027

Definition of Unprofessional Conduct

Unprofessional conduct within the meaning of ORS 683.140(1)(c) includes, but is not limited to:

- (1) Fraud, misrepresentation or dishonesty.
- (2) Advertising optometric services, treatments, or advice in which untruthful, improbable, misleading or deceitful statements are made.

(3) Advertising professional methods or professional superiority, including using the term “board certified” without defining which board has provided the certification.

[Note: As a licensing and regulatory agency, the Oregon Board of Optometry does not “board certify” optometric physicians.]

- (4) Aiding an unlicensed person in the practice of optometry.
- (5) Failure to train and supervise any unlicensed person who performs any work covered in this chapter that is delegated by the licensee.
- (6) Permitting another person to use the optometrist’s license.
- (7) Prescribing, dispensing or administering controlled substances in Schedules III–V outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

(8) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances.

(9) The use of threats or harassment or to delay or to obstruct any person in providing evidence in any investigation, disciplinary action, or other legal action instituted by the Board.

(10) The discharge of an employee based primarily on the employee’s attempt to comply with or aid in the compliance of the Board’s rules, or with the Board’s enforcement activities.

(11) The use of threats, harassment, or any other conduct that obstructs or delays a member of the Board, a member of the Board’s staff or a duly appointed agent of the Board in carrying out their functions under the Board’s rules.

(12) Willfully deceiving or attempting to deceive the Board, an employee of the Board, or an agent of the Board in any application or renewal, or in reference to any matter under investigation by the Board including the alteration or destruction of any records in order to obstruct or delay an investigation by the Board, or to alter or falsify any information in patient or business records to avoid potential disciplinary action.

(13) Failing to respond in writing to a Board request for information as required.

(14) Failing to appear before the Board at a time and place designated by the Board for such appearance.

(15) Violations of ORS 676.110(5) (use of titles), which states, in part, that any person practicing optometry who uses the title “doctor,” or any contraction thereof, “clinic,” “institute,” “specialist,” or any other assumed name or title in connection with the profession, in all advertisements, professional notices, or any written or printed matter must add the word “optometrist” or the words “doctor of optometry” or “optometric physician.”

(16) Conduct which could be construed as moral turpitude.

(17) Any conduct or practice contrary to recognized standards of ethics of the optometric profession, which includes:

(a) Sexual abuse: Includes conduct that constitutes a violation of any provision of ORS 163.305 through 163.479, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil or administrative litigation, or admitted or stipulated by the professional;

(b) Sexual Violation: Includes professional-patient sex, whether initiated by the patient or not, and engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, including, but not limited to: sexual intercourse; genital-to-genital contact; oral-to-genital contact; oral-to-anal contact; oral-to-oral contact except CPR; touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment or where the patient has refused or has withdrawn consent; encouraging the patient to masturbate in the presence of the professional or masturbation by the professional while the patient is present; and

(c) Sexual Impropriety: Includes any behavior, gestures, or expressions that are seductive or sexually demeaning to a patient of normal sensibilities; inappropriate procedures, including, but not limited to, disrobing or draping practices that reflect a lack of respect for the patient’s privacy; inappropriate comments about or to the patient, including, but not limited to, making sexual comments about a patient’s body or underclothing, making sexualized or sexually demeaning comments to a patient, inappropriate comments on the patient’s or professional’s sexual orientation, making comments about potential sexual performance during an examination or consultation; requesting the details of sexual history unless medically necessary; questioning or discussing sexual likes or dislikes; initiation by the professional of conversation regarding the sexual problems, preferences or fantasies of the professional or the patient; or kissing of a sexual nature.

(18) Failing to make full payment to the Board of all Board assessed fees, fines and penalties.

(19) Failing to give written notification to the Board of any disciplinary action or sanction related to the practice of optometry by any licensing agency of any state.

(20) Failing to give written notification to the Board of any felony or misdemeanor convictions.

(21) Failing to immediately give the prescription to the patient at the time the doctor would provide spectacles or contact lenses without additional examination.

(22) Failing to keep complete and accurate records for a patient.

(23) Failing to retain patient records in an accessible print or electronic format.

(24) Failing make appropriate transfer of the custody of patient records.

(25) Failing to provide the Board with requested patient records.

(26) Failing to comply with a Board order.

(27) Failure to report own or other licensee’s prohibited or unprofessional conduct, arrests or convictions as required by ORS 676.150, ORS 683.335, and ORS 683.340.

Stat. Auth.: ORS 683; ORS 182
Stats. Implemented: ORS 683.140, 683.270 & 182.466
Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 1-1993, f. & cert. ef. 2-10-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-2000, f. 4-28-00, cert. ef. 5-1-00; OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05; Renumbered from 852-010-0027, OPT 4-2005, f. & cert. ef. 12-8-05; OPT 1-2013, f. & cert. ef. 1-3-13

852-060-0060

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Oregon Board of Optometry adopts the Attorney General’s Model Rules of Procedure under the Administrative Procedures Act current edition; these rules of procedure are controlling except as otherwise required by statute or rule.

[ED. NOTE: The full text of the Attorney General’s Model Rules of Procedure is available from the office of the Attorney General or Board of Optometry.]

Stat. Auth.: ORS 183, 683 & 182
Stats. Implemented: ORS 183.341(2) & 182.466
Hist.: OPT 2-2004, f. & cert. ef. 5-20-04; OPT 1-2013, f. & cert. ef. 1-3-13

852-060-0065

Requiring an Answer to Charges as Part of Notices to Parties in Contested Cases

In addition to the notice requirements under the Attorney General’s Model Rules of Procedure adopted by OAR 852-60-0060, the notice to parties in contested cases must include the statement that an answer to any assertions or charges of unprofessional conduct, sexual abuse, sexual violation or sexual impropriety will be required and will list the consequences

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of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of OAR 852-060-0070 with the notice.

Stat. Auth.: ORS 183, 683 & 182
Stats. Implemented: ORS 183.413 & 182.466
Hist.: OPT 2-2004, f. & cert. ef. 5-20-04; OPT 1-2013, f. & cert. ef. 1-3-13

852-060-0070

Hearing Requests, Answers, and Consequences of Failure to Answer

(1) A hearing request and answer when required by OAR 852-060-0065 must be made in writing to the Board by the party or his or her representative. Any required answer must include the following:

(a) An admission or denial of each factual matter alleged in the notice that requires an answer; and

(b) A short and plain statement of each relevant affirmative defense the party may have.

(2) Except for good cause:

(a) Factual matters alleged in the notice that require an answer and which are not denied in the answer are presumed admitted;

(b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(c) New matters alleged in the answer (affirmative defenses) are presumed to be denied by the Board; and

(d) Evidence may not be taken on any issue not raised in the notice and answer.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.155 & 182.466
Hist.: OPT 2-2004, f. & cert. ef. 5-20-04; OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0005

Definitions

“Hour” means clock hour of 60 minutes of instruction time, plus or minus 10 minutes. “Half-hour” means 30 minutes of instruction time, plus or minus five minutes.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.210 & 182.466
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0010

Requirement of Continuing Optometric Education

(1) Every active status licensed optometric physician must complete at least 18 hours of clinical optometric courses each license year as a condition of license renewal. Continuing education hours cover 12-month periods and must be reported with license renewal applications. Upon written request, the licensee may carry forward excess hours completed in the prior license year to the current license year.

(2) Of the required 18 hours, at least nine hours each license year must be in the area of diagnosis, treatment and management of ocular disease.

(3) At least one of the required hours every other license year must be in the area of ethics or Oregon law and administrative rules. Licensees, including Board members, may receive one hour of optometric ethics/Oregon law credit per year for verified attendance of at least one hour at an official meeting of the Oregon Board of Optometry.

(4) Credit will be given for no more than five hours of live observation in an approved surgical facility per license year.

(5) No more than nine of the required hours of coursework may be earned for online, journal, correspondence or video courses per year.

(6) The required hours of continuing education each license year must be of different course content. When the Board determines that a licensee has submitted a course or lecture essentially identical to another presentation submitted in the same license renewal period, credit will be given for only one.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.270, 683.210 & 182.466
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1978, f. & ef. 1-25-78; OE 1-1984, f. & ef. 1-13-84; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2003, f. 9-15-03, cert. ef. 1-1-04; OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0016

Continuing Optometric Education Not Required for Inactive Licenses

(1) Those licensees who have been granted inactive status by the Board are not required to complete the continuing optometric education requirement in OAR 852-070-0010.

(2) If an inactive licensee petitions to change to active status, he or she must comply with OAR 852-070-0010 for the continuing education license year previous to the year in which active status is granted by the Board.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210
Hist.: OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0020

Application for Credit

Each continuing education offering must be approved by the Board in order for an optometric physician to obtain credit. Upon application the Board may:

(1) Grant credit, to the extent determined by it, for any course, or individual or group study deemed suitable to carry out the purposes of ORS 683.210. To be granted credit, any course offering must be open to all optometric physicians licensed in Oregon.

(2) Grant credit, to the extent determined by it, for publication of articles and papers of scientific and educational interest published in recognized scientific publications.

(3) Grant credit, to the extent determined by it, for courses that relate to the maintenance or advancement of professional skills and abilities, including communication and cultural competency skills. Courses that relate primarily to practice management or jurisprudence will not be granted credit.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210 & 683.270
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1979, f. & ef. 10-29-79; OE 2-1983, f. & ef. 2-22-83; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0025

Credit for Conducting Course or Presenting Material

Any optometric physician who prepares and presents a continuing education course eligible for credit under this rule is entitled to three hours of continuing education credit for each credit hour of the initial presentation of the course. No credit will be given for repeat presentations unless application for credit has been filed in advance with the Board and appropriate evidence submitted that additional study or research was necessary for such additional presentation. The Board may then grant, to the extent deemed suitable by it, credit for the additional presentation.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84

852-070-0030

Calculation of Credit

An optometric physician must meet the continuing optometric education requirement beginning with the second license year renewal period following the year of original licensure by the Board.

(1) This applies only to graduates of optometry school not more than one year post graduation.

(2) All other optometric physicians must meet the continuing optometric education requirements of Division 70.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.210 & 182.466
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1994, f. & cert. ef. 7-22-94; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0035

Responsibility to Notify Board

(1) Each active licensee must notify the Board of Optometry in writing of completion of the required hours of approved continuing education credits as part of the license renewal.

(2) Notification for at least the total number of required hours must be submitted at one time.

(3) If sufficient proof of continuing education is not received by the Board by the license year renewal period deadline, the license will not be renewed until the continuing education deficiency is made up in a manner acceptable to and approved by the Board.

(4) It is the licensee's responsibility to ensure that all continuing optometric education credits the licensee plans to submit have been approved by the Board before the license year renewal period deadline. Continuing optometric education credits that are not approved by the Board before the deadline may be considered late and may not be approved.

(5) Licensees relying on unapproved continuing optometric education program credits for renewal must submit a request for course approval and

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sufficient supporting program information to the Board at least 30 days before the renewal due date for consideration for credit. If the Board determines the credits do not count for renewal, the licensee must submit additional acceptable credits by renewal due date or renewal will be considered incomplete and late.

(6) Licensees must submit original certificates of attendance or other proof of attendance acceptable to the Board.

(7) Any licensee who has completed the required continuing optometric education course work by the license year renewal period but fails to meet the submission deadline is subject to a late fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1984, f. & ef. 1-13-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0045

Board Responsibility for Provision of Continuing Optometric Education

The Oregon Board of Optometry must provide or approve education programs to fulfill the requirements of this section

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.140 & 683.210
Hist.: OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0054

COPE Approved Continuing Optometric Education Courses

(1) The Oregon Board of Optometry accepts courses related to the maintenance or advancement of professional skills and clinical abilities approved by COPE (Council on Optometric Practitioner Education). If such a course has been COPE approved, the Board will accept the course as meeting its continuing education requirements for license renewal except for courses in Category D as indicated in (4) below.

(2) COPE course category A: Clinical Optometry which includes Contact Lenses (CL), Functional Vision/Pediatrics (FV), General Optometry (GO), and Low Vision (LV).

(3) COPE course categories B: Ocular Disease and C: Related Systemic Disease are approved as meeting the Board's nine hours per license year requirement of continuing optometric education in the area of diagnosis, treatment and management of ocular disease:

(a) Ocular Disease includes Glaucoma (GL), Injection Skills (IS), Laser Procedures (LP), Peri-Operative Management of Ophthalmic Surgery (PO), Refractive Surgery Management (RS), Surgery Procedures (SP), Treatment and Management of Ocular Disease: Anterior Segment (AS), and Treatment and Management of Ocular Disease: Posterior Segment (PS); and

(b) Related Systemic Disease includes Neuro-Optometry (NO), Oral Pharmaceuticals (OP), Pharmacology (PH), Principles of Diagnosis (PD), and Systemic/Ocular Disease (SD).

(4) COPE course category D, which includes Public Health (PB), Practice Management (PM) and Ethics/Jurisprudence (EJ), are not approved by the Oregon Board of Optometry, unless it is an optometric ethics course that has been individually evaluated and approved by the Board.

(5) It is the responsibility of the licensee to ensure that any continuing optometric education coursework submitted for credit meets the criteria of this rule.

(6) The Oregon Board of Optometry will review the COPE criteria for course category definitions to determine if the process and categories are within the standards it has set. Those COPE category definitions not acceptable to the Board will be identified to COPE and listed in the Board's administrative rules.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.210 & 182.466
Hist.: OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OP 2-1996, f. 10-30-96, cert. ef. 11-1-96; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2003, f. 9-15-03, cert. ef. 1-1-04; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; Renumbered from 852-070-0060 by OPT 1-2013, f. & cert. ef. 1-3-13

852-070-0055

Continuing Optometric Education Provided by Outside Entities

(1) All continuing optometric education provided by other organizations must be submitted to the Board for approval before credit will be granted. Approval or denial of the continuing optometric education will be based on course:

- (a) Relevance to modern optometric practice;
- (b) Provision of skills or information which can translate to improved patient care;

(c) Content being recognized and accepted as sound scientific thought;

(d) Provision of heightened content standards needed by optometric physicians; and

(e) Presenter(s) credentials, as evidenced by a submitted curriculum vitae and an academic degree or combination of academic achievement and special expertise acceptable to the Board.

(2) The Board may accept continuing optometric education courses that have been approved by other organizations. This acceptance will be in accordance with the standards set by the Board.

(3) Courses acceptable to the Board for continuing education credit must be at least one half-hour in length, must be proctored for attendance, and the sponsor must provide original source documentation of successful completion to the attendee. Additional credits must be in half-hour increments.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.210 & 182.466
Hist.: OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2013, f. & cert. ef. 1-3-13

852-080-0020

Designation of Topical Formulary

Pursuant to ORS 683.010(3) and 683.270(j), optometric physicians are qualified to use, administer, and prescribe topical pharmaceutical agents as designated by the Oregon Board of Optometry. The following formulary of pharmaceutical agents for topical use in the practice of optometry are designated, subject to the conditions in 852-080-0030:

(1) Category 1 — Ocular lubricants, artificial tears, and irrigating solutions;

(2) Category 2 — Mydriatics;

(3) Category 3 — Cycloplegics;

(4) Category 4 — Anesthetics;

(5) Category 5 — Dyes;

(6) Category 6 — Miotics;

(7) Category 7 — Astringents and antiseptics;

(8) Category 8 — Caustic agents;

(9) Category 9 — Antihistamines and decongestants;

(10) Category 10 — Anti-louse agents;

(11) Category 11 — Hyperosmotics;

(12) Category 12 — Anti-infectives (antibiotics, anti-virals, anti-fungals);

(13) Category 13 — Anti-glaucoma and ocular hypotensives;

(14) Category 14 — Anti-inflammatories;

(15) Category 15 — Any combination of the above agents;

(16) Category 16 — Other agents as approved by the Board.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.010, 683.270 & 182.466
Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 1-2000, f. & cert. ef. 3-15-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2013, f. & cert. ef. 1-3-13

852-080-0025

Adoption of Nontopical Formulary

Pursuant to ORS 683.010(3) optometric physicians are qualified to use, administer, and prescribe nontopical pharmaceutical agents adopted by the Council on Optometric Nontopical Formulary under ORS 683.240(2) and approved by the Board. The Oregon Board of Optometry adopts the following nontopical formulary subject to the conditions in 852-080-0030:

(1) Category 17 — Anesthetics;

(2) Category 18 — Analgesics;

(3) Category 19 — Dyes;

(4) Category 20 — Anti-allergy agents;

(5) Category 21 — Anti-infectives (antibiotics, anti-virals, anti-fungals);

(6) Category 22 — Anti-glaucoma and ocular hypotensives;

(7) Category 23 — Anti-inflammatory agents;

(8) Category 24 — Any combination of the above agents;

(9) Category 25 — Emergency use agents.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.240 & 182.466
Hist.: OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2013, f. & cert. ef. 1-3-13

852-080-0030

Conditions of Formulary Application

The following conditions apply to the formulary of pharmaceutical agents in 852-080-0020 and 852-080-0025:

(1) Optometric physicians certified for Topical Therapeutic Pharmaceutical Agents (TPA), Nontopical Therapeutic Pharmaceutical Agents (AT) or Nontopical Therapeutic Pharmaceutical Agents with

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Injections (ATI) may use, administer, and prescribe any and all over-the-counter pharmaceutical agents.

(2) Optometric physicians certified for topical TPA use may use, administer and prescribe topical agents in Categories 1-16.

(3) Optometric physicians certified for nontopical TPA use have the designation "AT" or "ATI" printed on their licenses, and may use, administer and prescribe topical and nontopical agents in Categories 1-24 as indicated for procedures that are permitted under OAR Chapter 852, Division 20 Standards of Optometric Practice.

(4) Glaucoma Treatment:

(a) Optometric physicians treating a patient with antiglaucoma medication must consult with an ophthalmologist if:

(A) The glaucoma progresses despite the use of two glaucoma medications;

(B) More than two medications are required to control the glaucoma;

or

(C) A secondary glaucoma develops;

(b) Glaucoma is considered to be progressing if, in comparison to prior examinations, there is a reproducible worsening of the patient's visual field as measured by standard threshold testing or if there is a worsening of the patient's optic nerve as measured by direct observation or standard imaging technology or by rising eye pressure despite the use of two or more medications;

(c) Glaucoma is considered to be under control if target eye pressure, individualized for each patient, is maintained with no abnormal glaucomatous progression; and

(d) A combination medication that contains two pharmacologic agents is considered one medication.

(5) Optometric physicians certified for nontopical TPA must consult with a doctor of medicine or doctor of osteopathy, licensed under ORS Chapter 677, before extending treatment with nontopical corticosteroids or Schedule III analgesics beyond seven days.

(6) Optometric physicians should be diligent in preventing the diversion of drugs for illegitimate purposes. Upon application, active status licensees are granted access to the Oregon Prescription Drug Monitoring Program of the Oregon Health Authority to research controlled substance information on their patients; under ORS Chapter 431, fees for the program are required to be collected at the time of annual active license renewal by the Board and allow doctors to register and use the program at no additional charge.

(7) Optometric physicians may not use, administer or prescribe agents classified principally as anti-neoplastics.

(8) Optometric physicians may use or administer pharmaceutical agents in cases of emergency requiring immediate attention.

(9) Optometric physicians certified for nontopical TPA with injections (ATI) use may administer subcutaneous and subconjunctival injections. Sub-Tenon, retrobulbar, intraocular and botulinum toxin injections are excluded.

(10) Optometric physicians certified for nontopical TPA use, may administer oral pre-medication for light sedation. Conscious sedation, deep sedation and general anesthesia are excluded.

(11) Optometric physicians certified for topical or nontopical TPA use may prescribe and dispense therapeutic contact lenses that include pharmaceutical agents listed on the topical formulary in OAR 852-80-0020.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.240, 683.270 & 182.466

Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 4-1998, f. 6-25-98, cert. ef. 7-1-98; OPT 1-2000, f. & cert. ef. 3-15-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 2-2007, f. 12-7-07 & cert. ef. 1-1-08; OPT 1-2008, f. 6-25-08, cert. ef. 7-1-08; OPT 1-2013, f. & cert. ef. 1-3-13

852-080-0040

Certification to Use Pharmaceutical Agents

(1) Topical TPA Certification (T) for inactive status licensee: Any optometric physician licensed in Oregon in inactive status who elects to become TPA certified must:

(a) Pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) or have passed a 100-hour TPA course approved by the Board and have been continuously practicing using therapeutic pharmaceutical agents in another state or states, and be without disciplinary incident;

(b) Pay a \$75 TPA examination and licensure fee for topical TPA certification; and

(c) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical Therapeutic Pharmaceutical Agents."

(2) Nontopical TPA Certification (AT) for active status licensee: Before using nontopical therapeutic pharmaceutical agents as listed in this rule, any doctor of optometry licensed in Oregon in active status must:

(a) Meet Topical TPA Certification;

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination;

(c) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(e) Acquire and maintain Board-approved CPR certification designed for professional health care providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification:

(A) After the initial CPR certification, the Board will accept a Board-approved BLS Healthcare Providers Online Renewal course for license renewal. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification;

(B) The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires;

(C) Documentation of CPR certification is due with the licensee's annual license renewal as indicated in OAR 852-050-0006. Failure to maintain current CPR certification will result in immediate automatic loss of Nontopical TPA certification. The Nontopical TPA certification will not be reinstated until the CPR certification deficiency has been corrected; and

(D) Any licensee whose Nontopical TPA certification is lost due to expiration of their CPR certification is subject to a late CPR fee of \$50 to have the Nontopical TPA certification reinstated. The fee must be received before the Nontopical TPA certification will be reinstated.

(3) Nontopical TPA Certification (AT) for inactive status licensee: Any doctor of optometry licensed in Oregon in inactive status must:

(a) Meet all criteria for Topical TPA Certification in OAR 852-080-0040(1);

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(c) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(e) Acquire Board-approved CPR certification designed for professional healthcare providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. A CPR certification card with an expiration date must be received from the CPR provider. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(4) Nontopical TPA Certification with Injections (ATI) for active status licensee: Before using nontopical therapeutic pharmaceutical agents with injections as listed in this rule, any doctor of optometry licensed in Oregon in active status must:

(a) Pass a Board-approved Nontopical TPA course of at least 23 hours or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(b) Pass a Nontopical TPA injection workshop of at least seven hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(c) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents with Injections"; and

(e) Acquire and maintain Board-approved CPR certification designed for professional health care providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its

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equivalent, as determined by the Board. This CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification;

(A) After the initial CPR certification, the Board will accept a Board-approved BLS Healthcare Providers Online Renewal course for license renewal. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification;

(B) The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires;

(C) Documentation of CPR certification is due with the licensee's annual license renewal as indicated in OAR 852-050-0006. Failure to maintain current CPR certification will result in immediate automatic loss of Nontopical TPA certification. The Nontopical TPA certification will not be reinstated until the CPR certification deficiency has been corrected;

(D) Any licensee whose Nontopical TPA certification is lost due to expiration of their CPR certification is subject to a late CPR fee of \$50 to have the Nontopical TPA certification reinstated. The fee must be received before the Nontopical TPA certification will be reinstated.

(5) Nontopical TPA Certification with Injections (ATI) for inactive status licensee: Before using nontopical therapeutic pharmaceutical agents with injections as listed in this rule, any optometric physician licensed in Oregon in inactive status must:

(a) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(b) Pass a Nontopical TPA injection workshop of at least seven hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(c) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents with Injections"; and

(e) Acquire Board-Approved CPR certification designed for professional healthcare providers. The CPR certification must be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.270 & 182.466

Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 3-2003, f. 9-15-03, cert. ef. 10-1-03; OPT 3-2004, f. 9-24-04, cert. ef. 10-1-04; OPT 2-2005, f. & cert. ef. 4-8-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 4-2006, f. & cert. ef. 8-2-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13

Board of Pharmacy
Chapter 855

Rule Caption: Reorganizes, renumbers, amends and repeals rules in Division 041 to provide greater clarity and order.

Adm. Order No.: BP 7-2012

Filed with Sec. of State: 12-17-2012

Certified to be Effective: 12-17-12

Notice Publication Date: 11-1-2012

Rules Repealed: 855-041-0007, 855-041-0030

Rules Renumbered: 855-041-0010 to 855-041-1085, 855-041-0016 to 855-041-1170, 855-041-0017 to 855-041-1095, 855-041-0020 to 855-041-1010, 855-041-0025 to 855-041-1015, 855-041-0036 to 855-041-1025, 855-041-0037 to 855-041-1030, 855-041-0040 to 855-041-1035, 855-041-0055 to 855-041-1145, 855-041-0056 to 855-041-1135, 855-041-0057 to 855-041-1140, 855-041-0061 to 855-041-1110, 855-041-0075 to 855-041-2115, 855-041-0080 to 855-041-1045, 855-041-0086 to 855-041-1115, 855-041-0095 to 855-041-1050, 855-041-0103 to 855-041-1055, 855-041-0140 to 855-041-6840, 855-041-0164 to 855-041-7080, 855-041-0170 to 855-043-0600, 855-041-0173 to 855-043-0610, 855-041-0175 to 855-043-0620, 855-041-0177 to 855-043-0630, 855-041-0300 to 855-041-1060, 855-041-0350 to 855-041-4025, 855-041-0355 to 855-041-4035, 855-041-0365 to 855-041-4055, 855-041-0600 to

855-041-4100, 855-041-0610 to 855-041-4110, 855-041-0645 to 855-041-4200

Rules Ren. & Amend: 855-041-0005 to 855-041-1080, 855-041-0015 to 855-041-1090, 855-041-0026 to 855-041-1020, 855-041-0035 to 855-041-2100, 855-041-0060 to 855-041-1040, 855-041-0060 to 855-041-1160, 855-041-0060 to 855-041-1165, 855-041-0065 to 855-041-1105, 855-041-0065 to 855-041-1120, 855-041-0065 to 855-041-1125, 855-041-0065 to 855-041-1130, 855-041-0135 to 855-041-6800, 855-041-0145 to 855-041-7050, 855-041-0160 to 855-041-7060, 855-041-0162 to 855-041-7070, 855-041-0165 to 855-041-8050, 855-041-0360 to 855-041-4045, 855-041-0620 to 855-041-4120

Subject: The Board has reorganized, renumbered, amended and repealed rules within Division 041 in an effort to update the Division in its entirety and provide greater clarity for licensees. In addition rules relating to correctional facilities have been renumbered to Division 043 for organizational purposes. The Board will further review Division 041 in its entirety in 2013 after the reorganization occurs to ensure that rules within the Division accurately reflect current pharmacy practice standards and accommodate new business models.

The complete text of these rules is available on the Board's website at: www.pharmacy.state.or.us.

Rules Coordinator: Karen MacLean—(971) 673-0001

855-041-1010

Personnel (Both Retail and Institutional Drug Outlets)

(1) Each pharmacy must have one pharmacist-in-charge employed on a regular basis at that location who shall be responsible for the daily operation of the pharmacy. The pharmacist-in-charge shall be indicated on the application for a new or relocated pharmacy and for pharmacy renewal registration.

(2) The pharmacy must ensure that it is in compliance with all state and federal laws and rules governing the practice of pharmacy and that all controlled substance records and inventories are maintained in conformance with the keeping and inventory requirements of federal law and board rules.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.305

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1986, f. & ef. 12-8-86; PB 10-1987, f. & ef. 12-8-87; PB 9-1989, f. & cert. ef. 7-20-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2001, f. & cert. ef. 3-5-01; BP 2-2008, f. & cert. ef. 2-20-08; Renumbered from 855-041-0020, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1015

Operation of Pharmacy (Both Retail and Institutional Drug Outlets)

(1) Supervision. A pharmacy may only be operated when a pharmacist licensed to practice in this state is present. This means that the pharmacist must be physically present in the pharmacy or institutional facility.

(2) Sanitation:

(a) Pharmacies shall be kept clean.

(b) Persons working in a pharmacy shall practice appropriate infection control.

Stat. Auth.: ORS 689.305

Stats. Implemented: ORS 689.305

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 12-1989, f. & cert. ef. 8-11-89; PB 1-1997, f. & cert. ef. 9-22-97; Renumbered from 855-041-0025, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1020

Security of Prescription Area

(1) The area in a registered pharmacy where legend and/or controlled substances are stored, possessed, prepared, manufactured, compounded, or repackaged shall be restricted in access, in such a manner as to ensure the security of those drugs.

(2) The pharmacist-in-charge and each pharmacist while on duty shall be responsible for the security of the prescription area including provisions for adequate safeguards against theft or diversion of prescription drugs, and records for such drugs.

(3) When there is no pharmacist present, the pharmacy shall be secured to prevent entry. All entrances to the pharmacy shall be securely locked and any keys to the pharmacy shall remain in the possession of the pharmacist-in-charge and other employee pharmacists as authorized by the pharmacist-in-charge. When there is no pharmacist present, and it is necessary for non-pharmacist employees or owners to have access to the phar-

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macy, the prescription area shall be secured from entry as described in OAR 855-041- 2100.

(4) Prescription drugs and devices and non-prescription Schedule V controlled substances shall be stored within the prescription area or a secured storage area.

(5) Any security system deviating from the requirements of this section, except as provided in OAR 855-041- 6310, shall be approved by the Board prior to implementation. Requests for such approval shall be in writing and provide a detailed description of the proposed system. A written description of such security system, as approved by the Board, shall be maintained in the pharmacy.

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented: ORS 689.205

Hist.: 1PB 5-1982, f. & ef. 8-6-82; PB 1-1987, f. & ef. 2-3-87; Renumbered from 855-041-0026, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1025

Disposal of Drugs

Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed or returned to their supplier.

Stat. Auth.: ORS 475.035, 689.155, 689.205, 689.305 & 689.315

Stats. Implemented:

Hist.: 1PB 2-1984, f. & ef. 3-7-84; PB 1-1990, f. & cert. ef. 1-23-90; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); Renumbered from 855-041-0036, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1030

Reporting Drug Loss

(1) Disasters, accidents and emergencies which may affect the strength, purity, or labeling of drugs or devices shall immediately be reported to the Board.

(2) When there are reasonable grounds to believe that drugs have been stolen, the pharmacist shall immediately notify the Board.

(3) At the time a Report of Theft or Loss of Controlled Substances (D.E.A. Form 106) is sent to the Drug Enforcement Administration, a copy shall be sent to the Board. When loss of controlled substances is due to burglary or robbery, a copy of the police report shall be sent to the Board.

Stat. Auth.: ORS 475.035, 689.155, 689.205, 689.305 & 689.315

Stats. Implemented:

Hist.: 1PB 2-1981, f. & ef. 8-20-81; 1PB 1-1986, f. & ef. 6-5-86; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); Renumbered from 855-041-0037, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1035

Minimum Equipment Requirements (Both Retail and Institutional Drug Outlets)

The minimum equipment requirement to open and operate a retail drug outlet and institutional drug outlet in the state of Oregon shall consist of not less than the following:

(1) The most current issue of at least one pharmaceutical reference with current, properly filed supplements and updates appropriate to and based on the standards of practice for the setting.

(2) Current and properly filed Oregon Revised Statutes, Chapters 689, and 475; current and properly filed Oregon Administrative Rules, chapter 855; and a minimum of three years of the Board of Pharmacy quarterly newsletters maintained in house or other readily retrievable means.

(3) Official Poison and Exempt Narcotic Register if poisons and exempt narcotics are sold or distributed.

(4) Suitable refrigeration.

(5) A sink with running hot and cold water.

(6) Equipment and supplies appropriate to and based on the standards of practice for the setting as determined by the Pharmacy and Pharmacist-in-Charge.

(7) Failure to have and use equipment necessary to your practice setting constitutes unprofessional conduct for purposes of ORS 689.405(1)(a).

(8) If an outlet files original prescriptions electronically, then the outlet must have a computer and software capable of storing and accessing electronically filed original prescriptions. Exceptions to the above list may be approved by the Board of Pharmacy.

Stat. Auth.: ORS 689.205 & 689.508

Stats. Implemented: ORS 689.205 & 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 1-1981(Temp), f. & ef. 4-1-81; 1PB 2-1981, f. & ef. 8-20-81; 1PB 4-1986, f. & ef. 12-8-86; PB 8-1987, f. & ef. 9-30-87; PB 12-1989, f. & cert. ef. 8-11-89; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 3-2005, f. & cert. ef. 4-14-05; Renumbered from 855-041-0040, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1040

Drug Outlet Procedures

Each drug outlet is accountable for establishing, maintaining, and enforcing their written procedures for:

(1) Securing their legend drugs and the area in which they are prepared, compounded, stored or repackaged;

(2) Performing mandatory prospective drug utilization reviews; on all prescriptions both new and refilled;

(3) Verifying the accuracy of all completed prescriptions and medical orders before they leave the pharmacy's secured legend area;

(4) Documenting the identification of the pharmacist responsible for the verification of each dispensed medication;

(5) Ensuring the delivery of each completed prescription to the correct party;

(6) Providing appropriate confidential professional advice concerning medications to patients or their agents;

(7) Ensuring that all who work in the pharmacy are appropriately licensed and adequately trained to perform their duties and;

(8) Establishing and maintaining a Continuous Quality Assurance Program.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1994, f. & cert. ef. 2-2-94; BP 3-2005, f. & cert. ef. 4-14-05; BP 2-2008, f. & cert. ef. 2-20-08; Renumbered from 855-041-0060, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1045

Returned Drugs and Devices

(1) Pharmacists, pharmacies, pharmacy technicians, and certified pharmacy technicians may only accept the return of controlled substances upon receiving a waiver from the Board of Pharmacy.

(2) Pharmacists, pharmacies, pharmacy technicians, and certified pharmacy technicians may accept the return of drugs or devices as defined by ORS 689.005 once the drugs or devices have been removed from the pharmacy only if;

(a) The drugs or devices are accepted for destruction or disposal and;

(b) The drugs or devices were dispensed in error, were defective, adulterated, misbranded, dispensed beyond their expiration date, were unable to be delivered to the patient, or are subject of a drug or device recall; or

(c) After consultation, a pharmacist determines that, in the pharmacist's professional judgment, harm could result to the public or a patient if the drugs or devices were not accepted for return.

(3) Notwithstanding section 2 of this rule, drugs or devices previously dispensed or distributed may be returned and redispensed or redistributed provided all the following conditions are met:

(a) The drug is in an unopened, tamper-evident unit;

(b) The drugs or devices have remained at all times in control of a person trained and knowledgeable in the storage and administration of drugs in long term care facilities or supervised living groups using the services of a consultant pharmacist;

(c) The drug or device has not been adulterated or misbranded and has been stored under conditions meeting United States Pharmacopeia standards.

(4) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety or the health and safety of a patient. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

Stat. Auth.: ORS 475 & 689

Stats. Implemented:

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 1-1981(Temp), f. & ef. 4-1-81; 1PB 2-1981, f. & ef. 8-20-81; PB 5-1989, f. & cert. ef. 1-30-89; PB 8-1990, f. & cert. ef. 12-5-90; BP 2-2006, f. & cert. ef. 6-9-06; Renumbered from 855-041-0080, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1050

Pharmacy Depots

(1) Except when delivering directly to a patient, licensed pharmacists may not participate in the transfer of completed prescription medication containers to or from any location that is not a licensed pharmacy, unless the transfer occurs to:

(a) The office of the patient's health care practitioner; or

(b) The location of the patient; or

(A) Patient's primary residence; or

(B) Alternate residence designated by the patient; or

(C) Patient's workplace; or

(c) The hospital or medical care facility in which a patient is receiving care.

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(2) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety or the health and safety of a patient. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12; BP 1-2012, f. 4-26-12, cert. ef. 5-1-12; Renumbered from 855-041-0095, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1055

Confidentiality

(1) No licensee or registrant of the Board who obtains any patient information shall disclose that information to a third party without the consent of the patient.

(2) Section (1) of this rule does not apply to:

(a) Any disclosure made to the Board;

(b) Any disclosure made to a practitioner or to another pharmacist when the pharmacist reasonably believes that disclosing such information is necessary to protect the patient's health or well being; or

(c) To a third party when disclosure is otherwise authorized or required by law.

Stat. Auth.: ORS 689.155 & 689.205

Stats. Implemented:

Hist.: PB 5-1992, f. & cert. ef. 10-23-92; Renumbered from 855-041-0103, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1060

Out-of State Pharmacies

(1) Every out-of-state pharmacy that delivers prescription drugs or devices to a resident in this state shall be registered with the Oregon Board of Pharmacy.

(2) To qualify for registration under these rules, every out-of-state pharmacy shall be registered and in good standing with the Board of Pharmacy in the pharmacy's state of residence.

(3) Every out-of-state pharmacy shall designate a pharmacist-in-charge, who shall be responsible for all prescription drugs and devices delivered to residents in Oregon. To qualify for this designation, the person must hold a license to practice pharmacy in the state of residence of the out-of-state pharmacy and in Oregon, and be in good standing with both licensing boards.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.225

Hist.: PB 1-1994, f. & cert. ef. 2-2-94; BP 2-2008, f. & cert. ef. 2-20-08; Renumbered from 855-041-0300, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1080

Pharmacy Registration (Both Retail and Institutional Drug Outlets)

(1) Pharmacies shall be registered as either retail drug outlets or institutional drug outlets or both.

(2) An application for registration of a new pharmacy shall be accompanied by a floor plan drawn to scale and shall be approved by the Board prior to opening.

(3) The application shall specify the location of the pharmacy and shall indicate the owner, trustee, receiver, or other person applying for the registration. When an applicant is not the owner of the pharmacy, the application shall indicate the owner and the applicant's affiliation with the owner:

(a) If the owner is a partnership or other multiple owner, the names of the partners or persons holding the five largest interests shall be indicated on the application;

(b) If the owner is a corporation, the name filed shall be the same as filed with the Corporation Commissioner. The name of the corporation, the names of the corporation officers and the names of the stockholders who own the five largest interests shall be indicated on the application.

(4) Upon request by the Board, the applicant shall furnish such information as required by the Board regarding the partners, stockholders, or other persons not named in the application.

(5) The application shall also identify any person who has incidents of ownership in the pharmacy who also has financial interest in any long-term care facility as defined in ORS 442.015.

(6) A certificate of registration will be issued upon Board approval of the application.

(7) All registration renewal applications shall be accompanied by the annual fee and shall contain the same information required in sections (3) and (4) of this rule.

(8) The initial and annual registration fee for pharmacies is set out in division 110 of this chapter.

(9) Pharmacy registration expires March 31, annually. If the annual registration fee referred to in Division 110 of this Chapter is not paid by March 31 of the current year, a delinquent fee as set out in Division 110 of this Chapter shall be included with the application for registration renewal.

(10) The registration is not transferable and the registration fee cannot be prorated.

(11) A change of ownership requires the approval of the Board and new certificate of registration. Application shall be on a form supplied by the Board.

(12) A change of ownership includes any change in the legal form of the business including additions or deletions of partners.

(13) Applicants for change in ownership shall provide the Board with the information required in sections (3), (4), and (5) of this rule.

(14) A change of ownership shall be reported to the Board within 15 days of the occurrence.

(15) No pharmacy shall be operated until a certificate of registration has been issued to the pharmacy by the Board.

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 5-1990, f. & cert. ef. 4-12-90; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; Renumbered from 855-041-0005, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1085

Change of Location of a Pharmacy (Both Retail and Institutional Drug Outlets)

(1) A change of location of a pharmacy requires the approval of the Board and a new certificate of registration.

(2) Application for approval to relocate shall be on a form provided by the Board and shall be accompanied by fees and a floor plan drawn to scale.

(3) A certificate of registration will be issued upon Board approval of the application.

(4) Following Board approval, a change of location, shall be reported to the Board within 15 days of the occurrence.

(5) No pharmacy shall be operated until a certificate of registration has been issued to the pharmacy by the Board.

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented:

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 5-1990, f. & cert. ef. 4-12-90; PB 1-1994, f. & cert. ef. 2-2-94; Renumbered to 855-041-0010, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1090

Change of Business Name, Closure (Both Retail and Institutional Drug Outlets)

(1) Any change of business name of a pharmacy must be reported to the Board within 15 days by filing a new application for which no fee is required.

(2) Any closure of a pharmacy shall be reported to the Board within 15 days and include notification of the disposition of controlled substances, dangerous, legend, and restricted drugs.

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented: ORS 689.205

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1994, f. & cert. ef. 2-2-94; Renumbered from 855-041-0015, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1095

Pharmacy Advertising

No person shall advertise or otherwise purport to operate as a pharmacy or to advertise or purport to provide pharmacy services unless the person is registered with the Board pursuant to ORS 689.305.

Stat. Auth.: ORS 475.035, 689.155, 689.205, 689.305 & 689.315

Stats. Implemented:

Hist.: PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); Renumbered from 855-041-0017, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1105

Requirements for Prescriptions

(1) Prescriptions, prescription refills, and drug orders must be correctly dispensed in accordance with the prescribing practitioner's authorization. When a prescription is transmitted orally, both the receiving pharmacist's name or initials and the name of the person transmitting must be noted on the prescription.

(2) Each pharmacy must document the following information:

(a) The name of the patient for whom or the owner of the animal and the species of the animal for which the drug is dispensed;

(b) The full name and, in the case of controlled substances, the address and the Drug Enforcement Administration registration number of

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the practitioner or other number as authorized under rules adopted by reference under rule OAR 855-080-0085;

(c) The name, strength, dosage forms of the substance, quantity prescribed and, if different from the quantity prescribed, the quantity dispensed;

(d) The directions for use, if given by the practitioner; and

(e) The date of filling, and the total number of refills authorized by the prescribing practitioner.

(3) In accordance with ORS 689.515(3), a practitioner may specify in writing, by a telephonic communication or by electronic transmission that there may be no substitution for the specified brand name drug in a prescription.

(a) For a hard copy prescription issued in writing or a prescription orally communicated over the telephone, instruction may use any one of the following phrases or notations:

(A) No substitution;

(B) N.S.;

(C) Brand medically necessary;

(D) Brand necessary;

(E) Medically necessary;

(F) D.A.W. (Dispense As Written); or

(G) Words with similar meaning.

(b) For an electronically transmitted prescription, the prescriber or prescriber's agent shall clearly indicate substitution instructions by way of the text (without quotes) "brand medically necessary" or words with similar meaning, in the electronic prescription drug order, as well as all relevant electronic indicators sent as part of the electronic prescription transmission.

(c) Such instructions shall not be default values on the prescription.

(4) Upon written request and for good cause, the Board may waive any of the requirements of this rule. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.505 & 689.515

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; 1PB 1-1986, f. & ef. 6-5-86; PB 8-1987, f. & ef. 9-30-87; PB 10-1989, f. & cert. ef. 7-20-89; PB 1-1991, f. & cert. ef. 1-24-91; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 3-1997(Temp), f. & cert. ef. 11-12-97; BP 1-1998(Temp), f. & cert. ef. 1-27-98 thru 5-4-98; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 2-2000, f. & cert. ef. 2-16-00; BP 3-2000, f. & cert. ef. 2-16-00; BP 6-2000, f. & cert. ef. 6-29-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 12-2010, f. & cert. ef. 12-23-10; Renumbered from 855-041-0065, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1110

Tamper-resistant Prescription

When the use of a tamper-resistant prescription is required by any federal or state law or rule, the term "tamper-resistant" shall have the meaning as defined in OAR 855-006-0015.

Stat. Auth.: 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2007(Temp), f. & cert. ef. 8-27-07 thru 2-18-08; BP 1-2008, f. & cert. ef. 2-5-08; Renumbered from 855-041-0061, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1115

Verification of Prescription Authenticity

Alteration of a written prescription, other than by a pharmacist's or practitioner's authorization, in any manner constitutes an invalid order unless verified with the prescriber.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 2-2008, f. & cert. ef. 2-20-08; Renumbered from 855-041-0086, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1120

Prescription Refills

(1) Where refill authority is given other than by the original prescription, documentation that such refill authorization was given, the date of authorization, and name of the authorizing prescriber or the prescriber's agent must be recorded. This documentation must be readily retrievable. Prescriptions for controlled substances in Schedules III and IV are limited to five refills or six months from date of issue, whichever comes first.

(2) If the practitioner is not available and in the professional judgment of the pharmacist an emergency need for the refill of a prescription drug has been demonstrated, the pharmacist may dispense a sufficient quantity of the drug consistent with the dosage regimen, provided it is not a controlled substance, to last until a practitioner can be contacted for authorization, but not to exceed a 72-hour supply. The practitioner shall be promptly notified of the emergency refill.

(3) Each refilling of a prescription must be accurately documented, readily retrievable, and uniformly maintained for three years. This record must include.:

(a) The identity of the responsible pharmacist;

(b) Name of the patient;

(c) Name of the medication;

(d) Date of refill; and

(e) Quantity dispensed.

(4) Refill quantities may be combined into a single filling if the prescription is not for a controlled substance or psychotherapeutic drug and the prescriber is notified of the change.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.505 & 689.515

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; 1PB 1-1986, f. & ef. 6-5-86; PB 8-1987, f. & ef. 9-30-87; PB 10-1989, f. & cert. ef. 7-20-89; PB 1-1991, f. & cert. ef. 1-24-91; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 3-1997(Temp), f. & cert. ef. 11-12-97; BP 1-1998(Temp), f. & cert. ef. 1-27-98 thru 5-4-98; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 2-2000, f. & cert. ef. 2-16-00; BP 3-2000, f. & cert. ef. 2-16-00; BP 6-2000, f. & cert. ef. 6-29-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 12-2010, f. & cert. ef. 12-23-10; Renumbered from 855-041-0065, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1125

Prescription Expiration

This section of rule addresses the expiration date of the prescription and not the expiration date of the drug.

(1) After one year from date of issue, a prescription for a non-controlled substance becomes invalid and must be re-authorized by the prescriber.

(2) When used alone as a prescription refill designation the abbreviation, "PRN" for a non-controlled substance means that the medication can be refilled in proper context for a period of one year.

(a) When this abbreviation is used alone as a means to authorize refills for a controlled substance, the medication can be refilled in proper context for a period of six months or five refills, whichever comes first.

(b) When this abbreviation is used in conjunction with a definite time period, or a specific number of refills, the non-controlled medication can be refilled in proper context for a period not to exceed one year.

(3) The prescription shall not be refilled out of context with the approximate dosage schedule unless specifically authorized by the prescriber.

(4) A "non-controlled substance" means those drugs defined as "legend" pursuant to ORS 689.005(29) but does not include those drugs or substances controlled under the jurisdiction of the United States Department of Justice Drug Enforcement Administration.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.505 & 689.515

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; 1PB 1-1986, f. & ef. 6-5-86; PB 8-1987, f. & ef. 9-30-87; PB 10-1989, f. & cert. ef. 7-20-89; PB 1-1991, f. & cert. ef. 1-24-91; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 3-1997(Temp), f. & cert. ef. 11-12-97; BP 1-1998(Temp), f. & cert. ef. 1-27-98 thru 5-4-98; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 2-2000, f. & cert. ef. 2-16-00; BP 3-2000, f. & cert. ef. 2-16-00; BP 6-2000, f. & cert. ef. 6-29-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 12-2010, f. & cert. ef. 12-23-10; Renumbered from 855-041-0065, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1130

Prescription Labeling

(1) Prescriptions must be labeled with the following information:

(a) Name, address and telephone number of the pharmacy;

(b) Date;

(c) Identifying number;

(d) Name of patient;

(e) Name of drug, strength, and quantity dispensed; when a generic name is used, the label must also contain the identifier of the manufacturer or distributor;

(f) Directions for use by the patient;

(g) Name of practitioner;

(h) Required precautionary information regarding controlled substances;

(i) Such other and further accessory cautionary information as required for patient safety;

(j) An expiration date after which the patient should not use the drug or medicine. Expiration dates on prescriptions must be the same as that on the original container unless, in the pharmacist's professional judgment, a shorter expiration date is warranted. Any drug bearing an expiration date shall not be dispensed beyond the said expiration date of the drug; and

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(k) Any dispensed prescription medication, other than those in unit dose or unit of use packaging, shall be labeled with its physical description, including any identification code that may appear on tablets and capsules.

(l) Upon written request and for good cause, the Board may waive any of the requirements of this rule. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.505 & 689.515

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; 1PB 1-1986, f. & ef. 6-5-86; PB 8-1987, f. & ef. 9-30-87; PB 10-1989, f. & cert. ef. 7-20-89; PB 1-1991, f. & cert. ef. 1-24-91; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 3-1997(Temp), f. & cert. ef. 11-12-97; BP 1-1998(Temp), f. & cert. ef. 1-27-98 thru 5-4-98; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 2-2000, f. & cert. ef. 2-16-00; BP 3-2000, f. & cert. ef. 2-16-00; BP 6-2000, f. & cert. ef. 6-29-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 12-2010, f. & cert. ef. 12-23-10; Renumbered from 855-041-0065, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1135

Defines Labeling and Container Requirements for Repackage Drugs

(1) Drugs repackaged by a pharmacy for later own use dispensing on prescription shall be in a container meeting USP standards and labeled to identify at a minimum:

- (a) Brand name, or generic name and manufacturer;
- (b) Strength;
- (c) Lot number;
- (d) Manufacturer's expiration date, or any earlier date which, in the pharmacist's professional judgment, is preferable.

(2) An internal control number which references manufacturer and lot number may be utilized.

Stat. Auth.: ORS 689

Stats. Implemented:

Hist.: PB 6-1987, f. & ef. 5-1-87; Renumbered from 855-041-0056, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1140

Customized Patient Medication Packages

In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or a prescriber, provide a customized patient medication package (patient med pak). A patient med pak is a package prepared by a pharmacist for a specific patient comprising a series of containers and containing two or more prescribed solid oral dosage forms. The patient med pak is so designed for each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken:

(1) Label:

(a) The patient med pak shall bear a label stating:

(A) The name of the patient;

(B) A serial number for each patient med pak itself and a separate identifying serial number for each of the prescription orders for each of the drug products contained therein;

(C) The name, strength, physical description or identification, and total quantity of each drug product contained therein;

(D) The directions for use and cautionary statements, if any, contained in the prescription order for each drug product therein;

(E) Any storage instructions or cautionary statements required by the official compendia;

(F) The name of the prescriber of each drug product;

(G) The date of preparation of the patient med pak and the beyond-use date assigned to the patient med pak (such beyond-use date shall be no later than 60 days from the date of preparation);

(H) The name, address, and telephone number of the dispenser and the dispenser's registration number where necessary; and

(I) Any other information, statements, or warnings required for any of the drug products contained therein.

(b) If the patient med pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug products contained therein.

(2) Labeling: The patient med pak shall be accompanied by a patient package insert, in the event that any medication therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med pak.

(3) Packaging:

(a) In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med pak shall comply with the moisture permeation requirements for a Class B

single-unit or unit-dose container. Each container shall be either not reclosable or so designed as to show evidence of having been opened;

(b) There is no special exemption for patient med paks from the requirements of the Poison Prevention Packaging Act. Thus the patient med pak, if it does not meet child-resistant standards shall be placed in an outer package that does comply, or the necessary consent of the purchaser or physician, to dispense in a container not intended to be child-resistant, shall be obtained.

(4) Guidelines: It is the responsibility of the dispenser, when preparing a patient med pak, to take into account any applicable compendia requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the medications. In this regard, pharmacists are encouraged to report to USP headquarters any observed or report incompatibilities.

(5) Recordkeeping: In addition to any individual prescription filing requirements, a record of each patient med pak shall be made and filed. Each record shall contain, as a minimum:

(a) The name and address of the patient;

(b) The serial number of the prescription order for each drug product contained therein;

(c) The name of the manufacturer or labeler and lot number for each drug product contained therein;

(d) Information identifying or describing the design, characteristics, or specifications of the patient med pak sufficient to allow subsequent preparation of an identical patient med pak for the patient;

(e) The date of preparation of the patient med pak and the beyond-use date that was assigned;

(f) Any special labeling instructions; and

(g) The name or initials of the pharmacist who prepared the patient med pak.

Stat. Auth.: ORS 689

Stats. Implemented:

Hist.: PB 1-1989, f. & cert. ef. 1-3-89; Renumbered from 855-041-0057, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1145

New Containers

In filling the original prescriptions, nothing but new containers may be used. A patient's original container may be refilled if clean and the label is legible and up-to-date. The container shall comply with the current provisions of the Federal Consumer Packaging Act (Public Law 91-601, 91st Congress, S. 2162) and rules or regulations adopted thereunder. It must also conform with the current United States Pharmacopoeia/National Formulary monographs for preservation, packaging, storage and labeling.

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

Stat. Auth.: ORS 689

Stats. Implemented:

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; Renumbered from 855-041-0055, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1160

Prescription Records and Retention

(1) Definitions. The following definitions apply to this rule:

(a) An "original prescription" is a prescription maintained in the same physical manner in which a pharmacy first receives the prescription. For example, for a prescription received by the pharmacy in writing on a prescription form, the original prescription consists of the original writing on the prescription form. For a prescription received by the pharmacy orally over the telephone, the original consists of the writing or electronic record that reflects receipt of the oral prescription.

(b) "Filing" and "file" mean the storage of the original prescription in such a manner that the original prescription is safeguarded and readily retrievable.

(2) Every pharmacy and pharmacist-in-charge of a pharmacy must ensure that original prescriptions are properly filed in compliance with this rule.

(3) All original prescriptions shall be filed for a minimum of three years from the date of first dispensing and shall at all times be open for inspection by the prescriber, and the Board of Pharmacy or its duly authorized agent.

(4) After 120 days, the paper prescription may be destroyed and filed in an electronic form if:

(a) The electronic form shows the exact and legible image of the original prescription;

(b) Notes of clarifications of and changes to the prescription are directly associated with the electronic form of the prescriptions; and

(c) The prescription is not for a controlled substance.

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(5) This rule is not intended to alter or supersede the recordkeeping requirements of any other federal or Oregon statute or rule, including but not limited to ORS 689.508, OAR 855-041-1120, and rules related to records for prescriptions for controlled substances.

(6) Unless specified otherwise, all records and documentation required by OAR 855 Division 041 must be retained for three years and made available to the Board for inspection upon request. Records must be stored onsite for at least one year and may be stored in a secured off-site location if retrievable within three business days. Records and documentation may be written, electronic or a combination of the two.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1994, f. & cert. ef. 2-2-94; BP 3-2005, f. & cert. ef. 4-14-05; BP 2-2008, f. & cert. ef. 2-20-08; Renumbered from 855-041-0060, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1165

Patient Medical Record

(1) A patient record system shall be maintained by pharmacies for all patients for whom prescription drug orders are dispensed, except for those patients who the pharmacist has good reason to believe will not return to that pharmacy to obtain drugs. The patient record system shall provide for readily retrievable information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist shall make a reasonable effort to obtain, record, and maintain the following information:

- (a) Full name of the patient for whom the drug is intended;
- (b) Address and telephone number of the patient;
- (c) Patient's age or date of birth;
- (d) Patient's gender;
- (e) Chronic medical conditions;

(f) A list of all prescription drug orders obtained by the patient at the pharmacy maintaining the patient record showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber;

- (g) Known allergies, drug reactions, and drug idiosyncrasies; and
- (h) If deemed relevant in the pharmacist's professional judgment:

(A) Pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug; and

(B) Additional information such as chronic conditions or disease states of the patient, the patient's current weight, and the identity of any other drugs, including over-the-counter drugs, or devices currently being used by the patient which may relate to prospective drug review.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1994, f. & cert. ef. 2-2-94; BP 3-2005, f. & cert. ef. 4-14-05; BP 2-2008, f. & cert. ef. 2-20-08; Renumbered from 855-041-0060, BP 7-2012, f. & cert. ef. 12-17-12

855-041-1170

Grounds for Discipline

The State Board of Pharmacy may impose one or more of the following penalties which includes: suspend, revoke, or restrict the license of an outlet or may impose a civil penalty upon the outlet upon the following grounds:

(1) Unprofessional conduct as defined in OAR 855-006-0005;

(2) Advertising or soliciting that may jeopardize the health, safety, or welfare of the patient including, but not be limited to, advertising or soliciting that:

- (a) Is false, fraudulent, deceptive, or misleading; or
- (b) Makes any claim regarding a professional service or product or the cost or price thereof which cannot be substantiated by the licensee.

(3) Failure to provide a working environment that protects the health, safety and welfare of a patient which includes but is not limited to:

(a) Sufficient personnel to prevent fatigue, distraction or other conditions that interfere with a pharmacist's ability to practice with reasonable competency and safety.

(b) Appropriate opportunities for uninterrupted rest periods and meal breaks.

(c) Adequate time for a pharmacist to complete professional duties and responsibilities including, but not limited to:

- (A) Drug Utilization Review;
- (B) Immunization;
- (C) Counseling;
- (D) Verification of the accuracy of a prescription; and
- (E) All other duties and responsibilities of a pharmacist as specified in Division 19 of this chapter of rules.

(4) Introducing external factors such as productivity or production quotas or other programs to the extent that they interfere with the ability to provide appropriate professional services to the public.

(5) Incenting or inducing the transfer of a prescription absent professional rationale.

Stat. Auth.: ORS 689.151, 689.155(2), 689.205, 689.225(4)

Stat. Implemented: ORS 689.155

Hist.: BP 2-2012, f. & cert. ef. 6-12-12; Renumbered from 855-041-0016, BP 7-2012, f. & cert. ef. 12-17-12

855-041-2100

Operation of a Double Set-Up Pharmacy in a Retail Drug Outlet

A double set-up is an establishment having both a retail drug outlet registration and a nonprescription drug outlet registration. In a double set-up:

(1) The retail drug outlet (pharmacy) must be a separate operation, completely contained by an enclosure which assures safe storage. This enclosure must be from floor to ceiling or be at least ten feet from the floor. This area is to be easily distinguished by the public. When the retail drug outlet (pharmacy department) is closed, then as a nonprescription drug outlet the establishment is subject to the provisions of OAR 855-035-0005 and 855-035-0020.

(2) When a pharmacist is not in attendance, a closed sign shall be posted at the entrances stating the hours of the pharmacy's operation. All entrances to the retail drug outlet shall be closed off and securely locked. Any keys to the retail drug outlet (pharmacy) shall remain in the possession of the pharmacist-in-charge and other employee pharmacists as authorized by the pharmacist-in-charge if the retail drug outlet (pharmacy) is closed while the nonprescription outlet (shopkeeper) remains open.

(3) Any system deviating from the requirement of this section, except as provided in OAR 855-041-6310, shall be approved by the Board prior to implementation. Requests for such approval shall be in writing and provide a detailed description of the proposed system. A written description of such system, as approved by the Board, shall be maintained in the pharmacy.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1989, f. & cert. ef. 1-3-89; Administrative correction 9-8-97; Renumbered from 855-041-0035, BP 7-2012, f. & cert. ef. 12-17-12

855-041-2115

Transfer of Prescription Information Between Pharmacies

(1) Prescriptions may be transferred between pharmacies for the purpose of refill dispensing provided that:

- (a) The prescription is invalidated at the sending pharmacy; and
- (b) The receiving pharmacy obtains all the information constituting the prescription and its relevant refill history in a manner that ensures accuracy and accountability.

(2) Prescriptions for controlled substances can only be transferred one time.

(3) Pharmacies using the same electronic prescription database are not required to transfer prescriptions for dispensing purposes.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1982, f. & ef. 3-8-82; 1PB 1-1986, f. & ef. 6-5-86; PB 2-1990, f. & cert. ef. 2-9-90; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); BP 2-1998, f. & cert. ef. 3-23-98; BP 6-2000, f. & cert. ef. 6-29-00; Renumbered from 855-041-0075, BP 7-2012, f. & cert. ef. 12-17-12

855-041-4025

Purpose and Scope

A Retail Drug Outlet for Home Dialysis supplies may provide dialysis solutions under the general supervision and direction of a pharmacist with special training in renal disease and dialysis to end stage renal disease (ESRD) patients who have chosen the option of home dialysis therapy and who have been appropriately trained.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.305

Hist.: BP 8-2000, f. & cert. ef. 6-29-00; Renumbered from 855-041-0350, BP 7-2012, f. & cert. ef. 12-17-12

855-041-4035

Definitions

"Dialysis solutions" means peritoneal dialysis solutions, dialysate solutions, and legend devices including hardware, bloodlines and dialysis tubing and connectors.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.305

Hist.: BP 8-2000, f. & cert. ef. 6-29-00; Renumbered from 855-041-0355, BP 7-2012, f. & cert. ef. 12-17-12

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855-041-4045

Drug Delivery and Control

(1) An Oregon licensed pharmacist must be designated as the pharmacist-in-charge who will provide direction and supervision of the operation and staff.

(2) Deliveries of supplies must be made only pursuant to a current prescription order from an authorized prescriber. The prescription order must be maintained on file at the outlet. Supplies will be limited to dialysis solutions as defined in OAR 855-041 — 4035. No other legend medication ordered for the patient may be provided by the outlet.

(3) All patient records must be maintained in a secure area with a locking door. Access to the patient records area is allowed only when a pharmacist is present except in the event of an emergency. In the event of an emergency, any entry by individuals other than the pharmacist must be documented. In the absence of a pharmacist, the door to the patient records area must remain locked at all times.

(4) Copies of all prescriptions must be reviewed by the pharmacist and a complete set of prescription records for all patients serviced by the outlet must be maintained in the patient records area for a minimum of three years.

(5) A minimum of two current reference books that are specific and relevant to dialysis therapy must be maintained in the outlet to assist in the appropriate delivery of care to patients. Other reference material and equipment must be maintained to be consistent with the scope of services provided by the outlet.

(6) A current copy of Oregon Revised Statutes, Chapter 689, a current copy of Oregon Administrative Rules, chapter 855, and a minimum of three years of the Oregon Board of Pharmacy quarterly newsletters must be maintained in a loose leaf binder or other readily retrievable means.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.305

Hist.: BP 8-2000, f. & cert. ef. 6-29-00; Renumbered from 855-041-0360, BP 7-2012, f. & cert. ef. 12-17-12

855-041-4055

Duties of the Pharmacist

(1) The pharmacist-in-charge must review, at least weekly, the drug outlet operation and perform, at least monthly, quality assurance audits that include the review of prescription orders prior to delivery for accuracy and completeness, and the review of the assembled order with the prescription order prior to delivery for accuracy and completeness.

(2) The pharmacist-in-charge is responsible for the following on an ongoing basis:

(a) Ensure compliance of dialysis distribution operation to all applicable federal and state pharmacy laws and rules;

(b) Ensure valid prescriptions are received for all patient orders by performing periodic assessments of prescription files;

(c) Perform periodic assessments of distribution processes and procedures to ensure quality and compliance;

(d) Provide pharmaceutical care by reviewing all patient profiles and performing drug therapy assessments on those identified as abnormal;

(e) Provide pharmaceutical care by responding on a toll free telephone access to questions received from any patient or health care provider;

(f) Maintain, update and train personnel on policies and procedures specific to home dialysis patient deliveries and pharmacy requirements;

(g) Prepare educational materials for staff members of dialysis clinics as requested;

(h) Prepare and maintain on file monthly reports of activities performed;

(i) Ensure security of the patient record area; and

(j) Maintain a policy and procedure manual for the Drug Outlet operation that must include written protocols for the product delivery system, methods for supervising deliveries to patients, and a quality assurance program with which to monitor the qualifications, training and performance of personnel.

(3) The pharmacist-in-charge must perform an annual inspection of the outlet on a form provided by the Board, and must provide a copy of this inspection to the Board upon request.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.305

Hist.: BP 8-2000, f. & cert. ef. 6-29-00; Renumbered from 855-041-0365, BP 7-2012, f. & cert. ef. 12-17-12

855-041-4100

Definitions

(1) “Automated Pharmacy System” (APS) means a mechanical system that performs operations or activities, including but not limited to,

those related to the storage, packaging, dispensing, or distribution of medications, but not including compounding or administration, and that collects, controls, and maintains all transaction information.

(2) “Remote Dispensing Facility” (RDF) means a facility where drugs are prepared for administration and where requisite pharmacist supervision is provided remotely as approved by the Board.

(3) “Remote Dispensing Machine” (RDM) means a component of an Automated Pharmacy System that contains prepackaged drugs for dispensing.

(4) “Responsible Pharmacy” means the licensed pharmacy that is responsible for the APS, and RDM.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 9-2010(Temp), f. & cert. ef. 7-9-10 thru 12-24-10; Administrative correction 1-25-11; BP 3-2011, f. & cert. ef. 4-18-11; Renumbered from 855-041-0600, BP 7-2012, f. & cert. ef. 12-17-12

855-041-4110

Duties and Responsibilities of the Pharmacist-in-Charge.

Each RDM must be under the supervision of the Pharmacist-in-Charge of the Responsible Pharmacy. The Pharmacist-in-Charge must:

(1) Develop written policies and procedures prior to installation of the RDM that:

(a) Ensure safety, accuracy, security, and patient confidentiality;

(b) Define access to the RDM and to medications contained within or associated with the RDM, including but not limited to policies that assign, discontinue, or change access to the RDM and medications.

(c) Ensure that access to the medications complies with state and federal laws and regulations.

(2) Obtain written approval by the Board prior to installing any RDM.

(3) Train all personnel who will access the APS (including the RDM) before being allowed access to the APS. Training must ensure the competence and ability of all personnel who operate any component of the APS. Documentation of original training and continuing education must be kept both in the pharmacy and at the site of the RDM, and readily available for inspection by the Board.

(4) Ensure that the RDM is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate record-keeping and security safeguards.

(5) Implement an ongoing quality assurance program that monitors performance of the APS, including the RDM, and the personnel who access it.

(6) Notify the Board within 15 days of removal or closure of the RDM and the disposition of drugs contained in the RDM before it was removed or closed.

(7) Ensure that the RDM is stocked accurately and in accordance with established, written policies and procedures. A pharmacist must check the accuracy of the product supplied for stocking the machine.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; Renumbered from 855-041-0610, BP 7-2012, f. & cert. ef. 12-17-12

855-041-4120

Drug Delivery and Control

(1) Each RDM must be registered with the Board, under the control of and connected via computer with a Responsible Pharmacy, but not located in a pharmacy. RDMs must be used only in settings with an established program of pharmaceutical care that ensures prescription orders are reviewed by a pharmacist before release to the patient. The Responsible Pharmacy must establish the policies and procedures necessary to fulfill the requirements of all applicable state and federal laws and regulations.

(2) The following must be conspicuously displayed at the site of the RDM:

(a) RDM license;

(b) DEA registration if required;

(c) A certified copy of the Responsible Pharmacy license; and

(d) A certified copy of the Pharmacist-In-Charge license.

(3) Documentation as to type of equipment, serial numbers, content, policies and procedures, and location shall be maintained in the pharmacy for review by the board. Such documentation must include, but is not limited to:

(a) Location of RDM(s);

(b) Manufacturer’s name and model for each RDM;

(c) Description of how the RDM is used;

(d) Quality assurance procedures to determine continued appropriate use of the automated device; and

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(e) Policies and procedures for training of appropriate personnel, system operation, safety, security, accuracy, patient confidentiality, oral counseling by a pharmacist or pharmacist-intern, access, and malfunction.

(4) Policies and procedures addressing the operation of the RDM must be maintained in the pharmacy responsible for the APS and at the location at which the RDM has been installed.

(5) All events involving the contents of the RDM must be recorded electronically. Records must be maintained by the pharmacy for a minimum of three years and must be readily available to the Board. Such records shall include:

- (a) Identity of RDM accessed;
- (b) Identification of the individual accessing the RDM;
- (c) Type of transaction;
- (d) Date and time of transaction;
- (e) Name, strength, dosage form, and quantity of the drug accessed;
- (f) Name of the patient for whom the drug was ordered;
- (g) Name of the prescribing practitioner
- (h) Such additional information as the pharmacist-in-charge may deem necessary; and

(6) Only an Oregon registered technician or an Oregon licensed pharmacist may have access to the RDM.

(7) Only an Oregon registered technician or an Oregon licensed pharmacist may stock medications in the RDM.

(8) All containers of medications stored in the RDM shall be packaged and labeled in accordance with state and federal laws and regulations, including OAR 855-041-1130.

(9) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(10) Oral counseling, as required by OAR 855-019-0230, shall be provided by the pharmacist at the time of dispensing by a two-way audio and video hookup with the Responsible Pharmacy.

(11) The Automated Pharmacy Systems shall provide a mechanism for securing and accounting for wasted, discarded or unused medications in accordance with existing state and federal laws and regulations.

(12) The RDM must be clearly marked with the name, address, and phone number of the Responsible Pharmacy and Pharmacist-In-Charge.

(13) A Responsible Pharmacy located outside of Oregon that operates a RDM in Oregon must be currently licensed and in good standing in Oregon. The Pharmacist-In-Charge must also be currently licensed and in good-standing both in Oregon and in the state in which the Responsible Pharmacy is located.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.205
Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; Renumbered from 855-041-0620, BP 7-2012, f. & cert. ef. 12-17-12

855-041-4200

Remote Dispensing Facility (RDF)

(1) A pharmacy physically located in Oregon may make written application to operate an RDF.

(2) At its discretion, the Board may approve an application for registration as an RDF which includes the following:

- (a) An operation plan;
- (b) Policies and Procedures;
- (c) A training plan;
- (d) A quality assurance plan for ensuring that there is a planned and systematic process for the monitoring and evaluation of the quality and appropriateness of pharmacy services and for identifying and resolving problems; and

(e) The fee specified in OAR 855-110-0007(14).

(3) Notwithstanding the definition of "supervision by a pharmacist" in OAR 855-006-0005, supervision in an RDF may be accomplished by a pharmacist via an audio-visual technology from the applying pharmacy.

(4) Notwithstanding rules in this division and in Division 19, a Certified Pharmacy Technician who works in an RDF may have access to the facility without the physical presence of a pharmacist, but may only perform Board approved functions when under the supervision of a pharmacist.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 3-2011, f. & cert. ef. 4-18-11; Renumbered from 855-041-0645, BP 7-2012, f. & cert. ef. 12-17-12

855-041-6800

Supervision of Consulting Pharmacist

(1) In a hospital having a drug room and no pharmacy, the drug room must be supervised by a licensed pharmacist who provides his or her serv-

ices with sufficient professionalism, quality and availability to adequately protect the safety of the patients and to properly serve the needs of the facility. The arrangements for a consulting pharmacist shall be in writing, and shall, at a minimum, provide that:

(a) The pharmacist is to act in the capacity of a part-time director;

(b) The pharmacist shall provide on-call service at all times;

(c) Adequate storage facilities for drugs will be provided; and

(d) All drugs supplies shall be labeled so as to insure that recalls can be effected and that proper control and supervision of such drugs may be exercised.

(2) One registered nurse supervisor and only one in any given shift may have access to the drug room and may remove drugs therefrom, except in an emergency situation. In that case, such nurse may designate another licensed nurse to obtain the required drug(s). Any access to the drug room deviating from the requirements of this section must be approved by the Board prior to implementation. The registered nurse supervisor shall be designated in writing by the appropriate committee of the hospital and shall, prior to being permitted to obtain access to the drug room, receive thorough education and training in the proper methods of access, removal of drugs, and records and procedures required. Such education and training shall be given by the director of pharmacy, who shall require, at a minimum, the following records and procedures:

(a) Drugs can only be removed from the drug room on a practitioner's written order, or verbal order which has been reduced to writing;

(b) A log of drugs withdrawn from a drug room shall be maintained and initialed by the registered nurse;

(c) Drugs shall be removed for outpatients only in compliance with section (3) of this rule.

(3) The consultant pharmacist who is the part-time director of pharmaceutical services shall in concert with the appropriate committee of the hospital medical staff, develop policies and procedures which shall be implemented to provide emergency pharmaceuticals to outpatients during the hours when normal community or hospital pharmacy services are not available. Such policies shall allow the designated registered nurse supervisor to issue medications pursuant to the pharmacist's standing orders, which shall provide:

(a) A written order of a practitioner authorized to prescribe a drug is presented;

(b) The medication is prepackaged by a pharmacist and contains:

(A) Name, address and telephone number of the hospital;

(B) Name of drug, strength, and number of units; when a generic name is used, the label shall also contain the name of the manufacturer or distributor;

(C) Required precautionary information regarding controlled substances;

(D) Such other and further accessory cautionary information as required for patient safety;

(E) An expiration date after which the patient should not use the medication.

(c) No more than a 24-hour supply is provided to the patient, except when the pharmacist has informed the nurse supervisor that normal services will not be available within 24 hours;

(d) The container is labeled by the nurse supervisor before presenting to the patient, and shows the following:

(A) Name of patient;

(B) Directions for use to the patient;

(C) Date;

(D) Identifying number;

(E) Name of prescribing practitioner;

(F) Initials of the supervisor.

(e) The original written order by the prescriber is retained for verification by the pharmacist after completion by the nurse supervisor and shall bear:

(A) Name and address of patient;

(B) Date of issuance;

(C) Units issued;

(D) Initials of supervisor issuing medication.

(f) The original written order is verified by the pharmacist, initialed, dated, and filed in a separate location for a period of three years for Board inspection;

(g) The withdrawal of a single dose for immediate administration to the patient need not follow the requirements of subsection (d) of this section.

(4) Emergency Kits:

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(a) **Emergency Kit Drugs Defined.** Emergency kit drugs are those drugs which may be required to meet the immediate therapeutic needs of in-patients, and which are not available from any other authorized source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining such drugs from such other source;

(b) **Supplying Pharmacist.** All emergency kit drugs shall be prepared by a licensed pharmacist;

(c) **Drugs Included.** The director of pharmacy and the medical staff of the hospital shall jointly determine and prepare a list of drugs, by identity and quantity, in amounts sufficient for immediate therapeutic requirements, to be included in emergency kits. Such list of drugs shall be reviewed annually by the appropriate medical staff committee;

(d) **Storage.** Emergency kits shall be stored in areas to prevent unauthorized access and to insure a proper environment for preservation of the drugs within them, as required in official compendia;

(e) **Labeling — Interior.** All drugs contained in emergency kits shall be labeled in accordance with OAR 855-041-6420;

(f) **Labeling — Exterior.** The exterior of emergency kits shall be labeled to clearly and unmistakably indicate that it is an emergency drug kit and it is for use in emergencies only; such label shall also contain a listing of the name, strength and quantity of the drugs contained therein and an expiration date;

(g) **Expiration Date.** The expiration date of an emergency kit shall be the earliest expiration date on any drug supplied in the kit. Upon the occurrence of the expiration date, the supplying pharmacist shall open the kit and replace expired drugs;

(h) **Removal of Drugs.** Drugs shall be removed from emergency kits by authorized personnel only pursuant to a valid order or by the supplying pharmacist;

(i) **Notifications.** Whenever an emergency kit is opened or has expired, the supplying pharmacist shall be notified and the pharmacist shall restock and reseal the kit within a reasonable time so as to prevent risk of harm to patients.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Hist.: 1PB 3-1979(Temp), f. & ef. 10-31-79; 1PB 2-1980, f. & ef. 4-3-80; PB 12-1989, f. & cert. ef. 8-11-89; Renumbered from 855-041-0135, BP 7-2012, f. & cert. ef. 12-17-12

855-041-6840

Drug Distribution and Control from a Drug Room in a Hospital

(1) **General.** The director of pharmacy shall establish and implement written procedures for the safe and efficient distribution of pharmaceutical products. An annually updated copy of such procedures shall be available for inspection by the Board.

(2) **Availability.** A pharmacist providing pharmaceutical services to a hospital maintaining a drug room shall be engaged by the hospital and shall schedule on-premises visits on at least a weekly basis.

(3) **Span of Control.** The pharmacist's span of supervision shall extend to all areas of the hospital where drugs are stored. No less than every two months inspections of these areas shall be conducted and substantiated by records so as to verify at least proper drug storage, documentation of distribution and administration of controlled substances, absence of outdated drugs, and the integrity of the required emergency drug supply.

(4) **Director's Absence.** In the absence of the director of the pharmaceutical service, pharmaceutical services shall be directed by a designated pharmacist.

(5) **Responsibility.** The director of pharmacy shall be responsible for procedures for the safe and efficient distribution of, control of and accountability for drugs. Accordingly, the director shall be responsible for, at a minimum, the following:

(a) Procedures for preparation and sterilization of parenteral medications manufactured within the hospital;

(b) Procedures for admixture of parenteral products, including education and training of nursing personnel concerning incompatibility and provision of proper incompatibility information. When the admixture of parenteral products is not accomplished under the direct supervision of a pharmacist, such preparation shall be limited to a practitioner or registered nurse;

(c) Manufacture and compounding of drugs;

(d) Procedures for establishment of specifications for procurement of all pharmaceutical materials, including drugs, chemicals and biologicals, subject to approval of the appropriate committee of the hospital;

(e) Procedures for participation in the development and revisions of a hospital formulary system;

(f) Procedures for filling and labeling all stock containers from which drugs are to be administered;

(g) Maintaining and making available a sufficient inventory of antidotes and other emergency drugs, as well as current antidote information, telephone numbers of poison control center(s) and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the hospital;

(h) Records of all transactions of the hospital relating to pharmaceutical services as may be required by state or federal law, and maintenance of accurate control over and accountability for all pharmaceutical materials. The procedures shall include the keeping of accurate and complete records of the receipt, withdrawal from stock and use or other disposal of all legend drugs stored in the drug room and all other locations in the hospital;

(i) Participation in those aspects of the hospital's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(j) Meeting all inspection and other requirements of the pharmacy and drug laws of this state and rules thereunder.

Stat. Auth.: ORS 689

Stats. Implemented:

Hist.: 1PB 3-1979(Temp), f. & ef. 10-31-79; 1PB 2-1980, f. & ef. 4-3-80; Renumbered from 855-041-0140, BP 7-2012, f. & cert. ef. 12-17-12

855-041-7050

Definitions

As used in OAR 855-041- 7000 through 855-041- 7080:

(1)(a) "Long term care facility" means a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the director, to provide treatment for two or more unrelated patients. "Long Term Care facility" includes skilled nursing facilities and intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

(b) For the purposes of Schedule II prescriptions in 21 CFR 1306.11-1306.13, the DEA definition of "long term care facility" as defined in 21 CFR 1300.01(25) includes "community based care facilities."

(2) "Community Based Care Facility" means a home, facility or supervised living environment licensed or certified or otherwise recognized by an agency of the state of Oregon which provides 24-hour care, supervision, and assistance with medication administration. These include but are not limited to Adult Foster Homes, Residential Care Facilities (RCF), Assisted Living Facilities (ALF), Group Homes for the Developmentally Disabled and Mentally Retarded and Inpatient Hospice.

(3) "Pharmaceutical Care" means the responsible provision of any or all of the following services by the pharmacist:

(a) Develop and maintain policies and procedures for pharmaceutical services;

(b) Provide direction and oversight regarding all aspects of the acquisition, disposition, handling, storage, and administration of drugs including but not limited to the following:

(A) Receipt and interpretation of physician's orders;

(B) Ordering and receiving of medications;

(C) Handling of emergency drugs and supplies;

(D) Labeling of all drugs;

(E) Selection of drug delivery systems;

(F) Development of systems to provide timely delivery of drugs and supplies;

(G) Monitoring of drug storage conditions and expiration dates;

(H) Monitoring accuracy and efficiency of medication administration and compliance with physician's orders;

(I) Establishing and monitoring of appropriate record keeping;

(J) Accountability of controlled substances;

(K) Return, release, and/or destruction of discontinued or outdated drugs; and

(L) Compliance with state and federal laws and regulations related to pharmaceutical services and medication management.

(c) Provide training and in-service education to facility staff;

(d) Perform drug regimen review for each resident on a regularly scheduled basis for the purpose of promoting therapeutic appropriateness and achieving the desired drug therapy outcomes by identifying issues such as:

(A) Over-utilization or underutilization;

(B) Therapeutic duplication;

(C) Drug-disease contraindications;

(D) Drug-drug interactions;

(E) Incorrect drug, drug dosage or duration of drug treatment;

(F) Drug-allergy interaction;

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- (G) Clinical abuse/misuse;
- (H) Untreated indication;
- (I) Monitoring and assessing of drug therapy outcomes;
- (e) Communicate effectively with residents' physicians and facility staff; and
- (f) Participate in resident care planning.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.0305

Hist.: 1PB 2-1980, f. & ef. 4-3-80; PB 8-1990, f. & cert. ef. 12-5-90; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; Renumbered from 855-041-0145, BP 7-2012, f. & cert. ef. 12-17-12

855-041-7060

Drug Distribution and Control

(1) Pharmacies or pharmacists that supply emergency drug kits to and/or accept returned medications from long term care facilities or community based care facilities must:

- (a) Assist in the establishment and supervision of:

(A) The policies and procedures for the safe storage, distribution, administration, and disposition of drugs;

(B) The maintenance of controlled drug accountability records; and

(C) The policies and procedures for professional advice/medication counseling of patients and/or their care givers.

(b) Have some pharmacists visit and provide consultant services on a regular basis; and

(c) Supervise the implementation of the policies and procedures involving the security, storage, stocking, labeling, and notification of use of emergency drugs kits and supplemental drug supplies.

(2) Arrangements can be made in advance by a provider pharmacy with a long term care facility or a community based care facility to:

(a) Provide emergency drug kits to those facilities permitted by their license to have them; and

(b) Allow only a designated licensed nurse present in the facility access to the emergency drug kit or the on-site pharmacy pursuant to OAR 855-041-6310.

(3) An emergency drug kit consists of those drugs that may be required and are authorized by a practitioner to meet the immediate therapeutic needs of patients, when medication is not readily available directly from a pharmacy.

(4) The emergency drug kit inventory is the property of the provider pharmacy, and the provider pharmacy consultant is responsible for developing the policy and procedures for storing and stocking the emergency drug kit.

(5) Medication(s) can only be removed from the emergency drug kit or the on-site pharmacy by a designated licensed nurse pursuant to a practitioner's order.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.305

Hist.: 1PB 2-1980, f. & ef. 4-3-80; 1PB 1-1981(Temp), f. & ef. 4-1-81; 1PB 2-1981, f. & ef. 8-20-81; PB 1-1990, f. & cert. ef. 1-23-90; PB 8-1990, f. & cert. ef. 12-5-90; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; Renumbered from 855-041-0160, BP 7-2012, f. & cert. ef. 12-17-12

855-041-7070

Labeling and Distribution

(1) Except as provided in subsection (2) of this section, all drugs dispensed for individual patients must be labeled as required by OAR 855-041-1120, or administered by health care professionals from a unit dose system as defined in OAR 855-041-6050(j).

(2) Pharmacies that provide long term care facilities or community based care facilities with pharmaceuticals can supply, on the order of a practitioner, and consistent with the policy and procedures of the pharmacy or pharmacist providing consultant services:

- (a) Injectables for immunization and screening;

(b) Irrigation solutions; and

(c) Bulk manufacturer's container(s) of topical scabicides and pediculicides.

(3) Institutional pharmacies that dispense medications to patients in long term care facilities and community based care facilities must maintain for three years the records required by

OAR 855-041-1120, and comply with the patient counseling requirements of OAR 855-19-0230.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.305

Hist.: BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; Renumbered from 855-041-0162, BP 7-2012, f. & cert. ef. 12-17-12

855-041-7080

Pharmaceutical Care in Community Based Care Facilities

When a pharmacist provides pharmaceutical care to patients in a Community Based Care facility under an arrangement with the facility, the pharmacist may provide the following services:

(1) Assist facilities in establishing the appropriate policies and procedures for distribution, storage, documentation and disposal of drugs;

(2) Assist facilities in establishing and maintaining proper record keeping related to medication administration;

(3) Visit the facility on a regularly scheduled basis;

(4) Supervise the distribution and storage of drugs;

(5) Assist in providing appropriate training, in-service education, and clinical support to facility staff; and

(6) Communicate with physicians and other practitioners as needed.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.305

Hist.: BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; Renumbered from 855-041-0164, BP 7-2012, f. & cert. ef. 12-17-12

855-041-8050

Emergency Drug Supply in Home Health Care Agencies

Pharmacists serving home health care agencies may provide for an emergency supply of drugs to be made available to registered nurses to treat immediate therapeutic needs of their patients or clients during such time as the pharmacy services are not available. Arrangements shall be made in advance by the provider pharmacist for provision of the emergency drug supply:

(1) Emergency drugs defined. Emergency drugs are those non-controlled substances which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in a timely manner;

(2) Portable Container. Subject to all provisions of this section, a licensed pharmacy may furnish to a home health agency licensed by the State an emergency drug supply in a portable container for emergency in home treatment or adjustment of drug therapy by the home health agency nurse;

(3) Drugs included. The pharmacist(s) and the practitioner(s) who represent the agency shall jointly determine and review annually a list of items and quantities to be included in the emergency supply. Drugs shall only be available therein, in amounts sufficient for immediate therapeutic requirements. The selected list shall include only drugs to treat the following specific conditions:

(a) Allergic reactions;

(b) Diabetic emergencies;

(c) Severe nausea and vomiting;

(d) Pulmonary congestion or congestive heart failure;

(e) Local or topical anesthetics for catheter and needle placement;

(f) Hydration due to hypovolemia or shock;

(g) Routine catheter maintenance; and

(h) Narcotic analgesic overdose.

(4) Security. The emergency drug supply shall be stored in a manner to prevent loss of drugs, and available only to authorized licensed personnel. It may be kept in a room adjacent to the locked pharmacy, or in a secure area in the Home Health/Home I.V. nursing office;

(5) Storage. The emergency drug supply shall be stored in areas suitable to prevent unauthorized access and to insure a proper environment for preservation of the drugs as required in official compendia;

(6) Labeling-Exterior. The exterior of the emergency drug supply shall be labeled to clearly indicate it as an emergency supply. Labeling shall also include the expiration date of the drug supply. A complete listing of the contents of the supply shall be readily available;

(7) Labeling-Interior. All drugs contained in the emergency medication supply shall in the manufacturer's container or be labeled in accordance with OAR 855-041-1135;

(8) Drugs added to parenteral solutions. Whenever any drug is added to a parenteral solution, whether within or outside the direct personal supervision of a pharmacist, such admixtures shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, date and time of addition, expiration date, administration time and infusion rate when applicable, and name or initials of person so adding. This excludes any single dose medication prepared and totally administered immediately;

(9) Removal of drugs. Emergency drugs shall be removed for administration only by authorized licensed personnel pursuant to a prescriber's order. A copy of this order shall be forwarded to the provider pharmacist within 72 hours to be reviewed and filed in the pharmacy. Verification of

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this review shall be a hand written initial of the reviewing pharmacist on that copy of the order;

(10) Expiration Date. The expiration date of the emergency drug supply shall indicate the month and year, and shall be the earliest expiration date of any drug in the supply. The provider pharmacist shall examine the supply and replace drugs prior to their expiration.

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented: ORS 689.225

Hist. PB 1-1996, f. & cert. ef. 4-5-96; Renumbered from 855-041-0183, BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; Renumbered from 855-041-0165, BP 7-2012, f. & cert. ef. 12-17-12

855-043-0600

Purpose and Scope

A correctional facility is defined as an institutional drug outlet and as such is subject to the rules of the State Board of Pharmacy. Drug dispensing in a correctional facility shall be from a pharmacy or from a drug room. The facility shall have a pharmacist who acts as a consultant to the institution, develops policies and procedures on drug distribution, procurement and management, monitors for compliance, performs drug utilization reviews, and may delegate registered nurses to withdraw drugs for administration to patient/inmates.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.005, 689.155 & 689.605

Hist. PB 1-1996, f. & cert. ef. 4-5-96; Renumbered from 855-041-0170, BP 7-2012, f. & cert. ef. 12-17-12

855-043-0610

Definitions

(1) "Administer" means the direct application of a drug or device whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or the authorized agent thereof; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Bulk Drug Container" means a bottle or package of medication, other than unit dose, labeled by a manufacturer or pharmacist.

(3) "Container" is the device that holds the medication and that is or may be in direct contact with the medication.

(4) "Correctional Facility" means any prison, jail, or detention facility for the confinement of juveniles or adults.

(5) "Dispense" or "Dispensing" means the preparation and delivery of a prescription drug pursuant to the lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(6) "Drug Room" means a secure and lockable location within an inpatient care facility that does not have a licensed pharmacy.

(7) "Institutional Drug Outlet" means hospitals and inpatient care facilities where medications are dispensed to another health care professional for administration to patients served by the hospitals or facilities.

(8) "Medication card" means a medication container, labeled as required in OAR 855-041-0177(4), which provides multiple doses of a single medication with each dose contained in a separate, tamper-evident, sealed compartment.

(9) "Practitioner" means a person licensed and operating within the scope of such license to prescribe and dispense, conduct research with respect to or administer drugs in the course of professional practice or research:

(a) In this state; or

(b) In another state or territory of the United States not residing in Oregon and registered under the Federal Controlled Substances Act.

(10) "Unit dose" means a sealed, single-unit container so designed that the contents are administered to the patient as a single dose, direct from the container and which bears a separate label showing the name and strength of the medication, the name of the manufacturer or distributor, an identifying lot number and, if applicable, the expiration date of the medication.

(11) "Unit Dose Dispensing System" means a system which utilizes unit dose as its principle means of distributing drugs within a correctional facility.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.005 & 689.155

Hist. PB 1-1996, f. & cert. ef. 4-5-96; Renumbered from 855-041-0173, BP 7-2012, f. & cert. ef. 12-17-12

855-043-0620

Duties of the Pharmacist

(1) May delegate to a registered nurse the authority to withdraw prescription drugs from a unit dose system or from a manufacturer's or pharmacist's

labeled container for administration to persons confined in the facility;

(2) Develop written policies and procedures with the practitioner representing the facility regarding medication management;

(3) Monitor the facility's compliance with policies and procedures regarding medication management;

(4) Perform drug utilization review including timely, routine prospective review of specific individual therapies as well as retrospective drug regimen reviews, and drug use review and evaluation.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.605 & 689.155

Hist. PB 1-1996, f. & cert. ef. 4-5-96; Renumbered from 855-041-0175, BP 7-2012, f. & cert. ef. 12-17-12

855-043-0630

Drug Delivery and Control

(1) Policies and Procedures: The pharmacist and the practitioner representing the facility shall be responsible for establishing written policies and procedures for medication management including, but not limited to, drug procurement, dispensing, administration, labeling, medication counseling, drug utilization review, medication records, parenterals, emergency and nonroutine dispensing procedures, stop orders, over-the-counter drugs, security, storage and disposal of drugs within the facility. Policies and procedures shall be reviewed and updated annually by the pharmacist and the practitioner, maintained in the facility; and be made available to the Board for inspection. The facility shall submit to the Board for approval, the name of any employee pharmacist or a written agreement between the pharmacist and the facility regarding drug policies and procedures. The facility shall notify the Board of any change of pharmacist within 15 days of the change.

(2) Dispensing: Prescription drugs shall be dispensed by a pharmacist or by a practitioner authorized to dispense in either an individual container, medication card, or in a unit dose system.

(3) Unit Dose Dispensing System. The "Unit Dose Dispensing System" is that drug distribution system which is pharmacy based and which uses unit dose packaging in a manner which removes traditional drug stock from patient care areas and enables the selection and distribution of unit dose packaging to be pharmacy based and controlled:

(a) A unit dose dispensing system shall:

(A) By nature of the system;

(i) Provide for separation of medications by patient name and location; and

(ii) Provide for separating medications by day of administration.

(B) By means of an individual patient medication record:

(i) Record the drug and dosing regimen of those drugs dispensed by the pharmacy;

(ii) Record the actual doses dispensed and returned to the pharmacy;

(iii) Record the date of the original order and the date the order is discontinued;

(iv) Provide a means for the pharmacist to verify the prescriber's original order;

(v) Provide a means for the pharmacist to certify the accuracy of the selected medication before the dose is delivered for administration to the patient; and

(vi) Provide a mechanism to easily identify those drugs dispensed by pharmacy that are controlled substances.

(b) Each correctional facility utilizing a unit dose dispensing system shall establish written policies specifying the categories of drugs which will or will not be dispensed under the unit dose distribution system. Such policies shall be available in the pharmacy for inspection by the Board:

(A) Proper utilization of the unit dose system requires that, in as far as is practicable, all medications be in unit dose packaging when dispensed.

(B) Controlled substances may be included in the unit dose system if the methods of including such drugs in the system are in compliance with applicable federal and state laws and rules.

(C) Drugs not dispensed in unit dose packaging must be labeled in accordance with OAR 855-041-0177(4).

(c) The pharmacist shall certify the accuracy of the selected unit dose packages before the dose is delivered for administration to the patient.

(d) All medication shall be stored in a locked area or locked cart.

(4) Labeling: Prescription drugs dispensed in individual containers or medication cards shall be labeled with the following information:

(a) Name and identifying number of the patient/inmate;

(b) Name, strength, and quantity of the drug dispensed. If the drug does not have a brand name, then the generic name of the drug and the drug manufacturer must be stated;

(c) Name of the prescriber;

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- (d) Initials of the dispenser and the date of dispensing;
- (e) Directions for use;
- (f) Auxiliary labels and cautionary statements as required;
- (g) Manufacturer's expiration date, or an earlier date if preferable;

and

- (h) Name of the pharmacy.
- (5) Patient counseling:

(a) Upon receipt of a prescription drug order and following review by the pharmacist of the patient's record, the pharmacist shall initiate and provide oral counseling to the patient or to the patient's agent or care giver in all ambulatory care settings and for discharge medications in institutions:

- (A) Upon request; or
- (B) On matters which a reasonable and prudent pharmacist would deem significant; or
- (C) Whenever the drug prescribed has not previously been dispensed to the patient; or

(D) Whenever the patient's medication record shows the drug has not been previously dispensed to the patient in the same dosage, form, strength or with the same written directions.

(b) When counseling is provided it shall include information that a reasonable and prudent pharmacist would deem necessary to provide for the safe and effective use of the drug. Such information may include the following:

- (A) The name and description of the drug;
- (B) The dosage form, dose, route of administration, and duration of drug therapy;
- (C) The intended use of the drug and expected actions;
- (D) Special directions and precautions for preparation, administration, and use by the patient;
- (E) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (F) The possible dangers of taking the drug with alcohol, or taking the drug and then operating a motor vehicle or other hazardous machinery;
- (G) Techniques for self-monitoring drug therapy;
- (H) Proper storage;
- (I) Prescription refill information;
- (J) Action to be taken in the event of a missed dose; and
- (K) Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

(c) Patient counseling shall be in person whenever practicable. Whenever the prescription is delivered outside the confines of the pharmacy by mail or other third party delivery, counseling shall be in writing and by free access to the pharmacist by phone.

(d) Subsections (a) and (b) of this section shall not apply to those prescription drug orders for inpatients in hospitals or institutions where the drug is to be administered by a nurse or other individual authorized to administer drugs.

(e) Notwithstanding the requirements set forth in subsection (a), a pharmacist is not required to provide oral counseling when a patient refuses the pharmacist's attempt to counsel, or when the pharmacist, on a case by case basis and in the exercise of professional judgment, determines that another form of counseling would be more effective.

(f) Board rules for patient counseling must be observed for patient/inmates who self administer or who are given prescription drugs when they are released from the correctional facility.

(6) Administration: Drugs shall be administered to inmate/ patients by a practitioner or nurse, or by an unlicensed person who has been trained to administer drugs as defined in Nursing Board administrative rule 851-047-0020. Drugs selected by registered nurses from manufacturer's or pharmacist's bulk drug containers shall not be administered by unlicensed persons, except under certain emergency and nonroutine situations as described in the facility's policies and procedures.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689

Hist. PB 1-1996, f. & cert. ef. 4-5-96; Administrative correction 11-3-99; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; Renumbered from 855-041-0177, BP 7-2012, f. & cert. ef. 12-17-12

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Rule Caption: Emergency Department Distribution amendments establish new requirements and update labeling and records rules.

Adm. Order No.: BP 8-2012

Filed with Sec. of State: 12-21-2012

Certified to be Effective: 12-21-12

Notice Publication Date: 11-1-2012

Rules Amended: 855-041-6410

Subject: The Emergency Department Distribution amendments update labeling and records requirements. The amendments also contain a waiver clause and establishes requirements for Automated Dispensing Machines (ADM) within the Emergency Department.

Rules Coordinator: Karen MacLean—(971) 673-0001

855-041-6410

Emergency Department Distribution

(1) A practitioner or associate practitioner with prescriptive authority in Oregon who is a member of the hospital's medical staff may dispense an emergency supply of drugs to a patient examined by them or by an associate practitioner subject to the following requirements:

(a) The prescriber shall offer the patient the option of being provided a prescription that may be filled at the pharmacy of the patient's choice.

(b) During consultation with the patient or the patient's caregiver, the prescriber shall clearly explain the appropriate use of the drug supplied and the need to have a prescription for any additional supply of the drug filled at a pharmacy of the patient's choice.

(c) The patient must be given instructions on the use and precautions for taking the drug;

Labeling

(d) The drug is in a manufacturer's unit-of-use container, such as an inhaler, or hospital pre-pack that has been labeled by the pharmacy with:

(A) Name of drug, strength, and number of units. When a generic name is used, the label must also contain the identifier of the manufacturer or distributor;

(B) Accessory cautionary information as required for patient safety;

(C) Product identification label if the drug is not in unit-of-use packaging;

(D) An expiration date after which the patient should not use the drug; and

(E) Name, address and phone number of the hospital pharmacy.

(e) The following information must be added to the drug container by the practitioner or nurse before dispensing to the patient:

(A) Name of patient;

(B) Directions for use by the patient;

(C) Date of issue;

(D) Unique identifying number as determined by policy and procedure;

(E) Name of prescribing practitioner; and

(F) Initials of the dispensing nurse or practitioner.

Distribution Record

(f) A prescription or record of the distribution must be completed by the practitioner or nurse. This record must contain:

(A) Name of patient;

(B) Date of issuance;

(C) Drug name and strength distributed;

(D) Units issued;

(E) Name of practitioner;

(F) Initials of the dispensing nurse or practitioner; and

(G) Instructions given to the patient as labeled.

(g) Any additional information required by state and federal laws and regulations for the distribution of a drug to an outpatient;

(h) The record must be reviewed and documented by a pharmacist for accuracy and completeness. The pharmacist shall review the record of dispensing of drugs within 24 hours. However, if the pharmacy is closed, records shall be reviewed during the first day the pharmacy is open but not to exceed 72 hours following the dispensing; and

(i) Errors and discrepancies will be included in hospital and pharmacy QA review process and available to the Board.

(2) A controlled substance may only be distributed or dispensed to an outpatient by the examining practitioner after the patient has been examined by the practitioner and a legitimate medical purpose for a controlled substance has been determined. Distribution of a controlled substance must comply with all applicable state and federal laws and regulations.

(3) The CPO or PIC and appropriate hospital committee will establish a limited selection and quantity of drugs to be included in the Emergency Department formulary and the amount contained in each prepack that may be distributed to meet only the acute care needs of a patient; for example, an emergency supply of drugs. The amount dispensed may not exceed a 48 hour supply except for:

(a) A drug in the manufacturer's unit-of-use packaging such as an inhalant or a topical drug;

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(b) A full course of therapy that may be dispensed if in the professional judgment of the pharmacist or practitioner this would be in the patient's best interest such as an antibiotic;

(4) Any additional preparation for use of the medication must be completed prior to discharge; for example, reconstituting antibiotics;

Automated Dispensing Machine

(5) For the purpose of this rule an Automated Dispensing Machine (ADM) is a machine or contrivance which will prepare a completed and labeled prescription which is ready for dispensing to the patient or patient's representative.

(6) An Automated Dispensing Machine; may only be located within the Emergency Department in a secure environment that has no direct public access, and when used, must be part of the discharge procedure;

(7) When the patient or patient's representative receives the prescription from an ADM;

(a) A registered nurse or practitioner or pharmacist must be present at the time of dispensing; and

(b) A registered nurse or practitioner or pharmacist will grant access to the ADM for the release of the drugs to be dispensed using a password protected or biometric security system; and

(c) The patient or patient's representative will obtain the drug using a specific patient access code.

(8) Only a pharmacy technician, certified pharmacy technician, intern or pharmacist may access the drug supply in the ADM.

(9) The CPO or PIC will establish policies and procedures for use of the ADM including, but not limited to emergency access and down time procedures for the ADM.

(10) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety. A waiver granted under this section shall only be effective when it is issued in writing and will be time limited.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155 & 689.505

Hist.: BP 3-2010, f. 4-29-10, cert. ef. 4-30-10; BP 8-2012, f. & cert. ef. 12-21-12

Board of Tax Practitioners Chapter 800

Rule Caption: 2012 Revision of OAR's based on recommendations of the Rules Advisory Committee and the Board.

Adm. Order No.: BTP 1-2013

Filed with Sec. of State: 1-15-2013

Certified to be Effective: 2-1-13

Notice Publication Date: 12-1-2012

Rules Amended: 800-001-0020, 800-010-0020, 800-010-0030, 800-015-0010, 800-020-0015, 800-020-0030, 800-020-0035, 800-030-0025

Subject: The proposed amendments to the OAR's, under which the Board operates, result from the Rules Advisory Committee, Assistant Attorney General and Board staff recommendations and are for general "housekeeping" and "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies. In addition, the proposed amendments will provide better clarification to constituents as well as continue to conform to the current standards.

In addition to the general housekeeping revisions and changes made to clarify rule language the following changes are being proposed:

800-020-0015: Application for Examination

(3) Would allow persons who are instructors of an approved basic course to provide proof of their instruction to meet the education requirement for issuance of their initial practitioner's license.

(5) Would require Enrolled Agent applicants to submit verification of having completed a minimum of 360 hours work experience during at least two (2) of the last five (5) years to qualify for the state only portion of the consultant's examination.

800-020-0030: Licenses-Renewals and Reactivation: Subsections (4); (8) and

800-020-0035: Inactive and Lapsed Status: Subsections (1) and (2)

Changes language to reflect current operating procedures in regards to the attestation process for verification of compliance with continuing education requirements.

800-030-0025(1): Specifically the Civil Penalty Matrix

Increases the minimum and maximum civil penalty range amounts that can be assessed per violation for failure to register a tax preparation business, i.e. rule #800-025-0020(1), from a range of \$50 to \$2,000 to a range of \$100 to \$5,000.

Rules Coordinator: Monica J. Walker—(503) 378-4860

800-001-0020

Hearing Request and Answers: Consequences of Failure to Answer

(1) A hearing request, and answer when required, shall be made in writing to the Board by a party or his/her attorney and an answer shall include a short and plain statement of each relevant affirmative defense the party may have.

(2) Except for good cause:

(a) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(b) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the board; and

(c) Evidence shall not be taken on any issue not raised in the notice and answer.

Stat. Auth.: ORS 673.705 - 673.990 & SB279

Stats. Implemented:

Hist.: BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13

800-010-0020

Confidential Information

(1) A licensee shall not disclose any confidential information obtained in the course of professional engagement except:

(a) With the written consent of the client;

(b) After being subpoenaed by a court or governmental agency of competent jurisdiction;

(c) In response to an inquiry by the Board or its investigator;

(d) As required by federal or state regulations for electronic filing.

(2) Members of the Board and its employees shall not disclose any confidential client information which comes to their attention except as required to carry out their official responsibilities.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 6, f. & cf. 1-5-76; TSE 1-1985, f. & cf. 1-15-85; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13

800-010-0030

Accountability

(1) A Licensed Tax Consultant or registered tax preparation business shall only allow persons to practice in the consultant's or tax preparation business name who are licensed as tax consultants, tax preparers, or as described in ORS 673.610.

(2) A Licensed Tax Consultant shall not permit the use of the consultant's license to enable others to establish and carry on a business for the preparation of personal income tax returns wherein the consultant's only interest is the receipt of a fee for use of the consultant's license and the Licensed Tax Consultant does not provide supervision of the tax preparation activities as defined in OAR 800-025-0050.

(3) A Licensed Tax Consultant or a Licensed Tax Preparer shall not state or imply that a Licensed Tax Preparer preparing tax returns to which the consultant's license number or tax preparation business information is affixed is not:

(a) Fully subject to the supervision of the Licensed Tax Consultant or registered tax preparation business; as defined in OAR 800-025-0050; or

(b) Acting as agent of the Licensed Tax Consultant or registered tax preparation business.

(4) A Licensed Tax Preparer shall not engage in the preparation of tax returns, assist in such preparation, gather tax information, or provide tax advice for valuable consideration unless the Licensed Tax Preparer is under the supervision of a Licensed Tax Consultant as defined in OAR 800-025-0050.

(5) A licensee shall not maintain a financial interest in or hold an employment position with any business entity that offers personal income tax preparation services, if any other person maintains a financial interest in the entity, or holds a management position involving authority over the business operations of the entity, and:

(a) That person's tax consultants or tax preparers license has been permanently revoked; or

(b) The Board has refused to issue or renew a license to that person;

or

(c) Another state regulatory agency or the Internal Revenue Service has revoked or refused to issue or renew an occupational license, registra-

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tion or permit held or requested by that person, for conduct involving tax preparation or dishonesty.

(6) If required to do so under section (5) of this rule, a licensee shall be allowed a reasonable time, not to exceed 180 calendar days, to sever an existing relationship with a person whose license is revoked or refused.

(7) Section (5) of this rule does not apply to a licensee or a person described in subsections (5)(a) through (c) of this rule, whose only financial interest in a tax preparation business is the ownership of ten percent or less of the stock in a publicly-held corporation.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 1-1985, f. & ef. 1-15-85; TSE 8-1987, f. & ef. 12-21-87; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13

800-015-0010

Continuing Education

(1) Except for renewal of an initial license, a Licensed Tax Consultant or Licensed Tax Preparer renewing a license shall attest on the renewal to have completed at least 30 hours of acceptable continuing education since the last renewal date.

(2) Each licensee shall report compliance with the continuing education requirements on the license renewal document. Licensees shall be subject to the provisions of OAR 800-015-0015 pertaining to the periodic audit of continuing education.

(3) Proof of participation in required continuing education is the responsibility of the licensee. To ensure that proof of attainment of required continuing education is available for audit or investigation by the Board, licensees shall maintain certificates for at least four (4) years following each continuing education cycle and renewal of the tax practitioner license.

(4) Continuing education credit will be accepted only for courses and seminars that comply with all Board rules regarding continuing education.

(5) The Board may verify continuing education information submitted by licensees.

(6) Education hours earned in excess of 30 hours annually cannot be carried over from one renewal period to the next, except extra hours earned during the month of renewal not claimed on that renewal may be submitted with the following year's renewal.

(7) Continuing education credit shall be granted only once during a license year for attendance at or instruction of duplicate seminars offered by the same sponsor or instructor.

(8) Continuing education credit for courses at accredited universities and colleges will be 15 hours for each semester hour credit and ten (10) hours for each quarter hour credit. For all other courses and seminars, one (1) hour of continuing education credit will be allowed for each hour of classroom attendance.

(9) Continuing education credit may be accepted for instructors of basic or advanced courses or seminars. The credit allowed will be two (2) hours for each hour of teaching, which includes preparation time. No more than 1/2 of total required continuing education credit can be in teaching.

(10) Correspondence and online study courses may be accepted if the program and sponsor comply with all Board rules regarding continuing education and:

(a) The sponsor requires evidence of satisfactory completion of workbooks or examinations before certificates are issued.

(b) The hours credited do not exceed the credit that would be allowed in a resident course covering the same material; and

(c) A course outline with accompanying workbooks or exams is submitted to the Board, prior to offering the material, for approval of course content and hours of credit claimed, if not already approved by California Tax Education Council (CTEC), Internal Revenue Service (IRS), National Association of State Boards of Accountancy (NASBA), or courses by such other sponsors as may be approved by the Board.

(11) "In-Company" instruction may be accepted if the course or seminar is presented to ten (10) or more people and all other requirements for continuing education sponsors are met. Portions of such educational sessions devoted to administrative and firm matters shall not be accepted.

(12) If a licensee claims credit for a course or seminar in the reasonable belief the instruction qualifies as acceptable continuing education, but the Board finds all or part of the hours claimed to be unacceptable, the licensee may be granted an additional period of time, not to exceed 60 calendar days, to make up the rejected hours.

(13) Licensed Tax Consultants and Licensed Tax Preparers who have extenuating circumstances and are unable to obtain all their continuing edu-

cation by their license due dates may make application, by completing a form prescribed by the Board, for a waiver of continuing education hours.

Stat. Auth.: ORS 673.645 - 673.667

Stats. Implemented: ORS 673.645 - 673.667

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 9-1987, f. & ef. 12-21-87; TSE 1-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13

800-020-0015

Application for Examination

(1) Application to take the examination for a tax preparer or tax consultant must be filed with the Board on forms prescribed and furnished by the Board. The application must include the examination fee and the proctor site fee, if applicable. The application must be signed.

(2) The application and examination fee shall be filed with the Board no later than one (1) month prior to the examination date, except when the Board sets tighter deadlines due to extenuating circumstances.

(3) Completed basic course certification forms as required under OAR 800-015-0005(6) or a photocopy of an official transcript issued by an accredited college or university shall be submitted to the Board by the student with the initial application for a Tax Preparer License. The preparer applicant may file an application to take the examination before completing the basic tax course. Applicants shall furnish the Board a brief outline of courses completed and/or taught, together with a transcript or proof of instruction from the educational institution if the course(s) they completed and/or taught have not received prior approval from the Board. If the Board determines the course(s) completed and/or taught are comparable to those described in OAR 800-015-0005, the applicant shall be eligible to take the examination.

(4) A tax consultant applicant who is a Licensed Tax Preparer shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 1100 hours during at least two (2) of the last five (5) years.

(5) An Enrolled Agent applicant who is enrolled to practice before the Internal Revenue Service, holding a valid treasury card, shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has completed a minimum of 360 hours work experience during at least two (2) of the last five (5) years.

(6) A tax consultant applicant who is claiming equivalent tax preparer experience shall submit on forms prescribed and furnished by the Board:

(a) Verification by the applicant's employer or employers that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 1100 hours during at least two (2) of the last five (5) years.

(A) The Board will accept employment as an income tax auditor or taxpayer service representative with the Internal Revenue Service or State Department of Revenue as being equivalent experience.

(B) For the purpose of meeting the work experience requirement for tax consultants, one hour of experience gained through volunteer tax preparation programs such as VITA or AARP-TCE will be accepted for each five hours spent preparing, advising or assisting in the preparation of tax returns through the volunteer program, up to a maximum of 212 hours credited. To qualify for the one (1) to five (5) hour experience credit, total hours worked in the volunteer program must be verified in writing by a supervisor knowledgeable in tax preparation.

(b) To claim experience under this section, the applicant must submit a petition signed under penalty of perjury that the work experience claimed is true, correct and complete.

(7) Applicants for the tax consultant examination must have completed, within a year prior to submitting application, a minimum of 15 hours of acceptable continuing education in personal income taxation to meet the requirements of OAR 800-015-0010 to 800-015-0030. This requirement is in addition to the required 1100 hours of work experience earned during at least two (2) of the last five (5) years.

(8) A tax practitioner applicant claiming tax consulting experience in another state shall:

(a) Submit, on a form prescribed and furnished by the Board, a petition signed under penalty of perjury, claiming self-employment as a tax practitioner for no less than two (2) of the last five (5) years; and

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(b) Furnish documented proof of self-employment as a tax practitioner.

(9) A tax preparer or tax consultant applicant who has worked in the capacity as a tax practitioner in another state or in an exempt status may request Board approval to substitute work experience for up to two-thirds of the classroom hours of basic income tax education otherwise required to qualify as a tax preparer or tax consultant. Approval may be granted to substitute experience for education only if:

(a) The applicant was actively engaged in a tax preparation business within two (2) years prior to the date of application;

(b) The applicant has at least three (3) years experience in a tax preparation business;

(c) The applicant has gained a competency level through work experience that is equal to those applicants who have successfully completed the basic income tax course; and

(d) The applicant submits verification by the applicant's employer(s) or evidence of self-employment regarding the work experience.

(10) The Board may accept education credit for courses completed by a tax consultant applicant to substitute for up to 365 hours of work experience at the rate of one (1) classroom hour of education for five (5) hours of experience if:

(a) The subject matter of the course was related to taxation;

(b) The applicant completed the course within one (1) year of applying to become a Licensed Tax Consultant; and

(c) Credit for the course is not claimed to fulfill continuing education requirements.

(11) Information required of the applicant and on the application forms shall be completed before an applicant may be admitted to an examination.

Stat. Auth.: ORS 673.625

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 2-1980, f. & ef. 5-30-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1988, f. & ef. 11-2-88; TSE 5-1990, f. & cert. ef. 5-3-90; TSE 9-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2005, f. & cert. ef. 1-5-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 3-2011, f. 6-3-11, cert. ef. 7-1-12; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13

800-020-0030

Licenses — Renewals and Reactivation

(1) Applicants who pass the required examination and meet all other requirements shall be issued a license upon request and payment of the license fee. The licensee shall be assigned a permanent license number.

(2) Tax preparers' licenses shall expire annually on September 30.

(3) Tax consultants' licenses shall expire annually on May 31.

(4) Renewal licenses shall be issued upon receipt of a signed renewal application notice, attesting to required continuing education and payment of the appropriate fees.

(5) Licensed Tax Preparers have the option to file for inactive status on or before October 15, provided the license is not in lapsed status as provided in OAR 800-020-0035(2).

(6) Licensed Tax Consultants have the option to file for inactive status on or before June 15, provided the license is not in lapsed status as provided in OAR 800-020-0035(2).

(7) If a tax preparer or tax consultant license is suspended or revoked, the individual's license and pocket identification card become the property of the Board and shall, on demand, be delivered by the holder to the Board of Tax Practitioners.

(8) Licenses that have been placed in inactive or lapsed status may be reactivated upon receipt of a completed reactivation application form prescribed by the Board, attesting to required continuing education and paying the appropriate fee(s).

Stat. Auth.: ORS 673.730

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 2-1993, f. & cert. ef. 2-23-93; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13

800-020-0035

Inactive and Lapsed Status

(1) Except as provided in section (3) of this rule, a license that has been placed in inactive status may be reactivated upon submission of a reactivation application, payment of license fee for an active license and

attesting to compliance with all past continuing education requirements the same as if the licensee had held an active license.

(2) Except as provided in section (3) of this rule, a license that has been placed in lapsed status may be reactivated to active status upon submission of a reactivation application, payment of all past unpaid fees and attesting to compliance with all past continuing education requirements the same as if the licensee had held an active license. A license that has been placed in lapsed status shall not be placed in inactive status.

(3) A license that has been placed in inactive or lapsed status, or a combination thereof, for three (3) consecutive years, shall not be reactivated to active status.

(4) The Board may refuse to reactivate a license that has been placed in inactive or lapsed status for the same reasons it may refuse to issue, renew, suspend, or revoke a license.

Stat. Auth.: ORS 673.645, 673.667 & 673.730

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1991, f. & cert. ef. 1-30-91; TSE 6-1992, f. 8-13-92, cert. ef. 8-1-93; TSE 2-1993, f. & cert. ef. 2-23-93; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13

800-030-0025

Civil Penalties

(1) Civil Penalty Ranges. Pursuant to ORS 673.735, a civil penalty in the following range shall be assessed for each violation of the following statutes and rules:

NOTE: The Board has determined that the gravity of the following types of violations warrant at least the following minimum civil penalties for each violation committed.

(2) Civil Penalty Factors. Pursuant to ORS 673.735, the following factors shall be considered in determining the amount of civil penalty to assess for each violation above the minimum established under paragraph (1) of this rule or for violations not specified in paragraph (1):

(a) The previous record of the person in complying, or failing to comply, with ORS 673.605 to 673.740, or any rule or order adopted there under.

(b) The harm to the consumer as a result of the violation.

(c) The person's knowledge of the statute, rule, or order violated. An intentional, reckless, or willful violation warrants a high civil penalty per violation.

(d) The person's lack of cooperation with the Board.

(e) The seriousness of the violations committed.

(3) Daily Civil Penalty. Pursuant to ORS 673.735, the Board may impose civil penalties of not more than \$5,000 for each violation of 673.605 to 673.740, or any rule adopted there under. In the case of violations of 673.615, 673.643, or 673.705(5), or OAR 800-010-0025(7) or 800-010-0042, the Board may consider each business day a person continues in violation following Board notification to be a separate violation.

(4) Civil Penalty Adjustment. The civil penalty amount to be imposed under this rule shall be lowered to an appropriate amount when the Board determines that the total civil penalties to be assessed against a person are grossly disproportionate to the seriousness of the violations committed.

Stat. Auth.: ORS 673.730

Stats. Implemented: ORS 673.735

Hist.: TSE 1-1985, f. & ef. 1-15-85; BTSE 1-1998, f. & cert ef 9-3-98; BTSE 1-2002(Temp), f. & cert. ef. 8-6-02 thru 1-1-03; Administrative correction 4-16-03; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2004, f. 1-28-04, cert. ef. 2-1-04; BTP 3-2004, f. 10-11-04 cert. ef. 11-1-04; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13

Bureau of Labor and Industries

Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2013.

Adm. Order No.: BLI 13-2012

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 1-1-13

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 January 1, 2013.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

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839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon dated January 1, 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:

(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 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

Commission for the Blind Chapter 585

Rule Caption: Modify Public Records Rule.

Adm. Order No.: CFTB 2-2012

Filed with Sec. of State: 12-17-2012

Certified to be Effective: 12-17-12

Notice Publication Date: 9-1-2012

Rules Adopted: 585-001-0007, 585-001-0009

Subject: 585-001-0007: Requests for Release of Public Records — Adoption of the rule will provide additional detail in regards to its public records requests. This rule includes how the request should be received.

585-001-0009: Release of Public Records — Adoption of this rule will provide additional detail in regards to its public records requests. This rule includes timeframe for providing the request and how to handle exempt material.

Rules Coordinator: Linda Mock—(971) 673-1588

585-001-0007

Requests for Release of Department Public Record

(1) Any person may request public record information. Every person has a right to inspect any public record, except as otherwise prohibited by law.

(2) The request must be in writing, and must specify the record from which information is requested, if known. Where applicable, the request must be accompanied by a signed release of information.

(3) The OCB must respond to any written request to view or obtain copies of records. If an exemption exists to prohibit disclosure, the OCB must notify the requester in writing, stating the reason for the exemption.

Stat. Auth.: ORS 346.150 & 183.341

Stats. Implemented: ORS 346.150

Hist.: CFTB 2-2012, f. & cert. ef. 12-17-12

585-001-0009

Release of Public Records

(1) The time frame for inspection or copying of records is as soon as reasonably possible from the date of the request, including time to locate and prepare the record.

(2) To protect its records and prevent interference with the regularly scheduled duties of its staff, the OCB and the person requesting to inspect the record must establish a reasonable time at which the person may inspect the records.

(3) Prior to allowing examination or copying of a public record, OCB staff must review the record and separate any material which is exempt from disclosure from non-exempt material. The non-exempt material must be made available for examination.

(4) OCB must provide the person requesting examination a place to review the record. A person designated by OCB shall sit with the person reviewing the record to assure the record is not altered in any way.

(5) The person viewing the record may designate pages to be copied, or may request copies of specific information contained in the record. Only OCB staff may copy the designated material.

Stat. Auth.: ORS 346.150 & 183.341

Stats. Implemented: ORS 346.150

Hist.: CFTB 2-2012, f. & cert. ef. 12-17-12

Department of Agriculture Chapter 603

Rule Caption: Adopts revised retail Food Code to be used by the Oregon Department of Agriculture.

Adm. Order No.: DOA 30-2012

Filed with Sec. of State: 12-17-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 10-1-2012

Rules Amended: 603-025-0030

Subject: The Oregon Department of Agriculture (ODA) is currently using a Food Code that was established in 2002. The 2013 Oregon Department of Agriculture Retail Food Code is very similar to the 2002 code, but there have been several changes. Options for the retail food code discussed during Oregon Health Authority meetings in 2012, the 2009 Model Food Code, suggestions from ODA staff, and a stakeholder advisory committee were consulted during the formation of the food code. The rule is also being amended to correct typographical errors and clarify when certain establishments will be exempt from licensing.

The following are the significant changes that will be included in the 2013 Retail Food Code: (1) Cut leafy greens and other produce will be considered a potentially hazardous food, (2) persons in charge of facilities must demonstrate knowledge about major food allergens, (3) certain illnesses will cause an employee to be excluded from the

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food establishment, (4) employees may not contact exposed, ready-to-eat food with their bare hands, (5) use of non-commercial mushrooms will require record retention and consumer notification, (6) latex gloves will be prohibited, (7) outdoor food service regulations will be relaxed, (8) a 6-hour standard for cold foods may be used as long as the food does not exceed 70°F, (9) more stringent employee training will apply when a food establishment acquires a variance from the rules, (10) a consumer advisory will be used for raw or undercooked animal products, (11) facilities will need a small diameter probe to measure temperature of thin foods, and (12) dogs will be allowed in the outside seating areas of establishments if the owner permits it and certain restrictions are followed.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-025-0030

Retail Food Code

(1) In addition to the provisions of OAR 603-025-0020 a retail food establishment shall comply with the Oregon Department of Agriculture Retail Food Code, 2013. [Code not included. See ED. NOTE.]

(2) Retail Fruit and Vegetable Stands and Similar Outlets: Retail fruit and vegetable stands, and other similar unusual food sales outlets, are also subject to these retail food establishment provisions, except as follows:

(a) Fruit and vegetable stands located on a farmers own property, wherein only fruits and vegetables grown by the owner are sold, and no food processing is being done, are exempt from licensing;

(b) Food establishments that are exempt under OAR 603-025-0215 to 603-025-0275 (Farm Direct Marketing Rules), are exempt from licensing;

(c) Other fruit and vegetable stands may be exempted from certain retail food establishment requirements where the department determines that public health principles will not be compromised.

(3) New Establishment Construction or Remodeling:

(a) Prior to undertaking construction of a new retail food establishment, and as a condition to obtaining a license to operate the establishment, a copy of the construction plans and specifications, together with a statement of an expected completion date, shall be submitted to the department for review and comment as to sanitation and food maintenance;

(b) Prior to undertaking remodeling of an existing establishment in order to expand or add food processing or food service facilities, a copy of the construction plans and specifications, together with a statement of an expected completion date, shall be submitted to the department for review and comment as to sanitation and food maintenance.

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

Stat. Auth.: ORS 561, 616 & 619

Stats. Implemented: ORS 616.700

Hist.: AD 2-1987, f. & ef. 1-30-87; AD 21-1990, f. & cert. ef. 11-27-90; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03; DOA 6-2006, f. & cert. ef. 3-10-06; DOA 30-2012, f. 12-17-12, cert. ef. 1-1-13

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Rule Caption: Clarifies statutes; sets fee's for filing claims; clarifies financial assurance; makes mediation available.

Adm. Order No.: DOA 31-2012

Filed with Sec. of State: 12-21-2012

Certified to be Effective: 12-21-12

Notice Publication Date: 11-1-2012

Rules Adopted: 603-047-0010, 603-047-0100, 603-047-0200, 603-047-0300, 603-047-0400, 603-047-0500

Subject: This rule provides clarification to ORS 576.715 through ORS 576.744 "Payment for Agriculture Commodities", colloquially known as the "Slow Pay – No Pay" law. Sets a fee of \$50 for producers or growers making a complaint of no or untimely payment to the department. Sets a fee of \$150 to producers or growers for each notice of payment demand, issued by the department, to a seed dealer. Sets rules requiring a surety bond or irrevocable letter of credit for not less than \$100,000 as a condition of renewing the license of a seed dealer suspended under ORS 576. Establishes a process for mediation of disputes between parties of a grass seed contract.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-047-0010

Definitions

Unless the context or a specifically applicable definition requires otherwise, the following definitions shall apply to OAR 603-047-0100 to 603-

047-0500: Rules promulgated under the authority of ORS Chapter 576, Payment for Agriculture Commodities (Seeds).

(1) "Agricultural seed" means grass seed of a type commonly sold for use in turf lawns or as forage seed.

(2) "Authenticate" has the meaning given that term in ORS 79.0102.

(3) "Complaint" as used in this rule means a written complaint submitted to the department by a producer or grower pursuant to ORS 576.738 alleging a failure by a seed dealer to make any payment or timely payment under a seed bailment contract, seed production contract or seed purchase contract.

(4) "Department" means the State Department of Agriculture.

(5) "Reasonable Price" means the value of a grass seed kind, variety (or similar variety) and quality (or similar quality) during a time frame corresponding with the date in which payment was due.

(6) "Financial Assurance" as used in ORS 576.741 means any written assurance attesting to the applicant's financial abilities as obligated under seed production or seed purchase contracts and may include a surety bond.

(7) "Notice of failure to make payment," as used in ORS 576.738 and this OAR means a notice made by the department to a seed dealer of failure to make payment under a seed production contract or a seed purchase contract as described in 576.738 for which a final order affirming the notice has been issued. It does not include a notice that has been withdrawn or successfully appealed.

(8) "Producer" means a person that grows agricultural seed in this state on a commercial basis for a seed dealer.

(9) "Seed Bailment Contract" means a seed production contract under which the seed dealer retains title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(10) "Seed Dealer" means a person that in the ordinary course of business contracts to buy agricultural seed grown in this state by a producer or contracts with a producer for the growing of agricultural seed in this state.

(11) "Seed Deliver" means the date on which the seed grower delivers grass seed to the seed dealer pursuant to a notice from the dealer.

(12) "Seed Grower" means a person that grows grass seed in this state on a commercial basis without entering into a contract with a seed dealer prior to harvesting of the seed.

(13) "Seed Production Contract" means a written agreement between a producer and a seed dealer for the growing of agricultural seed in this state.

(14) "Seed Purchase Contract" means a written agreement for a seed dealer to purchase grass seed that has been grown by a seed grower. "Seed purchase contract" does not include a seed production contract.

(15) "Variety Not Stated Seed" means agricultural seed that is sold in unmarked plastic bags or other unmarked containers without any reference to a variety name for the seed.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680

Stats. Implemented: ORS 576.738, 576.741 & 574.744

Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0100

Seed Production Contract Terms

As provided for in ORS 576.718, 576.721, 576.726, 576.729 and 72.3050 (1) to (3):

(1) If the seed production or purchase contract does not settle the price of the grass seed, a reasonable price may be established according to a department survey of a representation of seed dealers and growers/producers for the purpose of determining a reasonable price at the time of delivery.

(2) When the price of a grass seed kind is the "established price" pursuant to supervised price discussions as described in ORS 646.738, the established price shall apply.

(3) When a disagreement over payment or timely payment stems from a disagreement between the seed dealer and the seed producer or grower over the quality of the seed of a contracted or purchased lot, the parties to the contract may engage in collaborative dispute resolution processes including the process specified in OAR 603-047-0500.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680

Stats. Implemented: ORS 576.738, 576.741 & 574.744

Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0200

Seed dealer Failures to Timely Make Payment; Fee

Pursuant to ORS 576.738, all producers or growers making a complaint of no payment or untimely payment must submit the complaint in writing to the department.

ADMINISTRATIVE RULES

(1) Prior to filing a complaint of untimely or nonpayment with the department, a seed grower or producer must send a notice to the dealer of the amount owed.

(2) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed, a producer shall upon notification to the dealer of seed quality test results, indicating that the seed is eligible for sale, shall also notify a seed dealer, in writing, no later than 30 days prior to commencement of storage fees, a rate for storage fees and the date in which storage fees will commence.

(3) A written complaint must include all documents and information as required by the department and must include a fee of \$50.

(a) Upon receipt of the fee and written complaint the department shall verify that the complainant has provided all information required to make a determination and request additional information from the complainant if necessary.

(b) Consistent with law, the agency may initiate an investigation to determine the validity of the complaint.

(4) Upon the department's determination that a complaint of untimely or nonpayment is valid and correct the department shall notify the seed dealer in writing that the dealer has 30 days to pay the producer or seed grower all delinquent monies plus interest on each delinquent amount at the rate of one percent per month simple interest from the final payment date for that delinquent amount and that failure to make payment as described in the notice may result in the suspension of the seed dealer's license.

(a) The department must notify the seed dealer of its determination consistent with ORS Chapter 183 and as described in OAR 603-047-0400, and shall serve its notice on the seed dealer and on any and all persons to whom payment is due under the contract.

(b) The complainant or respondent may challenge and offer evidence to prove or disprove the department's notice in a contested case hearing.

(5) The Department may post a notice issued pursuant to subsection (2) above on its web page and in a newspaper of general circulation. This notice shall include the following information:

(a) The name of the seed dealer to whom the Department has issued a notice;

(b) A statement that the Department has determined as a preliminary matter that the named seed dealer owes payment to a grower/producer and the name of the grower/producer;

(c) A statement allowing any person to file a complaint as described in subsection (1) of this section with the Department within 30 days of publication of the notice.

(6) If it appears that no determination may be made that payment has not been made in accordance with the terms of a seed production contract or seed purchase contract, or that the department does not have jurisdiction over the complaint, the department shall apprise the complainant in writing of its final decision not to pursue the complaint.

(7) The complainant producer or grower shall submit to the department a payment of \$150 for each notice of payment demand made to a seed dealer prior to the department's issuance of the notice.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
Stats. Implemented: ORS 576.738, 576.741 & 574.744
Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0300

Seed Dealer Financial Assurance; Rules; License Refusal; Agents

As used in ORS 576.741 and this rule, unless the context or a specifically applicable definition requires otherwise.

(1) "Officer" means any of the following individuals:

(a) A president, vice president, secretary, treasurer or director of a corporation;

(b) A general partner in a limited partnership;

(c) A manager in a manager-managed limited liability company;

(d) A member of a member-managed limited liability company;

(e) A trustee;

(f) A person or group of persons who direct or cause the direction of the management and policies of a licensed seed dealer person, whether through ownership of voting securities, by contract or otherwise.

(g) "Owner" means the sole proprietor of, partner in or holder of a controlling interest in the named entity on an application for a seed dealer's license.

(2)(a) As a condition of issuing a seed dealer license under ORS 633.70, the department shall require the following financial assurance when:

(b) If during the preceding year a seed dealer, owner or officer of a seed dealer's license has received a final order suspending the dealer's

license and the final order is not withdrawn or successfully appealed, but the seed dealer has demonstrated to the satisfaction of the department that the dealer is current on all payments described in a final order, the department may issue a seed dealer license but shall require a surety bond or irrevocable letter of credit for not less than \$100,000 prior to issuing or renewing a license. This bond must be maintained for a period of time not less than 5 years from the date of issuance of the new or renewed license.

(3)(a) The department may refuse to issue or renew a seed dealer license to a seed dealer, owner or officer of a seed dealer, for which the license has been suspended under ORS 576.738, or may refuse to issue or renew a seed dealer license to an officer of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended, or of a person who exercised substantial control over the seed industry activities of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under 576.738.

(b) The department must notify applicant of its decision to refuse to issue or renew a seed dealer license in writing consistent with ORS Chapter 183 and as described in OAR 603-047-0400, and shall serve its notice on the applicant and on any party to the previous action resulting in suspension of the seed dealer's license.

(4) Any seed dealer or person who was an officer or agent for a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended may provide evidence to the department as to why a seed dealer license should not be suspended and may include evidence;

(a) That the seed dealer named in the order on suspension is current on all payments due as described in a final order issued by the Department;

(b) That the person or entity making the application is not or did not exercise substantial control over the business or activities causing the suspension of the seed dealer license; or

(c) That the person or entity making the application did not have actual authority to establish the performance obligations of the seed dealer under the contract at issue in any seed dealer license suspension.

(5) The department may corroborate the evidence submitted by a seed dealer with any seed growers or producers who were a party to the suspension proceeding in which the seed dealer's license was suspended. If significant disputes remain regarding the evidence submitted by applicant, the department shall refer the issue of whether the seed dealer has made satisfactory payment to an evidentiary hearing.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
Stats. Implemented: ORS 576.738, 576.741 & 574.744
Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0400

Department's Notice; Right to Contested Case Hearing

(1) A notice issued by the department pursuant to OAR 603-047-0200 and 603-047-0300 must be in writing, is subject to any applicable provisions of ORS Chapter 183, and shall include:

(a) A reference to the particular statute and administrative rule involved in the department's determination;

(b) A statement explaining how the amount of nonpayment was calculated, or how the payment is untimely or both;

(c) A statement explaining that the seed dealer's license is suspended and the dealer has not demonstrated to the satisfaction of the Department that the dealer is current on all payments due as described in a final order issued by the Department and that the Department may refuse to issue or renew the seed dealer license;

(d) A statement explaining that a license applicant is an officer, owner or agent of the entity holding a seed dealer's license that was suspended;

(e) A statement of the person's right to request a hearing within 60 days of receipt of the notice and an explanation of how a hearing may be requested;

(f) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, and that choosing such process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process;

(g) A statement indicating whether and under what circumstances ODA may issue a final order by default.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
Stats. Implemented: ORS 576.738, 576.741 & 574.744
Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0500

Collaborative Dispute Resolution; Mediation

(1) Resolution of contested cases. The department may enter into an informal disposition of a contested case with the parties to a contested case to resolve any matter identified in the department's notice.

ADMINISTRATIVE RULES

(a) Any informal disposition must be in writing and signed by the party or parties to the contested case;

(b) The department shall incorporate an informal disposition into a final order resolving all issues described in the notice.

(2) Dispute over price stemming from seed quality disputes. When a disagreement over payment or untimely payment stems from a disagreement between the seed dealer and the seed producer or grower regarding the quality of the seed of a contracted or purchased lot, then upon mutual agreement and request of both dealer and producer or grower, the Department may take an official sample of the disputed lot and submit the sample to the Oregon State University, agricultural research station, or other laboratory agreed upon by the parties for testing.

(a) The parties may agree that the results of this test shall be binding upon the dealer and producer or grower.

(b) The parties may agree that the cost of sampling and testing shall be shared equally between the dealer and producer or grower and dealer, but in no case shall the cost of sampling be ascribed to the department unless by consent of the department.

(3) Mediation of disputes. At any time after the department receives a complaint or issues a notice pursuant to OAR 603-047-0200, the parties to the disputed contract may enter into mediation to resolve the matters disputed.

(a) The department may keep a roster of qualified mediators to assist parties wishing to mediate the matters disputed and a mediator may be selected by agreement of the parties.

(b) Any mediation agreement between the parties must contain a provision for reporting to the department as to whether the mediation successfully resolves the matters asserted in the department's notice. If there is no agreement, the Department may refer the matter to the Office of Administrative Hearings for a contested case hearing.

(c) A request for mediation does not toll the time period for requesting a contested case hearing if a notice has been issued.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
Stats. Implemented: ORS 576.738, 576.741 & 574.744
Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

Department of Community Colleges and Workforce Development Chapter 589

Rule Caption: Amend Community College Support Fund Distribution Formula and adopt sub-sections to break out rule content.

Adm. Order No.: DCCWD 3-2012

Filed with Sec. of State: 12-26-2012

Certified to be Effective: 12-26-12

Notice Publication Date: 9-1-2012

Rules Adopted: 589-002-0110, 589-002-0120, 589-002-0130

Rules Amended: 589-002-0100

Subject: Authority for distribution of the Community College Support Fund is granted by OAR 589-002-0100. Along with house-keeping to provide plain

language, this proposed rule will adopt sub-sections in order to break-out rule definitions (589-002-0110); outline the CCSF Distribution

Methodology (589-002-0120); and, break-out rule language specific to the State Board Strategic Fund (589-002-0130).

Rules Coordinator: Linda Hutchins—(503) 947-2456

589-002-0100

Community College Support Fund Distribution

(1) Purpose Statement:

(a) It is in the state's interest to support a strong local community college system that meets local, regional and state economic and workforce development needs. Short and long-term interests include the consideration of such things as comparable District funding capability, maintaining small districts as a means of educational access and stable, predictable funding. Oregon's community college distribution formula is designed to provide a financial foundation to support undergraduate and lower-division education, career technical education, remedial education, local response to workforce training, and other educational services necessary at the local and state level.

(b) The State Board through the authority vested in it by ORS 341.626, uses this rule to state clearly and concisely what the statewide interests are for Oregon community colleges and students through the adop-

tion of a policy-driven distribution formula. The overarching policy, chosen by the State Board, has been structured to support access, stability and quality, and to do so with equity for Oregon students. Principles which support these policies include:

(A) Access is supported by having the funding follow the student to the college which they are attending.

(B) Quality is supported when adequate funding per student is available.

(C) Growth management is a tool to prevent erosion of the level of funding per student.

(D) Equity is supported by the equalization of public resources distributed per student.

(E) Stability is supported by buffering fluctuations in student enrollment through growth management and by using a three-year weighted average of students by college to distribute state funds.

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

Stat. Auth.: ORS 326.051, 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Stats. Implemented: ORS 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Hist.: 1EB 9-1979, f. & ef. 6-11-79; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0260; ODE 27-2000, f. & cert. ef. 10-30-00; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0200; DCCWD 2-2001, f. & cert. ef. 5-7-01; DCCWD 3-2002, f. & cert. ef. 6-5-02; DCCWD 7-2002(Temp), f. & cert. ef. 12-16-02 thru 6-5-03; DCCWD 3-2003, f. & cert. ef. 5-14-03; DCCWD 1-2004, f. & cert. ef. 7-1-04; DCCWD 1-2005, f. & cert. ef. 7-13-05; DCCWD 2-2006(Temp), f. & cert. ef. 6-15-06 thru 11-30-06; DCCWD 6-2006, f. 10-3-06, cert. ef. 10-4-06; DCCWD 8-2006, f. 12-13-06, cert. ef. 12-15-06; DCCWD 2-2007, f. & cert. ef. 7-6-07; DCCWD 4-2007, f. & cert. ef. 10-1-07; DCCWD 3-2009(Temp), f. & cert. ef. 8-5-09 thru 1-31-10; DCCWD 5-2009, f. & cert. ef. 10-28-09; DCCWD 1-2011, f. & cert. ef. 4-20-11; DCCWD 1-2012(Temp), f. & cert. ef. 7-17-12 thru 1-10-13; DCCWD 3-2012, f. & cert. ef. 12-26-12

589-002-0110

Definitions

The following definitions apply to OAR 589-002-0100 through 589-002-0130.

(1) "Total Public Resources (TPR)" is what the Community College Support Fund formula considers 100% of the next year's imposed property tax revenue and the General Fund appropriation from the legislature. TPR does not include tuition and fees paid by students.

(2) "Base Payment" is an allocation made from the Community College Support Fund which provides funding for basic community college district operations that are essential and do not vary in direct proportion to the districts' Full-Time Equivalent (FTE) student enrollment. The base allocation increases stability and predictability of funding for individual colleges.

(3) "Equalization" means equal public resource support per funded FTE, regardless of community college district, and exclusive of the base. Equalization is measured by dividing Total Public Resources, exclusive of the base, by funded FTE.

(4) "Property tax revenues" means the amount determined by the Department of Revenue to be imposed on local property following the application of limits imposed by sections 11(b)(1) through 11(b)(3), Article XI, of the Oregon Constitution, and those limits imposed by legislation implementing Ballot Measure 50. This amount becomes the basis for operation of the funding formula without regard to uncollectible taxes, or taxes collected from previous years. Taxes levied or imposed by a community college district to provide a public library system shall be excluded from the definition of property taxes in this rule. Property tax revenues raised through voter approval of any local option or capital construction levy are not to be included as a resource to be distributed through the funding formula.

(5) "Community College Support Fund (CCSF)" is funding received through the state's General Fund appropriation and distributed to the community college districts for funding educational programs.

(6) "Full-Time Equivalent (FTE) student" for the purpose of receiving state reimbursement, means a student who carries 510 clock hours over three terms of instruction for all terms including a fall 12-week term. All colleges with an 11-week fall term will have their fall term clock hours increased to the equivalent 12-week hours for the purpose of calculating reimbursable FTE.

(7) "Total Reimbursable FTE" means full-time equivalent students that are eligible for state reimbursement. These students must receive instruction from community college districts through either a contracted out-of-district (COD) agreement described in OAR 589-002-0600, an agreement to provide services to state penitentiary or correctional institution inmates described in OAR 589-002-0700, or are CCSF reimbursable FTE, described in Section 8 of this rule and in OAR 589-002-0110 Sections (2) through (5).

ADMINISTRATIVE RULES

(8) "CCSF Reimbursable FTE" means full-time equivalent students that are eligible, as described in OAR 589-002-0110 Sections (2) through (5) of this rule, for state funding through the CCSF Funding Distribution Formula, before the application of the Annual Growth Factor (AGF).

(9) "Contracted Out-of-District (COD) Reimbursable FTE" means full-time equivalent students that are not residents in the community college district that they are attending and for which the community college district has a contract to provide educational services with an entity in the geographic area from which the student resides. COD reimbursable FTE must meet all other requirements of a CCSF reimbursable FTE. The community college district must have a contract in place with the Department of Community Colleges and Workforce Development in order to receive reimbursement.

(10) "Fundable FTE" is the number of full-time equivalent students that are at or below each community college district's FTE Cap. Fundable FTE is the lesser of either the CCSF reimbursable FTE or the FTE cap. This number is used in the three-year weighted average calculation that determines a community college district's funded FTE as described in Section 11 of this rule.

(11) "Funded FTE" is the community college district's number of full-time equivalent students used in the formula to distribute the CCSF funding for each community college district. This number is buffered to prevent significant changes in a community college district's funding due to variability in student enrollment. It is calculated using a three-year weighted average of fundable FTE with the first year prior to current fundable FTE weighted at 40%, second year prior to current fundable FTE weighted at 30%, and third year prior to current fundable FTE weighted at 30%.

(12) "Total Funded FTE" is the sum of all community college districts' funded FTE for a fiscal year.

(13) "FTE Cap" is the maximum number of CCSF reimbursable FTE per community college district, which may be included in the funding formula calculation. The FTE cap is determined by applying the annual growth factor and may be adjusted by the preliminary FTE cap as described in Section 14.

(14) "Preliminary FTE Cap" is a tool that allows a community college district to recover fundable FTE within one year, if the district's CCSF reimbursable FTE is less than the FTE cap. There are two preliminary FTE caps. The first is based on the FTE cap from one year prior and the second is based on the prior year's fundable FTE. The annual growth factor (as defined in Section 19 below) is applied to each. The current year's FTE cap is the greater of these two numbers.

(15) "Growth Management" means the application of the Growth Management Component in combination with each community college district's FTE cap.

(16) "Biennial Growth Management Component" is the percent change, from one biennium to the next, of the total number of FTE for all community college districts that could be included in the funding formula without reducing resources available per FTE. The biennial growth management component is determined by the amount of total public resources available for the current biennium compared to the prior biennium and the estimated increased cost of FTE.

(17) "State Board of Education's Biennial Quality Growth Factor" is a policy lever that allows the number of FTE that will be counted for funding purposes to be above or below the Biennial Growth Management Component.

(18) "Total Biennial Growth Management Component" is the sum of the Biennial Growth Management Component and the State Board of Education's Biennial Quality Growth Factor.

(19) "Annual Growth Factor (AGF)" is one-half of the Biennial Growth Management Component.

Stat. Auth.: ORS 326.051, 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Stats. Implemented: ORS 341.626

Hist.: DCCWD 1-2012(Temp), f. & cert. ef. 7-17-12 thru 1-10-13; DCCWD 3-2012, f. & cert. ef. 12-26-12

589-002-0120

Community College Support Fund Distribution Methodology

(1) The Community College Support Fund shall be distributed in equal payments as follows:

(a) For the first year of the biennium, August 15, October 15, January 15, and April 15;

(b) For the second year of the biennium, August 15, October 15, and January 15;

(c) The final payment of each biennium is deferred until July 15 of the following biennium as directed by the 71st Oregon Legislative Assembly.

(d) Should any of the dates set forth above occur on a weekend, payment shall be made on the next business day.

(e) All payments, made before actual property taxes imposed by each district are certified by the Oregon Department of Revenue, shall be based on the department's best estimate of quarterly entitlement using property tax revenue projections. Payments shall be recalculated each year as actual property tax revenues become available from the Oregon Department of Revenue and any adjustments will be made in the final payment(s) of the fiscal year.

(2) Community college districts shall be required to submit enrollment reports in the format specified by the Commissioner, including numbers of clock hours realized for all coursework, in a term-end enrollment report by the Friday of the sixth week following the close of each term. If reports are outstanding at the time of the quarterly payments, payment to the district(s) not reporting may be delayed at the discretion of the Commissioner.

(a) All payments, made before actual Full-Time Equivalent student enrollment data are available shall be based on the department's best estimate of quarterly entitlement using student enrollment data from previous years.

(b) Payments shall be recalculated each year as Full-Time Equivalent student enrollment data become available and any adjustments will be made in the fiscal year.

(3) Reimbursement from the Community College Support Fund shall be made for career technical, lower-division collegiate, developmental education and other courses approved by the State Board in accordance with OAR 589-006-0100 through 589-006-0400. State reimbursement is not available for hobby and recreation courses as defined in 589-006-0400.

(4) Residents of the State of Oregon and the states of Idaho, Washington, Nevada, and California shall be counted as part of each community college district's CCSF reimbursable FTE, but only for those students who take part in coursework offered within Oregon's boundaries.

(5) State funding for community college district operations is appropriated by the legislature on a biennial basis to the Community College Support Fund. The amount of state funds available for each biennium and for distribution through the funding formula shall be calculated based on the following:

(a) Funds to support services provided to inmates of state penitentiary and correctional institutions by community college districts shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for services provided to inmates shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation. The distribution method of CCSF funding for individual state penitentiary and correction institution programs provided by community college districts will be determined in consultation between the agency and the Department of Corrections.

(b) Funds to support contracted out-of-district (COD) programs described in OAR 589-002-0600 shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated.

(A) Community college districts providing contracted out-of-district services will receive an allocation equal to the college's number of reimbursable COD FTE from the prior year multiplied by the prior year's statewide average of non-base Community College Support Funds per total funded FTE.

(B) To receive COD reimbursement for the current fiscal year, a community college district must have a contract with the Department of Community Colleges and Workforce Development in place by October 31st of the current fiscal year and must follow all requirements found in OAR 589-002-0600.

(c) Funds to support targeted investments such as distributed learning shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for these investments shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage change to the current biennium's total Community College Support Fund appropriation.

(d) Funds remaining in the Community College Support Fund shall be distributed through the formula as described in Section 6.

(e) State general fund and local property taxes for territories annexed or formed effective June 1, 1996 or later shall not be included in the funding formula for the first three years of service. Additionally, the FTE generated in newly annexed territories shall not impact the funding formula

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during the first three years of service. Beginning in the fourth year, funding will be distributed through the formula as outlined in this rule.

(6) Distribution of funds to community college districts from the Community College Support Fund shall be accomplished through a formula, based on the following factors:

(a) Base Payment: Each community college district shall receive a base payment of \$720 for each Weighted Reimbursable FTE up to 1,100 and \$360 per FTE for unrealized enrollments between actual Weighted Reimbursable FTE and 1,100 FTE. The base payment for each community college district will be adjusted according to the size of the district. Community college district size for purposes of this adjustment will be determined each year by the FTE set forth in section (8)(b) of this rule. The base payment adjustments shall be:

- (A) 0 — 750 FTE 1.3513;
- (B) 751 — 1,250 FTE 1.2784;
- (C) 1,251 — 1,750 FTE 1.2062;
- (D) 1,751 — 2,250 FTE 1.1347;
- (E) 2,251 — 2,750 FTE 1.0641;
- (F) 2,751 — 3,250 FTE 1.0108;
- (G) 3,251 — 3,750 FTE 1.0081;
- (H) 3,751 — 4,250 FTE 1.0054;
- (I) 4,251 — 4,999 FTE 1.0027;
- (J) 5,000 or more FTE 1.000.

(b) Student-Centered Funding: The formula is designed to distribute the Community College Support Fund based on each community college district's FTE.

(A) The equalized amount per FTE is determined by dividing Total Public Resources — excluding base payments, contracted out-of-district payments, and any other payments directed by the State Board or the legislature — by funded FTE. The department shall make the calculation based on submission of FTE reports by community college districts and in accordance with established FTE principles.

(B) To determine the number of funded FTE for each community college district, a three-year weighted average of fundable FTE for each community college district will be used with the first year prior to current fundable FTE weighted at 40%, second year prior to current fundable FTE weighted at 30%, and third year prior to current fundable FTE weighted at 30%.

(c) Beginning with the 2011-13 biennium, a Biennial Growth Management Component is added to the calculation of each community college district's funded FTE. The purpose of the Biennial Growth Management Component is to manage the level of total public resource available per FTE within the total public resources available.

(A) The methodology for calculating the base year and subsequent biennial growth management component is displayed in Table 1 "Community College Support Fund Growth Management Calculation Tables" and is available through the following hyperlink. [Table not included. See ED. NOTE.]

(B) The calculations that will implement the Growth Management Component in the CCSF Distribution Formula Model are available in Table 2. Formula Calculation of Fundable FTE by Community College District." [Table not included. See ED. NOTE.]

(C) The State Board of Education (SBE) has authority, on a biennial basis to, set the "quality growth factor" that may increase or decrease the number of FTE that will be counted for funding purposes above or below the Biennial Growth Management Component. The SBE will consider the following principles as guidelines for setting the "quality growth factor":

(i) Balance the desire to support growth beyond that which is funded through the funding formula distribution model with the desire to enhance quality by increasing the level of funding provided on a per-student FTE basis.

(ii) The Total Public Resources (TPR) per FTE should not erode by more than 5% on an annual basis.

(iii) Where current TPR per FTE is determined to be insufficient to support the "quality of education" desired, a growth factor could be established that would increase the TPR per FTE.

(iv) If revenue is significantly reduced during a biennium, the Board may reduce the "quality growth factor."

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

Stat. Auth.: ORS 326.051, 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Stats. Implemented: ORS 341.626

Hist.: DCCWD 1-2012(Temp), f. & cert. ef. 7-17-12 thru 1-10-13; DCCWD 3-2012, f. & cert. ef. 12-26-12

589-002-0130

State Board Strategic Fund

The State Board may establish a strategic fund.

(a) There are two basic categories for these funds: incentivized statewide initiatives and activities, and requests from individual districts for assistance in meeting new requirements and expectations stemming from legislative change.

(b) The commissioner will use a committee of stakeholders and department staff to determine overall priorities for funding that considers the State Board work plan and initiatives.

(c) Strategic funds provided to incentivize statewide activities or assist community colleges in meeting legislative expectations are provided only for the biennium in which funding is approved. Strategic Funds allocated for either purpose will not be considered in the distribution of funds through the formula described in Section 6 of 589-002-0110 for the current biennium or future biennia.

(d) Any unused monies remaining in the current biennium's strategic fund will be allocated through the formula described in Section 6 of 589-002-0110 at the end of the biennium.

(e) The commissioner will review, rank and approve proposals to incentivize statewide activities. After each proposal is approved, the commissioner will provide the State Board with a report detailing the purpose of the activity, the amount of strategic fund monies approved, and the proposal's merit as assessed under the following parameters:

(A) Purpose of the proposal.

(B) How the activity supports the initiatives and work plans of the department and the State Board.

(C) How the activity relates to the department's Key Performance Measures or other program-specific measures.

(D) If the funding one time (for this biennium) or will additional funding be needed in the future.

(E) If future funding is needed, how resources will be obtained and how the activity will be sustainable?

(F) The activity's impact on the state three years from now and five years from now.

(G) Anticipated changes.

(H) How progress will be measured.

(f) The department will bring all requests for assistance in meeting new requirements or expectations stemming from legislative change to the State Board for discussion and consideration.

(g) The department will assess the requests for assistance in meeting new requirements or expectations of the legislature based on the following parameters:

(A) Purpose of the proposal.

(B) How funds will be used to sustain or increase enrollment (not supplanting existing funds).

(C) If the funding is one time (for this biennium) or if additional funding will be needed in the future.

(D) If future funding is needed, how those resources will be obtained and how the activity is sustainable.

(E) The impact on the community college three years from now and five years from now.

(F) How progress will be measured.

(h) The department will provide a recommendation and reasoning to the State Board on whether the request merits funding.

Stat. Auth.: ORS 326.051, 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Stats. Implemented: ORS 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Hist.: DCCWD 1-2012(Temp), f. & cert. ef. 7-17-12 thru 1-10-13; DCCWD 3-2012, f. & cert. ef. 12-26-12

Rule Caption: Amends NCRC program requirements for participant residency, assessment scoring and eligibility criteria.

Adm. Order No.: DCCWD 4-2012

Filed with Sec. of State: 12-26-2012

Certified to be Effective: 12-26-12

Notice Publication Date: 9-1-2012

Rules Amended: 589-007-0700

Subject: Under the current rule, services provided to program participants are too broad in scope, and the agency determined that stricter limitations must be implemented to better align with HB 2353 (passed in 2011 legislative session). This rule amendment revises program requirements regarding participant residency, assessment

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scoring and eligibility criteria. It also includes rule language clarifications and adds the ORS citing of 660.343.

Rules Coordinator: Linda Hutchins—(503) 947-2456

589-007-0700

National Career Readiness Certificate (NCRC) Program

(1) The purpose of the National Career Readiness Certification (NCRC) program is to prepare Oregonians for the workplace and for college as a part of implementing an integrated workforce delivery system that focuses on developing the skills and talents of Oregonians. The NCRC in Oregon provides individuals with documented, transportable, skills-based certificates.

(2) The Department of Community Colleges and Workforce Development (CCWD) shall administer the statewide program for the National Career Readiness Certificate called for in HB 2353, passed in the 2011 legislative session, and establish a policy and procedures for:

(a) Initial skills review assessments to identify participant's skill levels;

(b) Targeted instruction and remedial skill-building for participants;

(c) Foundational skills assessments for participants;

(d) Training of staff to administer assessments based on established guidelines;

(e) Delivery site criteria and validation of these criteria;

(f) Quality assurance processes;

(g) Development of systems to collect, track and maintain data;

(h) Participant's eligibility criteria. Eligible program participants:

(A) Must be a citizen or national of the United States, lawfully admitted permanent resident alien, refugee, asylee, or parolee, or other immigrant authorized by the Attorney General to work in the United States;

(B) Must be a resident of Oregon or an employee of businesses located in Oregon;

(C) Must comply with NCRC assessment-taking procedures and requirements as outlined in American College Testing (ACT) test coordinator manual and directions for administration.

(D) Must meet any additional eligibility requirements as dictated by the funding source(s) used to administer, implement, or support the NCRC program.

(3) Services provided by the NCRC program shall include, but are not limited to:

(a) An assessment process that includes an initial skills review and a foundational skills assessment of examinees in reading for information, applied mathematics, and locating information at a minimum;

(b) Targeted and accelerated instruction and remedial skills training to increase foundational skills for participants as determined by the assessment process;

(c) Issuance of a National Career Readiness Certificate to any eligible individual who earns a minimum score of a 3 on each of the NCRC assessments for reading for information, applied mathematics, and locating information:

(A) Certificates issued to examinees on successful completion of the assessments must describe the skills demonstrated by the examinee as evidence of the individual's readiness for employment;

(B) Each of the NCRC assessments shall be scored on a scale of three and above. The level of credential examinees receive is based on the following:

(i) A bronze-level certificate requires a minimum score of three or above on each of the assessments.

(ii) A silver-level certificate requires a minimum score of four or above on each of the assessments.

(iii) A gold-level certificate requires a minimum score of five or above on each of the assessments.

(iv) A platinum-level certificate requires a minimum score of six or above on each of the assessments.

(4) The results of NCRC assessments must be used, at a minimum, to determine a participant's career readiness as determined by general skills requirements and job profiles, and to determine additional instructional needs for the participant in reading, locating information, and applied mathematics, or other assessments needed or required.

(5) Participants may opt out of the NCRC database by informing the Agency in writing, by mail, and with examinee's signature that he or she wants to opt out of the database.

(6) CCWD shall conduct periodic studies of the assessments used in Oregon to document Essential Skill for high school graduation to compare their effectiveness in preparing graduates for successful transition to post-secondary education and the workplace.

Stat. Auth.: ORS 183, 660.318, 660.330 - 660.339 and 660.343

Stats. Implemented:

Hist.: DCCWD 2-2009(Temp), f. & cert. ef. 7-15-09 thru 1-8-10; DCCWD 6-2009, f. & cert. ef. 12-14-09; DCCWD 3-2011, f. & cert. ef. 12-9-11; DCCWD 2-2012(Temp), f. & cert. ef. 8-6-12 thru 1-31-13; DCCWD 4-2012, f. & cert. ef. 12-26-12

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

Rule Caption: Creates an Alternative Inspection Pilot Program.

Adm. Order No.: BCD 15-2012

Filed with Sec. of State: 12-21-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Adopted: 918-674-0057

Subject: This rule creates an alternative inspection pilot program for residential prefabricated structures intended for rent, sale, or lease in the state of Oregon.

Rules Coordinator: Richard J. Baumann—(503) 373-7559

918-674-0057

Alternative Inspection Pilot Program

(1) There is established in the division an optional alternative inspection pilot program. The alternative inspection pilot program ends December 31, 2018. A manufacturer must continuously meet the requirements of this rule for continued use of this program.

(2) Under this program the division may waive in-plant cover inspections specified in OAR 918-674-0055(2)(a) for certain prefabricated structures.

(3) Following initial approval, a manufacturer must obtain annual approval from the division for continued use of the program. Subsequent approval is based upon division evaluation of the manufacturer's prior year performance under this program.

(4) The scope of construction is limited to prefabricated structures:

(a) Classified as Group R-3 occupancies;

(b) 2,500 square feet or less; and

(c) Single story.

(5) The following definitions apply to this rule.

(a) "Defect" means any design or construction that requires repair or replacement due to work of the manufacturer, contractor or subcontractor.

(b) "Loss run" means information about current and prior reported incidents for the manufacturer under the warranty, including all paid amounts and reserves for further payment. Such losses shall be valued not more than 90 days prior to the date of the loss runs.

(c) "Warranty" means the minimum coverage including, but is not limited to:

(A) In the first 12 months, coverage for any defect in materials and labor;

(B) In the first 24 months, coverage for any defect in materials and labor supplied for the electrical, plumbing, HVAC delivery and distribution systems; and

(C) Ten-year construction defect coverage for material and labor defects that result in the failure of a load bearing part of the home or any defects that materially and adversely affect the use of the home for residential occupancy.

(6) A manufacturer must submit a compliance control program as specified in OAR 918-674-0060(2) and pay the appropriate fee as specified in OAR 918-674-0155. The compliance control program must also contain an inspection checklist, in a form and format acceptable to the division, where the manufacturer inspects the structure according to the applicable state building code and documents any waived inspections under this program including, but not limited to:

(a) Inspection type;

(b) Name and license number of the electrical contractor and their signing supervisor;

(c) Name and license number of the plumbing contractor;

(d) Person performing inspection(s);

(e) Date of inspection(s);

(f) Code violations observed;

(g) Corrective action taken to resolve the issue(s); and

(h) An executive management signature.

(7) A copy of the inspection checklist must be provided during the final inspection.

(8) Prior to approving a manufacturer for this alternative inspection pilot program, the division must fully inspect one structure to ensure the

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manufacturer is following its approved compliance control program and determine if the manufacturer is capable of constructing code compliant structures.

(9) The final inspection performed by the division is to ensure that the manufacturer has satisfied the requirements of this rule as evidenced by a completed and signed inspection checklist. The division's final inspection is limited to only those items that can be visually inspected or by removing typical access panels. It may be necessary for an inspector to use simple hand tools to access certain installations.

(10) The final inspection performed by the division may not be construed to mean that the division or a division inspector assumes any liability for any work or any inspection performed by the manufacturer under this alternative inspection program.

(11) A manufacturer is required to purchase a warranty for each structure built under this alternative inspection pilot program that is offered for sale, rent, or lease in Oregon. A warranty must include, but is not limited to:

(a) A warranty program that is provided by or has evidence of a contractual liability insurance policy from an Oregon admitted insurance carrier; and

(b) Is transferable from the initial purchaser to any subsequent purchaser for the terms of the initial warranty period; and

(c) Provisions in the warranty provider's contract that allows the warranty provider to review a manufacturer's financial stability at each renewal or at other times if there are indications of financial instability.

(12) A manufacturer must submit, along with its quality control manual, a written statement that the manufacturer will agree to provide a "loss run" on an annual basis from the insurer providing the warranty protection for structures built under this program. The loss run must be submitted to the division by March 1 of each year following division approval for use of the program.

(13) This rule does not waive:

(a) The cover inspections for fire sprinkler systems;

(b) Other inspection requirements in OAR 918-674-0055 (final inspection or any reinspection); or

(c) Any license, permit, or plan review requirements.

(14) The division may perform random audits of the manufacturer's alternative inspection program for the purposes of verifying the manufacturer is complying with the compliance control program. Fees for evaluating or auditing a compliance control program are as specified in OAR 918-674-0155(4).

(15) The division may deny a manufacturer's use of the alternative inspection program if the division determines that the manufacturer is unable to construct complying structures as determined by final inspection, reinspection, as a result of evaluating or auditing the manufacturer's compliance control program, or excessive warranty claims.

Stat. Auth.: ORS 455.030, 455.100 & 455.110

Stats. Implemented: ORS 455.110 & 455.705

Hist.: BCD 15-2012, f. 12-21-12, cert. ef. 1-1-13

Rule Caption: Amends the 2011 Oregon Plumbing Specialty Code.

Adm. Order No.: BCD 16-2012

Filed with Sec. of State: 12-21-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Adopted: 918-750-0115

Subject: This rule amends the 2011 Oregon Plumbing Specialty Code relative to fats, oils, and grease interceptors in food service establishments.

Rules Coordinator: Richard J. Baumann—(503) 373-7559

918-750-0115

Amendments to the Oregon Plumbing Specialty Code

The **Oregon Plumbing Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Plumbing Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment. Effective January 1, 2013, the **Oregon Plumbing Specialty Code** is amended according to the following.

(1) Amend Section 204.0 by adding a definition of Building Official.

(2) Amend Section 208.0 Food Service Establishment definition to clarify facilities that require waste pretreatment.

(3) Amend Section 1014.1 by:

(a) Specifying that the building official is the proper authority for determining plan review, permit, and inspection requirements of waste pretreatment systems for food service establishments.

(b) Clarifying plumbing fixtures required to be connected to a grease interceptor.

(c) Requiring a solids interceptor to be installed if a garbage disposal is used when connected to a hydromechanical grease interceptor.

(d) Clarifying buildings and plumbing fixtures not required to be connected to a grease interceptor.

(e) Deleting Section 1014.1.2 maintenance of grease interceptors.

(f) Deleting Section 1014.1.3 removing vague language regarding food waste disposals and dishwashers.

(4) Amend Section 1014.3.2.1 clarifying that waste discharge may be drained through a waste pretreatment system if approved by the building official.

(5) Amend Section 1014.3.2.2 clarifying that certain plumbing fixtures should not be connected to a grease interceptor.

(6) Amend Section 1014.3.3.1 clarifying that the building official may approve an alternate design.

(7) Amend Section 1014.3.4.1 clarifying that the location of the grease interceptor must be approved by the building official.

(8) Amend Section 1014.3.4.3 clarifying that the building official may allow a gravity grease interceptor to serve more than one establishment.

(9) Amend Section 1015.1 removing the language suggesting the system is designed as a water quality strategy.

(10) Delete Section 1015.2. This section suggested that fats, oils, and grease systems must be engineered systems.

(11) Amend Section 1015.4 changing "engineered" to "designed."

(12) Amend Section 1015.5 removing the language referring to other national consensus standards for fats, oils, and grease disposal systems.

[Publications: Publications are available from the agency.]

Stat. Auth.: ORS 447.020, 455.020, 455.030 & 455.110

Stats. Implemented: ORS 447.020, 455.020, 455.030 & 455.110

Hist.: BCD 16-2012, f. 12-21-12, cert. ef. 1-1-13

Rule Caption: Clarifies continuing education requirements for licensees, corrects scrivener's errors.

Adm. Order No.: BCD 17-2012(Temp)

Filed with Sec. of State: 12-21-2012

Certified to be Effective: 12-22-12 thru 5-31-13

Notice Publication Date:

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

Stat. 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

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

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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

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

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

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

Rule Caption: Amend the HB 3462 training program and certification rules.

Adm. Order No.: BCD 18-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Amended: 918-098-1530, 918-098-1550

Rules Repealed: 918-098-1530(T), 918-098-1550(T)

Subject: These rules provide flexibility for the division to independently evaluate and certify individuals under the House Bill 3462 training and certification pilot program. Currently individuals in the program are required to obtain a particular amount of fieldwork experience prior to examination and certification. These rules recognize that in some areas of the state it has been prohibitively difficult to obtain fieldwork opportunities. The rules would allow individuals to undergo independent evaluation to become certified and take advantage of the pilot certification program. The rules also allow the division flexibility to tailor the certification to an individual's knowledge level ensuring that they can utilize the specialized certification.

Rules Coordinator: Richard J. Baumann—(503) 373-7559

918-098-1530

Training Programs

(1) Approved applicants must complete an appropriate division-approved training program and pass a division-approved examination for the desired specialized certification. Training program requirements are stated in OAR 918-098-1560 for the Specialized Solar Photo-Voltaic Inspector Certification, in 918-098-1570 for the Specialized Plumbing Inspector Certification, and in 918-098-1580 for the Specialized Electrical Inspector Certification, and in 918-098-1590 and 918-098-1591 for the Specialized Finals Inspector Certification.

(2) Approved fieldwork supervisors must be qualified by training, licensure, and experience to perform the specialized inspector certification fieldwork inspections being performed.

(3) Fieldwork Training. A specialized inspector certification applicant is eligible to perform the required fieldwork training after the applicant has begun the division training program.

(4) Fieldwork Supervision. All specialized certification fieldwork training must be supervised and verified by an inspector with a valid Oregon Inspector Certification required to conduct the inspections being performed.

(a) An applicant's fieldwork training must be documented on a division-approved form and signed by the inspector who supervised the inspections.

(b) An inspector supervising and verifying an applicant's fieldwork training may not be qualified to conduct the inspections performed based solely on a specialized inspector certification issued according to the rules.

(5) Alternate Evaluation. The division may evaluate the skill and knowledge level of a specialized inspector applicant in lieu of some or all of the fieldwork requirements.

(6) Fieldwork Training Approval. A specialized inspector certification applicant must submit proof of completed fieldwork training, or alternate evaluation and approval by the division, to the division for verification and approval, and issuance of specialized inspector certification.

(7) Examination Approval. A specialized inspector certification applicant is eligible to take a certification examination once the application has been approved by the division. A certification will not be issued until the division receives proof that the applicant has successfully completed the required training program and passed the exam.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11; BCD 25-2011(Temp), f. & cert. ef. 8-18-11 thru 10-1-11; BCD 27-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-30-12; BCD 7-2012, f. 6-27-12, cert. ef. 7-1-12; BCD 13-2012(Temp), f. & cert. ef. 11-7-12 thru 5-6-13; BCD 18-2012, f. 12-27-12, cert. ef. 1-1-13

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918-098-1550

Specialized Inspector Certification Issuance and Expiration

(1) Upon receiving proof of completion of all requirements listed in these rules, the division may issue the appropriate specialized inspector certification.

(2) The scope of a certification may be tailored to an individual's knowledge level and skill as determined by the division through an independent evaluation, but may not exceed the scope of work allowed under the rules.

(3) All specialized certifications remain valid until January 2, 2018, if the holder maintains a current Oregon Inspector Certification. Should the holder fail to maintain a valid Oregon Inspector Certification, all certifications, including any specialized certification issued under this rule, become invalid and the holder may not conduct any inspections until the Oregon Inspector Certification is again valid.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11; BCD 13-2012(Temp), f. & cert. ef. 11-7-12 thru 5-6-13; BCD 18-2012, f. 12-27-12, cert. ef. 1-1-13

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

Rule Caption: Aligns state and federal regulations concerning unimproved credit union property held for future expansion

Adm. Order No.: FCS 1-2013(Temp)

Filed with Sec. of State: 1-4-2013

Certified to be Effective: 2-1-13 thru 7-31-13

Notice Publication Date:

Rules Amended: 441-710-0270

Subject: This temporary rulemaking activity aligns Oregon rules concerning unimproved credit union property held for future expansion with federal regulations applicable to federally-chartered credit unions. In Oregon, a credit union holding unimproved property for future expansion (e.g., the construction of a new branch office) must partially use the unimproved property within three years of acquisition, unless waived by the Director of the Department of Consumer and Business Services (DCBS). In contrast, recent changes to National Credit Union Administration (NCUA) regulations (12 C.F.R. § 701.36) give federally-chartered credit unions six years to partially utilize unimproved property held for the same purpose. The practical effect of this difference between state and federal regulations is that state-chartered credit unions will be at a competitive disadvantage when acquiring unimproved property for new branches or support offices, especially in a commercial real estate market favoring purchasers. To avoid this result, this temporary rulemaking activity would simply align the span of time a state-chartered credit union can hold unimproved property for future expansion so that credit unions maintain regulatory parity in Oregon.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-710-0270

Investment in Premises

(1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed three years unless otherwise approved in writing by the Director.

(2) When a credit union acquires unimproved real property for future expansion, the credit union shall at least partially utilize the property within a reasonable period of time, not to exceed six years unless otherwise approved in writing by the Director.

(3) After real property acquired for future expansion under sections (1) or (2) of this rule has been held for one year, a board resolution with definitive plans for utilization must be available for inspection by the Director's examiners.

(4) Investments in premises will be recorded on the credit union's books in accordance with generally accepted accounting principles. The cost of land shall be carried on the books of the credit union in an account separate from the cost of improvements thereon.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.152

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0320; FCS 2-2005, f. & cert. ef. 8-25-05; FCS 1-2013(Temp), f. 1-4-13, cert. ef. 2-1-13 thru 7-31-13

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.

Adm. Order No.: ID 19-2012(Temp)

Filed with Sec. of State: 12-20-2012

Certified to be Effective: 12-20-12 thru 6-17-13

Notice Publication Date:

Rules Amended: 836-053-1404, 836-053-1405

Subject: 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—(503) 947-7484

836-053-1404

Definitions; noncontracting providers; co-morbidity disorders

(1) As used in ORS 743A.168, this rule and OAR 836-053-1405:

(a)(A) "Mental or nervous conditions" means:

(B) All disorders listed in the "Diagnostic and Statistical Manual of Mental Disorders, DSM-IV-TR, Fourth Edition" except for:

(i) Diagnostic codes 317, 318.0, 318.1, 318.2, 319; Mental Retardation;

(ii) Diagnostic codes 315.00, 315.1, 315.2, 315.9; Learning Disorders;

(iii) Diagnostic codes 302.4, 302.81, 302.89, 302.2, 302.83, 302.84, 302.82, 302.9; Paraphilias; and

(iv) Diagnostic codes V15.81 through V71.09; "V" codes. This exception does not extend to children 5 years of age or younger for diagnostic codes V61.20; Parent-Child Relational Problem through V61.21; Neglect, Physical Abuse, or Sexual Abuse of Child, and V62.82; Bereavement.

(b) "Chemical dependency" means an addictive relationship with any drug or alcohol characterized by a physical or psychological relationship, or both, that interferes on a recurring basis with an individual's social, psychological or physical adjustment to common problems.

(c) "Chemical dependency" does not mean an addiction to, or dependency on:

(A) Tobacco;

(B) Tobacco products; or

(C) Foods.

(2) A non-contracting provider must cooperate with a group health insurer's requirements for review of treatment in ORS 743A.168(10) and (11) to the same extent as a contracting provider in order to be eligible for reimbursement.

(3) The exception of a disorder in the definition of "mental or nervous conditions" or "chemical dependency" in section (1) of this rule does not include or extend to a co-morbidity disorder accompanying the excepted disorder.

Stat. Auth.: ORS 731.244 & 743.556

Stats. Implemented: ORS 743.556

Hist.: ID 13-2006, f. 7-14-06 cert. ef. 1-1-07; ID 19-2012(Temp), f. & cert. ef. 12-20-12 thru 6-17-13

836-053-1405

General Requirements for Coverage of Mental or Nervous Conditions and Chemical Dependency

(1) A group health insurance policy issued or renewed in this state shall provide coverage or reimbursement for medically necessary treatment of mental or nervous conditions and chemical dependency, including alcoholism, at the same level as, and subject to limitations no more restrictive than those imposed on coverage or reimbursement for medically necessary treatment for other medical conditions.

(2) For the purposes of ORS 743A.168, the following standards apply in determining whether coverage for expenses arising from treatment for chemical dependency, including alcoholism, and for mental or nervous con-

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ditions is provided at the same level as, and subject to limitations no more restrictive than, those imposed on coverage or reimbursement of expenses arising from treatment for other medical conditions:

(a) The co-payment, coinsurance, reimbursement, or other cost sharing, including, but not limited to, deductibles for mental or nervous conditions and chemical dependency, including alcoholism, may be no more than the co-payment or coinsurance, or other cost sharing, including, but not limited to, deductibles for medical and surgical services otherwise provided under the health insurance policy.

(b) The co-payment, coinsurance, reimbursement, or other cost sharing, including, but not limited to, deductibles for wellness and preventive services for mental or nervous conditions and chemical dependency, including alcoholism, may be no more than the co-payment or coinsurance, or other cost sharing, including, but not limited to, deductibles for wellness and preventive services otherwise provided under the health insurance policy.

(c) Annual or lifetime limits for treatment of mental or nervous conditions and chemical dependency, including alcoholism, may be no less than the annual or lifetime limits for medical and surgical services otherwise provided under the health insurance policy.

(d) The co-payment, coinsurance, reimbursement, or other cost sharing, including, but not limited to, deductibles for prescription drugs intended to treat mental or nervous conditions and chemical dependency, including alcoholism, may be no more than the co-payment or coinsurance, or other cost sharing for prescription drugs prescribed for other medical services provided under the health insurance policy.

(e) Classification of prescription drugs into open, closed, or tiered drug benefit formularies, for drugs intended to treat mental or nervous conditions and chemical dependency, including alcoholism, must be by the same process as drug selection for formulary status applied for drugs intended to treat other medical conditions, regardless of whether such drugs are intended to treat mental or nervous conditions, chemical dependency, including alcoholism, or other medical conditions.

(3) A group health insurance policy issued or renewed in this state must contain a single definition of medical necessity that applies uniformly to all medical, mental or nervous conditions, and chemical dependency, including alcoholism.

(4) A group health insurer that issues or renews a group health insurance policy in this state shall have policies and procedures in place to ensure uniform application of the policy's definition of medical necessity to all medical, mental or nervous conditions, and chemical dependency, including alcoholism.

(5) Coverage for expenses arising from treatment for mental or nervous conditions and chemical dependency, including alcoholism, may be managed through common methods designed to limit eligible expenses to treatment that is medically necessary only if similar limitations or requirements are imposed on coverage for expenses arising from other medical condition. Common methods include, but are not limited to, selectively contracted panels, health policy benefit differential designs, preadmission screening, prior authorization of services, case management, utilization review, or other mechanisms designed to limit eligible expenses to treatment that is medically necessary.

(6) Coverage of mental or nervous conditions and chemical dependency, including alcoholism, may be limited for in-home services.

(7) Nothing in this rule prevents a group health insurance policy from providing coverage for conditions or disorder excepted under the definition of "mental or nervous condition" in OAR 836-053-1400.

(8) The Director shall review OAR 836-053-1400 and this rule and any other materials within two years of the rules' effective date to determine whether the requirements set forth in the rules are uniformly applied to all medical, mental or nervous conditions, and chemical dependency, including alcoholism.

Stat. Auth.: ORS 731.244 & 743A.168

Stats. Implemented: ORS 743A.168

Hist.: ID 13-2006, f. 7-14-06 cert. ef. 1-1-07; ID 19-2012(Temp), f. & cert. ef. 12-20-12 thru 6-17-13

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Department of Corrections Chapter 291

Rule Caption: DMV/DOC Program for Providing Offenders Driver License or Identification Card before Release.

Adm. Order No.: DOC 12-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 10-1-2012

Rules Adopted: 291-207-0100

Subject: ORS 802.087 requires the Department of Transportation (DMV) and the Department of Corrections (DOC) to work together to assist inmates in obtaining a driver license or identification (ID) card prior to an inmate's release. The aim of this program is for an inmate to have state-issued photo ID at the time of release to remove a significant barrier to successful reentry into local communities. DMV and DOC completed a feasibility study looking at various options for issuance. The study evaluated the costs of the options and security concerns both for DMV and DOC. It was determined that the most efficient and effective method is to issue a driver license (replacement or renewal) or an ID card using the inmate's last photo on file with DMV. DMV has a similar program for issuing a driver license or ID card to a person who is out-of-state, out-of-country, or medically unable to go to a DMV field office. Through interagency agreement and this rulemaking, DMV and DOC have established a program for issuing a driver license or ID card to an inmate prior release from custody.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-207-0100

DMV/DOC Program for an Inmate Obtaining a Driver License or Identification Card Prior to Release

(1) The Oregon Department of Transportation, Driver and Motor Vehicle Services Division (DMV) and the Oregon Department of Corrections (DOC) have established, through interagency agreement, the following program to help an inmate obtain a driver license or identification card prior to his or her release from custody.

(2) For purposes of this rule, the term "inmate" means any person under the supervision of the DOC and who is not on parole, probation or post-prison supervision status.

(3) Notwithstanding OAR 735-062-0016, DMV may issue a renewal or replacement driver license or an identification card containing the last photograph of the inmate on file with DMV. The photograph on file must not be older than nine years and two months. DMV will issue as follows:

(a) A replacement driver license to an inmate whose driving privileges are valid or are reinstated at the time of issuance;

(b) A renewal driver license to an inmate whose driving privileges are valid or are reinstated at the time of issuance and whose driver license is within 14 months of expiring or has been expired for less than one year; or

(c) An original, renewal or replacement identification card to an inmate:

(A) Who is not eligible for driving privileges under sections (4), (7) or (8) of this rule;

(B) Whose previous driver license has been expired for more than one year;

(C) Whose driving privileges are suspended, revoked or cancelled; or

(D) Who has never been issued or does not currently qualify for a driver license under ORS 807.040.

(4) DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) and the Commercial Driver License Information System (CDLIS), to determine if the inmate's driving privileges are suspended, revoked, cancelled or otherwise not valid in any other jurisdiction. An inmate whose driving privileges are not valid in any other jurisdiction is not eligible to replace or renew driving privileges in Oregon.

(5) DOC may complete an application packet for each eligible inmate within no more than 90 days prior to the inmate's date of release from DOC custody. The application packet must include:

(a) A completed Valid with Previous Photo DL/ID Card (VWPP) Application, DMV Form 735-171C, signed by the inmate. The application must include the inmate's Social Security Number (SSN). DMV must verify, or have previously verified, the SSN with the Social Security Administration, as required by OAR 735-062-0005;

(b) Proof of legal name as required by OAR 735-062-0014;

(c) Proof of legal presence as required by OAR 735-062-0015 and the interagency agreement;

(d) Proof of date of birth and identity as required by OAR 735-062-0020; and

(e) A photo of the inmate, which contains the state identification (SID) number.

(6) On the application DOC must certify:

(a) That the copies of the documents submitted to meet the requirements of section (5) of this rule are true copies of the original documents

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and that the documents pertain to the inmate for whom DOC is submitting the VWPP application; and

(b) That the inmate will be living in Oregon when released and the address provided on the application meets the requirements for residence or mailing address as outlined in the interagency agreement.

(7) An inmate is not eligible for driving privileges, under ORS 807.060(4) or (5), and DMV will not replace or renew a driver license, if on the VWPP Application the inmate:

(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?";

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?"; or

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?"

(8) An inmate who is eligible to renew his or her driving privileges, and is or will be 50 years of age or older at the time his or her driving privileges expire, must meet the requirements of OAR 735-062-0060. As the inmate will not be at a DMV field office for the vision screening, DOC must provide a vision examination form, Certificate of Vision, DMV Form 735-24, completed by a licensed ophthalmologist or optometrist with the VWPP application. If no Certificate of Vision form is included or the inmate does not meet the vision standards set forth in OAR 735-062-0050, the inmate is only eligible for an identification card.

(9) When an inmate's driving privileges are valid (not suspended, revoked, cancelled or expired more than one year) the inmate must surrender driving privileges in order to be eligible for an identification card. A completed Surrender of Driving Privilege(s), DMV Form 735-7206, must be included with the VWPP application of any inmate who is surrendering driving privileges. A person who surrenders driving privileges must pass all tests and pay all fees associated with an original driver license to regain driving privileges at a later date.

(10) DOC will pay the fee listed in ORS 807.370 or 807.410, as appropriate, for each inmate issued a driver license or identification card in a manner outlined in the interagency agreement.

(11) When an inmate's driver license or identification card issued pursuant to this rule is renewed or replaced, he or she must provide proof of citizenship or permanent legal residency as required by OAR 735-062-0015, unless DMV records show the person has previously provided such proof.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075 & 802.087
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 802.087
Hist.: DOC 12-2012, f. 12-27-12, cert. ef. 1-1-13

Rule Caption: Earned Time Credit for Inmates.

Adm. Order No.: DOC 13-2012(Temp)

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 12-28-12 thru 6-25-13

Notice Publication Date:

Rules Adopted: 291-097-0220, 291-097-0225, 291-097-0230, 291-097-0235, 291-097-0245

Rules Suspended: 291-097-0023, 291-097-0031

Rules Ren. & Amend: 291-097-0005 to 291-097-0200, 291-097-0010 to 291-097-0210, 291-097-0015 to 291-097-0215, 291-097-0020 to 291-097-0240, 291-097-0025 to 291-097-0250, 291-097-0030 to 291-097-0255, 291-097-0040 to 291-097-0260, 291-097-0050 to 291-097-0265, 291-097-0060 to 291-097-0270, 291-097-0070 to 291-097-0275, 291-097-0080 to 291-097-0280, 291-097-0090 to 291-097-0285, 291-097-0100 to 291-097-0290, 291-097-0120 to 291-097-0295, 291-097-0130 to 291-097-0300, 291-097-0140 to 291-097-0305

Subject: These temporary rule amendments are needed to further clarify changes made to ORS 421.121 with regard to 30% earned time. This statute was amended to further restrict inmates from 30% earned time based on the crime of conviction as well as prior criminal history. Furthermore, it provides a sunset to 30% earned time for crimes committed on or before 6/30/2013.

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-097-0023

Court Notification of Inmate Eligibility for Increase in Earned Time Credits

Pursuant to Oregon Laws 2009, Chapter 660 § 18 (House Bill 3508), for inmates with sentencing guidelines sentences imposed prior to July 1, 2009 for crimes committed on or after November 1, 1989:

(1) Upon identifying an inmate who is eligible for earned time credits that exceed 20 percent, the Department will send written notification to the inmate, as well as the presiding judge, trial court administrator, and the district attorney of the county in which the inmate was sentenced, of the particular sentences for which the Department has determined that the inmate is eligible for an increase in earned time credits. The Department will also provide a supplemental judgment to the presiding judge and trial court administrator of the county in which the inmate was sentenced that lists the particular sentences for which the Department has determined that the inmate is eligible for an increase in earned time credits.

(2) The Department will not send a written notification or supplemental judgment for any sentence in which an inmate has completed his/her prison term prior to or on August 31, 2009.

(3) The Department will not send a written notification or supplemental judgment for any inmate on or after February 17, 2010.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2010 Ch 2 (SB1007)
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2010 Ch 2 (SB1007)
Hist.: DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; Suspended by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0031

Restoration of Earned Time Credits from Special Case Factor 25 Retractions

(1) Special Case Factor 25: Inmates identified as both highly criminal and highly involved with drugs or alcohol through intake screening or subsequent assessment were previously required to participate and complete a residential alcohol and drug program if available prior to the inmate's release or have their program earned time retracted for non-compliance.

(2) For only those inmates currently incarcerated and serving a sentence for a crime committed on or after November 1, 1989, and who were previously identified as needing residential alcohol and drug treatment (SCF 25), OISC shall restore all earned time credits previously retracted for SCF 25 non-compliance. Time credits restored shall not exceed those previously retracted.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Hist.: DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11; Suspended by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0200

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 137.635, 144.108, 144.110, 161.610, 179.040, 421.120, 421.121, 421.122, 423.020, 423.030 and 423.075.

(2) The purpose of this rule is to establish procedures for calculating, applying, retracting, and restoring earned time, statutory good time and extra good time credits, and for recommending modifications of parole release dates to the Board of Parole and Post-Prison Supervision, for inmates sentenced for crimes committed on or after November 1, 1989 (sentencing guidelines), and for inmates sentenced for crimes committed prior to November 1, 1989 (matrix sentences).

(3) Policy:

(a) It is the policy of the Department of Corrections that inmates serving sentences for crimes committed on or after November 1, 1989 (sentencing guidelines), may be considered for a reduction in their term of incarceration pursuant to ORS 421.121, as set forth in these rules.

(A) Inmates sentenced under sentencing guidelines may be eligible to earn sentence reduction credits (earned time credits) up to a maximum of 20 percent or 30 percent of each sentencing guidelines sentence, pursuant to ORS 421.121, as set forth in these rules.

(B) Earned time credits are designed to provide incentive for appropriate institutional behavior, program participation, and for certain inmates, obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

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(b) It is the policy of the Department of Corrections that inmates serving sentences for crimes committed prior to November 1, 1989 (pre-sentencing guidelines sentences), may be eligible for prison term reduction credits (statutory good time and extra good time credits) pursuant to ORS 421.120, as set forth in these rules.

(c) It is the policy of the Department of Corrections that inmates sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines sentences), may be eligible to receive a recommendation from the Department to the Board of Parole and Post-Prison Supervision that the inmate receive prison term reduction credits for an earlier date, as set forth in these rules.

(d) It is the policy of the Department of Corrections to develop case plans on all inmates assigned to a Department of Corrections facility.

(e) It is the policy of the Department of Corrections to not calculate earned time for boarders from another state or those inmates serving only pre-sentencing guidelines sentences or sentences of death, life without the possibility of parole or life with the possibility of parole.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; Renumbered from 291-097-0005 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0210

Definitions

(1) Case Plan: A dynamic document created by Department of Corrections counselors collaboratively with an inmate that specifically identifies the inmate's evidence-based assessed risk and needs, accompanied by risk reduction strategies and plans of action, with timelines.

(2) Certificate or Degree from a Post-Secondary Education Institution: A certificate or degree awarded by a post-secondary education institution as defined in ORS 337.511 for satisfactory completion of a course of study, which has been approved by the State Board of Education.

(3) Earned Time Credits: Sentence reduction credits (days), up to 30 percent of the sentence imposed, that can be earned by an inmate sentenced under sentencing guidelines, pursuant to ORS 421.121, and these rules.

(4) Earned Time Release Date: The release date that has been achieved by an inmate calculated by subtracting the earned time credits accrued from the maximum date.

(5) Extra Good Time Credits: Sentence reduction credits (days) that can be earned by an inmate sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines), for satisfactory work assignment or participation in an educational program, pursuant to ORS 421.120(1)(c), (d) and (e) and 421.122, and these rules. Days earned reduce the statutory good time date. Methods of computation are delineated in OAR 291-097-0070.

(6) Final Review Period: An increment of at least four months prior to an inmate's projected release date.

(7) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(8) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, or an Assistant Director and has responsibility for the delivery of program services or coordination of program operations.

(9) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(10) Judgment: Document issued by the court that commits an inmate to the legal and physical custody of the Department of Corrections, and reflects the inmate's term of incarceration, term of post-prison supervision, and court-ordered supervision conditions, if any.

(11) Multi-disciplinary Team (MDT): Stakeholders from different divisions within a functional unit who come together to provide comprehensive assessment, consultation and perspectives concerning an inmate's incarceration and successful reentry to the community.

(12) Offender: Any person under the supervision of the Department of Corrections, local supervisory authority or community corrections who is on probation, parole or post-prison supervision status.

(13) Offender Information & Sentence Computation Unit (OISC): The functional unit charged to administrate applicable statutes pertaining to sentencing; develop, implement and revise applicable processes for inmate

and offender sentence computation; respond to public information requests with regard to inmates and offenders; certify an inmate's release date; and provide supportive services to Department facilities with regard to inmate sentencing.

(14) Parole Release Date: The date on which an inmate is ordered to be released from an indeterminate prison sentence(s) to parole by the Board of Parole and Post-Prison Supervision. Parole release may be to the community, detainer or to another Department of Corrections sentence.

(15) Post-Secondary Education Institution: An education institution as defined in ORS 337.511.

(16) Pre-Sentence: That period of time a defendant spends in physical custody or incarceration from the point of arrest to the date of delivery to the Department to serve that sentence.

(17) Prison Term:

(a) Sentencing Guidelines Sentences: The length of incarceration time within a Department of Corrections facility as established by the court in the judgment for each crime of conviction.

(b) Pre-Sentencing Guidelines Sentences: The length of required incarceration time within a Department of Corrections facility as established by the order of the Board of Parole and Post-Prison Supervision setting of a parole release date.

(18) Projected Release Date: The date upon which an inmate is anticipated to complete service of the prison term.

(19) Restoration of Earned Time, Statutory Good Time, Extra Good Time Credits: Where previously retracted earned time, statutory good time, extra good time and previously forfeited statutory good time and extra good time for parole violators are granted and applied back to the inmate's sentence.

(20) Retraction: Where previously granted earned time, statutory good time or extra good time credits are forfeited by an inmate as a result of a significant negative action on the part of the inmate, in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105), or forfeiture of program earned time credits, advanced at the beginning of the final review period, for failure to comply with the case plan during the final review period.

(21) Review Period: A six-month increment, beginning with an inmate's admission date, used to determine an inmate's compliance with institution behavior and his/her case plan.

(22) Short-Term Transitional/Non-Prison Leave: A leave for a period not to exceed 90 days preceding an established release date that allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community. Short-term transitional leave/non-prison leave is granted in accordance with ORS 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves, and Supervised Trips (OAR 291-063).

(23) Statutory Good Time Credits: Prison term reduction credits (days) applicable to sentences for crimes committed prior to November 1, 1989 (matrix sentences) consisting of a reduction of one day for every two days served, pursuant to ORS 421.120(1)(a) and (b), and these rules. The application of statutory good time days establishes the initial statutory good time date and is re-calculated upon parole revocation based on the length of the remaining sentence.

(24) Supplemental Judgment: The form of judgment prepared by and transmitted to a sentencing court pursuant to Oregon Laws 2009, Chapter 660, §18 (House Bill 3508) which authorizes the Department to consider the inmate for a reduction in the term of incarceration under ORS 421.121 that may not exceed 30 percent of the total term of incarceration in a DOC facility.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11; Renumbered from 291-097-0010 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0215

Earned Time Credits for Crimes Committed on or after November 1, 1989 through June 30, 2009 and Sentenced Prior to July 1, 2009

(1) Pursuant to ORS 421.121, inmates with eligible crimes committed on or after November 1, 1989 through June 30, 2009 and sentenced prior to July 1, 2009, may earn sentence reduction credits up to 20 percent of the total sentencing guidelines prison term imposed for acceptable participation

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in case plan requirements and for maintaining appropriate institution conduct, except inmates:

- (a) Serving a sentence subject to ORS 137.635;
- (b) Serving presumptive sentences or required incarceration terms under ORS 161.737;
- (c) Serving statutory minimum sentences under ORS 137.700 or 137.707;
- (d) Serving a presumptive sentence under ORS 137.719;
- (e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;
- (f) Serving time as a sanction for violation of conditions of post prison supervision; or
- (g) Subject to any other Oregon statutes restricting earned time credits.

(2) Pursuant to ORS 421.121, inmates sentenced under the sentencing guidelines prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, may earn sentence reduction credits up to 30 percent of the total sentencing guidelines prison term imposed for acceptable participation in case plan requirements and for maintaining appropriate institution conduct, except inmates described in 291-097-0015(1)(a)-(g) or inmates:

- (a) Whose prison term reached its earned time release date prior to or on August 31, 2009;
- (b) Whose prison term reached its earned time release date prior to the date the sentencing court enters a supplemental judgment;
- (c) Whose supplemental judgment approving a reduction in the term of incarceration under ORS 421.121 that may not exceed 30 percent is:
 - (A) Dated after February 17, 2010 at 10 a.m.; or
 - (B) Dated on or after February 17, 2010, and the court made the order on the record in open court after February 17, 2010, at 10 a.m.; or
- (d) Serving a sentence for the following crimes:
 - (A) Rape in the Third Degree under ORS 163.355;
 - (B) Sodomy in the Third Degree under ORS 163.385;
 - (C) Sexual Abuse in the Second Degree under ORS 163.425;
 - (D) Criminally Negligent Homicide under ORS 163.145;
 - (E) Assault in the Third Degree under ORS 163.165;
 - (F) Assault in the Fourth Degree under ORS 163.160(3);
 - (G) A crime listed in ORS 137.700; or
 - (H) An attempt to commit a crime described in this subsection.

(3) Pursuant to ORS 475.930(2) and as outlined in OAR 291-097-0235, for eligible crimes committed on or after January 1, 2009, the maximum amount of earned time credits may not exceed 20 percent of the total term of incarceration if serving a sentence imposed under 164.061, 475.907, 475.924 or 475.925.

(4) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: half credit for compliance with the Case Plan and half credit for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 3-1998(Temp), f. & cert. ef. 2-20-98 thru 8-17-98; DOC 19-1998, f. & cert. ef. 8-14-98; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; Renumbered from 291-097-0015 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0220

Earned Time Credits for Crimes Committed on or after November 1, 1989 through February 16, 2010 and Sentenced on or after July 1, 2009

(1) Pursuant to ORS 421.121, inmates with eligible crimes committed on or after November 1, 1989 through February 16, 2010 and sentenced on or after July 1, 2009, may earn sentence reduction credits up to 30 percent of the total sentencing guidelines prison term imposed for acceptable participation in Case Plan requirements and for maintaining appropriate institution conduct, except for inmates:

- (a) Serving a sentence subject to ORS 137.635;
- (b) Serving presumptive sentences or required incarceration terms under ORS 161.737;
- (c) Serving statutory minimum sentences under ORS 137.700 or 137.707;

- (d) Serving a presumptive sentence under ORS 137.719;
- (e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;
- (f) Serving time as a sanction for violation of conditions of post prison supervision; or
- (g) Subject to any other Oregon statutes restricting earned time credits.

(2) If otherwise eligible for earned time, the maximum amount of earned time credits may not exceed 20 percent of the total term of incarceration if serving a sentence for the following crimes:

- (a) Rape in the Third Degree under ORS 163.355;
- (b) Sodomy in the Third Degree under ORS 163.385;
- (c) Sexual Abuse in the Second Degree under ORS 163.425;
- (d) Criminally Negligent Homicide under ORS 163.145;
- (e) Assault in the Third Degree under ORS 163.165;
- (f) Assault in the Fourth Degree under ORS 163.160(3);
- (g) A crime listed in ORS 137.700; or
- (h) An attempt to commit a crime described in this subsection.

(3) Pursuant to ORS 475.930(2) and as outlined in OAR 291-097-0235, for eligible crimes committed on or after January 1, 2009, the maximum amount of earned time credits may not exceed 20 percent of the total term of incarceration if serving a sentence imposed under ORS 164.061, 475.907, 475.924 or 475.925.

(4) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: half credit for compliance with the case plan and half credit for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - Implemented, 423.020, 423.030 & 423.075
Stats. Impl: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Hist.: DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0225

Earned Time Credits for Crimes Committed on or after February 17, 2010 through June 30, 2011

(1) Pursuant to ORS 421.121, inmates with eligible crimes committed on or after February 17, 2010 through June 30, 2011, may earn sentence reduction credits up to 20 percent of the total sentencing guidelines prison term imposed for acceptable participation in case plan requirements and for maintaining appropriate institution conduct, except inmates:

- (a) Serving a sentence subject to ORS 137.635;
- (b) Serving presumptive sentences or required incarceration terms under ORS 161.737;
- (c) Serving statutory minimum sentences under ORS 137.700 or 137.707;
- (d) Serving a presumptive sentence under ORS 137.719;
- (e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;
- (f) Serving time as a sanction for violation of conditions of post prison supervision;
- (g) Serving a mandatory minimum incarceration term of 90 days under ORS 813.011(3) for Felony Driving under the Influence of Intoxicants under 813.010(5)(a) and 813.011 committed on or after December 2, 2010; or
- (h) Subject to any other Oregon statutes restricting earned time credits.

(2) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: half credit for compliance with the Case Plan and half credit for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Hist.: DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0230

Earned Time Credits for Crimes Committed on or after July 1, 2011 and through June 30, 2013

(1) Pursuant to ORS 421.121, inmates with eligible crimes committed on or after July 1, 2011 and through June 30, 2013, may earn sentence reduction credits up to 30 percent of the total sentencing guidelines prison term imposed for acceptable participation in case plan requirements and for maintaining appropriate institution conduct, except for inmates:

- (a) Serving a sentence subject to ORS 137.635;

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(b) Serving presumptive sentences or required incarceration terms under ORS 161.737;

(c) Serving statutory minimum sentences under ORS 137.700 or 137.707;

(d) Serving a presumptive sentence under ORS 137.719;

(e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;

(f) Serving time as a sanction for violation of conditions of post prison supervision;

(g) Serving a mandatory minimum incarceration term of 90 days under ORS 813.011(3) for Felony Driving under the Influence of Intoxicants under 813.010(5)(a) and 813.011 committed on or after December 2, 2010; or

(h) Subject to any other Oregon statutes restricting earned time credits.

(2) If otherwise eligible for earned time, the maximum amount of earned time credits may not exceed 20 percent of the total term of incarceration for crimes in which:

(a) The judgment states earned time may not exceed 20 percent;

(b) The inmate is convicted of an offense that was committed less than five years after the inmate completed serving a sentence for:

(A) A person felony; or

(B) A crime described in paragraph (e) of this subsection;

(c) The inmate is convicted of a person felony;

(d) The inmate is convicted of an offense involving the use or threatened use of a firearm; or

(e) The inmate is convicted of any of the following crimes:

(A) Subjecting another person to involuntary servitude in the second degree under ORS 163.263;

(B) Subjecting another person to involuntary servitude in the first degree under ORS 163.264;

(C) Trafficking in persons under ORS 163.266;

(D) Coercion under ORS 163.275;

(E) Online sexual corruption of a child in the second degree under ORS 163.432;

(F) Online sexual corruption of a child in the first degree under ORS 163.433;

(G) Aggravated theft in the first degree under ORS 164.057, if:

(i) The victim of the theft was 65 years of age or older at the time of the commission of the offense; and

(ii) The value of the property stolen from the victim described in subparagraph (i) of this subparagraph, in a single or aggregate transaction, is \$10,000 or more;

(H) Treason under ORS 166.005;

(I) Abuse of a corpse in the second degree under ORS 166.085;

(J) Racketeering activities under ORS 166.720;

(K) Luring a minor under ORS 167.057;

(L) Assaulting a law enforcement animal under ORS 167.339;

(M) A sex crime as defined in ORS 181.594;

(N) Causing another person to ingest a controlled substance under ORS 475.908;

(O) Applying a controlled substance to the body of another person under ORS 475.910;

(P) Driving while under the influence of intoxicants under ORS 813.010 (5); or

(Q) An attempt, conspiracy or solicitation to commit an offense described in this paragraph or in paragraph (c) or (d) of this subsection.

(3) As used in this section:

(a) "Completed serving a sentence" includes the completion of any term of probation, parole or post-prison supervision.

(b) "Person felony" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(4) Pursuant to ORS 475.930(2) and as outlined in OAR 291-097-0235, for eligible crimes committed on or after January 1, 2009, the maximum amount of earned time credits may not exceed 20 percent of the total term of incarceration if serving a sentence imposed under ORS 164.061, 475.907, 475.924 or 475.925.

(5) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: half credit for compliance with the case plan and half credit for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0235

Earned Time Credits for Crimes Impacted by ORS 475.930(2)

(1) Pursuant to ORS 475.930(2), for eligible crimes committed on or after January 1, 2009, the maximum amount of earned time credits may not exceed 20 percent of the total term of incarceration if serving a sentence imposed under ORS 164.061, 475.907, 475.924 or 475.925 for any of the following crimes:

(a) Aggravated Theft I under ORS 164.057 if the victim is at least 65 years of age (per ORS 164.0561);

(b) Unlawful Delivery or Manufacture of a Schedule I Controlled Substance under ORS 475.840(1)(a) or 475.752(1)(a) if the controlled substance and quantities are as follows:

(A) Heroin of 50 grams or more; or

(B) 3,4-Methylenedioxymethamphetamine (MDMA/Ecstasy) of 50 grams or more or 250 or more pills, tablets, or capsules.

(c) Unlawful Delivery or Manufacture of a Schedule II Controlled Substance under ORS 475.840(1)(b) or 475.752(1)(b) if the controlled substance and quantities are as follows:

(A) Cocaine of 100 grams or more; or

(B) Methamphetamine of 100 grams or more.

(d) Unlawful Delivery or Manufacture of a Controlled Substance within 1000 Feet of a School under ORS 475.904 if the controlled substance and quantities are as follows:

(A) Heroin of 50 grams or more;

(B) 3,4-Methylenedioxymethamphetamine (MDMA/Ecstasy) of 50 grams or more or 250 or more pills, tablets, or capsules;

(C) Cocaine of 100 grams or more; or

(D) Methamphetamine of 100 grams or more;

(e) Unlawful Delivery of a Schedule I or II Controlled Substance to a Minor under ORS 475.906(1) if the controlled substance is Heroin, 3,4-Methylenedioxymethamphetamine (MDMA/Ecstasy), Cocaine or Methamphetamine;

(f) Unlawful Delivery of Cocaine to a Minor under ORS 475.880(3);

(g) Unlawful Delivery of Methamphetamine to a Minor under ORS 475.890(3);

(h) Unlawful Manufacture of Heroin under ORS 475.846 if 50 grams or more;

(i) Unlawful Manufacture of Heroin within 1000 Feet of a School under ORS 475.848 if 50 grams or more;

(j) Unlawful Delivery of Heroin under ORS 475.850 if 50 grams or more;

(k) Unlawful Delivery of Heroin within 1000 Feet of a School under ORS 475.852 if 50 grams or more;

(l) Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (MDMA/Ecstasy) under ORS 475.866 if 50 grams or more or 250 pills, tablets or capsules;

(m) Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (MDMA/Ecstasy) within 1000 Feet of a School under ORS 475.868 if 50 grams or more or 250 pills, tablets or capsules;

(n) Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (MDMA/Ecstasy) under ORS 475.870 if 50 grams or more or 250 pills, tablets or capsules;

(o) Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (MDMA/Ecstasy) within 1000 Feet of a School under ORS 475.872 if 50 grams or more or 250 pills, tablets or capsules;

(p) Unlawful Manufacture of Cocaine under ORS 475.876 if 100 grams or more;

(q) Unlawful Manufacture of Cocaine within 1000 Feet of a School under ORS 475.878 if 100 grams or more;

(r) Unlawful Delivery of Cocaine under ORS 475.880(2) if 100 grams or more;

(s) Unlawful Delivery of Cocaine within 1000 Feet of a School under ORS 475.882 if 100 grams or more;

(t) Unlawful Manufacture of Methamphetamine under ORS 475.886 if 100 grams or more;

(u) Unlawful Manufacture of Methamphetamine within 1000 Feet of a School under ORS 475.888 if 100 grams or more;

(v) Unlawful Delivery of Methamphetamine under ORS 475.890(2) if 100 grams or more;

(w) Unlawful Delivery of Methamphetamine within 1000 Feet of a School under ORS 475.892 if 100 grams or more

(2) For crimes described in subsections (e)-(g) above, section (1) does not apply to a person who is less than three years older than the person under 18 years of age to whom the controlled substance was delivered, unless the person has a previous conviction for Delivery of Cocaine,

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Methamphetamine, Heroin or 3,4-Methylenedioxymethamphetamine (MDMA/Ecstasy) to a person under 18 years of age.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0240

Calculation and Application of Earned Time Credits

(1) Case plan compliance is defined as acceptable participation in work and self-improvement programs required within the case plan. The required activities within the case plan are determined by ongoing assessment and evaluation, which begins at the inception of the inmate prison term.

(a) An inmate will be considered to be compliant if he/she was not failed from the required program activity(ies) during the review period under consideration, nor did the inmate refuse to participate in required programming during the review period under consideration.

(b) As needed, the counselor or multi-disciplinary team will evaluate an inmate's compliance with the required program activity(ies) as outlined in the department policy on Correctional Case Management (#90.1.3).

(c) If the inmate's counselor or multi disciplinary team determines the inmate is non-compliant with the case plan, he/she will approve a program failure for documentation in the inmate's computer record.

(2) Institution conduct compliance is defined as maintaining Level I or Level II major misconduct-free behavior during the review period. Major misconduct is documented in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Any finding of a Level I or Level II major misconduct violation during the review period will be considered as noncompliance. The date of the adjudication, not of the incident, will be used for the date of the violation.

(3) At the end of each review period, the OISC staff will review the inmate's computer records for information reflecting the inmate's compliance with the current case plan and institution conduct. Based on the information contained in the inmate's computer records, the OISC staff will apply either:

(a) An effective 0, 10, or 20 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for sentences eligible for a maximum of 20% earned time, or

(b) An effective 0, 15, or 30 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for sentences eligible for a maximum of 30% earned time.

(4) For inmates housed in non-Oregon Department of Corrections facilities, the ODOC staff, as designated by the Offender Management and Rehabilitation Division will review the inmate's institution file including any reports received from the housing facility to determine compliance with the current case plan and institution conduct.

(a) Case plan compliance will be determined by the inmate's reported compliance with requirements as determined by Department staff or the housing facility staff.

(b) Due process comparable to the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) shall be applied. Institution conduct non-compliance will be determined by substituting the rule(s) of prohibited conduct, for the rule(s) violated at the housing facility, with the most equivalent charges as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The functional unit manager or designee may impose sanctions, in addition to that imposed by the housing facility, related to sentence reductions.

(5) For each review period under consideration for inmates housed in Oregon Department of Corrections facilities, the OISC staff will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied to the inmate's sentence on the Earned Time Computation Form (CD 1154D).

(6) For inmates housed in non-Oregon Department of Corrections facilities, the ODOC staff, as designated by the Offender Management and Rehabilitation Division, will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied on the Earned Time Computation Form (CD 1154D).

(7) Upon the application of earned time credits toward an inmate's sentence for the review period under consideration, the OISC Unit will recompute the inmate's new earned time release date, file the Earned Time Computation Form (CD 1154D) in the institution file, and provide a copy of the determination to the inmate.

(8) Determination of Earned Time Credits During Presentence Incarceration: For crimes committed on or after November 1, 1989, earned time credits will be computed for the period in which an inmate is in custody in a non-Department of Corrections facility prior to sentencing and admission to the Department of Corrections, based solely on the inmate's conduct in the facility.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For sentences eligible for a maximum of 20% earned time credits, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(B) For sentences eligible for a maximum of 30% earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(b) Any verified major misconduct equivalent to a Level I or Level II major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during any of the presentence incarceration credits applied to the sentence will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the total length of presentence incarceration. The date of the adjudication, not of the incident, will be used for the date of the violation.

(9) If the inmate escapes, the OISC staff will close out the current earned time review period, changing the current review period to end the day after escape. An inmate that is returned from an escape to a Department of Corrections facility will have the starting date of the new earned time credit cycle begin with the date of return. The escape will constitute a program failure for the period up to the escape.

(10) Alternative Incarceration Program:

(a) If, during any review period, the inmate is assigned to an Alternative Incarceration Program and for sufficient justification as determined by the functional unit manager's committee to be unsuccessful, the inmate will be considered a program failure as provided by the Department's rule on Alternative Incarceration Programs (OAR 291-062).

(b) If the inmate fails to successfully complete the short-term transitional leave (non-prison leave) granted through the Alternative Incarceration Program, the inmate will be considered a program failure and non-compliant with institution conduct for the length of the inmate's short-term transitional leave. The failure to successfully complete the short-term transitional leave (non-prison leave) will not result in a retraction of the portion of earned time credits for program compliance advanced at the beginning of the final review period as outlined in OAR 291-097-0025(2).

(11) Determination of earned time credits for inmates on non-AIP transitional leave:

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration on short-term transitional leave (OAR 291-063).

(A) Institution conduct and case plan compliance will be assumed while an inmate is released on short-term transitional leave.

(B) Earned time credits for the period on transitional leave will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto short-term transitional leave.

(b) A revocation of an inmate's short-term transitional leave is deemed non-compliance with the inmate's case plan and non-compliance with institution conduct. Upon revocation of short-term transitional leave, an inmate will receive an effective 0 percent reduction for case plan compliance and 0 percent reduction toward the sentencing guidelines sentence for institutional conduct proportional for the length of the inmate's short-term transitional leave.

(c) The failure to successfully complete the short-term transitional leave will not result in a retraction of the portion of earned time credits for program compliance advanced at the beginning of the final review period as outlined in OAR 291-097-0025(2).

(12) If all of an inmate's sentence(s) is vacated, reversed and remanded for new trial, or conviction affirmed and remanded for resentencing, the OISC staff will close out the current earned time review period to end the day after release to the sentencing court. An inmate that is returned on a resentence will start a new review period, effective the date of return to a Department of Corrections facility. The new earned time credit cycle date will be reflected on the inmate's facesheet.

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(13) Determination of earned time credits for inmates serving the remainder of a sentencing guidelines sentence on conditional release (Second Look):

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration in the community on conditional release, based solely on the inmate's compliance with his/her conditional release plan.

(b) Earned time credits for the period on conditional release (Second Look) will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto conditional release (Second Look).

(c) Conduct compliance will be assumed unless the inmate's conditional release is revoked by the sentencing court.

(d) Any revocation of an inmate's conditional release prior to the inmate reaching his/her projected earned time date will result in an effective 0 percent reduction in the sentencing guidelines prison term for the length of the inmate's sentence being served in the community on conditional release.

(14) If an inmate is incarcerated in an Oregon county jail prior to the inmate's return to a Department of Corrections facility following an escape, revocation of second look conditional release, or violation of non-AIP or AIP short-term transitional leave, earned time credits will be computed for the period in which the inmate is in custody based solely on the inmate's conduct in the county jail.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For sentences eligible for a maximum of 20% earned time credits, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(B) For sentences eligible for a maximum of 30% earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(b) Any verified major misconduct equivalent to a Level I or Level II major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during the incarceration will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration. The date of the adjudication, not of the incident, will be used for the date of the violation.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11; Renumbered from 291-097-0020 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0245

Earned Time Credit for Education or Apprenticeship Certifications

(1) Pursuant to ORS 421.121 and this rule, consideration for earned time credit may also be given for an inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010, on or after January 1, 2010.

(2) Determination of Earned Time Credits for Education or Apprenticeship Certifications:

(a) Inmates who obtain a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 prior to January 1, 2010 are not eligible to be considered for earned time credits for education or apprenticeship certifications.

(b) Subject to OAR 291-097-0025 (Retraction of Earned Time Credits), 291-097-0030 (Restoration of Earned Time Credits), and 291-097-0040 (Determination of Earned Time Credits During Final Review Period for Sentencing Guidelines Sentences), at the time an inmate obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1,

2010, the OISC Staff will apply the amount of earned time credits, not to exceed 60 days, to the amount of earned time credits actually received by the inmate for either maintaining appropriate institution conduct or compliance with his/her case plan, in order to bring the inmate's total earned time credits up to the amount of earned time credits the inmate would have received if the inmate maintained appropriate institution conduct and was in full compliance with his/her case plan as of the date the inmate obtained the education or apprenticeship certification.

(A) The Department may apply up to 60 days earned time credits for education or apprenticeship certifications toward prior earned time not credited to the sentence due to adjudicated misconduct during the presentence incarceration or while an inmate is incarcerated in an Oregon county jail prior to the inmate's return to a Department of Corrections facility following an escape, revocation of second look conditional release, or violation of non-AIP or AIP short-term transitional leave, or toward non-compliance with institutional conduct or the case plan, and toward earned time previously retracted during the service of the sentence.

(B) In no event will an inmate be credited with more earned time credits than the amount of earned time credits the inmate would have received toward the sentence if the inmate maintained appropriate institutional behavior and was in full compliance with his/her case plan as of the date the inmate obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(C) The earned time credits for education or apprenticeship certifications may not be applied to a sentence whose prison term reached its earned time release date prior to the date the inmate obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(D) An inmate may be credited with multiple education or apprenticeship certifications as long as no individual sentence receives more than 60 days total earned time credit for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(E) The date the inmate successfully meets the total score requirements for the GED certificate is the date the inmate is deemed to have obtained his/her GED certificate.

(F) For inmates housed at OYA, the date the inmate receives the high school diploma or GED certificate is the date the inmate is deemed to have obtained his/her diploma unless DOC receives documentation that the inmate completed the requirements for the diploma or GED at an earlier date.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0250

Retraction of Earned Time Credits

Time credits previously earned or applied will be retracted as follows:

(1) The inmate is found guilty of a major rule violation after a formal disciplinary hearing or upon waiver of the inmate's right to a hearing, and the disciplinary order directs that earned time credits earned or applied be forfeited in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291 105).

(a) A recommendation for retraction of earned time shall be within the range corresponding to the violation level as set forth in Table 1.

(b) A recommendation for retraction of earned time credits may not exceed the amount previously applied, including any amount credited to the inmate for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(2) Failure to comply with the case plan during the final review period will result in a retraction of the portion of the earned time credits for program compliance advanced at the beginning of the final review period. The OISC staff will document the retraction on the Earned Time Computation form (CD 1154D).

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

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Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11; Renumbered from 291-097-0025 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0255

Restoration of Earned Time Credits

(1) Time credits that have been retracted may be restored upon recommendation of staff and approval of the functional unit manager or designee only for an inmate who has been involved in saving a life or through the Adjustments to Final Order process outlined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Time credits restored may not exceed those previously retracted.

(2) Restoration of time credits must be approved in writing by the functional unit manager or designee.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; Renumbered from 291-097-0030 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0260

Determination of Earned Time Credits During Final Review Period for Sentencing Guideline Sentences

(1) Four months prior to an inmate's projected release date, OISC staff (or the ODOC staff, as designated by the Offender Management and Rehabilitation Division, for inmates housed in non-Oregon Department of Corrections facilities) will conduct a final review of inmates' earned time compliance.

(a) Final reviews will be conducted only for inmates serving a sentencing guidelines sentence. OISC staff will advance and apply earned time credits for the final review period.

(b) An inmate's full compliance with the case plan and institutional behavior will be assumed during the final review period.

(A) For inmates sentenced on or after November 1, 1989, with sentences eligible for a maximum of 20 percent earned time credits, the OISC staff will apply an effective 20 percent reduction in sentence for the final review period and the OISC Unit will re-compute the inmate's new earned time release date.

(B) For inmates sentenced on or after November 1, 1989 with sentences eligible for a maximum of 30 percent earned time credits, the OISC staff will apply an effective 30 percent reduction in sentence for the final review period and the OISC Unit will re-compute the inmate's new earned time release date.

(2) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is extended as a result of a new sentence or an adjustment in presentence time, the OISC staff will delete the final review and any earned time credits advanced for the final review period. The OISC staff will complete a new Earned Time Computation form (CD 1154D) to assure that the extended prison term is reviewed in accordance with these rules.

(3) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is reduced, the OISC Unit will adjust the final review period and any earned time credits advanced for the final review period provided the inmate was in full compliance with his/her case plan and institutional behavior at the time of the final review.

(a) If the inmate was in partial compliance with his/her Case Plan or institutional behavior at the time of the final review, the OISC staff will delete the final review and any earned time credits advanced for the final review period.

(b) The OISC Staff will complete a new Earned Time Computation form (CD 1154D) to assure that the reduced prison term is reviewed in accordance with these rules.

(4) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010, the OISC Unit will adjust the

final review period and any earned time credits advanced for the final review period in accordance with OAR 291-097.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11; Renumbered from 291-097-0040 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0265

Administrative Review

(1) An inmate may obtain an independent review of the determination of his/her case plan performance as documented by the OISC staff or the ODOC staff as designated by the Offender Management and Rehabilitation Division, (for inmates housed in non-Oregon Department of Corrections facilities) for each review period by writing to the office designated by the Offender Management and Rehabilitation Division and requesting an administrative review of the determination.

(a) The review request must be in writing on an Inmate Communication form (CD 214), and must state the reason(s) why the inmate believes the determination is not correct. A copy of the Earned Time Computation form (CD 1154D) under review must also be submitted.

(b) Requests for administrative review must be received by the office designated by the Offender Management and Rehabilitation Division no later than 30 days after final determination as indicated on the Earned Time Computation form (CD 1154D).

(2) If an inmate submits a proper and timely request for administrative review, the Office of Population Management shall review the determination and either approve or modify the determination, in writing, within 30 days after receipt of the request. A copy of the order shall be provided to the inmate, his/her assigned counselor, and OISC.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11; Renumbered from 291-097-0050 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0270

Statutory Good Time Credits

(1) Pursuant to ORS 421.120 (1) (a) and (b), and these rules, each inmate confined in execution of the judgment of sentence upon any conviction for a crime committed prior to November 1, 1989, for any term other than life, who has acceptably participated in the requirements of their case plan and has maintained appropriate conduct, shall be entitled to a deduction from the term of sentence.

(2) The deduction shall be computed as follows:

(a) From the term of a sentence of not less than six months nor more than one year, one day shall be deducted for every six days of such sentence actually served in the Department of Corrections facility.

(b) From the term of a sentence of more than one year, one day shall be deducted for every two days of such sentence actually served in the Department of Corrections facility.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 to 421.122, 423.020, 423.030 & 423.075

Stat. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 to 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; Renumbered from 291-097-0060 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0275

Extra Good Time Credits

(1) Pursuant to ORS 421.120(1)(c), (d), (e), 421.122, and these rules, each inmate confined in execution of the judgment of sentence upon any conviction for a crime committed prior to November 1, 1989, for any term other than life, who has acceptably participated in his/her case plan and has maintained appropriate institutional conduct shall be entitled to a deduction from the term of sentence to be computed as follows:

(a) From the term of any sentence:

(A) One day shall be deducted for every 15 days of work actually performed in prison industry, or in meritorious work in connection with prison

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maintenance and operation, or of enrollment in an educational activity as certified by the educational director of the institution during the first year of prison employment or educational activity; and

(B) One day shall be deducted for every seven days of such work actually performed or educational activity certified after the first year to and including the fifth year of prison employment or educational activity certified; and

(C) One day for every six days of such work actually performed or educational activity certified after the fifth year of prison employment.

(b) From the term of any sentence, one day shall be deducted for every 10 days of work actually performed in agriculture during the first year of prison employment, and one day for every six days of such work actually performed thereafter.

(c) From the term of any sentence one day shall be deducted for every six days of work performed at work camp during the first year of prison employment and one day for every four days thereafter. Once the four-day rate is achieved, it may be applied to subsequent work or release programs while the inmate is serving the same term.

(2) Extra good time credits applied pursuant to ORS 421.120 (1)(c), (d), (e), 421.122, and these rules, shall be in addition to statutory good time credits granted pursuant to ORS 421.120 (1)(a) and (b), and these rules. For purposes of this rule, "meritorious" is synonymous with satisfactory performance.

(3) For purposes of these rules, "prison employment" includes actual work in Oregon Correctional Enterprises, meritorious work in connection with prison maintenance and operation, actual work in agriculture and actual work at work camp. Performance shall be considered meritorious unless removed from the work assignment for unsatisfactory performance.

(4) No statutory good time or extra good time credits earned or applied prior to acceptance and release on parole shall be granted to an inmate upon return to a Department of Corrections facility for a service of a term of incarceration as a sanction for violation of any condition of parole, except when authorized by the Board of Parole and Post-Prison Supervision upon recommendation of the functional unit manager thereof.

(5) Rate attained for calculation of extra good time credits prior to release on parole shall be voided upon an inmate's return to a Department of Corrections facility for violation of any condition of parole, except when authorized by the Board of Parole and Post-Prison Supervision.

Stat Auth: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 to 421.122, 423.020, 423.030 & 423.075

Stat Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 to 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; Renumbered from 291-097-0070 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0280

Retraction of Statutory Good Time and Extra Good Time Credits

Statutory good time and extra good time credits previously earned or applied may be retracted as a result of a disciplinary action as follows:

(1) The inmate is found guilty of a major rule violation after a formal disciplinary hearing or upon waiver of the inmate's right to a hearing, and the disciplinary order directs that time credits earned are forfeited in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) and Table 2 attached.

(2) A recommendation for retraction of statutory good time and extra good time credits may not exceed the amount previously earned or applied.

Stat Auth: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 to 421.122, 423.020, 423.030 & 423.075

Stat Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 to 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; Renumbered from 291-097-0080 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0285

Restoration of Statutory Good Time and Extra Good Time Credits

(1) Statutory good time and extra good time credits that have been retracted may be restored upon recommendation of staff and approval of the functional unit manager or designee only for an inmate who has been involved in saving a life.

(2) Restoration of statutory good time and extra good time credits must be approved in writing by the functional unit manager or designee.

Stat Auth: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 to 421.122, 423.020, 423.030 & 423.075

Stat Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 to 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; Renumbered from 291-097-0090 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0290

Inmates With Indeterminate Sentences of More Than Thirty-Six Months

(1) The functional unit manager may recommend to the Board of Parole and Post-Prison Supervision that an inmate receive prison term reduction credits in those cases where the inmate has received a parole release date set from the Board of Parole and Post-Prison Supervision of 36 months or more, if:

(a) The inmate has applied for a reduction and the period under review falls within the established prison term;

(b) The inmate has completed a three-year period of good conduct; and

(c) The inmate has complied with case plan efforts to address problems associated with the inmate's criminal conduct present at the time of incarceration.

(d) Notwithstanding (b) and (c) above, the functional unit manager may consider significant improvement in inmate behavior and case plan efforts during the last 12 months of the three-year period and recommend that the parole release date be reset.

(2) Three-Year Period of Good Conduct: For purposes of these rules, an inmate shall be considered to have maintained a three-year period of good conduct if:

(a) The inmate has not received any Level I - II rule violations as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during the three years under review.

(b) Notwithstanding (a) above, upon finding that an inmate has committed a Level III or IV rule violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105), after a formal disciplinary hearing or upon waiver of the inmate's right to hearing, the hearings officer may recommend to the functional unit manager that the inmate not be considered for a positive recommendation for prison term reduction within a three-year period from the date of the rule violation.

(3) Demonstrable Achievement in Addressing Problems Associated with the Inmate's Criminal Conduct Present at the Time of Incarceration: For purposes of these rules, an inmate shall be considered to have made demonstrable achievement in addressing problems associated with the inmate's criminal conduct present at the time of incarceration if the inmate has received favorable reports for his/her successful participation in one or more self-improvement programs appropriate to his/her need as determined by departmental assessment captured in the case plan (to the extent these specific programs are available to the inmate). An inmate will be considered to be successfully participating in a self-improvement program if he/she is documented to be registered on a waiting list for the program within 30 days of the development of the case plan.

(4) Inmates serving a term of incarceration in a Department of Corrections facility as a sanction for violation of parole or post-prison supervision are ineligible for consideration for a positive recommendation.

(a) Inmates sentenced for aggravated murder or as dangerous offenders, and those whose parole the Board of Parole and Post-Prison Supervision denied are not subject to personal reviews.

(b) Dangerous offenders may be eligible for personal reviews upon receipt of a positive recommendation from the Department of Corrections, if the Board of Parole and Post-Prison Supervision has found their condition absent or in remission and has set a parole release date.

(5) The functional unit manager or designee will review the recommendation of the counselor, approve/deny or otherwise modify the recommendation, and send the determination to the Board of Parole and Post-Prison Supervision on an action sheet and supplemental report for the Board's consideration.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; Renumbered from 291-097-0100 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

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291-097-0295

Inmates With Indeterminate Sentences of Thirty-Six Months or Less

(1) The functional unit manager may recommend to the Board of Parole and Post-Prison Supervision that an inmate's parole release date be reset to an earlier date in those cases where the inmate has received a parole release date set from the Board of Parole and Post-Prison Supervision of 36 months or less, if:

(a) The inmate has been incarcerated in a Department of Corrections facility for at least six months; and

(b) The inmate's performance in two areas, the case plan and institution conduct, as set forth in the criteria for calculation and application of earned time credits in OAR 291-097 0020 warrants a positive recommendation.

(2) Inmates serving a term of incarceration in a Department of Corrections facility as a sanction for violation of parole or post-prison supervision are ineligible for consideration for a positive recommendation.

(3) Inmates sentenced to a minimum term of incarceration pursuant to ORS 144.110 (judicial minimum) or 161.610 (gun minimum), are ineligible for consideration for a positive recommendation, until such minimum incarceration term has been served.

(4) Inmates serving an enhanced sentence pursuant to ORS 161.725 and 161.735 (dangerous offender), or pursuant to ORS 426.725 (sexually dangerous offender), are ineligible for consideration for a positive recommendation.

(5) At the end of the review period, based upon six-months increments beginning with the inmate's admission date, a counselor will evaluate the inmate's eligibility, consistent with OAR 291-097-0020(3), for a positive recommendation based on the criteria set forth above. Based upon the inmate's performance, the counselor will recommend to the functional unit manager or designee that the inmate be considered by the Board of Parole and Post-Prison Supervision for a 0, 10 or 20 percent reduction in the prison term set by the Board, and a corresponding parole release date.

(6) The functional unit manager or designee will review the recommendation of the counselor, approve/deny or otherwise modify the recommendation, and send the determination to the Board of Parole and Post-Prison Supervision on an action sheet for the Board's consideration.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075
Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; Renumbered from 291-097-0120 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0300

Extension of Parole Release Date (Recommendations)

The Department of Corrections may recommend to the Board of Parole and Post-Prison Supervision that an inmate's parole release date be reset to a later date as a result of a disciplinary action, as follows:

(1) The inmate is found guilty of a major rule violation after a formal disciplinary hearing or upon waiver of the inmate's right to a hearing, and the final disciplinary order directs that the Board of Parole and Post-Prison Supervision be notified that the department recommends that the inmate's parole release date be extended in accordance with the department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(2) In order to qualify the inmate for a parole release date extension recommendation, the rule violation must involve misconduct that can be classified within one of four categories as follows:

(a) Hazard to human life/health;

(b) Hazard to security;

(c) Hazard to property;

(d) Third in series of rule violations within a three-month period while assigned to any Department of Corrections facility or program.

(3) A parole release date extension shall not be recommended without consideration of the following:

(a) Effectiveness of the sanction as a disciplinary measure, both to the inmate and to the general inmate population;

(b) Degree of hazard posed by the misconduct to human health and/or life, facility security, or to property;

(c) Seriousness of the misconduct had it been committed in the wider community;

(d) Circumstances of the misconduct; and

(e) The inmate's prior record of institution conduct.

(4) A recommendation for extension of an inmate's parole release date shall be within the range corresponding to the violation classification category, as set forth in Table 3.

(5) A parole release date extension recommendation will not be made that, if followed by the Board of Parole and Post-Prison Supervision, will result in a parole release date beyond the inmate's statutory good time date.

(6) If an inmate is found guilty of a major rule violation, before a parole release date has been set, that qualifies the inmate for a parole release date extension recommendation in accordance with these rules, the department will recommend to the Board of Parole and Post-Prison Supervision that the inmate's parole release date be adjusted when set to reflect the department's recommended extension, if any.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; Renumbered from 291-097-0130 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

291-097-0305

Administrative Review

(1) An inmate may obtain an independent review of the determination of his/her referral to the Board of Parole and Post-Prison Supervision for a modification of the parole release date set by writing to the Counselor Case Management Unit and requesting an administrative review of the determination.

(a) The review request must be in writing on an inmate communication form (CD 214) and must state the reason(s) why the inmate believes the functional unit manager's or designee's decision not to refer the request to the Board of Parole and Post-Prison Supervision is not correct.

(b) Requests for administrative review must be received by the Counselor Case Management Unit no later than 30 days after the date of the determination.

(2) If an inmate submits a proper and timely request for administrative review, the Counselor Case Management Unit shall review the determination and either approve or modify the determination in writing to the inmate and functional unit manager within 30 days after the receipt of the request for administrative review.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; Renumbered from 291-097-0110, DOC 2-2009, f. & cert. ef. 3-10-09; Renumbered from 291-097-0140 by DOC 13-2012(Temp), f. & cert. ef. 12-28-12 thru 6-25-13

Department of Energy Chapter 330

Rule Caption: Small Scale Local Energy Loan Program rules for amendments, default management, fee clarification, other aspects.

Adm. Order No.: DOE 13-2012

Filed with Sec. of State: 12-20-2012

Certified to be Effective: 12-20-12

Notice Publication Date: 11-1-2012

Rules Adopted: 330-110-0046, 330-110-0047, 330-110-0048

Rules Amended: 330-110-0005, 330-110-0010, 330-110-0015, 330-110-0016, 330-110-0025, 330-110-0030, 330-110-0035, 330-110-0036, 330-110-0040, 330-110-0042, 330-110-0045, 330-110-0055

Rules Repealed: 330-110-0020, 330-110-0050

Subject: The rule amendments for the Small Scale Local Energy Loan Program revise rule definitions to clarify terms and align with current practices. The rules include processes for amendments, forbearance, and loan delinquency and default management. Overall, the proposed rules increase transparency by clarifying project technical requirements and simplify the fee structure. The proposed rules also include housekeeping amendments to correct terminology, simplify language and remove sections that are obsolete or covered elsewhere in statute or rule.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-110-0005

Purpose, Statutory Authorization, Policy

(1) The purpose of these rules is to provide procedures for the Small Scale Local Energy Loan Program and standards and criteria for projects to

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be met by applicants. These rules are authorized by ORS 469.040, 470.080 and 470.140.

(2) It is the goal and policy of the Oregon Department of Energy and the Small Scale Local Energy Project Advisory Committee that these rules and the loan program:

- (a) Encourage diversity in projects;
- (b) Develop and maintain a loan portfolio that is reasonably balanced across market sectors and project and borrower types; and
- (c) Fund energy projects that support the Department's goal for energy efficiency, generation and security without regard to energy source.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0010

Definitions

As used in ORS Chapter 470 and in these rules, the following definitions apply:

(1) "Adequate security" means the pledge of real or personal property given to secure a loan against loss or credit enhancement, guaranty or other security of value authorized by ORS 470.170, given as assurance that the loan will be paid.

(2) "Alternative fuel project" means sub-sections (a) and (b):

(a) The purchase of a fleet of vehicles that are modified or acquired directly from a factory and that:

(A) Use an alternative fuel including electricity, gasohol with at least twenty percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane, biodiesel or any other fuel approved by the Director; and

(B) Produce lower exhaust emissions or are more energy efficient than those fueled by gasoline.

(b) A facility, including a fueling station, necessary to operate alternative fuel vehicles.

(3) "Applicant" means a loan program applicant.

(4) "Application" means a completed loan application on a Department-approved form that contains all required information, is dated and signed by an authorized representative of the applicant, and is accompanied by the required documentation and the application and underwriting fees. The term "application" includes all documentation submitted in conjunction with a loan application, whether at the time of original submission of the loan application or later and all modifications of the application that was originally submitted.

(5) "Biomass" means plant and animal matter, but not fossil fuels.

(6) "Cogeneration" means the sequential production of electrical or mechanical energy and useful thermal energy from a primary source including but not limited to oil, natural gas or biomass. Cogeneration must qualify under the Small Scale Local Energy Loan Program Technical Requirements.

(7) "Committee" means the Small Scale Local Energy Project Advisory Committee.

(8) "Conservation measure" means a system, component of a system, mechanism or series of mechanisms, support service or combination thereof that:

- (a) Reduces the use of energy at the project site;
- (b) Directly avoids the loss of energy in the transmission of energy;
- (c) Conserves energy used in transportation with the energy savings being substantially in Oregon;
- (d) Is a cogeneration project; or
- (e) Increases the production or efficiency of or extends operating life of a system or project otherwise described in OAR 330-110-0010, including but not limited to restarting a dormant project.

(9) "Conventional fuels" means purchased electricity or fossil fuels.

(10) "Creditworthy" means, in regard to an applicant, able to repay its debts as they become due, as evidenced by a satisfactory credit history, sufficient financial resources or other indication of financial strength as approved by the Department.

(11) "Delinquent account" means a loan that has not been paid in accordance with the terms of the underlying loan documents.

(12) "Demonstration project" means a project that showcases new or improved technologies or designs that promise cost-effective production or conservation of energy if adopted by the marketplace.

(13) "Department" means Oregon Department of Energy.

(14) "Director" means the Director of the Department or designee.

(15) "Energy need" means any of the energy demands forecasted by the Department under ORS 469.070 and the need to save energy to cut costs.

(16) "Financial feasibility" means that:

(a) The primary repayment source for the loan has been identified, the applicant is creditworthy and the project is financially viable; and

(b) Adequate security is offered to provide a secondary source of repayment.

(17) "Financial statement" means a report of a person's financial operations or condition including but not limited to balance sheets, statements of financial condition, statements of financial position, income statements, statement of earnings, statements of revenues and expenses, statements of profit and loss, statements of operations, statements of retained income, statements of cash flows, statements of changes in financial position, pro forma statements, aging reports and any accounting reports, reviews, audits, tax returns or other financial information submitted as, or as a part of, a representation of financial condition in a Department approved format using Generally Accepted Accounting Principles (GAAP).

(18) "Fleet" means three or more vehicles used for commercial or governmental purposes primarily operated in Oregon.

(19) "Interim loan" means a disbursement of a program loan for the purpose of paying for pre-construction and other approved project costs prior to permanent funding.

(20) "Loan contract" means, in addition to the meaning set forth in ORS 470.050, the loan agreement and all other documentation required by the Director to make a loan or change its terms and conditions.

(21) "Local community or region" means one or more energy users in Oregon.

(22) "Municipal corporation" has the meaning assigned to that term by ORS 470.050.

(23) "Person" means a natural person or a validly existing entity that is duly organized under the laws of a state, including but not limited to a partnership.

(24) "Preference" means, in any choice between financially feasible projects or applicants, preference under ORS 470.080 and these rules.

(25) "Primary repayment source" means the business revenues produced by the borrower of a loan that is or will be used to pay the debt service on a loan.

(26) "Program" means the Small Scale Local Energy Loan Program.

(27) "Project" has the meaning given to "small scale local energy project" in ORS 470.050; including systems or devices that implement one or more conservation measures, use renewable resources to meet a local community or regional energy need in Oregon or are recycling or alternative fuel projects. The project may produce heat, electricity, mechanical action or alternative fuels. A project may also be an improvement that increases the production or efficiency of or extends the operating life of a system or device or project otherwise described in these rules, including but not limited to restarting a dormant project. A project also:

(a) Must be primarily in Oregon but can have a minor contiguous component in a neighboring state, or in the case of energy conservation the project can provide substantial benefits to Oregon. The components located in Oregon should exceed 70 percent of the portion of the project cost financed by the program;

(b) Can directly or indirectly conserve energy or enable the conservation of energy or use or enable the use of a renewable resource, by the applicant or another person, to produce energy, as, for example, power transmission or conditioning, energy storage or smart metering; and

(c) Can directly or indirectly reduce the amount of energy needed in the construction and operation of a facility, including the manufacture and transportation of construction materials, but the project or components must meet acceptable sustainability practices established in the Small Scale Local Energy Loan Program Technical Requirements.

(28) "Qualified" means, in regard to an applicant, able and eligible under the law to apply for a loan and enter into a loan contract.

(29) "Recycling project" means a facility or equipment that conserves energy by converting solid waste, as defined in ORS 459.005, into a new and usable product.

(30) "Renewable resource" means solar, wind, geothermal, biomass, waste heat or water resource.

(31) "Security value" means the value assigned by the Department, based upon an internal review or an appraisal by a qualified third party acceptable to the Department, to the project or security being offered as collateral for a loan.

(32) "Small business" has the meaning given in ORS 470.050.

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(33) “Small Scale Local Energy Loan Program Technical Requirements” means the specific technical requirements of the Department for certain projects. An application will be subject to the Technical Requirements in effect on the date the Department receives a complete application.

(34) “Usable life” of a project means the number of years that a project can likely function without major repair or replacement.

(35) “Waste heat” means produced but unused heat that can be applied to an energy need.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 2-1981(Temp), f. & ef. 6-3-81; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1991(Temp), f. & cert. ef. 6-10-91; DOE 3-1991, f. & cert. ef. 12-3-91; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0015

Eligible Costs

Subject to these rules, a loan may be approved to pay for:

- (1) The cost of buying, building and installing a project;
- (2) Audit, study, commissioning and design costs; and
- (3) Reserves, interest, staff training and site preparation costs.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0016

Ineligible Costs

(1) Loans funded from proceeds of tax-exempt bonds may not pay capital costs incurred prior to bond issuance unless the Department has adopted a reimbursement resolution declaring an intent to reimburse capital costs that are paid after or no more than 60 days prior to such resolution.

(2) Except as allowed in ORS 470.050, the proceeds of a loan may not be used to pay for parts of a project that are not consistent with energy production using renewable resources or energy conservation or that do not qualify as an alternative fuel project or recycling project, or do not meet a sustainability standard set out in the Small Scale Local Energy Loan Program Technical Requirements, unless the project is found by the Director to be a demonstration project.

(3) The proceeds of a loan may only be used to pay for projects or components of a project that have longer than a 12 month simple payback. For the purposes of this subsection, “component” means a part of a project that ordinarily saves or produces energy by itself and that costs more than ten percent of total, estimated project costs.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0025

Application

(1) The Department may provide an initial review and advise whether a project appears to qualify for loan financing by the program. The Department’s advice, however, does not constitute a loan approval or any other binding commitment. The Department requires that an application be submitted and the required fees be paid if a potential applicant wishes to apply for a loan after an initial review.

(2) An application must be made on Department approved forms and in a manner set by the Department.

(3) The Department may request an applicant’s social security number in accordance with provisions of the Privacy Act of 1974.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.060 & 470.080

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0030

Application Review Process

(1) In reviewing an application for financing by the program, the Department may require an applicant to submit further documentation to determine whether a loan should be made. If the Department fails to receive

any items requested of the applicant within fourteen days after making its request in writing, the loan request may be denied. If the loan request is denied and the applicant still desires to make a loan application, the applicant must submit a new application and pay again any fees and charges applicable to loan applications that are described in OAR 330-110-0055.

(2) Application review and appeal must conform to ORS 470.080 to 470.100 and OAR 330-105.

(3) Loan approval or denial is communicated to an applicant in writing. A Department issued approval expires on the expiration date stated in the approval, or if no date is given, 60 days after the date of the approval. If the loan is not closed prior to the date the approval expires, an applicant must submit a new application and pay the fees and charges applicable to a new loan application. Any substantial change, including but not limited to, a change in financial position, project scope or the ownership of applicant, prior to the expiration of the approval, may result in the voiding of the loan approval and require submission of a new loan application.

(4) The Department may require a third party project and financial feasibility study in form and substance acceptable to the Department as a condition of approval on a loan. Applicant must pay the cost of a third party study.

(5) Findings under ORS 470.090 are for the benefit of the Department for lending purposes only. They do not endorse the project, its design or its parts. They offer no assurance of any kind to any person or entity, including the applicant, for any purpose.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 - 470.100

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0035

Findings by the Director

(1) To approve an application for a loan, the Director must make the following findings:

(a) The project is consistent with preservation and enhancement of the environment. Factors may include whether the project saves conventional fuel, makes efficient use of a renewable resource, reduces greenhouse gas emissions or promotes sustainability.

(b) The plan for the project assures its timely completion, quality and adequate funding. Funding includes adequate working capital and reserves.

(c) The project meets the goals of the Department.

(d) The applicant has certified as part of the application that the applicant is in compliance with applicable state and local regulations. If requested, the applicant must provide compliance documentation. Failure to disclose any issues regarding compliance or any issues of non-compliance may result in denial of an application by the Department.

(e) Any other findings required by ORS 470.090.

(2) The Director may deny a loan to any applicant that restricts membership, sales or services on the basis of any of the protected classes listed in ORS 659A.003.

(3) The Director may deny a loan because other sources of funding are inadequate.

(4) The Director may limit the size or number of loans made by the program.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 1-1985, f. & ef. 1-2-85; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0036

Public Health, Safety, and Environmental Issues

(1) The policy of the Department is:

(a) To accept the findings of local, state and federal agencies that license or permit projects to be built or run; and

(b) To avoid influencing any of those agencies to approve or deny a license or a permit.

(2) Each applicant must provide information demonstrating that the proposed project will:

(a) Obtain each local, state and federal permit and license that applies to a project;

(b) Comply with the express terms and conditions of each permit and license;

(c) Comply with all state, federal and local laws and regulations that apply to the project; and

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(d) Obtain a favorable land use decision from the city or county where the project will be built.

(3) The Department may issue a loan approval based on the applicant's representation or promise that each license and permit has been or will be obtained in a timely manner. If the applicant fails to obtain any required license or permit in a timely manner, the Department will revoke the loan or approval.

(4) The licensing or permitting agency must confirm in writing if any license or permit named in these rules is not required. Such confirmation is not needed for conservation measures for which the Department has already confirmed that such a license or permit is not required.

(5) Waterpower developers must comply with the following:

(a) A project on a navigable stream or connecting to a utility must obtain a license or exemption from the Federal Energy Regulatory Commission;

(b) A license or permit to use water for power must be obtained from the Water Resources Commission; and

(c) The requirements of the Northwest Power and Conservation Council's Columbia Basin Fish and Wildlife Program.

(6) Geothermal developers must obtain a geothermal well permit from the Department of Geology and Mineral Industries or a permit to use ground water from the Water Resources Commission.

(7) Biomass cogeneration developers must obtain an air contaminant discharge permit, a waste discharge permit and a solid waste disposal permit from the Department of Environmental Quality.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090 & 470.150

Hist.: DOE 1-1985, f. & ef. 1-2-85; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0040

Loan Limits, Security, and Conditions

(1) The Director may limit the term and amount of any loan or loan approval. The Director may deny any application or set such terms and conditions in regard to any loan or loan approval as needed to assure a sound loan or to protect the fiscal integrity of the program.

(2) A loan secured by real property must be secured by a first lien on such real property in favor of the State of Oregon and must not exceed eighty percent of the security value of such real property. The real property that is collateral for the loan must have been appraised by a licensed appraiser, county assessor or Department appraiser, at the discretion of the director, no longer than six months prior to the date of the loan approval. The Department will consider junior liens only on a case-by-case basis.

(3) If a loan to a municipal corporation will be repaid from project income, the security package for the loan may include the project income.

(4) A loan to a state agency, an eligible federal agency or a public corporation may be secured by project income, in addition to the facility or equipment that make up the project, by a lease purchase contract or by other income or security in accordance with ORS 470.170. State agencies, eligible federal agencies or public corporation borrowers must provide resolutions or other official action of borrower's governing body approving the loan and the other matters contemplated by the loan documents, and of all other documents evidencing any other necessary action by Applicant's governing body.

(5) The Department generally requires an unconditional and absolute guaranty of the owners or the principal shareholder of the borrower or that of a person having sufficient resources to satisfy the borrower's repayment obligation for the loan should the borrower default.

(6) The Director may consider savings in operation and maintenance costs in estimating the annual project cost savings. The Director may also, when calculating the estimated savings in fuel costs, consider reasonably expected increases in the cost of fuel.

(7) A project that primarily produces energy for sale must have:

(a) Secure sources of supply and contracts for the sale of output;

(b) Projected income, net of operating expenses and maintenance costs, of at least 125 percent of annual debt service for each year of the loan; and

(c) An identified secondary source of repayment apart from the project income.

(8) Unless the Director finds that mitigating financial factors warrant otherwise, a loan to a business for a project that saves or produces energy for use on site, is an alternative fuel project or is an energy-saving recycling project may be made only:

(a) Upon an identifiable and reasonable primary repayment source and the pledge of adequate security;

(b) For less than 80 percent of the security value of real property on which the Department has a first lien, the Department will consider junior liens on a case-by-case basis;

(c) To a business that has made a profit after taxes for at least the two years immediately preceding the loan application; and

(d) To a business that has a ratio of current assets to current liabilities of at least 1.75 to 1 and a ratio of total debt to owner's equity of no more than 2 to 1. The Director may exempt a business from the requirements of OAR 330-110-0040 if it demonstrates to the satisfaction of the Director that sound businesses of similar type and size do not normally meet these standards.

(9) Loan proceeds may be used, in whole or in part, for the following purposes and in the following amounts:

(a) Cost of acquisition of the project site: Not to exceed ten percent of the project's budget.

(b) Capital for start-up: Not to exceed three percent of the project's budget.

(c) Reserves: Not to exceed fifteen percent of the loan amount.

(10) The loan proceeds of an alternative fuel project may only be used for the following purposes:

(a) Incremental costs of the project that are beyond the reasonable estimated minimum costs to construct or install a similar project without alternative fuel features. Incremental costs do not include the cost of equipment or devices that, in standard industry practice, are used to dispense gasoline or, in the case of vehicles, equipment or devices that use gasoline and that also allow use of an alternative fuel without modification. Alternative fueling stations with underground fuel tanks do not qualify for funding as alternative fuel projects.

(b) In the case of vehicles, products and installation of such products approved by and meeting or exceeding the emission standards of the Department of Environmental Quality.

(11) No more than fifty percent of loan proceeds may be used to refinance existing debt authorized by ORS 470.050(27)(g) unless such debt is with the Department. The refinancing must result in a significant increase in the security value of the loan security.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080, 470.120, 470.150 - 470.155, 470.170 & 470.210

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0042

Bond Refunding

(1) The Department must pursue opportunities to refund bonds to reduce interest sums paid by the Department.

(a) When the Department refunds a bond with tax-exempt bonds, the Department must share, on an equitable basis, the savings from any refunding with the affected borrowers in an amount consistent with a finding by the Director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300(1). Affected borrowers are those whose loans were made with the proceeds of the refunded bonds.

(b) For the purposes of OAR 330-110-0042(1), savings from a refunding are shared on an equitable basis if the Department receives half the savings, and the affected borrowers receive or split half the savings, net of costs, from a bond refunding. When the Internal Revenue Code or other law limits the amount of refunding savings the Department may retain or provide to the affected borrowers, the Department may receive less or more than half the savings, and the affected borrowers will receive the remainder. If multiple loans were funded from the proceeds of the refunded bonds, the affected borrowers will share the savings in proportion with their respective shares of the proceeds of the refunded bonds that were used to make their loans, adjusted for the remaining term to maturity of their loans.

(2) Savings from a bond refunding accrue over the remaining term of the refunded bonds. The Department will share these savings with affected borrowers by reducing the amount of their loan payments over the remaining term of the loans. If the accumulated savings over the remaining term of a loan is less than \$15,000 or if the Director finds that it is in the interest of both the Department and the borrowers, the Department may reduce the principal amount of the loan by the net present value of the savings, calculated using a discount rate of the maximum arbitrage yield of the refunding bonds as defined in Section 148 of the Internal Revenue Code.

(3) The Department must not refund tax-exempt bonds with taxable bonds, unless the Department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds.

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(4) At least 120 days before the date on which the Department intends to issue refunding bonds, the Department must notify each borrower whose loan was made from the proceeds of the bonds being refunded and must offer the borrower the opportunity to prepay the borrower's loan. The Department will request that the borrower notify the Department of its intent to prepay their loan within 60 days of the date of the notification or risk losing the opportunity to prepay.

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

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.270

Hist.: DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0045

Waiver, Authority of Administrator

The Director:

(1) May, in writing, waive any of these rules. The waiver must serve the aims of the program, not cause financial damage to the program, and not conflict with ORS chapter 470.

(2) May contract with regulated financial institutions, state or federal agencies or others to provide services, subsidies or grants to the program.

(3) May take such steps as are needed to recover loan funds and prevent their misuse, or to prevent a project from being diverted from its purposes.

(4) May delegate, in writing, authority to approve, deny or amend loans and to execute bond and loan documents. A partial release of lien may be granted by the Director upon the written request of a borrower if the security value of the remaining security is adequate to secure the loan and meet the security requirements of OAR 330-110-0040. The Director will consider the creditworthiness and repayment history of the borrower in considering such a request.

(5) May contract with a person to operate a project in the event of any default that results in the Department taking and running the project.

(6) May settle, modify or release any person from liability for a loan so long as such action does not damage the program.

(7) May take any action allowed by law to comply with federal codes and rules on bonding or to assure the payment of program bonds.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 & 470.150

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0046

Loan Amendments

The Department may amend the terms of a loan in accordance with OAR 330-110-0046.

(1) Amendments may include but are not limited to amending the interest rate or payment amount in accordance with a bond refunding, changing payment dates or extending maturity dates.

(2) A borrower must request a loan amendment in writing. The request must include a detailed explanation of the amendment requested with information and documentation by the borrower that demonstrates the need for the amendment.

(3) When considering a request for a loan amendment, the Department may require the borrower to submit information it deems necessary to evaluate the request, such as financial statements, collateral information and valuation.

(4) The Department will only approve a loan amendment request if the amendment results in a significant increase in the security value to the loan security or significantly improves the borrower's ability to meet its obligations in regard to the loan.

(5) The borrower will be notified in writing whether or not the Department will agree to the requested loan amendment.

(6) Approved loan amendments are subject to a fee of \$300 plus additional charges for items listed in OAR 330-110-0055. Such charges will be estimated or itemized for the borrower.

Stat. Auth.: ORS 469.040 & 470.080, 470.140

Stats. Implemented: ORS 470.050 & 470.815

Hist.: DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0047

Loan Forbearance

The Department may consider forbearance on a loan, but will only consider forbearance if the borrower is current on its loan payments and is in compliance with the terms of its loan documents.

(1) If a borrower is requesting forbearance for its loan, this loan must be current and in good standing, and have no late charges outstanding, up to and including the date the forbearance documents are signed.

(2) A borrower must request forbearance in writing. The request must include a detailed explanation of the reason for the forbearance request including information and documentation that demonstrates the need for the forbearance.

(3) When considering a request for forbearance, the Department may require that the borrower submit information it deems necessary to evaluate the request, such as financial statements, collateral information and valuation.

(4) The borrower will, within thirty days of its request, be notified in writing whether or not the Department agrees to the loan forbearance request.

(5) The Department will only approve a forbearance request from a borrower who has submitted a written plan demonstrating that the temporary suspension or reduction of loan payments will significantly increase the likelihood of full loan repayment.

(6) The Department may extend a forbearance agreement beyond the initial forbearance period, if the circumstances, in the Department's sole discretion, justify such an extension.

(7) A borrower requesting forbearance must pay the Department a loan servicing fee that is calculated on the basis of the borrower's payment amount and loan balance. Additional charges may be made for items listed in OAR 330-110-0055(4). Such charges will be estimated or itemized for the borrower before they are incurred.

(8) Approval of a forbearance request will not reduce the borrower's liability to the Department for the loan.

Stat. Auth.: ORS 469.040 & 470.080, 470.140

Stats. Implemented: ORS 470.050 & 470.815

Hist.: DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0048

Delinquent Accounts

Delinquent loans will be managed in accordance with ORS 470.170 and subject to the Department's collection procedures, including but not limited to: (a) written demand, (b) collection of late fees, (c) acceleration of the amount due, (d) action against a guarantor or (e) any other legal remedy available to the Department.

Stat. Auth.: ORS 469.040 & 470.080, 470.140

Stats. Implemented: ORS 470.050 & 470.815

Hist.: DOE 13-2012, f. & cert. ef. 12-20-12

330-110-0055

Fees and Charges

Pursuant to ORS 470.060, an applicant will pay the Department for costs to review, process and service a request for a loan. Applicants will pay the following fees and charges:

(1) A non-refundable application fee as fixed by ORS 470.060. "Application," as used here, includes a request to assume or transfer or increase an existing loan but does not include a request for an interim loan made in an application for a permanent loan for a project. If the Department consults with an applicant on a loan before an application is submitted the applicant must pay an application fee after the first hour of consultation. The fee will be applied to the application fee for an application that is submitted within thirty days of the consultation. If an application is submitted more than thirty days after the consultation, the applicant must pay a new application fee.

(2) A non-refundable underwriting fee of \$500 or one-half of one percent of the loan request amount, whichever is greater, but not to exceed \$5,000.

(3) A loan fee of between one and four percent of the loan amount based upon the Director's assessment of the risk profile of the project, payable at loan closing.

(4) Charges for items including, but not limited to credit reports, expert advice, legal fees, construction inspections, disbursement fees, loan servicing fees and appraisals, unless charges incurred also benefit another application, in which case the charges will be divided equitably. Such charges will be estimated or itemized for the applicant before they are incurred.

(5) A fee of \$500 for each request to release or modify security. Additional charges may be made for items listed in OAR 330-110-0055(4). Such charges will be estimated or itemized for the applicant before they are incurred.

(6) The interest rate set in a binding loan commitment may not be increased without the applicant's consent except as provided in the loan commitment or the loan documents. The interest rate for any project pro-

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posed by an eligible federal agency must be set in accordance with ORS 470.150(2). Loan contracts may provide for rates to be adjusted upon issuance of the bonds whose proceeds fund the loans.

(7) The Department may offer a fee that combines the fees and charges in OAR 330-110-0055(1) through (3) and that is equal to or less than the sum of the fees and charges in OAR 330-110-0055(1) through (3). If offered, a combined fee will apply to any applicant receiving similar loan terms.

Stat. Auth.: ORS 469 & 470.140
Stats. Implemented: ORS 470.060 & 470.150
Hist.: DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12

Rule Caption: Residential Energy Tax Credit rules for cost terms, eligibility, tax-credit technician certification and other aspects.

Adm. Order No.: DOE 14-2012

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Rules Amended: 330-070-0010, 330-070-0013, 330-070-0014, 330-070-0019, 330-070-0020, 330-070-0021, 330-070-0022, 330-070-0024, 330-070-0025, 330-070-0026, 330-070-0027, 330-070-0029, 330-070-0040, 330-070-0045, 330-070-0048, 330-070-0055, 330-070-0059, 330-070-0060, 330-070-0062, 330-070-0063, 330-070-0064, 330-070-0070, 330-070-0073, 330-070-0089, 330-070-0091

Subject: The rule amendments for the Residential Energy Tax Credit program clarify cost terms, statutory incentive amounts, the year the tax credit can be claimed and tax credit technician registration. Additionally, the rules update the renewal requirements, renewal timelines and testing requirements for tax credit technicians. The rules provide for an upgraded heat pump system as an energy efficient appliance and update energy recovery and heat recovery ventilator minimum sensible recovery efficiency (SRE) requirements. The rules update premium efficiency biomass combustion device (woodstoves) eligibility and incentive amounts. For solar photovoltaic projects, the rules clarify that the eligible cost does not include structures beyond those needed for mounting or racking. For wind projects, the rules suggest that applicants consider 20 years of future tree growth. Lastly, the proposed rules also include housekeeping amendments to correct terminology, simplify language and update statutory references.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-070-0010

Purpose

(1) The department will grant or deny tax credits in accordance with ORS 469B.100 through 469B.118 which allow tax credits for Alternative Energy Devices (AEDs).

(2) These rules establish the criteria and standards for issuance of tax credits for AEDs. None of these rules replace any building code requirements.

(3) All decisions made by the department regarding AED eligibility, approval of tax-credit technician status, complaints regarding performance of tax-credit technicians, revocation of tax-credit technician status and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0013

Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 70 the following definitions apply unless the context requires otherwise:

(1) “Active Solar Heating” — A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun’s energy to a dwelling or part of a dwelling.

(2) “AHRI” — Air-Conditioning, Heating, and Refrigeration Institute.

(3) “Alternative Energy Device” (AED) — A device or system that reduces the amount of conventional energy used by a dwelling.

(a) AEDs eligible for tax years prior to January 1, 2012 include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; certain energy-efficient appliances, energy-efficient heating, ventilating and air conditioning systems; premium efficiency biomass combustion devices, fuel cell systems; alternative fuel vehicles and related alternative fuel devices or wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.

(b) AEDs eligible for tax years beginning on or after January 1, 2012 include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; energy-efficient heating and ventilation systems, premium efficiency biomass combustion devices, fuel cell systems; and wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.

(4) “Alternative Fuel” — Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director.

(5) “Alternative Fuel Device”:

(a) Prior to January 1, 2012 an alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.

(b) Beginning on January 1, 2012 a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.

(6) “Annual Fuel Utilization Efficiency” (AFUE) — An efficiency descriptor of the ratio of annual output energy to annual input energy as developed in accordance with the requirements of the U.S. Department of Energy 10 CFR Part 430.

(7) “Applicant” — A person who applies for a residential alternative energy device tax credit under this section, which may include:

(a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or

(b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in 757.015 that is designated by an applicant under (a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of that designated applicant.

(8) “ARI” — Air-Conditioning and Refrigeration Institute.

(9) “ASHRAE” — American Society of Heating, Refrigerating and Air-Conditioning Engineers.

(10) “AWEA” — American Wind Energy Association.

(11) “Btu” — British Thermal Unit.

(12) “CEF” — Energy Factor for Combined Systems: A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (which also includes space heating efficiency and combined efficiency) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(13) “Coefficient of Performance” (COP) — The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(14) “Combined Annual Fuel Utilization Efficiency” (CAFUE) — The effective efficiency of the combined appliance in performing the function of space heating. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (which also includes water heating efficiency and combined efficiency) does not count standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124-1991 test method.

(15) “Consumer Disclosure” — A department approved form completed by the Tax Credit Technician and provided to the buyer of AEDs, except for energy-efficient appliances and alternative fuel devices, including estimated energy savings of the AED, required conservation items, required maintenance and freeze protection information.

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(16) “Domestic Water Heating” — The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(17) “Ductless Mini-split Heat Pump” — An air-source heat pump consisting of an outdoor unit connected directly to one or more indoor units where the refrigerant is condensed and conditioned air is delivered directly to the room or zone of a home rather than through a central air handler.

(18) “Dwelling” — means real or personal property inhabited as a principal or secondary residence includes, but is not limited to, a single-family residence and an individual unit within multiple unit residential housing.

(a) Principal residence is the dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the mortgage under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in a calendar year.

(b) Secondary residence is a vacation or other dwelling owned by the applicant that is not the applicant’s principal residence.

(c) A dwelling does not include a motor home or recreational vehicle as defined in ORS 446.003.

(19) “Electric Load” — Appliance and lighting exclusive of any water or space heating use.

(20) “Energy Efficiency Ratio” (EER) — EER is calculated by dividing the cooling capacity in Btu per hour (Btu/hr) by the power input in watts at any given set of rating conditions, expressed in Btu/hr per watt.

(21) “Energy-Efficient Appliance” — Prior to January 1, 2012 a clothes washer, clothes dryer, water heater, refrigerator, dishwasher, space conditioning system, solar electric alternating current (AC) module, or any other major household appliance that has been certified by the department to have premium energy efficiency characteristics. On or after January 1, 2012 includes only emerging technologies, such as high-efficiency heat-pump water heaters for domestic hot water, for gas water heaters, ductless heat pumps, high-efficiency furnaces that are at least 95 percent efficient, instantaneous or tankless gas water heaters and heat-pumps, that exceed code as specified in these rules.

(22) “Energy Factor” (EF) — Energy Factor is the ratio of useful energy output from the water heater to the total amount of energy delivered to the water heater. EF is a metric used to compare relative efficiencies of water heaters. The higher the EF is, the more efficient the water heater. EF is determined by the DOE test procedure, Code of Federal Regulations, Title 10, Section 430.

(23) “Energy Recovery Ventilator” (ERV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(24) “Energy Yield Chart” — Chart approved by the department showing first year energy yield of an AED.

(25) “EUI (FURNACE)” — The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment: $(3413 \times \text{EAE}) / [(3413 \times \text{EAE}) + (1,000,000 \times \text{EF})] \leq 2.0$ percent. EAE is the average annual auxiliary electrical energy consumption for a gas furnace in kilowatt-hours per year (kWh/yr). It is a measure of the total electrical energy supplied to a furnace during a one-year period. EF is the average annual fuel energy consumption for a gas furnace in millions of Btus per year (MMBtu/yr).

(26) “EUI (HERV)” — The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model’s power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(27) “First Year Energy Yield” — Usable energy produced under average conditions by an AED in 12 consecutive months of continuous operation expressed in kWh. Usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(28) “Fuel Cell Stack” — The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack

and carrying away the electricity, electrochemical products and thermal energy generated.

(29) “Fuel Cell System” — A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy.

(30) “Ground Source Heat Pump” — A heating, ventilating and air-conditioning system, also known as a ground source heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

(31) “Heat Recovery Ventilator” (HRV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(32) “Heating Season Performance Factor” (HSPF) — The total heating output of a heat pump during its normal annual usage period for heating divided by the total electric power input in watt-hours during the same period. HSPF is measured according to test procedures defined by AHRI in its Standard 210/240 as well as ASHRAE Standard 116 and the DOE Test Procedure in 10 CFR; Part 430, Appendix M (ARI, 2003).

(33) “Hybrid Vehicle” — An alternative fuel vehicle that draws propulsion energy from on-board sources of stored energy that include both an internal combustion or heat engine and a rechargeable energy storage system.

(34) “Hydronic Space Heating System” — A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.

(35) “Ineligible Costs” — Costs not allowed for determining the tax credit, including, but not limited to, finance charges, maintenance costs, service contracts, or extended warranty.

(36) “Installed Output” — The rated capacity of a photovoltaic system measured in average alternating current watts for the purpose of determining the tax credit for systems installed on or after January 1, 2011 or before January 1, 2012. Installed output equals 0.7 multiplied by the rated direct current capacity as measured at standard test conditions.

(37) “IREC” — Interstate Renewable Energy Council.

(38) “kWh” — Kilowatt-hour; 1 kWh = 3413 Btus for purposes of department calculations.

(39) “Latent Recovery Moisture Transfer” (LRMT) — In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is

(40) “MM” — Million (Roman Numeral M = 1000, MxM = 1000 x 1000 = 1,000,000 or 106).

(41) “Modified Energy Factor” (MEF) — The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.

(42) “Net Generation” — The gross kWh produced minus internal losses and parasitic loads. The net generation includes both the amount of generation available to serve dwelling loads and to provide to a utility.

(43) “OG” — Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory.

(44) “Operational Date” — The date when final inspection is completed by a local jurisdiction for an AED and the AED is fully operational.

(45) “Owner-Built” — An AED that is assembled and installed on an owner’s property and with an owner’s labor only.

(46) “Parasitic Power” — The electrical energy the system uses to operate.

(47) “Passive” — A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices.

(48) “Passive Solar Space Heating” — A system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun’s energy using only convection, radiation and conduction of energy.

(49) “Pass-through Amount” — The sum, equal to the present value of the credit, paid to an eligible AED owner in exchange for the right to claim the tax credit. The present value of the tax credit will be determined periodically by the Director.

(50) “Pass-through Partner” — An individual or business that pays the pass-through amount to an applicant and receives the tax credit in place of the applicant.

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(14) “Pass-through Verification” — A determination based on information collected by the department that the approved pass-through amount has been provided, that the applicant has relinquished any claim to the tax credit and has assigned the credit to the pass-through partner.

(15) “Peak Power Ratio” — The maximum power available from the electric motor of a hybrid vehicle providing propulsion energy when powered by the rechargeable energy storage system, divided by the total of such maximum power and the SAE net power of the internal combustion or heat engine.

(16) “Performance Checked Duct System” — A forced air duct system that has been tested for duct leakage by a tax-credit technician using the department’s approved testing procedures, and that has been repaired or constructed for premium efficiency using the department’s approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked duct systems are considered energy-efficient appliances.

(17) “Performance Checked Heat Pump or Air Conditioner” — A heat pump or air conditioner that has been tested and repaired or serviced for premium efficiency by a tax-credit technician using department approved procedures to assure that refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy-efficient appliances.

(18) “Premium Efficiency Biomass Combustion Device” — Any device that burns wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin for aesthetic or space-heating purposes.

(19) “Purchase Date” — The date when the first down payment is made by the applicant on a contract or invoice for an AED. The applicant must provide confirmation of the purchase date to the department.

(20) “PV System” — A complete solar electric power system capable of delivering power to either the main or sub-panel in a dwelling. Necessary components include solar electric modules, inverter, mounting system, and disconnection equipment.

(21) “Sensible Recovery Efficiency” (SRE) — In an HRV or ERV, the measurable (sensible) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(22) “Solar Domestic Water Heating System” — Any configuration of plumbing equipment and components to collect, convey, store and convert the sun’s energy for the purpose of heating water.

(23) “Solar Electric AC Module” — A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(24) “Solar Labor Costs” — Labor necessary for the installation of a solar powered AED.

(25) “Solar Material Costs” — Includes all parts necessary for the installation of a solar powered AED.

(26) “Solar Site Assessment Worksheet” — A form or report issued or approved by the department, and completed, signed and dated by a tax-credit technician demonstrating the Total Solar Resource Fraction (TSRF) at the site of the solar thermal collector(s) or PV array. The worksheet must represent the point on the array with the lowest TSRF, depict whether any plant life near the array is made up of evergreen or deciduous trees and estimate the effects of 20 years future plant growth.

(27) “SRCC” — Solar Rating and Certification Corporation.

(28) “Standard Test Conditions” (STC) — 25 degrees Celsius cell temperature and 1000 watts per square meter (W/m²).

(29) “System Certification” — Certification that an AED as described in an application for tax credit meets all criteria for the tax credit.

(30) “System Cost” — Costs allowed for determining the tax credit, include material cost, labor cost, and costs for design and acquisition.

(31) “System Owner” — A person who owns the AED.

(32) “Tax-Credit Listed Company” — A company that employs at least one tax-credit technician.

(33) “Tax-Credit Technician” (TCT) — means “contractor system certification” as used in ORS 469B.106(5). A technician who has been approved by the department to implement the tax credit program. A tax-credit technician is responsible for assuring that AEDs are installed in accordance with the department’s rules and must verify system installation quality and performance.

(34) “Third-party” — means the owner, or the owner’s representative, of the alternative energy device for the duration of the third-party agreement.

(35) “Third-party alternative energy device installation” — has the definition given in ORS 469B.100.

(36) “Total Solar Resource Fraction” (TSRF) — The fraction of usable solar energy that is received by the solar panel/collector throughout the year, which accounts for impacts due to external shading, collector tilt and collector orientation.

(37) “Unconditioned Spaces” — An enclosed space within a building that is not a conditioned space or a semi-heated space such as attics, garages, and any space with an average ambient temperature of less than 55 degrees Fahrenheit during the heating season.

(38) “Uncertified Woodstove” — A solid fuel burning device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space-heating or water heating purposes that has not been certified as meeting emission performance standards set by the U.S. Environmental Protection Agency.

(39) “Used Equipment” — Any product or any piece of equipment not under a current manufacturer’s warranty or which has been acquired by a previous owner or user.

(40) “Wastewater Heat Recovery Device” — A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling’s hot water supply system.

(41) “Water Factor” (WF) — The measure of water efficiency in clothes washers, measured in gallons per cubic foot of tub capacity, per cycle (gal/ft³/cycle).

(42) “Wind AED” — A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy, including turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0014

Pass-Through Eligibility

(1) A person or business that pays the present value to purchase the approved tax credit from the applicant may be eligible to claim the tax credit in place of the applicant.

(2) In accordance with ORS 469B.106(10) the department establishes the following rates for calculating the present value of the tax credit:

(a) For tax credits greater than \$1,500 the present value is 90 percent of the tax credit amount.

(b) For tax credits less than \$1,500 the present value is 95 percent of the tax credit amount.

(3) The department will issue a credit certificate to the pass through partner when the applicant confirms receipt of an amount equal to the present value of the tax credit and relinquishes any claim to the credit.

Stat. Auth.: ORS 469.040, 469.160 - 180 & 469.710 - 720

Stats. Implemented: ORS 469.040, 469.160 - 180 & 469.710 - 720

Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0019

Cost

(1) Notwithstanding the definition in OAR 330-070-0013, an applicant who installed eligible AEDs on or after August 1, 2010 and prior to January 1, 2011, other than those under contract on or before August 13, 2010 and installed prior to January 1, 2011, must determine the cost of the AED by calculating the amount the applicant paid for design, acquisition, building and installation of the AED, including permit and inspection fees. Cost does not include service contracts, rebates, or refunds.

(2) An applicant:

(a) With an eligible AED installed prior to August 1, 2010 must clearly indicate on the application that the date of installation completion was prior to August 1, 2010; or

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(b) With an eligible AED installed on or after August 1, 2010 and prior to December 31, 2010, who had a signed contract dated on or before August 13, 2010, must:

(A) Have provided a copy of the contract for the installation of an eligible AED to the department no later than 5:00 p.m. on Friday, August 27, 2010;

(B) Indicate on the application that the project was completed on or before December 31, 2010; and

(C) Provide the department evidence of the completed installation in the form of a copy of the approved final inspection, dated on or before December 31, 2010, as issued by the local jurisdiction.

(3) The department may grant an additional 15 days for project completion upon the written request of the applicant for good cause shown. The applicant must request the additional time in writing and explain the extenuating circumstances as to why the installation was not completed on or before December 31, 2010. Any project granted the additional time must be completed no later than Friday, January 14, 2011.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented: ORS 469.160.160 - 469.180

Hist.: DOE 10-2010(Temp), f. & cert. ef. 7-30-10 thru 1-24-11; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0020

Eligibility

(1) To qualify for a credit, a person must:

(a) Be subject to Oregon personal income tax (or corporate excise tax, if seeking a credit under ORS 317.115); and

(b) Purchase an AED, complete construction and installation if applicable, and obtain a certification in accordance with OAR 330-070-0010 through 330-070-0097; and

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner; and

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a primary or secondary residence.

(2) If the basis for the credit is the installation of an energy-efficient appliance, the credit will be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(3) If the basis for the credit is a fueling station necessary to operate an alternative fuel vehicle, unless the certificate is transferred, the company that constructs the dwelling that incorporates the fueling station or who installs the fueling station in the dwelling may claim the credit. If the alternative energy device is an alternative fuel vehicle or related equipment, the credit must be claimed by the system owner.

(4) A person who pays the present value of the tax credit for a qualified alternative energy device to the person who originally purchases the device will be entitled to claim the credit in place of the original credit owner.

(5) For a qualified vehicle owned by a lessor during the period of first use of a new vehicle, the lessor may pass-through the right to claim the credit to the lessee exercising the first new use.

(6) Notwithstanding (1)(b), a residential property owner may qualify for a credit for an AED that is a third-party alternative energy device installation by meeting the following additional requirements:

(a) Installations must include a minimum 10-year agreement between the residential property owner and the third-party owner of the AED. The agreement must cover maintenance of the AED and either the use of the AED or the power generated by the AED for the entire length of the agreement.

(b) The third-party must comply with OAR 330-070-0029.

(c) The applicant must provide system cost information for third-party AED installations. System cost can be demonstrated by providing either a copy of an invoice for the purchase of the AED by the third-party owner, or a declaration from the third-party owner of representative market value for an AED that includes the costs of supply and installation. Such a declaration must include a list of primary system components and their costs.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0021

Eligible Devices

(1) To be eligible for a tax credit, an AED must:

(a) Be a complete system that is currently operating and meets these rules. Additions to existing AED systems, except for pool, spa, or hot tub systems, are eligible when those additions increase the energy production capacity and the kWh saved by the system;

(b) Be a system that is built, installed, and operated in accordance with ORS 469B.100 through 469B.118;

(c) Be a system with manufacturers' warranties against defects in products and materials, including remanufactured equipment;

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems and be one of the following:

(A) A system that uses solar energy;

(B) A ground source heat pump system;

(C) A renewable energy system that heats or cools space, heats water, or makes electricity;

(D) An energy-efficient appliance including a wastewater heat recovery device;

(E) An alternative fuel device; For tax years prior to January 1, 2012 this includes vehicles licensed and registered for first new use on Oregon roadways and used vehicles being modified for first new use of a qualifying alternative fuel device.

(F) A fuel cell system;

(G) For tax years prior to January 1, 2012 a heat pump water heater. Beginning January 1, 2012 only residential heat pump water heaters that meet the "Northern Climate" specification established by the Northwest Energy Efficiency Alliance for electricity will be eligible;

(H) A premium efficiency biomass combustion device;

(I) A ductless mini-split heat pump;

(J) A gas furnace;

(K) A heat and energy recovery ventilator;

(L) An air source heat pump; or

(M) A ground source heat pump compressor upgrade.

(2) The following devices are not eligible for an AED tax credit:

(a) Standard efficiency furnaces;

(b) Standard backup heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood except a qualifying premium efficiency biomass combustion device;

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;

(f) Swimming pools and hot tubs used to store heat;

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing spa and hot tub systems;

(i) Above-ground, uninsulated swimming pools, spas and hot tubs;

(j) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(k) Used equipment, not including remanufactured equipment that meets program standards;

(l) Repairs and maintenance of systems having received prior certification for an AED tax credit;

(m) Water source heat pump: A system that uses surface or subsurface water in a single pass without recirculation (open loop);

(n) Hydro systems;

(o) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water; and

(p) Renewable energy systems that received certification under the Energy Incentives Program or the Business Energy Tax Credit program as Homebuilder Installed Renewable Energy Facilities or as part of a High Performance Home.

(q) Air Conditioning Systems (effective January 1, 2012).

(r) Boilers (effective January 1, 2012).

(s) Dishwashers (effective January 1, 2012).

(t) Refrigerators and Freezers (effective January 1, 2012).

(u) Clothes Washers and Dryers (effective January 1, 2012).

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

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330-070-0022

Amount of Tax Credit

(1) The amount of the AED tax credit is based on the first-year energy yield of an eligible AED. The department has determined first-year energy yield estimates for eligible AEDs and associated tax credit amounts, which are listed in the RETC Rate Chart. The energy yield basis for a solar tax credit may be adjusted by the department to account for less than optimal solar access.

(2) The amount of the AED tax credit must not exceed the lesser of:

(a) \$1,500 or the first-year energy yield of the AED in kWh multiplied by 60 cents for AEDs used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1998. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation. Only one tax credit for ground source heat pump systems will be issued per year per residence.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c) For each alternative fuel device, 25 percent of the eligible cost of the alternative fuel device or \$750, for devices placed in service on or after January 1, 1998. Individual credit may be claimed for both an alternative fuel vehicle, if purchased before January 1, 2012, and an alternative fuel fueling system.

(A) Eligible cost for an alternative fuel device is the difference in the cost between a conventional fueled vehicle of similar size with similar features and the cost of an alternative fuel vehicle and its charging or fueling systems.

(i) Conventional fuel vehicles manufactured by the same manufacturer with the same seating capacity and/or cab cubic volume or weight difference that are less than 20 percent, may be used to define eligible costs, provided that other features (upholstery, audio, suspension, body appointment) are similar.

(ii) Low-speed vehicles, as defined under ORS 801.331 (2009 Oregon Vehicle Code) and alternative fuel vehicles capable of using E-85 and gasoline (flex-fuel vehicles) are not eligible for a tax credit.

(d) For fuel cell systems placed in service on or after January 1, 2007, the first-year energy yield of the AED in kWh multiplied by 60 cents or \$6,000, and not to exceed 50 percent of the cost of the system. One tax credit may be issued per year, per residence, and the maximum credit claimed per year will not exceed \$1,500.

(e) For photovoltaic systems installed on or after November 4, 2005, one \$6,000 tax credit not to exceed 50 percent of the cost of the system as defined in OAR 330-070-0022(4). One tax credit may be issued per year, per residence, and the maximum credit claimed per year will not exceed \$1,500, over a four year period.

(f) For wind AEDs installed on or after January 1, 2007, the first-year energy yield of the AED in kWh multiplied by \$2.00, not to exceed the lesser of \$6,000 or 50 percent of the cost of the system. One tax credit may be issued per year, per residence, and the maximum credit claimed per year will not exceed \$1,500, over a four year period.

(3) For photovoltaic systems:

(a) Installed on or after November 4, 2005 and prior to January 1, 2011, the credit allowed under this section is equal to \$3 per watt of the installed capacity measured in watts of direct current at industry standard test conditions.

(b) Installed on or after January 1, 2011 and before January 1, 2012, the credit allowed under this section is equal to \$3 per watt of the installed output. This is equal to \$2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions.

(c) Installed on or after January 1, 2012, the credit allowed under this section is equal to \$2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions.

(d) A maximum of one credit valued at \$6,000 is allowed per residence, per AED. The maximum amount of credit allowed per year, beginning in the year in which the AED was installed, is \$1,500 per year over a four-year period. The total credit may not exceed 50 percent of the cost of the system. All photovoltaic systems installed at a dwelling within a 5 year period will be considered a single device.

(4) The amount of the tax credit may not exceed the system cost of the AED to the applicant. The sum of any rebates or cash payments, including public purpose organization or federal grants or credits and the residential energy tax credit may not exceed system costs.

(5) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the system cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have system cost prorated. System cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) The department may find an AED to be too large for a dwelling. In such case the system cost must be prorated. System cost must be based on the largest useful size of an AED for the dwelling. The department will determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and any addition may not exceed \$1,500 per year.

(6) For purposes of the tax credit, the eligible system cost of the AED is only those costs necessary for the system to yield energy savings and does not include:

(a) Unpaid labor (including the applicant's labor);

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

(g) Loan interest;

(h) Vendor rebates, discounts and refunds;

(i) Service contracts;

(j) Cost of moving a used AED from one site to another;

(k) Cost of repair or resale of a system; or

(l) Any part of the purchase price which is optional, such as an extended warranty.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0024

Year Credit Claimed

(1) The tax credit must be claimed pursuant to ORS 316.116 (or ORS 317.115, if applicable).

(2) The tax credit allowed in any one year may not exceed a person's tax liability for that year. Unused credit may be carried forward for a maximum of 5 years as allowed under ORS 316.116.

(3) The tax year for which the tax credit may be claimed is determined by the operational date of the AED:

(a) If the operational date of the AED is before April 1 of the tax year following the year it was purchased, then the tax credit must be claimed for the tax year in which the AED was purchased. Proof of purchase is established using the "Purchase Date" as defined in OAR 330-070-0013.

(b) Otherwise, the tax credit must be claimed for the tax year in which the AED became operational. Proof of operation is established using the "Operational Date" as defined in OAR 330-070-0013.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0025

Application for System Certification

(1) Applicants for a tax credit must obtain a system certification through the department.

(2) All applications for a system certification must:

(a) Provide all requested information and include a statement that the system and technician or owner-builder will meet all federal, state and local requirements;

(b) Include the applicant's social security number for use as an identification number in maintaining internal records. The applicant's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) State:

(A) The system cost of the AED;

(B) The location of the AED;

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(C) The estimated first-year energy yield of the AED provided by the tax-credit technician or from the department's energy yield chart, if any; and

(D) That the applicant has received an operating manual for the AED, except that no operating manual is required for sunspaces or direct gain space heating systems.

(d) Include an agreement by the tax-credit technician to make any changes required by the department for the system to comply with ORS 469B.100 through 469B.118;

(e) Be signed by the applicant and tax-credit technician, if any. Alternatively, a form of electronic signature acceptable to the department may be provided;

(f) Include no false or misleading information about an AED; and

(g) For third-party installations, include a valid reference number as issued to the third-party by the department under 330-070-0029.

(3) System certification applications for solar water heating AEDs must contain:

(a) All the data required in section (2); and

(b) The number of collectors;

(c) The manufacturer and/or supplier;

(d) The collector dimensions and/or the net area of the collectors;

(e) The amount of heat storage;

(f) The system type;

(g) A declaration of SRCC certification status or equivalence, as determined by the department;

(h) A description of the freeze protection for the system;

(i) A description of the over-heat protection for the system;

(j) The system model;

(k) A description of the orientation and tilt of the collector;

(l) A solar site assessment worksheet for the collector location;

(m) A Consumer Disclosure signed by the applicant and technician or supplier, if any;

(n) A statement that the applicant has received a copy of consumer information supplied by the department; and

(o) Other data the department requires to determine eligibility.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule; and

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A solar site assessment worksheet for the collector location; and

(e) Other data the department requires to determine eligibility.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) All the data required in section (2) above; and

(b) A copy of the building permit plans;

(c) A copy of the window specifications used;

(d) The type and amount of thermal storage;

(e) A solar site assessment worksheet taken at the center of the solar glazing; and

(f) Other data the department requires to determine eligibility.

(6) System certification applications for photovoltaic AEDs must contain:

(a) The data required in section (2); and

(b) The number of modules;

(c) The brand name of the module(s);

(d) The module(s) area;

(e) The rated DC output in watts of the module(s) under Standard Test Conditions (STC);

(f) A description of the storage provided if storage is a part of the system;

(g) Storage brand and model;

(h) Storage capacity in kWh;

(i) The brand name of the inverter if an inverter is part of the system;

(j) The capacity of the inverter;

(k) Orientation and tilt of the array;

(l) A solar site assessment worksheet of the array location;

(m) Other data the department requires to determine eligibility; and

(n) A copy of the final inspection after the system has been permitted by applicant's local jurisdiction.

(7) System certification applications for ground source heat pumps must contain:

(a) All the data required in section (2) of this rule; and

(b) For all systems connected to a well, data on the well including:

(A) Depth;

(B) Diameter (cased);

(C) Temperature;

(D) Static water level below grade;

(E) A copy of the well driller's log, if available; and

(F) Other data the department requires to determine eligibility.

(c) For systems connected to a heat pump:

(A) Brand name and model number of the heat pump;

(B) Rated output at the entering water temperature;

(C) Estimated system COP rated by ARI under Standard 325 -85 at an entering water temperature of 50 degrees Fahrenheit; and

(D) Any other data the department requires to determine eligibility.

(d) For ground loop heat pump systems:

(A) All the information in subsection (7)(b) of this rule; and

(B) Brand name, rated output, estimated COP;

(C) Length and depth of the loop;

(D) Materials and spacing used;

(E) Type of heat transfer fluid; and

(F) Other data the department requires to determine eligibility.

(8) System certification applications for energy-efficient appliances must contain:

(a) All the data required in section (2) of this rule; and

(b) The dealer's business location;

(c) The brand name, make, model number, capacity and/or size of the appliance;

(d) A signed copy of the sales agreement, which must include all of the following:

(A) Verification of applicant's name and address;

(B) Verification of model of appliance; and

(C) Verification of actual price paid for appliance.

(e) Certification of new equipment warranty; and

(f) Other data the department requires to determine eligibility.

(9) System certification applications for alternative fuel devices must contain:

(a) Taxpayer's name;

(b) Taxpayer identification or social security number;

(c) State of Oregon vehicle registration number, if the device is a vehicle;

(d) Installation location by street address;

(e) The name of the licensed and bonded company employing the technician;

(f) The employing company's business location;

(g) The brand name, make, model number, or component list of the AFD;

(h) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of applicant's name and address;

(B) Verification of model of, or components used for AFD; and

(C) Verification of actual price paid for the AFD.

(i) Certification of new equipment warranty;

(j) An optional letter attached to the application declaring that the applicant designates an Investor Owned Utility (IOU) or other qualifying entity as the eligible recipient of the credit certificate on behalf of the project owner applicant that includes:

(A) Name, address, contact person, phone number, facsimile number of the IOU or designated qualifying party; and

(B) Signature, or form of electronic signature acceptable to the department, of an authorized representative of the IOU or other designated qualifying party stating the party's willingness to accept the tax credit certificate; and

(k) Other data the department requires to determine eligibility.

(10) System certification applications for fuel cells must contain:

(a) All of the data required in section (2) of this rule; and

(b) The rated fuel cell stack peak capacity, in kW;

(c) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);

(d) Whether or not the system is grid connected;

(e) The fuel used by the system;

(f) The type of fuel stack (PEM, PAFC, SOFC, etc.);

(g) An estimate of the average load, in kW, expected to be placed on the system;

(h) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;

ADMINISTRATIVE RULES

(i) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and

(j) Other data the department requires to determine eligibility.

(11) System certification applications for premium efficiency biomass combustion devices must contain:

(a) The manufacturer, model, capacity, serial number of the device;

(b) The device characteristics, defined as catalytic, non-catalytic, or pellet stove or boiler;

(c) Vendor name and address;

(d) Price paid for the device, any parts or installation; and

(e) Efficiency information, as demonstrated by:

(A) The efficiency and grams of particulate emissions per hour published in the List of EPA Certified Wood Stoves;

(B) The efficiency and grams of particulate emissions per hour published in a third-party list approved by the Director in the year in which the device was purchased; or

(C) A certificate of performance including the grams of smoke per hour and efficiency for the specific manufacturer and model of wood burning device from a currently US EPA certified woodstove testing laboratory.

(f) For replacement of uncertified woodstoves, the applicant must additionally provide:

(A) A signed certification from the applicant verifying that the wood burning device being replaced has been rendered unusable, can no longer be used as a heating device, and will be retired permanently from service; and

(B) Documentation, in the form of a disposal receipt from a metal recycler, landfill or licensed contractor, verifying that the wood burning device being replaced is an uncertified woodstove and has been rendered unusable.

(g) Other data the department requires to determine eligibility.

(12) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

(13) For a third-party financed system, the application must provide copies of an energy purchase or lease agreement and full service maintenance agreement.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0026

Technician Tax Credit Certification

(1) Technicians may apply for the department's tax-credit technician status for a technology listed in section (2) of this section. Tax-credit technician status is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to department rules, and verify system installation quality and performance. Technician status is valid for two years and must be renewed to remain in effect.

(2) A tax-credit technician status applies only to the following products:

(a) Solar water heating systems;

(b) Ground source heat pumps (geothermal);

(c) Photovoltaic systems;

(d) Performance-tested ducts; and

(e) Air source heat pumps/air conditioning systems.

(3) The tax-credit technician's status is based on the following:

(a) Knowledge and understanding of the tax credit program requirements and expectations;

(b) Ability to provide systems that are designed and installed consistent with the manufacturer's warranty; and

(c) Employment by a company with a Construction Contractors Board (CCB) license.

(4) Those who do not maintain the competencies in section (3) are subject to revocation of the status.

(5) Tax-credit technician status entitles a technician to:

(a) Inform the AED system owner that he or she has attended the department's periodic training classes and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Verify that installation of tax-credit qualified equipment and systems meets department standards for performance and longevity.

(6) Tax-credit technician status requires that the technicians must follow department requirements including:

(a) Duct and air-source heat pump/air conditioning technicians must have a current or valid certification with Performance Tested Comfort System (PTCS) or Proctor Engineering CheckMe! Programs.

(b) Solar technicians must show a valid or current (North American Board of Certified Energy Practitioners-NABCEP certification or Limited Renewable Energy Technician (LRT) license for solar electric, Solar Thermal License (STL) for solar thermal, or pass the department's competency testing with a score of 70 or above for the technology. On or after May 4, 2009, new applicants for tax-credit solar technicians must show NABCEP photovoltaic (PV) certification or successfully passed the NABCEP PV Entry-Level Exam or Limited Renewable Energy Technician (LRT) license or Solar Thermal License (STL) or other certification approved by the Director to be a tax-credit technician. On and after May 4, 2010 all tax-credit solar technicians must show proof of appropriate NABCEP or LRT or STL certification or other certification approved by the Director to maintain their tax-credit solar technician status with the department.

(c) First-time geothermal technician applicants must show proof of successful completion of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the Director.

(d) Solar and geothermal tax-credit technician applicants must participate in periodic department tax credit training at least once every three years unless otherwise specified in department rule.

(e) Technicians must verify the AED owner has a user manual for the equipment/system.

(f) Technicians must provide the AED owner with a completed application and a copy of the final, itemized and dated invoice for the system that is marked "inspected and paid for." And they must verify the owner has a written full warranty for the system that lasts no less than 24 months after the system is installed.

(g) Technicians must maintain tax-credit technician status by completing the following technology-specific requirements during the period between awarding initial status and the renewal period or between renewal periods:

(A) For solar technology:

(i) Technicians must:

(I) Submit and have approved two (2) Residential or Energy Incentives Program applications for systems in a technology in which the tax-credit technician is listed and complete four (4) hours of related technical continuing education; or

(II) Submit and have approved one (1) Residential or Energy Incentives Program application for a system in a technology in which the tax-credit technician is listed and complete six (6) hours of related technical continuing education; or

(III) Complete eight (8) hours of related technical education.

(IV) Provide information on the number of job hours directly associated with the installation of RETC qualified photovoltaic systems within the prior two years. Job estimates should be submitted in hours.

(ii) Technicians are subject to the renewal period on the second year from the year of initial status or renewal year.

(iii) The two month renewal period begins every year on June 1st and ends prior to August 1st.

(iv) Proof of related technical continuing education must be provided during the renewal period.

(v) Failure to complete requalification during the renewal period will result in the revocation of TCT status for one year. TCT status may be reinstated during the following year's renewal period.

(B) For air source heat pumps/air conditioning, technicians must have a current or valid certification with PTCS or Proctor Engineering CheckMe! Programs.

(C) For performance tested duct systems, technicians must have a current or valid certification with PTCS.

(D) For ground-source heat pumps, technicians must submit and have approved a minimum of one (1) tax credit application or provide proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(7) Tax credits for installation of air source heat pumps/air conditioning systems, performance-tested ducts, geothermal systems, solar electric and solar thermal systems must be verified by a tax-credit technician.

(8) A tax-credit technician must notify the department within 30 days if changes are made in any of the information in the certification application.

ADMINISTRATIVE RULES

(9) The department will compile a list of companies employing duct and air-source heat pump/air conditioning technicians. A listed company must:

(a) Employ a tax-credit technician who has a valid or current certification with PTCS or Proctor Engineering CheckMe! Programs.

(b) Apply in writing and renew its listing on an annual basis.

(c) Have a minimum of two key administrative staff participate in the department's periodic update training.

(d) Tax-credit technicians that do not meet the minimum requirements are suspended for one-year, after which they may reapply.

(10) Tax-credit technicians inspect owner-built systems to verify that the system appears to be installed in a workman-like manner. As part of an owner-built inspection, a tax-credit technician is not required to provide a warranty or guarantee of the owner-built system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0027

Application Review Process

(1) The department must review applications for AED tax credit approval. AEDs must comply with OAR 330-070-0010 through 330-070-0097. Specific rules for each type of AED are provided in OAR 330-070-0060 through 330-070-0097.

(2) The department will return applications that are not complete and will identify the additional information needed.

(3) The department may require more details to complete its review of an application.

(a) If the department requests additional data and does not receive it within 30 days, the department may deny the application;

(b) During review, the department may ask for proof that the AED complies with OAR 330-070-0010 through 330-070-0097. The department may also suggest changes to allow the AED and application to comply with these rules.

(4) To obtain the information needed to evaluate an application or to verify eligibility and first year energy yield, the department may, with the owner's consent, inspect an installed AED:

(a) The department may deny a system certification or request Department of Revenue (DOR) to initiate proceedings for the forfeiture of a tax credit if an owner refuses to allow the department to inspect the AED;

(b) The department may require corrections necessary to bring the AED or tax credit application into compliance with OAR 330-070-0010 through 330-070-0097 to be made within 30 days; and

(c) If such changes are not made within this time limit, the department may reject the application.

(d) The department may use the results of utility inspections in lieu of its own inspection.

(5) The department may reject any application if the AED does not comply with ORS 469B.100 through 469B.118 and OAR 330-070-0010 through 330-070-0097. The department will provide an explanation for all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include a written explanation of the basis for the determination.

(6) If the department rejects an application for system certification or approves a certification for lesser cost than claimed by the applicant, an applicant may appeal the rejection. The appeal must be filed within 60 days of the mailing of the rejection notice by the department, in accordance with ORS 183.310 through 183.500.

(7) If the department receives an application(s) for a qualifying alternative fuel device accompanied by a letter from the applicant designating an IOU or other qualifying party as the recipient of the tax credit certificate, then the department may aggregate such applications and issue a single tax credit certificate to designated qualifying party quarterly for applications for projects to be completed in that calendar year.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 2-1987, f. & ef. 5-13-87; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0029

Third-Party Alternative Energy Device Installations

(1) A third-party who intends to complete a third-party alternative energy device installation must obtain a reservation before commencing installation.

(2) The third-party must apply to reserve potential tax credits by submitting a completed reservation request to the department. A reservation request may only be submitted after the owner of the residential property has entered into a contract for a third-party alternative energy device installation. The reservation request must contain the information required by the department on its form, but may be submitted in an alternative format.

(3) The department may require the third-party to provide a copy of the signed contract at any time after the submission of a reservation request. Failure to provide requested documents within 30 calendar days may result in the loss of reservations made by the third-party.

(4) A third-party may request the reservation of up to 25 potential tax credits in each reservation request, and may submit one request each week.

(5) The department will reserve the requested potential tax credits from the amount allowed by Oregon Laws 2011, chapter 730, section 75 and will provide the third-party with a reference number for each potential tax credit. The owner of the residential property at which the alternative energy device is installed must include the reference number on their tax credit application.

(6) A third-party may release a reservation by submitting a written request, including the reference number, to the department. If reservations are released in the same tax year they are reserved the department will re-allocate the potential tax credits to new reservation requests in the order the requests are received. Reservations of potential tax credits may not be transferred.

(7) The department will continually monitor the rate of allocation of tax credits to ensure that the total amount of tax credits do not exceed the amounts specified in Oregon Laws 2011, chapter 730, section 75. The department will allocate potential tax credits according to these rules and in the order in which requests are received. The department will return any excess reservation requests. A third-party may not commence installation until a reservation reference number is issued by the department.

(8) The department will issue tax credits based on the year the potential tax credit is reserved if the installation is completed, as verified by an approved final inspection issued by the local jurisdiction, before April 1 of the following tax year. Tax credits for installations completed after April 1 of the tax year following reservation will be issued for the tax year in which the installation is completed.

(9) Reservation of potential tax credits does not guarantee approval of tax credit applications.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160 - 469-180

Hist.: DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0040

Other Rules and Regulations

(1) AEDs must comply with all state, federal and local laws and rules that apply.

(2) The policy of the department is:

(a) To accept the findings of local, state and federal agencies which license or permit projects to be built or run;

(b) To avoid influencing any of those agencies to approve or deny a license or a permit; and

(c) To provide facts from tax credit files to such agencies when asked.

(3) Each applicant must:

(a) Obtain each local, state, and federal permit and license that applies to a project;

(b) Agree to comply with the express terms and conditions of each permit and license; and

(c) Agree to comply with all state rules and laws that apply to the project.

(4) System certification and tax-credit technician status are based on the applicant's promise that each needed local, state and federal license and permit has been or will be obtained. Failure to obtain those approvals will cause the department certification or status approval to be revoked.

(5) If any license or permit named in these rules does not apply to the project, the licensing or permitting agency must certify that the license or permit is not required. This does not apply to residential DHW, pool, spa and hot tub systems.

(6) AED technicians must install all systems in compliance with the system manufacturer's published specifications.

ADMINISTRATIVE RULES

(7) The department will assign a yield for all solar domestic water heating systems. For systems approved by the department that are not SRCC OG-300 certified, the department will assign a yield based on requirements determined comparable to SRCC OG-300.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0045

Enforcement

(1) Actions that are cause for revocation of a residential alternate energy tax credit:

(a) A system certification may be revoked pursuant to ORS 469B.118 if the Director finds any of the following:

(A) The applicant obtained the system certification as a result of misrepresentation.

(B) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

(i) Failure to follow applicable standards;

(ii) Failure to comply with required codes or obtain required permits or inspections;

(iii) Return of the AED to the seller or installer for a refund; or

(iv) Sale or removal of the device so that it no longer operates on the property of the applicant.

(C) The applicant refuses to allow the department to inspect the AED after a reasonable written request by the department. A reasonable request must allow applicant to choose a day within three weeks of the request from the department.

(b) Following revocation, the applicant will forfeit the tax credit, and the department of Revenue will proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) A technician's tax credit status may be revoked pursuant to ORS 469B.118 if the Director finds that:

(a) The system or tax-credit technician status was obtained by fraud or misrepresentation by the technician. The Director may find that fraud or misrepresentation occurred if false statements were made regarding the technician's licenses held, products or warranties carried by the tax-credit technician's employing company, the company's range of product cost, personnel employed in the business, or any other item in the application for technician tax credit status as defined in OAR 330-070-0026.

(b) The technician's performance regarding sales or installation of the alternative energy device for which the technician is issued a tax credit certificate under ORS 469B.106 does not meet industry standards. The Director may find that the technician's performance does not meet industry standards under any one or more of the following conditions:

(A) The technician or employing company is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding.

(B) The technician or employing company fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040.

(C) The technician fails to install the AED system in compliance with standards adopted under OAR 330-070-0060 through 330-070-0097.

(D) The technician fails to install the AED system to comply with manufacturers' published specifications.

(E) The technician or employing company fail to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation.

(F) The technician or employing company fail to honor a warranty that they are contractually obligated to perform.

(G) The technician or employing company fail to make corrections to remedy failure to comply with paragraphs (A) through (F) of this subsection, as requested by the department, within 30 days of written notification from the department of the problem, unless a time extension is granted by the department.

(H) A tax credit for an AED sold or installed under the tax-credit technician status is ordered revoked under subsection (2)(a) of this rule.

(I) Information indicates that the AEDs installed under the tax-credit technician status or the employing company do not meet eligibility requirements.

(c) The technician or employing company has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the technician or employing company has misrepresented the tax credit program or the AED under any of the following conditions:

(A) The technician or employing company has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other misleading information about the program implemented under ORS 469B.100 through 469B.118.

(B) The technician or employing company has misrepresented the nature of the performance of the AED or claimed savings in excess of those on a yield chart without providing accurate calculations to the customer and to the department to substantiate the yield. For geothermal heat pumps, the technician or employing company has claimed savings higher than other units of similar efficiency.

(C) The technician or employing company has misrepresented the cost of a system. For example, the technician or employing company omits costs in the contract for features necessary for basic installation and/or operation of the system and/or costs to comply with the AED eligibility under ORS 469B.100 through 469B.118.

(D) The technician or employing company has misrepresented a competitor's product or service.

(E) The technician or employing company fails to make corrections requested in writing to the department to remedy violations of (A)-(D) of this subsection within 30 days, unless more time is allowed by the department.

(F) The technician or employing company fails to remedy the construction and/or warranty claim as directed by order of the Construction Contractors Board.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0048

Administrative Process for Review and Revocation of Technician Tax Credit Certification

(1) If the department receives a complaint, the tax-credit technician and employing company must be notified and given an opportunity to respond.

(a) If the complaint relates to issues that the Construction Contractors Board (CCB) has authority to resolve, the complaint must be referred to the CCB for resolution. The CCB generally has authority to address construction, warranty claims or complaints involving dishonest or fraudulent conduct. Failure to comply with the order of the CCB must be grounds for revocation of tax-credit technician status.

(b) In all other cases, the department must evaluate the technician's or employing company's response and determine whether a violation occurred. The department must notify the technician and employing company of its determination and, if appropriate, the necessary remedy. The department must give the technician and employing company 30 days to remedy a violation. The department may grant the technician and employing company additional time where appropriate.

(2) If the technician and employing company do not take appropriate action within the time specified, the department may begin enforcement proceedings. An enforcement proceeding may be brought to revoke the tax-credit technician status, remove the company name from the department listing and to collect tax credit amounts.

(3) The department may commence an enforcement proceeding by sending the technician and employing company a notice of violation. The notice must describe the violation(s) and notify the technician and employing company of the proposed penalty (revocation or collection of tax credit amounts).

(4) Before the Director imposes a penalty, the technician and employing company must be given 21 days in which to request a hearing pursuant to ORS 183.310-183.550 and the applicable Attorney General's Uniform and Model Rules of Procedure. The hearing will be to contest the revocation of a system or technician tax credit status based on actions listed under OAR 330-070-0045.

(5) Re-application: To reapply after the revocation of a technician tax credit status, the technician and employing company must prove to the sat-

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isfaction of the department that the problem causing revocation has been corrected. Revocation must be in effect for at least one year before that technician or employing company or any other firm with any of the same shareholders may reapply for status.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0055

Consumer Information

(1) A tax-credit technician must inform the owner in simple terms:
(a) How to tell if the device is running correctly, and who to call if it is not;

(b) How to tell if the freeze protection is in effect, and who to call if it is not;

(c) What maintenance is needed, annually and long term;

(d) Who will honor warranties; and

(e) The conditions of the warranties including, but not limited to, how to start and keep warranties in force.

(2) A tax-credit technician or employing company must provide all AED purchasers with a copy of materials listed in section (1) of this rule prior to sale of the system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0059

Solar Pool and Spa AEDs

(1) Installations must be of professional quality, be installed according to manufacturer's instructions; and comply with all applicable state, county, or local codes and regulations.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

(a) Clear instructions on how to monitor the system performance;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices; and

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs.

(3) Pool heating system designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads.

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system.

(c) Any building insulation disturbed due to the system installation must be restored to previous condition.

(d) Pool collector materials must come with a minimum 10-year manufacturer's full warranty (to ensure that equipment designed for temporary installation is not used).

(e) System must have a method to show that it is operating correctly. This equipment must be a permanent part of the system, not require any special tools, and be in an easily accessible location.

(f) Collectors must be mounted in a manner to enable seasonal drainage by gravity for proper freeze protection.

(g) Pool collectors must be equal to not less than 40 percent of the pool surface area.

(h) The system must have a minimum total solar resource fraction (TSRF) of 75 percent.

(i) Above ground pool systems must be insulated to R-10 with rigid insulation designed for and protected from the environment. Installations must be of professional quality, and comply with all applicable state, county or local codes and regulations.

(j) A pool blanket must be used.

(4) Spa heating system designs and installations must comply with the following additional requirements:

(a) System design must be approved by the department. Approval is based on complete system design documentation and calculation of annual energy savings.

(b) Controls must be capable of maintaining safe spa temperatures.

(c) Spa or hot tub must be insulated with not less than R-15 perimeter and bottom insulation and have a cover rated to not less than R-5.

(d) The system must have a minimum total solar resource fraction (TSRF) of 75 percent.

(5) The costs listed in subsection (6) of this rule do not include all eligible costs. Other costs will qualify if justified to the department's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(6) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of monitors, meters and controls;

(d) The cost of photovoltaic devices used to supply electricity to parts of the system;

(e) Installation charges;

(f) Fees paid for design or building;

(g) The cost of swimming pool blankets, if they are installed with a solar pool heating system; and

(h) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(7) The addition of more energy producing capacity to an existing solar pool heating system may be eligible for an AED tax credit if:

(a) The system addition increases first year energy yield; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(8) The department will calculate first year energy yield of a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition.

(a) The department will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED that received an AED tax credit in a prior year will be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0060

Solar Domestic Water Heating AEDs

(1) Installations of solar domestic water heating systems must be of professional quality, comply with all applicable state, county or local codes and regulations and be verified by a tax-credit technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must be plainly mounted/displayed on or near the solar storage or backup water-heating tank. These instructions must at a minimum include:

(a) Clear instructions on how to determine if the system is functioning properly;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices;

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs; and

(e) How to protect the system from overheating due to stagnation during periods when the system is not in use during the summer months.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads.

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system.

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures.

(d) Any building insulation disturbed due to the system installation must be restored to previous condition.

ADMINISTRATIVE RULES

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system.

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes. A minimum number of fittings must be used in the attic, and the fittings must be copper or brass.

(g) Pipe materials (e.g. copper, PEX, polybutylene) must be capable of handling the temperature ranges that they will be exposed to (e.g. freezing or collector stagnation).

(4) Freeze protection must be provided for systems where the heat transfer fluid may freeze. The freeze protection method must follow these rules:

(a) The method must be clearly stated in the owner's manual.

(b) The method must work in the absence of utility electric power.

(c) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(d) Recirculation is not an acceptable freeze protection measure, unless the collector used is a heat pipe type.

(e) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(f) Thermosyphon systems may not connect power to the electric element in roof-mounted tanks as a freeze protection or backup measure.

(5) The annual energy requirement for domestic water heating must be reduced by setting the water heater thermostat to 120 degrees F.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(c) Equipment meeting this requirement must:

(A) Be a permanent part of the system;

(B) Not require any special tools or equipment to monitor; and

(C) Be in an accessible location.

(7) The costs listed in subsection (8) of this rule do not include all eligible costs. Other costs will qualify if justified to the department's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit.

(8) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges;

(g) Fees paid for design or building;

(h) The cost of swimming pool blankets, if they are installed with a solar pool heating system;

(i) The cost of hot water conservation measures installed with a water heating AED; and

(j) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) Annual energy savings will be based on the annual performance simulations provided by the Solar Rating and Certification Corporation (SRCC) modified for conditions required under state law.

(a) The SRCC annual energy savings must be adjusted for site specific conditions as documented by a Solar Site Assessment Worksheet.

(b) The system must have a minimum total solar resource fraction (TSRF) of 75 percent.

(10) All systems must meet the standards established by the SRCC OG-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

(a) Prior to January 1, 2011, temporary authorization will be granted to non-OG-300 systems under a special "Research & Development" status. The department will extend this temporary authorization for up to 12 systems of a specific design. The tax-credit technician must submit a complete copy of the system design and operation documents provided to the consumer to the department for approval. The department will consider whether the system will perform well under the conditions it is designed for and will likely last in excess of 15 years without replacement of major com-

ponents. Tax credit amounts under this status will be determined by the department based on 90 percent of the estimated annual energy output. On or after January 1, 2011, the temporary authorization provided in this section expires.

(b) Prior to January 1, 2011, temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status providing the system manufacturer is currently applying for OG-300 certification from SRCC. The department will extend an authorization to an unlimited quantity of systems to be installed in a 12-month period, providing the department has reviewed a copy of the SRCC application and determined it to be reasonably likely to achieve OG-300 certification within the 12-month period.

(c) On or after January 1, 2011, temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status the system must comply with all local codes and the manufacturer must have submitted an application to the SRCC for OG-300 certification. The department must have reviewed and approved a copy of the SRCC application including the operations manual prior to the installation of the system.

(11) All tax-credit technician installed systems must:

(a) Include an O&M manual which specifies installation instructions, operation instructions, maintenance plan, fluid quality, service and replacement parts, hazards, and warranty coverage;

(b) Provide clear labeling of on/off/bypass controls and safety issues;

(c) Have a means of indicating proper operation of the solar water heating system (flow indicators/meter or thermometers);

(d) Be installed to meet local building codes; and

(e) Have a tempering valve to prevent greater than 120 degree F. water downstream of the valve.

(12) Systems must be installed with the OG-300 certification sticker located on the manual cover. The manual and any supporting documentation must be placed in a waterproof, clear plastic bag located on or near the solar or domestic hot water heater.

(13) Owner-built and site-built domestic water heating systems must meet testing requirements. The department may evaluate the system design and assign it a yield based on 50 percent of its estimated annual energy performance. Owner-built and site-built domestic water heating systems must be tested by a tax-credit technician or a verifier approved by the department.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0062

Passive Solar Space Heating AEDs

(1) Installations of passive solar space heating systems must be of professional quality and comply with all applicable state, county or local codes and regulations.

(2) The estimated first year energy yield for the system must be the net usable energy produced under average environmental conditions in one year.

(3) Passive solar space heating systems must produce energy savings equal to not less than 20 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit. Such systems must:

(a) Have sufficient solar access not jeopardized by future buildings or tree growth;

(b) Provide usable heat for the heated space;

(c) Provide adequate thermal storage for solar heat gained;

(d) Prevent overheating of the heated space that requires mechanical space cooling; and

(e) In addition, sunspaces must:

(A) Have no backup heating device; and

(B) Be able to be isolated from the heated space.

(4) Determination of annual performance must be based on one of the following approved methods:

(a) Using the department's prescriptive passive solar heating path to achieve 20 percent savings.

(b) Annual hourly simulation using an approved energy modeling software (e.g. Energy-10).

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- (c) Monitored data from system before and after installation of AED.
- (5) Costs eligible for passive solar space heating systems include:
 - (a) The cost of mass or water walls for thermal storage;
 - (b) The cost of movable window insulation that is part of a passive system. It must tightly seal on all sides of the window. It must also have an R- value of at least three;
 - (c) The cost of south-facing windows, if the requirements of section (4) of this rule are met; and
 - (d) The cost of passive heat distribution components.
- (6) The department will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0063

Combined Active Solar Space and Domestic Water Heating AEDs

(1) Installations of active solar space and domestic water heating systems must be of professional quality, made to manufacturer's instructions, comply with all applicable state, county and local codes and regulations, and be verified by a tax-credit technician.

(2) Active solar space heating systems must produce energy savings equal to not less than 15 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit.

(3) The estimated first-year energy savings must be based on the following:

(a) The house design prior to installation of the solar energy equipment, not a base code design or reference design.

(b) The total energy savings from both space heating and domestic hot water heating, with not less than 50 percent of the savings coming from solar heating.

(c) An annual solar utilization calculation method approved by the Director that accounts for the operating temperature of the energy storage and collector system and gives no credit for any insulation measures not directly associated with the solar AED.

(d) Typical residential occupancy setpoints and operating behavior. Savings will not be granted for consumer behavior options, with the exception of nighttime window insulation which will be evaluated at 50 percent of maximum effectiveness.

(4) Applicant must provide the following information:

(a) Complete system design documentation with component list and controls sequence;

(b) Documentation showing that the system has a minimum total solar resource fraction (TSRF) of 75 percent.

(c) Annual estimated savings calculations; and

(d) Solar equipment specifications and performance test data.

(5) Costs eligible for the tax credit for active solar space heating systems include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters, and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges; and

(g) Fees paid for design or building.

(6) The department will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0064

Photovoltaic AEDs

(1) Installations of photovoltaic systems must be professional quality, comply with all applicable Oregon codes and be verified by a tax-credit technician.

(2) System size will be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC). The minimum system size must be 200 Watts DC output under STC.

(3) The system must have a minimum total solar resource fraction (TSRF) of 75 percent.

(4) Photovoltaic AED costs eligible for the tax credit include the cost of:

(a) Solar labor costs;

(b) Solar material costs, including the cost of:

(A) Photovoltaic modules;

(B) Inverters;

(C) Storage systems and regulators;

(D) Monitors, meters, and controls;

(E) Wiring and framing materials;

(F) Trackers;

(G) Mounting or racking structures only, no structures beyond those needed for mounting or racking purposes; and

(H) Shipping cost.

(c) The cost of owner-built system inspections by a tax-credit technician, up to \$400; and

(d) Permit and fee costs, including up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0070

Ground-Source Heat Pump

(1) Only total ground-source heat pump systems will qualify for a tax credit. All systems must comply with OAR 330-070-0025 and 330-070-0040 and be of closed loop design and operation. See also OAR 330-070-0027. Installations must be of professional quality, comply with all applicable Oregon codes and be verified by a tax-credit technician.

(2) Systems must limit waste of the resource.

(3) Systems must not have adverse effects on:

(a) Other systems; and

(b) Water quality, applying the standards of the Department of Environmental Quality.

(4) Systems must not create hazards such as:

(a) Steam or water vapor;

(b) Vapors or odors;

(c) Noise; and

(d) Hazardous wellhead design.

(5) System parts must have adequate:

(a) Structural strength;

(b) Resistance to weather and fire;

(c) Ease of upkeep; and

(d) Durability.

(6) No system may cause harmful physical effects on people or unwanted tastes or odors.

(7) Some heat transfer fluids need special handling. These include toxic, corrosive, and explosive fluids. Such fluids may only be used when the system is designed to safely handle them.

(8) Under normal operation, any part of a system that might be touched by people must be cooler than 141 degrees F. If this cannot be done, any part that reaches more than 140 degrees F. must have warning labels. Each system must include a device to limit water for domestic use to 140 degrees F.

(9) Each system and nearby structures must be protected against pressures, vacuums and temperatures.

(10) Systems must fully protect drinking water as specified in the Oregon Plumbing Specialty Code.

(11) Systems must use storage tanks built by accepted methods. Each tank must be tested for leaks.

(12) Expansion and contraction due to changing heat levels must not cause undue strain or distortion.

(13) Systems that use heat transfer fluids that may freeze must have freeze protection.

(14) Systems must use accepted methods to guard against the known corrosion/scaling level of the water.

(15) Systems must also be designed to have the least effect on groundwater.

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(16) Ground loop systems must cover enough ground to meet total annual heating requirements, as required by manufacturers' recommended design standards. Ground loops used for cooling must restore soil moisture.

(17) Downhole heat exchangers (direct use geothermal systems) must include a summary report from Oregon Institute of Technology or other source approved by the Director which describes the system and indicates that it will deliver sufficient heat and the design meets current good practice guidelines. These systems will be reviewed on a case-by-case basis.

(18) The system COP must be at least 3.3 for closed loop systems and 3.5 for direct expansion (DX) systems, including energy used by pumps. COP will be determined by the following methods:

(a) For water source heat pumps, the COP must be determined in accordance with ARI Standard 325-85, at an entering water temperature of 50 degrees F.

(b) For water source or ground loop heat pumps using ambient surface water as an energy source and for solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(19) All other types of ground source heat pumps must be reviewed on their COP.

(20) Bermed or earth covered buildings will not qualify for the geothermal tax credit.

(21) All ground source heat pumps must set the water heater thermostat to 120 degrees F, as a hot water conservation measure.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0073

Energy-Efficient Appliances and Alternative Fuel Devices

(1) Energy-efficient appliances must meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be currently listed with the department as qualifying premium efficiency appliances. In the event that the same model number has more than one energy efficiency rating, one of which is non-qualifying, all units with that model number will be declared ineligible and removed from the department's qualifying list of premium efficiency appliances. Models declared ineligible due to multiple energy efficiency ratings may be reinstated upon demonstration by the manufacturer that the problem has been remedied, but not earlier than 12 months from the time of removal from the list.

(2) Where USDOE test procedures do not exist, the department will designate a nationally recognized test procedure that will apply instead.

(3) Clothes washers.

(a) For the purpose of this program, clothes washer efficiency performance is determined using the USDOE Appendix J1 test procedure for residential clothes washers in effect at the time the rules are adopted.

(b) Clothes washers purchased on or after:

(A) April 1, 2007 and prior to January 1, 2011, must have a minimum Modified Energy Factor (MEF) of 2.0 ft³/kWh/cycle and a maximum Water Factor (WF) of 6.4 gal/ft³/cycle.

(B) January 1, 2011, must have a minimum Modified Energy Factor (MEF) of 2.2 ft³/kWh/cycle and a maximum Water Factor (WF) of 4.5 gal/ft³/cycle.

(C) January 1, 2012, are not eligible.

(c) Equipment efficiency requirements are based on ENERGY STAR® listing or other third-party certified list approved by the department.

(4) Refrigerator-Freezers.

(a) Refrigerator-Freezers purchased:

(A) prior to January 1, 2011, must have at least 20 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers.

(B) on or after January 1, 2011, must have at least 30 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers.

(C) on or after January 1, 2012, are not eligible.

(b) Refrigerator-freezers must have a total net volume (sum of the fresh food compartment and freezer compartment volumes) of at least 12 cubic feet, but less than 31 cubic feet.

(c) Refrigerator-freezers must have a fully automatic defrost cycle.

(d) Equipment efficiency requirements are based on listing by ENERGY STAR® or other third-party certified list approved by the Director.

(5) Dishwashers.

(a) Dishwashers purchased on or after:

(A) January 1, 2008 and prior to January 1, 2011, must have an Energy Factor of 0.70 cycles/kWh or higher.

(B) January 1, 2011, standard dishwashers as defined by ENERGY STAR®, must have an Energy Factor of at least 0.75 cycles/kWh or higher; and compact dishwashers, as defined by ENERGY STAR®, must have an Energy Factor of at least 1.00 cycles/kWh or greater.

(C) January 1, 2012, are not eligible.

(b) Dishwashers must have tax credit eligibility based on an Energy Factor derived from the DOE Dishwasher Test Procedure effective September 28, 2003.

(c) Equipment efficiency requirements are based on by ENERGY STAR® listings or other third-party certified list approved by the Director.

(6) Water Heating Appliances.

(a) Water heater efficiency requirements:

(A) Equipment efficiency requirements for units of nominal 1-ton or less capacity are based on listing by ENERGY STAR® or California Energy Commission or on the USDOE Energy Factor, as derived from the USDOE Appendix E test procedure for residential water heating equipment in effect at the time the rules are adopted. Efficiency requirements for units larger than 1-ton in capacity and smaller than 6-tons in capacity, are based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by the department.

(B) High-efficiency heat pump water heaters (HPWH) for domestic hot water must meet the "Northern Climate" specifications for electricity by the Northwest Energy Efficiency Alliance (NEEA). Split systems with a capacity greater than 1-ton and less than 6-tons must have a COP rating of not less than 2.5. HPWH less than 1-ton must have a minimum energy factor (EF) for the appropriate Tier Level stated in the specifications.

(C) Natural gas, propane, or oil-fired residential storage type water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have an Energy Factor of 0.80 or greater as tested with natural gas fuel.

(D) Whole-home gas fired instantaneous water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have:

(i) An Energy Factor of at least 0.80, a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour if installed prior to January 1, 2011;

(ii) An Energy Factor of at least 0.82 or greater if installed on or after January 1, 2011.

(E) Equipment efficiency requirements are based on either the listing by ENERGY STAR®, the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), or other third-party certified list approved by the Director.

(b) Combined space/water-heating system efficiency must be based on the water heating Energy Factor for Combined Systems (CEF) as derived from the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) 124-1991 test method. Water heaters that are part of a combined space and water heating system may not receive a tax credit for space heating efficiency as a boiler in addition to the tax credit as a water heating appliance.

(7) For Wastewater Heat Recovery Systems, field performance data submitted to and approved by the department will be the basis for tax credit qualification. The following rules also apply:

(a) The system must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(8) Performance Checked Space Conditioning Duct Systems must meet the following requirements:

(a) All work must be done in accordance with Performance Tested Comfort Systems (PTCS) specifications, a regionally developed set of protocols with provisions for testing and sealing duct work that is maintained

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by the Regional Technical Forum (RTF), as adopted by the RTF and in effect at the time the work is performed.

(b) If the home serviced by the performance checked duct system is new, or the building envelope is being altered, the house must meet residential energy conservation requirements of the Oregon Structural Specialty Code or of the Oregon One and Two Family Dwelling Code in effect at the time the home is constructed or structurally altered.

(c) Duct leakage must be tested in accordance with Performance Tested Comfort Systems (PTCS) approved testing protocols.

(d) Testing to verify that these standards have been achieved must be conducted by technicians approved by the department.

(e) Costs eligible for the purpose of calculating a performance checked duct system tax credit include:

(A) For new construction, the cost of:

- (i) Duct sealing labor and materials;
- (ii) Heating and cooling load calculations;
- (iii) Duct system sizing and design calculations;
- (iv) Labor and materials for installing multiple returns;
- (v) Labor and materials for installing passive pressure relief grilles;
- (vi) Duct testing; and
- (vii) Labor and materials for bringing duct systems inside heated space.

(B) For new ducts in existing homes, the cost of:

- (i) Duct sealing labor and materials;
- (ii) Heating and cooling load calculations;
- (iii) Duct system sizing and design calculations;
- (iv) Labor and materials for installing multiple returns;
- (v) Labor and materials for installing passive pressure relief grilles;

and

(vi) Duct testing.

(C) For duct repair and sealing/existing ducts in existing homes, the cost of:

- (i) Duct sealing labor and materials;
- (ii) Labor and materials for installing multiple returns;
- (iii) Labor and materials for installing passive pressure relief grilles;

and

(iv) Duct testing.

(f) To apply for a performance checked duct tax credit, the following information must be submitted in a form approved by the department:

(A) Application form;

(B) Test results worksheet for "new construction," "new duct systems in existing homes," or "duct repair and sealing"/existing ducts in existing homes, as applicable; and inclusion of the PTCS identification number associated with the "duct repair and sealing" measure being submitted for tax credit on the application form.

(C) Copies of heating and cooling load calculations and/or duct sizing calculations, as applicable, must be made available to the department upon request; and

(D) Itemized invoice identifying costs detailed in (e).

(9) Performance Checked Heat Pumps and Central Air Conditioners must meet the following standards:

(a) Systems must be tested and serviced as needed to confirm correct refrigerant charge and air flow by a tax-credit technician authorized by the department and by an approved Performance Tested Comfort System (PTCS) provider.

(b) Testing must be in accordance with PTCS specifications, a regionally developed set of protocols with provisions for testing the operation of air-source heat pumps and air conditioners that are maintained by the Regional Technical Forum (RTF), as adopted by the RTF and in effect at the time the work is performed.

(c) Eligible systems must be confirmed by the system diagnostic tests using PTCS protocols in use at the time of measure installation. Duplicate tax credits may not be claimed.

(d) Costs eligible for the purpose of calculating a performance checked heat pump/air conditioner tax credit include costs for:

(A) System diagnostic tests;

(B) Adding or removing refrigerant when initial diagnostic tests indicate need for refrigerant adjustment and post repair tests indicate correct charge has been installed;

(C) Altering the duct system to improve air flow when initial diagnostic tests show low air flow and post repair tests show an air flow improvement of 10 percent or more;

(D) Cleaning the inside coil when initial diagnostic tests indicate low air flow and post repair tests show an air flow improvement of 10 percent or more;

(E) Replacing an existing inside fan motor with an electronically commutated permanent magnet motor (ECPM DC) when initial diagnostic tests show low air flow and tests after ECPM DC installation show an air flow improvement of 10 percent or more; and

(F) Control modifications necessary for the system to pass the diagnostic test.

(e) To apply for a performance checked heat pump/air conditioner tax credit, the following information must be submitted in a form approved by the department:

(A) Application form;

(B) Performance checked heat pump/AC diagnostics data entry form;

(C) Pre- and post-repair system air flow measurements using approved methods listed in (b), if applicable; and

(D) Itemized labor and materials cost information for applicable measures, testing, and repairs.

(10) Alternative Fuel Vehicles must have equipment installed to make the vehicle capable of storing and utilizing an alternative fuel for vehicle propulsion.

(a) Equipment may consist of:

(A) Original equipment manufacturer components;

(B) Components for natural gas powered vehicles that meet EPA1-A requirements current at the time these rules are adopted;

(C) Components for hybrid vehicles must provide the hybrid vehicle with a combination of power between propulsion energy systems such that the peak power ratio of the vehicle is 0.10 or greater; or

(D) Other components as recognized by the department as necessary for alternative fuel use.

(b) Those applying for alternative fuel vehicle tax credits must acknowledge that they do not intend to transfer ownership of the vehicle to a non-Oregon resident for a period of one year.

(c) Vehicles must be purchased before January 1, 2012.

(11) Alternative Fuel Fueling Systems must be permanently installed to meet all state and local safety codes and be capable of re-fueling or recharging an alternative fuel vehicle within 14 hours.

(12) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed;

(c) Have a maximum EUI(HRV/ERV) of 1.1 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(d) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 68 percent at 32°F/0°C when operating at the highest fan speed.

(13) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 68 percent at 32°F/0°C when operating at the highest fan speed.

(14) High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI);

(d) Have a minimum EER rating at DOE standard test condition "A" conditions of 13.0;

(e) Be installed in accordance with the protocols specified in OAR 330-070-0073(9); and

(f) Be purchased before January 1, 2012.

(15) High Efficiency Air Source Heat Pump Systems must:

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(a) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) that is in effect at the time these rules are adopted;

(b) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI);

(c) Have a minimum DOE Region IV HSPF rating of 9.0 or greater;

(d) Have a minimum EER rating at DOE's standard test condition "A" of at least 12.0; and

(e) Be installed in accordance with the protocols specified in OAR 330-070-0073(9).

(16) High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating:

(A) Of 0.90 (90 percent) for installations completed prior to January 1, 2009;

(B) Of 0.92 (92 percent) for installations completed on or after January 1, 2009 and prior to January 1, 2011;

(C) Of 0.94 (94 percent) for installations completed on or after January 1, 2011 and prior to January 1, 2012; and

(D) Of 0.95 (95 percent) for installations completed on or after January 1, 2012.

(c) Use ducted outdoor air for combustion; and

(d) Must be listed in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) directory of Certified Energy Rating in effect at the time these rules are adopted as an "e" "electrically efficient" furnace. The "e" electrically efficient designation applies to furnaces whose electricity consumption is 2 percent or less of the furnaces total energy use, according to the department's official test procedure, and is determined according to the following formula: $(3413 \times \text{EAE}) / [(3413 \times \text{EAE}) + (1,000,000 \times \text{EF})] \leq 2.0$ percent. EAE is the average annual auxiliary electrical energy consumption for a gas furnace in kilowatt-hours per year (kWh/yr). It is a measure of the total electrical energy supplied to a furnace during a one-year period. EF is the average annual fuel energy consumption for a gas furnace in millions of Btus per year (MMBtu/yr).

(17) High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(18) High Efficiency Hot Water Boiler Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted.

(b) Have a minimum AFUE rating:

(A) Of 0.88 (88 percent) for installations completed prior to January 1, 2009.

(B) Of 0.92 (92 percent) and must include an outdoor temperature reset control for installations completed on or after January 1, 2009.

(c) Be purchased before January 1, 2012.

(19) High Efficiency Ductless Air Source Heat Pump Systems must:

(a) Include an inverter-driven variable speed compressor;

(b) Be listed in the Air-Conditioning, Heating and Refrigeration Institute (AHRI) Directory of Certified Products;

(c) Deliver at least 50 percent of its AHRI-certified rated heating capacity at 17°F outside temperature;

(d) Include no integrated electric resistance backup heat;

(e) Be sized and installed per manufacturer specifications; and

(f) Be installed by a technician trained by the equipment manufacturer within the last five years.

(20) Premium Efficiency Biomass Combustion Devices must be:

(a) Less than one quarter of a million British thermal units (Btu) per hour heat output;

(b) Installed in an Oregon residential dwelling;

(c) Installed with a dedicated outside combustion air intake; and

(d) Efficiency tested, as evidenced by:

(A) A listing in the United States Department Environmental Protection Agency List of EPA Certified Wood Stoves with emissions of 4.5

grams of particulate per hour or less if it is designated in that list as a non-catalytic wood stove;

(B) A listing in the List of EPA Certified Wood Stoves with emissions of 2.5 grams of particulate per hour or less if it is designated in that list as a catalytic wood or pellet stove; or

(C) Having a certificate of performance for the specific manufacturer and model of wood burning device from a current US EPA certified wood-stove testing laboratory, tested in accordance with CSA B415. The certificate must show emissions of 4.5 grams of particulate per hour or less if it is designated as a non-catalytic wood stove or emissions of 2.5 grams of particulate per hour or less if it is designated as a catalytic wood or pellet stove.

(21) Ground Source Heat Pump Compressor Upgrade must comply with the following requirements:

(a) All units must be installed on systems that comply with OAR 330-070-0025, 330-070-0040 and 330-070-0070. See also OAR 330-070-0027.

(b) All units must be installed on systems that use an operational closed-loop ground coupled heat exchanger. Open-loop systems do not qualify.

(c) The compressor upgrade unit must be sized within 15 percent of the unit it is replacing, based on rated cooling capacity in Btus. The department may grant an exception to this limit for an upgrade that is accompanied by a written justification including measured data and appropriate engineering calculations.

(d) All units must be manufactured by a company appearing in the Air-Conditioning and Refrigeration Institute (ARI) Unitary Directory.

(e) Post-upgrade system COP must be at least 3.3 for closed loop systems and 3.5 for direct expansion (DX) systems, including energy used by pumps. COP must be determined by the following methods:

(A) For water source heat pumps, the COP must be determined in accordance with ARI Standard 325-85, at an entering water temperature of 50 degrees F.

(B) For water source or ground loop heat pumps using ambient surface water as an energy source and for solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(22) Any other standards adopted by the department for energy-efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director.

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

Stat. Auth.: ORS 469.086

Stat. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0089

Wind AEDs

(1) To qualify for a tax credit:

(a) A minimum wind speed of 10 miles per hour at hub height or lower must be demonstrated at the wind AED site.

(b) A wind AED system manufacturer must make available estimated monthly or annual energy production data (kWh) at various annual average wind speeds for each model or system they produce.

(c) The wind AED system model must meet industry standards as approved by the department.

(d) A wind AED system application must include the nominal rated electric capacity, the power curve and energy production data as a function of the average annual wind speed.

(e) A wind system must have a minimum five-year manufacturer's warranty.

(2) The department reserves the right to deny eligibility for any wind AED for reasons including, but not limited to, poor generator performance, concerns about wind generation system design, the quality of data presented, lack of manufacturing support for maintenance or warranties.

(3) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

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(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(4) Materials used will assure that the wind AED has adequate:

(a) Strength;

(b) Resistance to ice, moisture, corrosion and fire;

(c) Durability; and

(d) Low maintenance cost.

(5) No part of a wind AED project may result in toxic substances entering into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(6) Wind AED parts must be serviceable without the need to trespass.

(7) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AEDs may be shut down during highest expected winds.

(8) Shutdown: All wind AEDs must have a way to stop the rotor from turning. This method must work safely during high winds and routine service.

(9) Overspeed Control: Rotor overspeeds must be prevented by the wind AED's design.

(10) Tower Safety: All parts of a wind AED project must meet accepted engineering standards. Tower design must include consideration of:

(a) Gravity load; and

(b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(11) Tower Height: A minimum tower height of 70 feet is required. All portions of the rotor disc of the wind AED must be at least 30 feet above any object within a 400 foot radius of the wind AED's base. Future growth of trees for the next 20 years must be taken into consideration.

(12) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

(13) The Director may waive part or all of section (1) of this rule if production of the wind AED model stopped prior to 1990, or it is an owner-built system or a mechanical wind AED.

(14) The first-year energy yield of wind AEDs must average at least 100 kWh per month based on the actual installation site of the wind AED.

(a) The first-year energy yield must be determined using the measured or estimated wind resource data and the wind AED's power curve or actual energy production data measured in kWh per month.

(A) The provided wind data from the wind AED site must cover a one-year period of 12 consecutive months.

(B) In the event of less than one year's measurements at the wind AED site, the application must include:

(i) A minimum of six consecutive months of on-site production data of the wind AED;

(ii) One year's worth of concurrent data from the two nearest wind monitoring stations at 35 feet or less; and

(iii) One year's worth of concurrent data for the wind AED site from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology. These data can be obtained from a company that meets industry standards as approved by the department.

(b) The department will verify data supplied by the applicant and validate the first-year energy yield.

(c) Production data must be provided with the tax credit application in the form of kWh produced monthly by the wind AED.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

330-070-0091

Eligible Costs for a Wind AED

(1) The costs listed in subsection (2) of this rule do not include all eligible costs. Other costs will qualify if directly associated with the acquisition and installation of the wind AED. Only systems that are fully functional and producing electricity will qualify for a tax credit. All systems must comply with OAR 330-70-0021 and 330-070-0040.

(2) Eligible costs include:

(a) The cost of wind turbine generators;

(b) The cost of DC/AC converters, inverters and synchronous inverters;

(c) The cost of wind and system instruments and controls when part of a total wind AED;

(d) The cost of energy storage (batteries or other methods);

(e) The cost of tower, foundation and guys;

(f) Fees paid for design and building;

(g) Fee to install;

(h) The cost of electric meters, switches and electrical safety equipment;

(i) The cost of electric transformers and lines and supports;

(j) The cost of safety equipment;

(k) Up to \$500 of wind permitting cost;

(l) The cost of windmills;

(m) The cost of pumps, linkage, pump heads, and vacuum chambers; and

(n) The cost of obtaining a project site specific computer model wind speed estimate from a nationally recognized service as approved by the department, not to exceed \$100.00.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13

Rule Caption: Public building green energy technology program rules incorporating SB 1533 (2012) to include geothermal project.

Adm. Order No.: DOE 15-2012

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Rules Adopted: 330-135-0018, 330-135-0047, 330-135-0048

Rules Amended: 330-135-0010, 330-135-0015, 330-135-0020, 330-135-0025, 330-135-0030, 330-135-0035, 330-135-0040, 330-135-0045, 330-135-0050, 330-135-0055

Subject: The rule amendments implement changes enacted by Oregon Laws 2012, chapter 83 (SB 1533). SB 1533 adds geothermal electricity generation or the direct use of geothermal energy to the list of green energy technologies eligible to satisfy statutory requirements. The rule also adds procedures for qualifying green energy technology to be built away from the site, clarifies the definition of total contract price, and extends procedures for deferring expenditures to a future project. Current statute requires contracting agencies to include 1.5 percent of the total contract price for the inclusion of solar technology in construction or renovation of public buildings.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-135-0010

Purpose

The purpose of these rules is to establish procedures to administer ORS 279C.527 through 279C.528 and Oregon Laws 2012 chapter 83 (SB1533), which require a contracting agency to include an appropriate green energy technology in the construction or major renovation of public buildings by spending an amount equal to at least 1.5 percent of the total contract price associated with that building.

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0015

Definitions

For the purpose of this division, the following definitions apply:

(1) "Agency" means a public body.

(2) "Building" means any structure used or intended for supporting or sheltering any use or occupancy, as defined in Section 202 of the 2010 Oregon Structural Specialty Code.

(3) "Contracting agency" means a public body authorized by law to conduct a procurement as defined in ORS 279A.010(1)(b).

(4) "Cost effective" means a higher estimated economic benefit when a comparison is made between an investment in green energy technology away from the site and at the site. The comparison must include, but is not limited to, the cost of green energy technology, the cost of energy transmission infrastructure back to the public building, the value of electrical energy produced, saved or used over the life of the system, and the value of thermal energy produced, saved or used over the life of the system.

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(5) "Department" means the Oregon Department of Energy.

(6) "Director" means the Director of the Oregon Department of Energy.

(7) "Direct use" of geothermal energy means using the geothermal resource directly for space or water heating in a building without the assistance of a heat pump. For the purpose of these rules, direct use applications generally employ resource temperatures of at least 140°F.

(8) "Feasible" means a project capable of being done and that the site meets the agency's preference for siting green energy technology.

(9) "Geothermal energy" means the energy from a geothermal source including, but not limited to, indigenous steam, hot water, hot brines, etc.

(10) "Green energy technology" has the definition given in Oregon Laws 2012, chapter 83 (SB 1533).

(11) "Not appropriate" means a determination of an adverse condition affecting an otherwise feasible project.

(12) "Public body" means state government bodies, local government bodies as defined in ORS 174.116, and special government bodies as defined in ORS 174.117.

(13) "Site" means a land parcel or a group of contiguous land parcels, controlled by the agency, on which a building either is or will be located.

(14) "Total contract price" means an estimated cost required to construct a building including building systems, interior finishes, site infrastructure within five feet of the building perimeter, connections to existing utilities, landscaping, and sidewalks and parking lots built for the immediate use of the building. It does not include the cost of major new utility infrastructure that needs to be brought to the site or wetland mitigation requirements.

(15) "Total solar resource fraction" (TSRF) means the percent of energy produced by a fixed axis solar energy system when compared to the annual performance of the same system with optimal tilt and orientation and no external shading.

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

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0018

Requirement for Inclusion of Green Energy Technology

(1) Agencies must spend an amount equal to at least 1.5 percent of the total contract price of an eligible public building project for the inclusion of green energy technology in the eligible public building.

(2) Agencies may defer expenditure of these funds under the conditions of OAR 330-135-0045 and 330-135-0050.

Stat. Auth.: ORS 469.040, 279C.528, OL 2012, Ch. 83, Sec.2 (SB 1533)

Stats. Implemented: ORS 279C.527, 279C.528, OL 2012, Ch. 83, Sec.2 (SB 1533)

Hist.: DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0020

Eligible Building Projects

(1) These rules apply to any permanent building(s) which will be owned, partially owned or controlled by an agency and which is either:

(a) Used by the public; or

(b) Enclosed by walls and roof to allow employees to use or occupy the building on a regular basis for a significant part of their work.

(2) Eligible public building projects are new capital construction projects for which the total contract price is \$1,000,000 or more for a single building or a group of buildings on the same site and major renovations that exceed \$1,000,000 and 50 percent of the insured value of the building.

(3) These rules apply to projects advertised, but if not advertised then building construction contracts entered into, on or after the effective date of this law.

(4) Public improvements that are not buildings are not required to comply with the provisions of these rules. This includes, but is not limited to:

(a) Group U occupancies as defined in Section 312 of the 2010 Oregon Structural Specialty Code.

(b) Motor pool lots, parking lots not associated with a building, highways, bridges, sewers, fishponds, fish ways, and similar non-architectural structures.

(c) Buildings that house public industrial processes where only a small portion of the square footage houses employees of the agency, such as: maintenance sheds, water and waste water facilities; including reservoirs, dams, conduit, pipe, pumps, wells, collection basins, pump stations, controls and other buildings primarily used for the purpose of water or waste water treatment.

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

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0025

Eligible Contract Price

(1) The 1.5 percent to be spent on green energy technology must be based on the total contract price.

(2) The total contract price that determines the amount to be spent on green energy technology must not be reduced by federal, state, or other incentives that may be available for the green energy technology.

(3) Any constitutionally, statutorily or contractually dedicated government funds for the building that have been determined to be unavailable for the installation of green energy technology may be excluded when determining eligible costs under this section.

(4) For buildings with a joint public-private ownership and occupancy, the 1.5 percent to be spent on green energy technology in the building must be pro-rated based on the agency's share of the ownership.

(5) For buildings that are being constructed or renovated with private funding but which are intended for use, operation, or ownership by an agency, the 1.5 percent to be spent on green energy technology in the building must include the privately-funded share of the construction contract.

(6) Parsing the project in order to avoid or reduce the level of compliance with ORS 279C.527 and 279C.528 and these rules is not permitted.

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0030

Eligible Green Energy Technologies and Performance Requirements

(1) Solar electric (photovoltaic), solar water heating, solar pool heating, and active solar space heating systems are to be installed in locations that have a total solar resource fraction (TSRF) of 75 percent or greater.

(2) Photovoltaic and geothermal electric systems must be separately metered to record electricity production.

(3) Geothermal systems that directly supply heat to the building system(s), or a passive solar thermal system, day lighting system or combined system must reduce the building's baseline energy use by 20 percent or more, as demonstrated with whole building energy modeling prepared under the direction of a professional engineer.

(a) The baseline energy includes space heating, space cooling, fan, pump, domestic hot water, and lighting loads. Other equipment and process loads are excluded.

(b) The system(s) must be commissioned by a third-party commissioning agent to ensure design intent is met.

(c) To determine whether the system(s) reduces energy use by 20 percent, the baseline building model must follow the 2010 SEED Guidelines, Appendix L.

(A) For local or special government bodies, the baseline building must be modeled according to the requirements of the 2010 Oregon Energy Efficiency Specialty Code.

(B) For state government bodies, the baseline building must be modeled according to the requirements of the Proposed Building as defined in the 2010 SEED Guidelines, Appendix L.

(4) For the purpose of these rules, green energy technology does not include:

(a) Heat pumps that use water, groundwater or the ground as a heat source or heat sink; and

(b) Wind, biomass, hydro, wave, or other "indirect" forms of solar energy.

(5) Purchase of renewable energy credits (REC) does not constitute compliance with the requirements of ORS 279C.527 through ORS 279C.528 and Oregon Laws 2012, chapter 83.

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0035

Eligible Green Energy Technology Costs

(1) For photovoltaic systems, eligible costs include the PV modules, mounting structure and hardware, modifications to the building structure specifically to accommodate the solar energy system, associated electrical equipment, metering, labor and system commissioning. Costs for auxiliary distribution systems such as chargers in electric vehicle charging stations or energy storage system (batteries or other) do not qualify.

(2) For building integrated photovoltaic (BIPV) systems, eligible costs include the difference between the costs for the BIPV components and the costs of the conventional building components that are modified or replaced to accommodate the installation of the BIPV system components.

(3) For solar water heating and solar pool heating systems, eligible costs include the solar collectors, mounting structure and hardware, associ-

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ated plumbing and controls, metering, labor, and system commissioning. Costs for backup systems that use conventional energy sources do not qualify.

(4) For active solar space heating systems, eligible costs include the solar collectors, mounting structure and hardware, associated plumbing and controls, metering, labor, and system commissioning. Costs for heat distribution systems, such as ductwork or radiant floors, or costs for backup systems that use conventional energy sources, do not qualify.

(5) For passive solar systems and day lighting systems, eligible costs include materials and labor costs that can be directly and exclusively attributed to the passive solar and day lighting system, the cost for modeling the building energy performance, and commissioning to ensure the system is functioning as intended.

(a) For passive solar systems eligible costs may include, but not be limited to, added thermal mass and shading controls.

(b) For day lighting systems, eligible costs may include, but not be limited to, automatic controls, light shelves, overhangs, automated louvers and blinds and related controls, skylights in spaces where automatic controls are present, and the portion of windows higher than 7 feet above the floor.

(6) For geothermal electricity generation, eligible costs include the cost of supply and disposal pipelines, turbine generators, controls, transformers, metering, labor and balance of plant.

(7) For geothermal energy use in building systems, eligible costs include the cost of supply and disposal pipelines, pumps, heat exchangers, controls, the cost for modeling the building energy performance, metering and labor.

(8) Costs for permanent educational displays located in or on the building that explain the green energy technology incorporated in the project are allowed.

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0040

Alternative Financing

(1) Innovative financing arrangements to allow leveraging of federal, state, utility and other incentives, including but not limited to, lease-purchase agreements, power purchase agreements or energy savings performance contracts qualify under this program if:

(a) The agency documents that the costs of the green energy system meets or exceeds 1.5 percent of the total contract price; and

(b) The green energy system is affixed to the building or located at the building site, allowing for ballasted and other systems installed under a power purchase agreement.

(2) The minimum term of the agreement under this section must be at least ten years, unless ownership of the green energy system reverts to the agency before that time.

(3) Any agreement must be exclusive to the green energy system required under the provisions of ORS 279C.527 through 279C.528 and Oregon Laws 2012, chapter 83. Operation and maintenance costs clearly associated with the green energy project are allowed. It must not include terms relating to operation and maintenance or capital equipment purchase of any other equipment or services. For energy savings performance contracts, green energy systems must be separately metered.

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0045

Review of Determination that Green Energy Technology is Not Appropriate and Request for Deferral of Expenditures

(1) If an agency believes that the use of green energy technology in a public building project is not appropriate, it must submit a request for a determination of inappropriateness from the department. The agency must present the reasons for requesting the determination.

(2) If an agency submits a request for a determination of inappropriateness both at the site of the public building and away from the site, it must also submit a request to defer expenditures of funds to a future building project. This provision does not apply to a public improvement contract for which no state funds are directly or indirectly used. State funds include funds authorized for construction or renovation of the building. Incentives, such as those provided by the Energy Incentive Program (EIP) and funds intended to support general purpose operations are not considered direct or indirect state funds for the purpose of this section.

(3) When submitting a request to defer expenditure of funds to a future building project, the agency must present reasons for requesting the

deferral and must identify a future building project, if any, with construction expected to begin within the next three years. The agency must also submit evidence of a plan to secure availability of deferred funds until the future project comes to fruition.

(4) Within two weeks from the date the department receives a request for a determination of inappropriateness it will either forward the request to the technical panel for review or determine that the request is incomplete and return it to the agency along with a request for additional information. The technical panel will review the requests and present its recommendation to the department as to whether green energy technology is not appropriate and whether the investment should be deferred.

(5) In drafting the determination of inappropriateness, the technical panel generally will consider whether there are physical or other constraints in the building that make the installation of green energy technology not appropriate for the building. For example, the panel may consider, but is not limited to, the following issues:

(a) Whether the building is listed or eligible for listing on the National Register of Historic

Places and the green technology installation would be disruptive to the historic character of the building;

(b) Whether the total solar resource fraction (TSRF) is less than 75 percent;

(c) Whether there is not an opportunity to use photovoltaic or geothermal electric, solar thermal, passive solar heating systems or the direct use of geothermal energy in building systems;

(d) Whether the installation of green energy technology would create security risks for staff or inhabitants of the building.

(6) The department will convey the recommendation of the technical panel to the agency requesting the review. The agency will make the final determination as to whether installation of green energy technology as part of the building project is appropriate and will enter this determination and the recommendation of the technical panel into the reporting database.

(7) Nothing in this section should be construed to waive the requirements that funds be deferred to a future building project pursuant to OAR 330-135-0050.

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0047

Requesting Review that Green Energy Technology Located Away from the Site meets Requirements

(1) If an agency intends to install green energy technology away from the site, the installation must:

(a) Be more cost-effective than green energy technology installed on-site;

(b) Provide energy to be used at the newly constructed or renovated public building;

(c) Be constructed in Oregon and in the same county or county adjacent to the newly constructed or renovated public building; and

(d) Add additional new capacity for electricity generation. Power purchased from an existing solar or geothermal electricity generator or capacity gained by redirecting already utilized capacity from an existing geothermal well is not considered additional new capacity. Increasing the output capacity of an existing geothermal well or reopening a previously retired well is considered additional new capacity.

(2) The agency must present the documentation or calculations for the determination to the technical panel. The technical panel will review the submitted documentation and present its recommendation to the department as to whether the proposed green energy technology meets the requirements of OAR 330-135-0047(1).

Stat. Auth.: ORS 469.040, 279C.528, OL 2012, Ch. 83, Sec.2 (SB 1533)

Stats. Implemented: ORS 279C.527, 279C.528, OL 2012, Ch. 83, Sec.2 (SB 1533)

Hist.: DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0048

Technical Review Panel

(1) The department will refer any requests submitted under OAR 330-135-0045 and 330-135-0047 to a technical panel appointed by the director. The technical panel will be a permanent panel with members serving terms of up to three years. The technical panel will include, but not be limited to, the following membership:

(a) A chair from the Oregon Department of Energy;

(b) A representative from a public body;

(c) A representative from each green technology industry; and

(d) An engineer or architect.

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(2) The technical panel will provide the requested determination within 60 days of the submission of the request by the department.

Stat. Auth.: ORS 469.040, 279C.528, OL 2012, Ch. 83, Sec.2 (SB 1533)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2012, Ch. 83, Sec.2 (SB 1533)
Hist.: DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0050

Deferral of Required Green Energy Technology Expenditures to Future Building Projects

(1) When an agency determines that it is not appropriate to include green energy technology in a building pursuant to OAR 330-135-0045, and deferral is required, the agency must include the deferred investment in the future building identified by the agency, in addition to the 1.5 percent otherwise required for the inclusion of green energy technology in the future building project.

(2) If the agency did not identify a building expected to begin construction within three years under OAR 330-135-0045, and deferral is required, the agency must defer those expenditures to the next building constructed.

(3) Any amount spent on green energy technology in excess of 1.5 percent of the total contract price may not be credited to other current or future projects.

(4) If green energy technology is decommissioned for any reason within 10 years of completion, the agency must spend an equivalent amount for green energy technology on the next building project undertaken by the agency.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

330-135-0055

Reporting on Green Energy Technology

(1) The amount to be spent on green energy technology must be entered into the green energy technology database before the construction/renovation of the building(s) commences.

(2) Information must include, but not be limited to:

- (a) Project name.
- (b) Address of public building;
- (c) Name of agency;
- (d) Contact information for reporting person;
- (e) Utility companies serving the building;
- (f) Total contract price;
- (g) Total insured building value (renovation projects);
- (h) Projected start of construction and occupation date of building;
- (i) Description of the proposed green energy technology;
- (j) Location details of the green energy technology installation;
- (k) Disclosure of non-public funds used in financing the green energy technology;
- (l) Estimated energy production or savings of the green energy system;
- (m) Estimated annual value of the green energy production or savings;
- (n) Estimated annual usage of green energy at the site;
- (o) Agency determination of appropriateness or agency decision to defer;
- (p) Technical panel determination of appropriateness or recommendation to defer, if applicable;
- (q) Future project to which funds will be deferred, and projected start of construction of the future building, if applicable;
- (r) Cost effectiveness comparison between green energy technology away-from-the-site of the public building compared to green energy technology at the site of public building under construction or renovation, if applicable; and
- (s) Evidence of additional new renewable electricity generation at the away-from-the-site location, if applicable.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Establishes 2013 seasons and regulations for game mammals.

Adm. Order No.: DFW 147-2012

Filed with Sec. of State: 12-18-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 9-1-2012

Rules Adopted: 635-065-0011

Rules Amended: 635-008-0175, 635-045-0000, 635-045-0002, 635-065-0001, 635-065-0015, 635-065-0090, 635-065-0401, 635-065-0625, 635-065-0735, 635-065-0740, 635-065-0760, 635-066-0000, 635-066-0010, 635-066-0020, 635-067-0000, 635-067-0004, 635-072-0000, 635-078-0011

Subject: Establishes the 2013 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-008-0175

White River Wildlife Area

The White River Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2007 White River Wildlife Area Management Plan unless otherwise excluded or restricted by the following rules:

(1) Motor vehicles are prohibited except on parking areas, designated campsites and open roads. No cross country travel or off road motor vehicle use is allowed, except by permit or for administrative use.

(2) ATV/OHV and snowmobile uses are prohibited on all area lands except by permit or for administrative use.

(3) Camping is prohibited except in designated campsites or by permit, and may not exceed 14 days in any 30 day period.

(4) Campfires and open burning are prohibited except at designated campsites. All fires are prohibited during designated fire closures.

(5) Running or training of dogs is prohibited except by permit or during authorized game bird hunting seasons.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 496.992
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 496.992
Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(21); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-045-0000

Purpose

(1) The purpose of these rules is to list definitions pursuant to hunting seasons for big game and game birds.

(2) The documents entitled “2012–2013 Oregon Game Bird Regulations”, and “2013 Oregon Big Game Regulations”, are incorporated by reference into these rules. These documents are available at hunting license vendors and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 36-1988, f. & cert. ef. 6-13-88; FWC 47-1989, f. & cert. ef. 7-25-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 91-1990, f. & cert. ef. 9-4-90; FWC 42-1996, f. & cert. ef. 8-12-96; FWC 53-1997, f. & cert. ef. 9-3-97; DFW 61-1998, f. & cert. ef. 8-15-01; DFW 75-1998, f. & cert. ef. 9-4-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 91-2005, f. & cert. ef. 8-19-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 90-2008, f. & cert. ef. 8-13-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 93-2009, f. & cert. ef. 8-12-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 117-2010, f. & cert. ef. 8-13-10; DFW 140-2010(Temp), f. & cert. ef. 10-6-10 thru 12-31-10; Administrative correction 1-25-11; DFW 108-2011, f. & cert. ef. 8-5-11; DFW 103-2012, f. & cert. ef. 8-6-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-045-0002

Definitions

(1) “Adult hunting license” is a resident or nonresident hunting license, resident combination angling and hunting license, disabled veteran’s angling and hunting license, pioneer’s angling and hunting license or senior citizen’s angling and hunting license.

(2) “Agricultural lands” are lands that are not less than ten acres in extent that have been cultivated and planted or irrigated to domestic crops that are currently in use. Isolated home gardens, abandoned farmsteads, logged lands, rangelands, and tree farms, are not included in this definition.

(3) “Antler Point” is a point at least one inch in length measured from tip of point to nearest edge of beam. This definition applies only to the three-point elk and spike only elk bag limits.

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- (4) "Antlerless deer" means doe or fawn deer.
- (5) "Antlerless elk" means cow or calf elk.
- (6) "Application" means the electronic form completed and purchased to apply for a hunt where the number or distribution of hunters is limited through a public drawing or other means. Mail order applications sent to the Department along with the proper remittance are used to generate the electronic form.
- (7) "Bait" for hunting game mammals means any substance placed to attract an animal by its sense of smell or taste, including but not limited to food items or minerals (such as salt). Applying a scent or attractant to one's body or clothing while worn, is not baiting.
- (8) "Baited Area" means an area where baiting has taken place.
- (9) "Baiting" means the placing, exposing, depositing, distributing, or scattering of corn, wheat, salt or other feed to constitute a lure or enticement to, on, or over an area where hunters are attempting to take game birds.
- (10) "Brace" is defined as an orthosis that is prescribed by a physician and fabricated by an orthotist certified by the American Board for Certification in Orthotics and Prosthetics, Inc.
- (11) "Brace Height" is the distance from the back of the bow's riser at the handgrip to the string when the bow is at rest.
- (12) "Buck Deer" means a male deer with at least one visible antler.
- (13) "Buck Pronghorn" means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.
- (14) "Bull elk" for the purposes of a bag limit definition, means a male elk with at least one visible antler.
- (15) "Calendar year" means from January 1 through December 31.
- (16) "Carcass" is the skinned or unskinned body, with or without entrails, of a game bird or game mammal.
- (17) "Cascade elk" means any live elk occurring in the Dixon, Evans Creek, Indigo, Keno, McKenzie, Metolius, Rogue, Santiam and Upper Deschutes units and those parts of Fort Rock and Sprague units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.
- (18) "Closed season" is any time and place when it is not authorized to take a specific species, sex or size of wildlife.
- (19) "Coast elk" means any live elk occurring in the Alsea, Applegate, Chetco, Melrose, Powers, Saddle Mountain, Scappoose, Siuslaw, Sixes, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.
- (20) "Commission" means the Oregon Fish and Wildlife Commission.
- (21) "Controlled hunt" is a season where the number or distribution of hunters is limited through a public drawing or other means.
- (22) "Department" means the Oregon Department of Fish and Wildlife.
- (23) "Director" means the Oregon Fish and Wildlife Director.
- (24) "Doe or fawn pronghorn" means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawn (young of the year) of either sex.
- (25) "Domestic partner" means, as provided in section 3 of the Oregon Family Fairness Act of 2007 (ORS Chapter 106), "an individual who has, in person, joined into a civil contract with another individual of the same sex, provided that each individual is at least 18 years of age and is otherwise capable, and that at least one of the individuals is a resident of Oregon."
- (26) "Eastern Oregon" means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.
- (27) "Eastern Oregon deer" means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.
- (28) "Eligible Hunter" means someone who will be 12 years of age by the time they hunt.
- (29) "Entry permit" means a permit issued by the Department to be in an area where entry is restricted by regulation.
- (30) "Established airport" is one that the Oregon Department of Aviation has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.
- (31) "Feral Swine" means animals of the genus *Sus* as defined by the Oregon Department of Agriculture in OAR 603-010-0055.
- (32) "Fiscal year" means from July 1 through June 30.
- (33) "Furbearers" are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.
- (34) "Game Birds" are any waterfowl, snipe, band-tailed pigeon, mourning dove, pheasant, quail, partridge, grouse, or wild turkey.
- (35) "Game mammals" are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.
- (36) "General season" is any season open to the holder of a valid hunting license and appropriate game mammal tag without restriction as to the number of participants.
- (37) "Hunter certification" means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.
- (38) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.
- (39) "Husbandry" means the care given animals directly by their owners and managers, including but not limited to:
- (a) Nutrition;
 - (b) Breeding program;
 - (c) Veterinary medical care;
 - (d) Environmental cleanliness; and
 - (e) Humane handling.
- (40) "Immediate family" for the purpose of Landowner Preference, means a landowner's spouse, children, father, mother, brother, sister, stepchildren, and grandchildren.; for all other purposes, it means spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.
- (41) "Inedible" means unfit for human consumption.
- (42) "Juvenile hunting license" is a resident, nonresident hunting license or resident combination angling and hunting license for persons 9 to 17 years of age to hunt wildlife.
- (43) "Landowner", as used in OAR chapter 635, division 075, means:
- (a) A person who holds title in trust or in fee simple to 40 or more contiguous acres of land; provided however that a recorded deed or contract of ownership shall be on file in the county in which the land is located; and/or
 - (b) A corporation or Limited Liability Company (LLC) holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation or LLC shall be registered with the State of Oregon; and/or
 - (c) A partnership holding title in fee simple to 40 or more contiguous acres of land; and/or
 - (d) Persons who hold title as part of a time share are not eligible for landowner preference.
- (44) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.
- (45) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.
- (46) "Muzzleloader" is any single-barreled (shotguns may be double barreled) long gun meant to be fired from the shoulder and loaded from the muzzle with an open ignition system and open or peep sights.
- (47) "On or within" means a straight line distance measured on a map.
- (48) "One deer" means a buck, doe, or fawn deer.
- (49) "One elk" means a bull, cow, or calf elk.
- (50) "Open Ignition" is an ignition system where the percussion cap, or frizzen, or flint is visible and exposed to the weather at all times and is not capable of being closed or covered by any permanent piece of the weapon.
- (51) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for profit.
- (52) "Point-of-Sale" (POS) is a computerized licensing system available at locations that sell Oregon's hunting and angling licenses. Licenses and tags are generated and issued directly to customers from a POS machine at the time of sale.
- (53) "Possession" means to have physical possession or to otherwise exercise dominion or control over any wildlife or parts thereof, and any person who counsels, aids or assists another person holding such wildlife is deemed equally in possession.
- (54) "Postmark" means the date of mailing as stated in a mark applied by the U.S. Postal Service to a piece of mail. Office postal machine meter marks are not valid application deadline postmarks.
- (55) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.
- (56) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(34) "game birds" as defined in 635-045-0002(33), "furbearers" as defined in 635-045-0002(32), "threatened and endangered species" as defined in 635-100-0125, and "nongame wildlife protected" as defined in 635-044-0130.

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(57) "Pursue" means the act of trailing, tracking, or chasing wildlife in an attempt to locate, capture, catch, tree, or kill any game mammal or furbearer.

(58) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(59) "Resident" is any person who has resided in Oregon for a period of at least six months immediately prior to the date of making application for a license or tag. Members of the armed forces assigned to permanent duty status in Oregon including spouses and dependent children, and foreign exchange students attending school in Oregon under a foreign student exchange program may purchase a resident license and tags. All other persons are nonresidents.

(60) "Resident juvenile" is any "Resident" of Oregon 14 through 17 years of age.

(61) "River" is that portion of a natural water body lying below the level of bankfull stage. Bankfull stage is the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.

(62) "Rocky Mountain elk" is any live elk occurring east of the following described line: Beginning at the California line on Highway 97; north on Highway 97 to State Highway 26 at Madras; northwest on Highway 26 to east boundary of Santiam Unit; north along east boundary of Santiam Unit to the Columbia River.

(63) "Sabot" A carrier, bushing or device in which a projectile of a smaller caliber is centered so as to permit firing the projectile within a larger caliber weapon. Cloth, paper or felt patches used with round balls are not considered a sabot.

(64) "Shotgun" is a smoothbore firearm, designed for firing birdshot, and intended to be fired from the shoulder, with a barrel length of 18 inches or more, and with an overall length of 26 inches or more. Exception: Shotguns equipped with rifled slug barrels are considered shotguns when used for hunting pronghorn antelope, black bear, cougar, deer, or elk when centerfire rifles or shotguns are legal weapons.

(65) "Sight bait" is exposed flesh bait within 15 feet of any foothold trap set for carnivores.

(66) "Spike deer" is a deer with spike (unbranched) antlers.

(67) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (a brow tine is not considered an antler branch under spike-only regulations).

(68) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002(42)(b).

(69) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(70) "Take" means to kill or obtain possession or control of any wildlife.

(71) "Three point plus elk" for the purposes of a bag limit definition, means a bull elk having 3 points or more on one antler including the brow tine.

(72) "Unbarbed broadhead" is a fixed position arrowhead where the rear edge of the blade(s) forms an angle with the arrow shaft to which it is attached of 90° or greater.

(73) "Unprotected Mammals and Birds" are European starling, house sparrow, Eurasian collared-dove and any mammal species for which there are no closed seasons or bag limits.

(74) "Valid certification permit" is a permit for the current season that has not become invalid after taking a season limit or illegal game bird.

(75) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(76) "Wait period" means the length of time a successful controlled hunt applicant must wait before reapplying for the species for which he was successful in drawing.

(77) "Waste" means to allow any edible portion of any game mammal (except cougar) or game bird to be rendered unfit for human consumption, or, to fail to retrieve edible portions, except internal organs, of such game mammals or game birds from the field. Entrails, including the heart and liver, are not considered edible.

(78) "Waterfowl" means ducks, geese, mergansers and coots.

(79) "Weapon" is any device used to take or attempt to take wildlife.

(80) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(81) "Western Oregon deer" is any live deer except the Columbian white-tailed deer occurring west of the east boundaries of the Santiam, McKenzie, Dixon, Indigo, and Rogue units.

(82) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(83) "Wildlife" means for the purposes of harassment to relieve damage described in OAR 635-043-0096 through 635-043-0115, game mammals, game birds except migratory birds protected by Federal law, furbearing mammals and wildlife declared protected by the commission.

(84) "Wildlife" means for the purposes of scientific taking described in OAR 635-043-0023 through 635-043-0045, wild birds, wild mammals, amphibians and reptiles, including nests, eggs, or young of same.

(85) "Wildlife" means, for the purposes of the Wildlife Diversity Plan described in OAR 635-100-0001 through 635-100-0194, fish, shellfish, amphibians, reptiles, feral swine, wild mammals, wild birds, and animals living intertidally on the bottom as defined by ORS 506.011.

(86) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

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

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

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

Hist.: FWC 47-1989, f. & cert. ef. 7-25-89; FWC 104-1989, f. & cert. ef. 9-29-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 22-1990, f. & cert. ef. 3-21-90; FWC 17-1991, f. & cert. ef. 3-12-91; FWC 33-1991, f. & cert. ef. 3-25-91; FWC 50-1991, f. & cert. ef. 5-13-91; FWC 57-1991, f. & cert. ef. 6-24-91; FWC 9-1993, f. & cert. ef. 2-8-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 20-1995, f. & cert. ef. 3-6-95; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 53-1997, f. & cert. ef. 9-3-97; FWC 71-1997, f. & cert. ef. 12-29-97; FWC 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 52-2008, f. & cert. ef. 5-28-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 108-2009, f. & cert. ef. 9-8-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 103-2012, f. & cert. ef. 8-6-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-065-0001

Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 065 incorporates, by reference, the requirements for hunting game mammals set out in the document entitled "2013 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2013 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for game mammals. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district, and headquarters offices, and website of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-065-0011

Mandatory Reporting Penalty

All big game tag holders, except for bighorn sheep and Rocky Mountain goat, and all turkey tag holders are required to report hunting effort and harvest.

(1) Reporting deadlines for 2012–13 seasons are as follows:

(a) January 31, 2013: For hunts ending between April 1 and December 31, 2012.

(b) April 15, 2013: For hunts ending between January 1 and March 31, 2013.

(2) Any person with any deer or elk tag for hunts and seasons listed in the 2012 Oregon Big Game Regulations pamphlet, issued through the Point of Sale (POS) system, that fails to report by deadlines established in OAR 635-065-0010(1) will not be able to obtain a license to hunt game mammals or game birds in Oregon without first reporting and paying a penalty.

(a) The penalty will be assessed beginning December 1, 2013 with purchase of a 2014 license.

(b) The penalty fee amount will be \$25.

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

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

Hist.: DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

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635-065-0015

General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

- (a) One valid general season black bear tag;
- (b) One valid additional general black bear tag valid in management units 20-30;
- (c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;
- (d) One valid 700 series "leftover" controlled bear tag;
- (e) One valid cougar (mountain lion) tag;
- (f) One valid eastern additional general cougar (mountain lion) tag;
- (g) One valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 090, and except as provided in 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

- (a) One valid deer bow tag;
- (b) One valid western Oregon deer tag;
- (c) One valid 100 series controlled buck hunt tag;
- (d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)-(4)(c) and (4)(e);
- (e) One valid 100 series "left over" controlled deer tag;
- (f) One valid 600 series "left over" controlled deer tag;
- (5) Except as provided in OAR Chapter 635, Division 090, a person may obtain and possess only one of the following tags during an annual hunting season:

- (a) One valid Cascade elk tag;
- (b) One valid Coast First Season elk tag;
- (c) One valid Coast Second Season elk tag;
- (d) One valid Rocky Mountain elk — first season tag,
- (e) One valid Rocky Mountain elk — second season tag;
- (f) One valid elk bow tag;
- (g) One valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015 (5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) In addition to the tags described in OAR 635-065-0015(3), (4), and (5), a person during an annual hunting season may obtain or possess only one valid "Mandatory Hunter Reporting Incentive Tag" per annual hunting season. If the Department awards a hunter such a tag through the controlled hunt draw authorized by 635-060-0030(5), the following requirements will apply:

(a) On or before July 15, 2013 the hunter must inform the Department which species the tag is to be issued for (pronghorn antelope, deer, or elk) and purchase the tag. Tags not purchased by July 15 will be offered to an alternate hunter with a tag sale deadline of July 31, 2013.

(b) Hunting hours, hunt dates, bag limit and hunt area for Mandatory Hunter Reporting Incentive Tags will be the same as those listed in OAR 635-090-150(3) for deer or (4) for elk, or 635-067-0028(2) for pronghorn.

(c) Bag limit: one pronghorn antelope or one deer or one elk.

(d) Oregon Department of Fish and Wildlife employees are not eligible for a Mandatory Hunter Reporting Incentive Tag.

(8) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(9) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(10) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(11) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception:

(a) Members of the armed forces returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the Department.

(b) Notwithstanding the deadlines for tag purchases provided by rule and in the hunting regulation synopses, any person who qualifies to purchase a tag but fails to make the purchase by the deadline, may purchase the tag late if the person:

(A) Submits a written affidavit certifying that the person has not yet hunted during the season for which the tag is sought to the Department's Licensing Services Office;

(B) The request must be received by the Department before the end of the season for the particular tag; and

(C) Pays the Department the fee for a duplicate tag, in addition to the usual tag fee.

(D) A tag purchased for a season that has not begun may be canceled and replaced with a tag for an ongoing season using the process outlines in 635-065-0015(b)(A) and (B) provided the original tag is surrendered with the affidavit and the fee for a duplicate tag is paid to the Department.

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

Stats Implemented: ORS 496.012, 496.138, 496.146 & 496.16

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 106-2009(Temp), f. & cert. ef. 9-2-09 thru 3-1-10; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 26-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 58-2010(Temp), f. & cert. ef. 5-12-10 thru 11-8-10; DFW 70-2010(Temp), f. & cert. ef. 5-18-10 thru 11-10-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-065-0090

Disabled Hunter Seasons and Bag Limits

(1) ORS 496.018 provides that in order to be considered a person with a disability under the wildlife laws, a person shall provide to the Fish and Wildlife Commission either written certification from a licensed physician, certified nurse practitioner, or licensed physician assistant of certain specified disabilities or written proof that the U.S. Department of Veterans Affairs or the Armed Forces shows the person to be at least 65 percent disabled. To implement that statute, this rule provides for the issuance of an "Oregon Disabilities Hunting and Fishing Permit" by the Department.

(2) To obtain an "Oregon Disabilities Hunting and Fishing Permit," a person shall submit to the Department a completed form specified by the Department. If the completed form accurately provides all required information, the Department shall issue an "Oregon Disabilities Hunting and Fishing Permit". Permits are valid for two calendar years. To renew a permit, the holder must submit a new, updated application form.

(3) The Department may revoke, suspend or decline to issue or renew an "Oregon Disabilities Hunting and Fishing Permit" for failure to submit accurate information. The holder or applicant may request a contested case hearing to appeal such an action.

(4) A person who possesses an Oregon Disabilities Hunting and Fishing Permit issued by the Department is qualified for expanded bag limits as follows:

(a) Season/Tag — Bag Limit.

(b) General or controlled buck deer — One deer.

(c) In the following units: Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Vinson at the intersection of Hwy 74 and Butter Creek Road, west on Hwy 74 to Sandhollow Rd, north on Sandhollow Rd to Baseline Rd, west ½ mile to Sandhollow Rd, north on Sandhollow Rd to Hwy 207, north and east on State Hwy 207 to Butter Creek Junction, south on Butter Creek Rd to Hwy 74 at Vinson), Hood, Indigo, Maupin, McKenzie, Melrose, Santiam, Willamette.

(d) General or controlled bull elk — Legal bull or antlerless elk.

(e) In the following units: Alsea, Applegate, Beatys Butte, Beulah, Biggs, Catherine Creek, Chesnimnus, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Vinson at the intersection of Hwy 74 and Butter Creek Road, west on Hwy 74 to Sandhollow Rd, north on Sandhollow Rd to Baseline Rd, west ½ mile to Sandhollow Rd, north on Sandhollow Rd to Hwy 207, north and east on State Hwy 207 to Butter Creek Junction, south on Butter Creek Rd to Hwy 74 at Vinson), Dixon (outside National Forest Lands within the unit), Evans Creek (outside National Forest Lands within the unit), East Fort Rock (that portion east of Hwy 97), Fossil, Grizzly, Hood, Imnaha, Indigo (outside National Forest Lands within the unit), Juniper, Lookout Mountain, Malheur River, Maupin, McKenzie (outside

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National Forest Lands within the unit), Melrose, Murderers Creek, Northside, Ochoco, Owyhee, Paulina, Pine Creek, Ritter portion of the Heppner unit (that part of unit 48 south and east of the North Fork John Day River), Rogue (outside National Forest Lands within the unit), Saddle Mountain, Santiam (outside National Forest Lands within the unit), Scappoose, Silvies, Siuslaw, Sixes, Sled Springs, Steens Mountain, Stott Mountain, South Sumpter (that part of Unit 51 south of Burnt Rvr Canyon Rd from Durkee to junction State Hwy 245 and Hwy 245 from junction Burnt Rvr Canyon Rd to Unity), Trask, Wagonfire, White River, Whitehorse, Willamette, Wilson.

(f) Controlled pronghorn antelope.

(g) Buck only hunts — One pronghorn.

(h) In the following units: Beatys Butte, Biggs, Columbia Basin, Fort Rock, Grizzly, Juniper, Keating, Lookout Mountain, Malheur River, Maupin, Maury, Murderers Creek, Northside, Ochoco, Paulina, Silver Lake, Silvies, Steens Mountain, Sumpter, Wagonfire, Warner. For hunts with bag limits other than one buck or one bull, the bag limit remains as shown in the Oregon Big Game Regulations.

(5) The Oregon Disabilities Hunting and Fishing Permit is valid only with a general season or controlled bull elk, buck deer, or pronghorn antelope tag for the area and time period being hunted. The permit must be carried on the person while hunting.

(6) An able-bodied companion may accompany a person with an Oregon Disabilities Hunting and Fishing Permit and kill any animal wounded by the permit holder. The wounded animal must be killed using a legal weapon for the season and species designated on the tag. The companion must immediately attach the permit holder's tag to the carcass of the animal. The companion is not required to possess a hunting license or tag.

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

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

Hist.: FWC 29-1987, f. & ef. 6-19-87; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-065-0401

Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11:59 pm, Pacific Time, September 27, 2013.

(2) No deer bow tag shall be issued after 11:59 pm, Pacific Time, August 23, 2013.

(3) No General Season bear tag shall be issued after 11:59 pm, Pacific Time, September 27, 2013.

(4) SW Additional Bear Tags may be purchased anytime during the bear hunting season, after a General Season Bear tag has been purchased. An unused bear tag must be in the hunter's position at the time they are hunting.

(5) No General Season cougar tag shall be issued after 11:59 pm, Pacific Time, September 27, 2013.

(6) Additional Cougar Tags may be purchased anytime during the cougar hunting season, after a General Season Cougar tag has been purchased. An unused cougar tag must be in the hunter's position at the time they are hunting.

(7) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11:59 pm, Pacific Time, October 22, 2013.

(8) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11:59 pm, Pacific Time, November 1, 2013.

(9) No Coast First Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 8, 2013.

(10) No Coast Second Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 15, 2013.

(11) No Cascade Elk Rifle Tag shall be issued after 11:59 pm, Pacific Time, October 11, 2013.

(12) No elk bow tag shall be issued after 11:59 pm, Pacific Time, August 23, 2013.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-065-0010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert.

ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 70-2007(Temp), f. & cert. ef. 8-13-07 thru 2-9-08; DFW 103-2007(Temp), f. & cert. ef. 9-27-07 thru 3-24-08; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-065-0625

Regulations on State Wildlife Areas, Refuges and Special Areas

State wildlife areas, refuges and special areas shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): Closed to all public entry except walk-in deer hunting prior to November 1.

(2) Bridge Creek Wildlife Area (Umatilla County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Entry is by permit only December 1 through April 14.

(3) Cascade Head — Lincoln City Area: The Cascade Head — Lincoln City Area is closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting is restricted to archery and shotguns only during authorized seasons, except for Department approved emergency hunts. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head — Lincoln City Area boundaries shall be defined as follows: Beginning at the Pacific Ocean and Siletz River mouth, east along the north shoreline of the Siletz River to Drift Cr. Rd. (mile post 1 on Hwy 229); north on Drift Cr. Rd. to Anderson Cr. Rd.; north on Anderson Cr. Rd. to Schooner Cr. Rd.; west on Schooner Cr. Rd. to Forest Rd. 2200; north and east on FR 2200 to FR 1726; west on FR 1726 to FR 2100; northeast on FR 2100 to the power line crossing; north along the power line to State Hwy. 18; west on Hwy 18 to Old Scenic Hwy 101; north on Old Scenic Hwy 101 to Three Rocks Rd.; west on Three Rocks Rd. to U.S. Hwy 101; north on Hwy 101 to FR 1861; west on FR 1861 to Harts Cove trailhead; west on Harts Cove trail to the Pacific Ocean; south along the coastline to the Siletz River, point of beginning.

(4) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(5) Dean Creek Elk Viewing Area (Douglas County): All Bureau of Land Management lands within or contiguous to BLM lands within T22S R11W (including Spruce Reach Island located adjacent to Hwy. 38 and between the outlets of Koapke and Hinsdale Sloughs) are closed to hunting. Also, other lands located within the following boundary are closed to hunting during all elk and deer seasons that pertain to this area: beginning at the intersection of Schofield Rd. and Hwy. 38, south on Schofield Rd. to its intersection with Hakki Ridge Rd., east on Hakki Ridge Rd. to the crest of Hakki Ridge, east along the crest of Hakki Ridge to its intersection with the BLM boundary located in T22S, R11W Section 4, easterly along the BLM boundary to Hwy. 38, west on Hwy 38 to point of beginning.

(6) Denman Wildlife Area (Jackson County): The Denman Wildlife Area shall be open to hunting only during game mammal and game bird seasons. Use of rifles and handguns is prohibited at all times.

(7) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(8) North Bank Habitat Management Area (NBHMA; previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35,36; T26S, R5W, Sections 1,2,11,12,13,14; T25S, R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area is closed to all big game hunting except for and during controlled hunts specific to the management area NBHMA by hunters possessing a controlled hunt tag for the area. Elk hunting will be allowed by hunters who possess a valid NBHMA controlled hunt tag in addition to a valid elk tag. The use of bait for hunting game mammals is prohibited on NBHMA. All BLM lands located in T25S, R5W, Sections 35, 36; T26S, R5W, Sections 1, 2, 11, 12, 13, 14; T25S, R4W, Sections 31,32, 33; T26S, R4W, Sections 4, 5, 6, 7, 8, 18 (6,500 acres located approximately 8 miles northeast of Roseburg).

(9) E.E. Wilson Wildlife Area (Benton County): This area is open to deer hunting during authorized seasons, except closed to bowhunting for deer when juvenile pheasant hunts are in progress. Rabbit hunting is permitted from November 1 through February each year. Hunting is by permit

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only. Permits are available at area headquarters and shall be filled out and returned each day hunted. Use of rifles, handguns, and crossbows shall be prohibited at all times.

(10) Elkhorn Wildlife Area (Baker/Union counties): Closed to all entry December 1 through April 10 annually. The Roth Tract is closed to all hunting. The Roth Tract is closed to public entry except by entry permit; an entry permit is required at all times of the year.

(11) Enterprise Wildlife Area (Wallowa County): Open to hunting seven days a week. No entry permit is required. Posted portions of the area lying south of the Union Pacific Railroad line and the entire Marr Tract are closed to all hunting.

(12) Fern Ridge Wildlife Area (Lane County): Open to black-tailed deer hunting during authorized seasons; see current Oregon Game Bird Regulations for open areas. A free daily hunting permit is required for East Coyote, West Coyote, Fisher Butte, Royal Amazon and Kirk Park units. Permits are available at check stations located at area access points. Hunters are limited to shotguns and archery equipment only. The discharging of rifles and handguns within the wildlife area is prohibited.

(13) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the refuge shall be open to deer hunting August 24 through September 22, 2013 under the regulations for bowhunting seasons.

(b) Portions of the refuge are open to deer hunting by hunters with a 615 controlled hunt tag using only archery equipment during September 1–September 22, 2013 and using shotguns or archery from September 23–November 1, 2013 .

(c) Portions of the refuge shall be open to deer hunting September 28 through November 1, 2013 under regulations for the general western Oregon deer buck season. Use of rifles or muzzleloaders is prohibited.

(d) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information on open areas and special regulations are available at the refuge.

(14) Gods Valley Wildlife Area (Clatsop County): Vehicles shall be restricted to travel only on county roads.

(15) Government Island State Recreation Area (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot, and bows is prohibited at all times.

(16) Irrigon, Coyote Springs, Power City, and Boardman wildlife management areas (Morrow and Umatilla counties): Use of rifles and handguns is prohibited at all times.

(17) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season. The refuge is open for pronghorn antelope Mandatory Reporting Incentive tag holders, and pronghorn antelope and

bighorn sheep auction and raffle tag holders but is closed for Access and Habitat deer and elk auction and raffle and Mandatory Reporting Incentive tag holders.

(18) Heppner Regulated Hunt Area: bowhunting; open fires and camping prohibited in posted areas. Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27 and 28 East;

(19) Jewell Meadows Wildlife Area (Clatsop County): The Beneke Tract and the Humbug Tract shall be open to hunting only during authorized game mammal and game bird seasons. The Beneke Tract is closed to all public entry during any open Saddle Mountain elk season, except that a hunter may enter that tract for black-tailed deer hunting only during the general western Oregon firearms season if the hunter holds a valid unused tag. It is unlawful to shoot rifles and bows from or across open fields during any open Wilson Unit elk seasons. The Fishhawk Tract is closed to public access. Posted lands of Cavenham Forest Industries, Inc., in T5N, R7W, Sections 2, 3 and 4, 9, 10 and 11 and T6N, R7W, Sections 33 and 34, are closed to all hunting. All areas posted as Refuge are closed to public access. Entry for other purposes is only by permit obtained at the Jewell Wildlife Area Headquarters.

(20) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(21) John Day River Refuge: Includes all land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. Within this area, from the Columbia Rvr upstream to Rock Cr, the area shall be open to hunting of upland game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. The remaining area from Rock Cr upstream to Thirty Mile Cr is open to the hunting of all game birds during authorized seasons. Hunting of big game is allowed during authorized seasons.

(22) Klamath Wildlife Area (Klamath County): This area is closed to all deer hunting.

(23) Klamath Marsh National Wildlife Refuge: This area is closed to all deer and elk hunting.

(24) Ladd Marsh Wildlife Area (Union County): All land north and east of Foothill Road is closed to all deer and elk hunting except during controlled youth deer hunts and closed to all rifle and handgun shooting. All lands west of Foothill Road shall be closed to all entry February 1–March 31, except by permit.

(25) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, and S32 are closed to all hunting.

(26) Lost Valley Ranch RHA: Open to public access and hunting from August 1 to March 31. Camping, horseback riding, and open fires are prohibited. Closed to all motor vehicle use unless posted otherwise. (Approximately 9 square miles in T5 and 6S, and R22 and 23E).

(27) Lower Deschutes Wildlife Area: Open to hunting big game, game birds and waterfowl during authorized seasons and by permit; except that discharge of firearms is prohibited within the scenic waterway boundary from the third Saturday in May through August 31. Discharge of firearms prohibited the remainder of the year. Access by foot, boat or bicycle only.

(28) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 is open during authorized rifle and bow deer and pronghorn antelope seasons.

(29) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(30) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(31) Metolius Wildlife Refuge (Jefferson County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). 36 CFR 261.58(v).

(32) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag or a Mill Creek Watershed controlled deer tag and a Forest Service entry permit.

(33) Newberry Crater Wildlife Refuge (Deschutes County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(34) Prineville Reservoir Wildlife Area: Open to hunting (big game, game birds, waterfowl) and trapping (furbearers) during authorized seasons. Discharge of firearms is prohibited the remainder of the year. Motorized vehicle travel restricted to designated open roads. All roads closed seasonally from November 15 or December 1 (as posted at each gate) through April 15 annually.

(35) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(36) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(37) Saddle Mountain Unit (White-tailed Deer Area): That portion of Saddle Mountain Wildlife Unit north of Burlington Northern railroad tracks to Astoria is closed to all deer hunting.

(38) Sauvie Island Wildlife Area (Multnomah-Columbia counties): This area shall be open to bowhunting for black-tailed deer August 25 through September 23, 2012, except Oak Island (Multnomah-Columbia Cos) is closed to deer hunting and Sturgeon LK Refuge is closed to all hunting. Daily permits are required. Hunters shall check in and out daily. This area shall be closed to deer hunting after September 23, 2012. Closed to hunting for furbearers, predators, unprotected and protected wildlife (except black-tail deer, rabbit, and game birds). Use of rifles, handguns and crossbows shall be prohibited at all times. Parking permits are required.

(39) Phillip W. Schneider Wildlife Area (Grant County): Open to public access and hunting April 15 through January 31. Motorized vehicle travel restricted to open roads. Some roads closed seasonally from December 1 through April 14. Entry by permit only February 1 through April 14 including BLM land within the exterior boundaries of the Wildlife Area.

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(40) Snake River Islands (Malheur County): Closed to hunting with centerfire rifles and centerfire handguns.

(41) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(42) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot high elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle or bow. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The main study area is open to hunting of other species during authorized seasons. The 12-foot right-of-way along each side of all eight foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually. Access and Habitat auction or raffle tag holders are not eligible to hunt in the Starkey Experimental Forest enclosure.

(43) Summer Lake Wildlife Area (Lake County): Open to public access and hunting during authorized mule deer and game bird hunting seasons. Closed to deer hunting during any pheasant, quail or waterfowl hunting seasons east of state Hwy 31 and posted refuge areas are closed to hunting. Motorized vehicle travel restricted to open roads. Some roads may be closed seasonally from March 15–August 15 and seven days prior to and during waterfowl hunting seasons. Hunters must obtain a daily hunting permit and check out at the end of the day. Permits and Area maps are available at Headquarters (1.3 mi. south of the town of Summer Lake). It is unlawful to discharge firearms except during deer and game bird hunting seasons or by permit. Centerfire rifles and handguns are prohibited for deer hunting.

(44) Umatilla Refuge (Morrow County): This refuge is closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 078.

(45) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(46) Wenaha Wildlife Area (Union County): Open to public access and hunting. Motorized vehicle travel restricted to open roads.

(47) Willamette River Greenway Corridor: Hunting is permitted with shotguns or bows and arrows only during authorized season on Willamette River Greenway parcels, except in those parcels where hunting is prohibited.

(48) White River Wildlife Area: Open to hunting during authorized seasons.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. & cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-065-0735

Vehicles, Boats, Aircraft

It is *unlawful*:

(1) To hunt any big game from a motor-propelled vehicle.

Exception: A qualified disabled hunter may obtain an Oregon Disabilities Hunting and Fishing Permit to hunt from a motor vehicle except while the vehicle is in motion or on any public road or highway. For the purpose of this regulation, "motor vehicle" includes All Terrain Vehicles (ATVs).

(2) To hunt within eight (8) hours of communicating with or receiving information on the location of game mammals from an aircraft. For purposes

of this regulation, "aircraft" includes unmanned aircraft such as drones.

(3) To hunt within eight hours after having been transported by helicopter or fixed-wing aircraft to any point other than an established airport adequate for fixed-wing aircraft.

(4) To shoot at pronghorn antelope from a point within 50 yards of a motor-propelled vehicle including aircraft, except for qualified disabled hunters as shown in 635-065-735(1).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-065-0740

Hunting Prohibited

It is *unlawful*:

(1) To hunt with a centerfire or muzzleloading rifle during the standard eastern Oregon controlled deer buck season (September 28–October 9, 2013) Cascade bull elk season, Coast bull elk seasons, Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (November 16–November 24, 2013) without a valid, unused tag for that species, time period and area on their person. EXCEPTIONS:

(a) Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

(b) Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (*Canis latrans*) in the Juniper, Beatys Butte, East Beulah, Whitehorse and Owyhee units and in the Wagontire Unit south of the Lake County Road 5-14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (November 16–November 24, 2013).

(c) Hunters who have a tag for one of the hunts listed in this paragraph may hunt bear and/or cougar within the time period and area for which their deer or elk tag is valid (used or unused) provided they have a valid unused bear and/or cougar tag.

(d) Hunters are not required to have an elk tag to hunt bear or cougar in the Applegate WMU during elk seasons.

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (3) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the Department.

(7) To hunt protected wildlife except:

(a) by a permit or during an authorized season established by the commission.

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

(9) To engage in computer-assisted hunting (Internet hunting) or provide or operate facilities for computer-assisted hunting in Oregon. As used in this act, "computer-assisted hunting" (Internet hunting) means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a firearm, bow, or any other weapon to hunt any game bird, wildlife, game mammal, or other mammal, and "facilities for computer-assisted remote hunting" means real property and improvements on the property associated with hunting, including hunting blinds, offices and rooms equipped to facilitate computer-assisted remote hunting. Nothing in subsection (9) of this section prohibits the use computer-assisted hunting by employees or agents of county, state or federal agencies while acting in their official capacities.

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

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Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-065-0760

Other Restrictions

It is *unlawful*:

- (1) To take or hold in captivity the young of any game mammal.
- (2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.
- (3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.
- (4) To resist game law enforcement officers.
- (5) To refuse inspection of any license, tag or permit by an employee of the Department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his or her land while on that property.
- (6) To refuse inspection, by an employee of the Oregon Department of Fish and Wildlife, or any person authorized to enforce wildlife laws, of any gear used for the purpose of taking wildlife.
- (7) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.
- (8) To disturb, damage, remove, alter or possess any official Department signs.
- (9) To sell, lend, or borrow any big game tag.
- (10) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; negative marking in which closed roads are marked by signs, gates, berms, or other similar indicators, or positive marking in which open roads are marked by round green reflectors, orange carsonite posts, or similar indicators. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:
 - (a) North Coast Access Area: Three days prior to opening of general archery season through the close of all bull elk rifle seasons. — Applies to all gated, posted, and/or barrier closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units. Cooperators require: day use only on private lands, no ATV use on private and designated state lands, no vehicle may block any road gate.
 - (b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;
 - (c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;
 - (d) Luckiamute: Permanent Closure — Those parts of the Stott Mt. /Alea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.
 - (e) Mid-Coast: Permanent Closure — That part of the Alea Unit as follows: Open roads in the Siuslaw NF lands south of US Hwy 20 and north of State Hwy 126 are designated on the Siuslaw NF Motor Vehicle Use Map. However; additional roads may be posted as closed as part of the Cooperative TMA or for administrative purposes.
 - (f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;
 - (g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season. That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;

(j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Wendling: opening of archery season through the end of the general firearms buck deer season including the youth weekend. Approximately 185 sq. mi in Unit 19 northeast of Springfield; north of Hwy 126, east of Marcola and Brush Creek Rds., and south of the Calapooia River Mainline. Roads open to motor vehicle use will be marked with orange road markers. Access may be closed due to fire danger.

(l) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: High Cascades Ranger District, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 104 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20 through March 31 annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(r) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(v) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloian;

(x) Murderers Creek-Flagtail: Three days prior to the opening of the archery deer and elk seasons through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1 through April 14 annually except by permit — That part of the Ukiah Unit as follows: 20 square

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miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(cc) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season and May 1 through June 30 encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(dd) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ee) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(ff) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(gg) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(hh) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(ii) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(jj) Hall Ranch: Three days prior to the opening of Rocky Mountain bull elk first season through April 30 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(kk) Little Catherine Creek: Three days prior to opening of archery season through May 31 — That part of the Catherine Creek Unit as follows: 22 square miles in Townships 3, 4 and 5 South, Ranges 40 and 41 East;

(ll) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(mm) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(nn) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(oo) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(pp) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(qq) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, and Range 48 East.

(rr) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(ss) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season — That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(tt) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(uu) Mehlorn: Permanent Closure: That part of the Pine Creek and Keating Units as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(vv) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(ww) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(xx) Summit Point: Permanent Closure: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(yy) Eagle Creek: December 1 — April 15: That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(zz) Conroy Cliff: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(aaa) Devine Ridge-Rattlesnake: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(bbb) Dairy Creek: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(ccc) Burnt Cabin: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ddd) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(eee) North Paulina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(fff) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(ggg) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, and no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(hhh) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(iii) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 roads in Chesnimnus Unit are closed;

(jjj) Hells Canyon National Recreation Area: Permanent Closure — Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(kkk) PO Saddle Road — Three days prior to opening of archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East.

(lll) Whiskey Creek — Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows — 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

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(mmm) South Boundary: Permanent Closure — That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

(nnn) JWTR: Permanent Closure — Applies to all gated, posted, or barrier-closed roads within the Rogue, Keno, Klamath Falls, Sprague, Interstate, Silver Lake, and Fort Rock Units within the land holdings of JWTR, LLC.

(ooo) Prineville Reservoir Wildlife Area: From November 15 or December 1 (as posted at each gate) through April 15 annually — That part of the Ochoco and Maury Units as follows: 5 square miles in Township 16 South, Range 17 East.

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

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

Hist.: FWC 123, f. & cert. ef. 6-9-77; FWC 33-1978, f. & cert. ef. 6-30-78; FWC 28-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 6-1981, f. & cert. ef. 1-23-81; FWC 11-1981, f. & cert. ef. 3-31-81; FWC 20-1981, f. & cert. ef. 6-19-81; FWC 37-1982, f. & cert. ef. 6-25-82; FWC 28, f. & cert. ef. 7-8-83; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06; DFW 128-2006, f. 12-7-06, cert. ef. 6-1-07; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-066-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting set out in the document entitled “2013 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2013 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-066-0010

General Season Regulations

(1) Pursuant to ORS 497.112, annual black bear tag sales to nonresident black bear hunters for the general fall season shall be limited to no more than three percent of the total tag sales based on previous year's hunter densities.

(a) Tags shall be available at any authorized license agent and through the Salem Headquarters office on a first-come, first-served basis.

(b) The application procedure shall be as follows:

(A) An applicant may purchase a nonresident general black bear tag at any hunting license agent or;

(B) An applicant shall mail or fax copies, through the Salem Headquarters only, of his/her nonresident driver's license, adult nonresident hunting license, juvenile nonresident hunting license, or provide documentation which includes the following information:

(i) Applicant's full name and current address;

(ii) Applicant's date of birth;

(iii) Applicant's Social Security number;

(iv) Applicant's telephone number;

(c) An applicant shall include a fee of \$180.50 (plus a \$2.00 license agent fee) with the application.

(d) The applicant shall state the areas for which he/she is applying in order of choice.

(2) Open Area: The entire state is open, except that lands within one mile of the Rogue River between Grave Creek and Lobster Creek are

closed to all black bear hunting. Nonresidents shall be restricted to hunting black bear only in specific areas as described below. Nonresident black bear tags shall be distributed by areas as described in the Black Bear Management Plan. These areas are described as follows:

(a) Northwest: All of wildlife management units: 10, 11, 12, 14, 15, 17, and 18.

(b) Southwest: All of wildlife management units: 20, 23, 24, 25, 26, 27, 28, and 29.

(c) Cascades: All of wildlife management units: 16, 19, 21, 22, 30, 31, 34, 39, 41, and 42 and those portions of wildlife management units 33 and 77 lying west of Highway 97.

(d) Eastern: All of wildlife management units: 32, 35, 38, 40, and 43 and those portions of wildlife management units 33 and 77 lying east of Highway 97; and all other wildlife management units to the east of these units.

(3) No person shall use dogs to hunt or pursue black bear.

(4) No person shall use bait to attract or hunt black bear.

(5) The skull of any bear taken must be presented to an ODFW office or designated collection site. The person who took the animal is responsible to have it presented, within 10 days of the kill, to be checked and marked. Skull must be unfrozen when presented for check-in. Check-in at ODFW offices must occur during normal business hours (8-5, Mon-Fri.). Hunters are required to check in the skull only, for the purpose of inspection, tagging and removal of a tooth for aging.

(6) When the bear skull is presented at check-in information that must be provided includes:

(a) Date of harvest and location of harvest including Wildlife Management Unit; and

(b) Complete hunter information including tag number as found on the bear tag; a completed “Wildlife Transfer Record Form” as found in the current year's Oregon Big Game Regulations is an alternative for providing the required information.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-066-0020

Controlled Seasons

(1) Tags will be issued by way of a controlled hunt drawing. The number of tags issued to nonresidents will be limited to no more than three percent of the total tags authorized for each hunt. Persons receiving a controlled black bear tag may also purchase a general season black bear tag and one SW Oregon additional bear tag and one “leftover” controlled spring bear tag.

(2) No person shall use dogs to hunt or pursue black bear.

(3) No person shall use bait to attract or hunt black bear.

(4) The skull of any bear taken must be presented to an ODFW office or designated collection site. The person who took the animal is responsible to have it presented, within 10 days of the kill, to be checked and marked. Skull must be unfrozen when presented for check-in. Check-in at ODFW offices must occur during normal business hours (8-5, Mon-Fri.). Hunters are required to check in the skull only for the purpose of inspection, tagging and removal of a tooth for aging.

(5) When the bear skull is presented at check-in information that must be provided includes:

(a) Date of harvest and location of harvest including Wildlife Management Unit, and

(b) Complete hunter information including tag number as found on the bear tag; a completed “Wildlife Transfer Record Form” as found in the current year's Oregon Big Game Regulations is an alternative for providing the required information.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope,

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cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2013 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2013 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted weapons and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2012 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

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

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

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

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

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. & cert. ef. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. & cert. ef. 10-31-07, cert. ef. 1-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 150-2008, f. & cert. ef. 12-18-08, cert. ef. 1-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 140-2009, f. & cert. ef. 11-3-09, cert. ef. 1-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 85-2010(Temp), f. & cert. ef. 6-21-10 thru 12-17-10; DFW 168-2010, f. & cert. ef. 12-29-10, cert. ef. 1-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 159-2011, f. & cert. ef. 12-14-11, cert. ef. 1-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 147-2012, f. & cert. ef. 12-18-12, cert. ef. 1-1-13

635-067-0004

Cougar Hunting Regulations

(1) Tag Requirement: Any person hunting cougar shall have on his/her person a general season cougar tag or an additional cougar tag. General season cougar tags may be purchased through any authorized license agent;

(2) Hunt Area: Hunt zones, and harvest quotas for each hunt zone, are established in OAR 635-067-0015;

(a) Hunters may hunt within all hunt zones;

(b) Hunt zones will be closed to hunting when individual zone harvest quotas are reached.

(3)(a) The person who took the animal is responsible to have it presented for check-in, within ten days of harvest, the hide with skull and proof of sex attached of any cougar killed at a Department of Fish and Wildlife office. Check-in must occur during normal business hours (8 a.m. to 5 p.m., Monday through Friday.) Hide and skull must be unfrozen when presented for check-in.

(b) Hunters are also required to submit the reproductive tract of any female cougar taken.

(c) When the required parts in (3)(a) and (3)(b) are presented at check-in information that must be provided includes: 1) date of harvest and location of harvest including Wildlife Management Unit, and 2) complete hunter information including tag number as found on the cougar tag; a completed "Wildlife Transfer Record Form" as found in the current year's Oregon Big Game Regulations is an alternative for providing the required information.

(4) No person shall hunt or assist another to hunt a cougar during an authorized cougar season unless in possession of an unused cougar tag or accompanied by the holder of a cougar tag which is valid for that area and time period.

(5) No person shall use dogs to hunt or pursue cougar.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. & cert. ef. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 150-2008, f. & cert. ef. 12-18-08, cert. ef. 1-1-09; DFW 159-2011, f. & cert. ef. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. & cert. ef. 12-18-12, cert. ef. 1-1-13

635-072-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 072 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "2013 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2013 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements 2013 for hunting western gray squirrel. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. & cert. ef. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. & cert. ef. 1-1-07; DFW 118-2007, f. & cert. ef. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. & cert. ef. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. & cert. ef. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. & cert. ef. 1-1-11; DFW 159-2011, f. & cert. ef. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. & cert. ef. 12-18-12, cert. ef. 1-1-13

635-078-0011

Determining Eligibility

(1) The method of determining who shall be eligible to participate in the emergency hunts set forth in section (1) of this rule shall be as follows:

(a) Hunters who wish to be eligible for emergency hunts shall have their names placed on the emergency hunt list for the county in which they wish to hunt: the list is to be effective for one year. Each hunter must have a valid hunting license. Each hunter less than 18 years of age shall be accompanied by a responsible adult (21 years of age or older) when hunting. Applications will be accepted and kept on file at the headquarters office of the Department of Fish and Wildlife, 3406 Cherry Ave, NE, Salem, OR, 97303. Beginning July 1 of each year, the hunter's name will be placed on the eligible list. No fee is required for applicants to be placed on the emergency hunt list. Applications may be made on a form available at department offices and up to two hunters may apply on the form as a party. Each applicant shall list their name, address and telephone number where they can be contacted and the county for which they are applying.

(b) At such time as the department determines that a need for such emergency hunt exists, those numbers of hunters for which permits are available shall be notified to obtain their permits from regional or district office of the department. Hunt lists will be prioritized by a random sort of the applications received during July of each year. Certified Master Hunters applying during July shall be randomized and moved to the top of the emergency hunt list. Applications received after July 31 each year will be prioritized as received.

(2) It is unlawful to take game mammals or wild turkey in and during the emergency hunt set forth in section (1) of this rule without having an emergency hunt permit/tag authorized for the species, area, and season on one's person.

(3) Upon killing a game mammal or wild turkey pursuant to these rules, the hunter shall immediately notify the local ODFW representative (or designee), and pay the appropriate fee for the tag required. Unfilled tags must be returned to the issuing office within five business days after the closing date of the hunt printed on the tag.

(4) Eligibility and fees for such tags shall be the same as the tag fees established by species in ORS 497.112.

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

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

Hist.: DFW 131-2004, f. & cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 22-2012, f. & cert. ef. 3-14-12, cert. ef. 4-1-12; DFW 147-2012, f. & cert. ef. 12-18-12, cert. ef. 1-1-13

Rule Caption: Amend Wildlife Integrity Rules for species classification of Tiger Muskie, Asian Carp and Quagga/Zebra Mussels.

Adm. Order No.: DFW 148-2012

Filed with Sec. of State: 12-18-2012

Certified to be Effective: 12-18-12

Notice Publication Date: 11-1-2012

Rules Amended: 635-056-0050, 635-056-0075

Subject: Amendments to Wildlife Integrity Rules to reclassify Tiger Muskie from prohibited to controlled species, Asian Carp as a

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prohibited species and classify live/dead quagga/zebra mussels as a prohibited species.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-056-0050

Prohibited Species

(1) Except as otherwise provided in these rules or other rules of the commission, live wildlife listed below may not be imported, possessed, sold, purchased, exchanged or transported in the state:

(a) Prohibited Mammals: Common Name — Family — Genus/species:

(A) Order Artiodactyla:

(i) Sheep, Goats, Chamois, Tahr — Bovidae — Subfamily Caprinae;

All species and hybrids except:

(I) *Capra hircus*;

(II) *Ovis aries*;

(III) hybrids of *Ovis aries* with *O. a. orientalis*; hybrids of *O. aries* with *Ammotragus lervia*; and hybrids of *O. aries* with *Pseudois nayaur*;

(ii) Wildebeest — Bovidae — *Connochaetes* All species and hybrids;

(iii) Central Asian gazelles — Bovidae — *Procapra* All species and hybrids;

(iv) Wild boar — Suidae — *Sus scrofa* (except *Sus scrofa domestica*).

(B) Order Carnivora:

(i) Wild canids — Canidae — All native species. However, fox (*Vulpes vulpes* and *Urocyon cinereoargenteus*) are exempt from this prohibition if when part of a commercial fur farming operation or for wildlife rehabilitation purposes by a licensed wildlife rehabilitator;

(ii) Mongooses — Herpestidae — All species and hybrids;

(iii) Civets and Genets — Viverridae — All species and hybrids (except *Arctictis binturong*).

(C) Order Chiroptera: Bats — All families except Pteropodidae — All species and hybrids.

(D) Order Cingulata: Nine-banded armadillo — Dasypodidae — *Dasypus novemcinctus*.

(E) Order Dasyuromorphia:

(i) Broad-footed marsupial mice — Dasyuridae — *Antechinus* All species and hybrids;

(ii) Brush-tailed marsupial mice — Dasyuridae — *Phascogale* All species and hybrids;

(iii) Dunnant — Dasyuridae — *Sminthopsis* All species and hybrids.

(F) Order Didelphimorphia: Virginia opossum — Didelphidae — *Didelphis virginiana*.

(G) Order Diprotodontia:

(i) Common brushtail — Phalangeridae — *Trichosurus vulpecula*;

(ii) Common ringtail — Pseudocheiridae — *Pseudocheirus peregrinus*.

(H) Order Erinaceomorpha: Eurasian hedgehogs — Erinaceidae — *Erinaceus europaeus*, *E. concolor*, *E. amurensis*.

(I) Order Lagomorpha:

(i) Hares and Jackrabbits — Leporidae — *Lepus* All nonnative species and hybrids;

(ii) Cottontails — Leporidae — *Sylvilagus* All nonnative species and hybrids.

(J) Order Rodentia:

(i) Argentine Plains viscacha — Chinchillidae — *Lagostomus maximus*;

(ii) Chinese jumping mouse — Dipodidae — *Eozapus setchuanus*;

(iii) Desert jerboas — Dipodidae — *Jaculus* All species and hybrids;

(iv) Kangaroo rats — Heteromyidae — *Dipodomys* All nonnative species except *D. deserti* and *D. spectabilis*;

(v) Pale kangaroo mouse — Heteromyidae — *Microdipodops pallidus*;

(vi) Pocket mice — Heteromyidae — *Perognathus* All nonnative species and hybrids;

(vii) Capybara — Hydrochaeridae — *Hydrochaeris hydrochaeris*;

(viii) Old world porcupines — Hystricidae — *Hystrix africaeaus-tralis*, *H. cristata*, and *H. indica*;

(ix) Mouselike hamster — Muridae — *Calomyscus* All species and hybrids;

(x) Ratlike hamsters — Muridae — *Cricetulus* All species and hybrids;

(xi) Bushy-tailed jird — Muridae — *Sekeetamys calurus*;

(xii) Nutria (Coypu) — Myocastoridae — *Myocastor coypus*;

(xiii) Fat dormouse — Myoxidae — *Glis glis*;

(xiv) Hazel dormouse — Myoxidae — *Muscardinus avellanarius*;

(xv) Antelope ground squirrels — Sciuridae — *Ammospermophilus*

All nonnative species and hybrids except *A. harrisi*;

(xvi) Tricolored squirrels — Sciuridae — *Callosciurus* All species and hybrids except *C. prevostii*;

(xvii) Prairie dogs — Sciuridae — *Cynomys* All species and hybrids;

(xviii) Southern flying squirrel — Sciuridae — *Glaucomys volans*;

(xix) Marmots — Sciuridae — *Marmota* All nonnative species and hybrids;

(xx) Giant flying squirrel — Sciuridae — *Petaurista* All species and hybrids;

(xxi) Eastern gray squirrel — Sciuridae — *Sciurus carolinensis*;

(xxii) Eastern fox squirrel — Sciuridae — *Sciurus niger*;

(xxiii) Eurasian red squirrel — Sciuridae — *Sciurus vulgaris*;

(xxiv) Ground squirrels — Sciuridae — *Spermophilus* All nonnative species and hybrids except *S. adocetus*, *S. annulatus*, *S. atricapillus*, *S. madrensis*, *S. mexicanus*, *S. mohavensis*, *S. perotensis*, and *S. tereticaudus*;

(xxv) Chipmunks — Sciuridae — *Tamias* All nonnative species and hybrids;

(xxvi) African ground squirrels — Sciuridae — *Xerus* All species and hybrids.

(b) Prohibited Birds: Common Name — Family — Genus/species:

(A) Order Anseriformes: Egyptian goose — Anatidae — *Alopochen aegyptiaca*.

(B) Order Charadriiformes: Spotted thick-knee — Burhinidae — *Burhinus capensis*.

(C) Order Coraciiformes:

(i) Malachite kingfisher — Alcedinidae — *Alcedo cristata*;

(ii) Laughing kookaburra — Alcedinidae — *Dacelo novaeguineae*.

(D) Order Passeriformes:

(i) Yellowhammer — Emberizidae — *Emberiza citrinella*;

(ii) European greenfinch — Fringillidae — *Carduelis chloris*;

(iii) Chaffinch — Fringillidae — *Fringilla coelops*.

(c) Prohibited Amphibians: Common Name — Family — Genus/species:

(A) Order Caudata:

(i) Tiger salamander — Ambystomatidae — *Ambystoma tigrinum* All nonnative sub-species;

(ii) Amphiumas — Amphiumidae — All species and hybrids;

(iii) Giant salamanders and Hellbenders — Cryptobranchidae — All species and hybrids;

(iv) American giant salamanders — Dicamptodontidae — All nonnative species and hybrids;

(v) Asian salamanders — Hynobiidae — *Ranodon* All species and hybrids;

(vi) Shovel-nosed salamander — Plethodontidae — *Leurognathus marmoratus*;

(vii) Waterdogs — Proteidae — *Necturus* All species and hybrids;

(viii) Firebelly newts — Salamandridae — *Cynops* All species and hybrids;

(ix) European Mountain or Brook salamanders — Salamandridae — *Euproctus* All species and hybrids;

(x) Caucasus or Spine-tailed salamanders — Salamandridae — *Mertensiella* All species and hybrids;

(xi) Red-spotted or Eastern newt — Salamandridae — *Notophthalmus viridescens*;

(xii) Chinese newts — Salamandridae — *Pachytriton* All species and hybrids;

(xiii) Warty newts — Salamandridae — *Paramesotriton* All species and hybrids;

(xiv) Ribbed newts — Salamandridae — *Pleurodeles* All species and hybrids;

(xv) Fire salamanders — Salamandridae — *Salamandra* All species and hybrids;

(xvi) Roughskin newts — Salamandridae — *Taricha rivularis* and *T. torosa*;

(xvii) Alpine newts — Salamandridae — *Triturus* All species and hybrids;

(xviii) Crocodile newts — Salamandridae — *Tylotriton* All species and hybrids;

(xix) Sirens — Sirenidae — All species and hybrids.

(B) Order Anura:

(i) Fire-bellied toads — Bombinatoridae — *Bombina* All species and hybrids;

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- (ii) True toads — Bufonidae — Bufo All nonnative species and hybrids except Bufo marinus;
- (iii) Midwife toads — Discoglossidae — Alytes All species and hybrids;
- (iv) Painted frogs — Discoglossidae — Discoglossus All species and hybrids;
- (v) Cricket frog — Hylidae — Acris All species and hybrids;
- (vi) European tree frog — Hylidae — Hyla arborea;
- (vii) Cope's gray tree frog — Hylidae — Hyla chrysoscelis;
- (viii) Green tree frog — Hylidae — Hyla cinerea;
- (ix) Mediterranean tree frog — Hylidae — Hyla meridionalis;
- (x) Gray tree frog — Hylidae — Hyla versicolor;
- (xi) Chorus frog — Hylidae — Pseudacris All nonnative species and hybrids;
- (xii) Australian froglets — Myobatrachidae — Crinia All species and hybrids;
- (xiii) Australian swamp frogs — Myobatrachidae — Limnodynastes All species and hybrids;
- (xiv) Barred frogs — Myobatrachidae — Mixophyes All species and hybrids;
- (xv) Spadefoot toads — Pelobatidae — All nonnative species and hybrids;
- (xvi) African clawed frog — Pipidae — Xenopus All species and hybrids;
- (xvii) African bull frog — Ranidae — Pyxicephalus All species and hybrids;
- (xviii) Siberian frog — Ranidae — Rana altaica;
- (xix) Khabarovsk frog — Ranidae — Rana amurensis;
- (xx) Crawfish frog — Ranidae — Rana areolata;
- (xxi) Swedish swamp frog — Ranidae — Rana arvalis;
- (xxii) Asian frog — Ranidae — Rana asiatica;
- (xxiii) Rio Grande leopard frog — Ranidae — Rana berlandieri;
- (xxiv) Plains leopard frog — Ranidae — Rana blairi;
- (xxv) Caucasus frog — Ranidae — Rana camerani;
- (xxvi) Inkiapo frog — Ranidae — Rana chensinensis;
- (xxvii) Toudaohoe frog — Ranidae — Rana chevronta;
- (xxviii) Green frog — Ranidae — Rana clamitans;
- (xxix) Spring frog — Ranidae — Rana dalmatina;
- (xxx) Dybowski's frog — Ranidae — Rana dybowskii;
- (xxxi) Stream frog — Ranidae — Rana graeca;
- (xxxii) Pig frog — Ranidae — Rana grylio;
- (xxxiii) River frog — Ranidae — Rana heckscheri;
- (xxxiv) Turkish frog — Ranidae — Rana holtzi;
- (xxxv) Iberian frog — Ranidae — Rana iberica;
- (xxxvi) Agile frog — Ranidae — Rana japonica;
- (xxxvii) Italian agile frog — Ranidae — Rana latastei;
- (xxxviii) Kokarit or Taipa frog — Ranidae — Rana longicrus;
- (xxxix) Brusa frog — Ranidae — Rana macrocnemis;
- (xl) Nikko frog — Ranidae — Rana ornativentris;
- (xli) Pickeral frog — Ranidae — Rana palustris;
- (xlii) Mink frog — Ranidae — Rana septentrionalis;
- (xliii) Wood frog — Ranidae — Rana sylvatica;
- (xliv) Tago frog — Ranidae — Rana tagoe;
- (xlv) European common frog — Ranidae — Rana temporaria;
- (xlvi) Tsushima frog — Ranidae — Rana tsushimensis;
- (xlvii) Carpenter frog — Ranidae — Rana virgatipes.
- (d) Prohibited Reptiles: Common Name — Family — Genus/species:
 - (A) Order Testudines:
 - (i) Snapping turtle — Chelydridae — All species and hybrids;
 - (ii) Chinese pond turtle — Emydidae — Chinemys All species and hybrids;
 - (iii) Pond turtle — Emydidae — Clemmys All nonnative species;
 - (iv) Painted turtle — Emydidae — Chrysemys All nonnative sub-species;
 - (v) European pond turtle — Emydidae — Emys orbicularis;
 - (vi) Blanding's turtle — Emydidae — Emydoidea blandingii;
 - (vii) Map turtle — Emydidae — Graptemys All species and hybrids;
 - (viii) Asian pond turtle — Emydidae — Mauremys All species and hybrids;
 - (ix) Pond slider — Emydidae — Pseudemys and Trachemys All species and hybrids;
 - (x) Common musk turtle — Kinosternidae — Kinosternon odoratum;
 - (xi) Common mud turtle — Kinosternidae — Kinosternon sub-rubrum;
 - (xii) North American soft shell — Trionychidae — Apalone All species and hybrids;
 - (xiii) African soft shell — Trionychidae — Trionyx triunguis.
 - (B) Order Squamata (Suborder Lacertilia):
 - (i) Slow worm — Anguillidae — Anguis fragilis;
 - (ii) Sand lizard — Lacertidae — Lacerta agilis;
 - (iii) Jewelled lizard — Lacertidae — Lacerta lepida;
 - (iv) Iberian Mountain lizard — Lacertidae — Lacerta monticola;
 - (v) Meadow lizard — Lacertidae — Lacerta praticola;
 - (vi) Iberian Emerald lizard — Lacertidae — Lacerta schreiberi;
 - (vii) Balkan Emerald lizard — Lacertidae — Lacerta trilineata;
 - (viii) Emerald lizard — Lacertidae — Lacerta viridis;
 - (ix) Viviparous lizard — Lacertidae — Lacerta vivipara;
 - (x) Erhard's Wall lizard — Lacertidae — Podarcis erhardi;
 - (xi) Iberian Wall lizard — Lacertidae — Podarcis hispanica;
 - (xii) Common Wall lizard — Lacertidae — Podarcis muralis;
 - (xiii) Crocodile lizard — Xenosauridae — Shinisaurus crocodilurus.
 - (C) Order Squamata (Suborder Serpentes):
 - (i) Brown tree snake — Colubridae — Boiga irregularis;
 - (ii) Black-necked spitting cobra — Elapidae — Naja nigricollis;
 - (iii) Cape cobra — Elapidae — Naja nivea;
 - (iv) Copperheads and cottonmouths — Viperidae — Agkistrodon All species and hybrids;
 - (v) Puff adders — Viperidae — Bitis All species and hybrids except Bitis gabonica and B. nasicornis;
 - (vi) Lanceheads — Viperidae — Bothrops All species and hybrids;
 - (vii) Palm pit vipers — Viperidae — Bothriechis All species and hybrids;
 - (viii) Rattlesnakes — Viperidae — All nonnative species and hybrids except Crotalus aquilus, C. basiliscus, C. durissus, C. intermedius, C. polystictus, C. pusillus, C. tortugensis, C. triseriatus, C. unicolor, and C. vegrandis;
 - (ix) Mid-east vipers — Viperidae — Daboia All species and hybrids;
 - (x) Pygmy rattlesnake — Viperidae — Sistrurus catenatus;
 - (xi) Asian pit vipers — Viperidae — Trimeresurus All species and hybrids;
 - (xii) Wagler's palm viper — Viperidae — Tropicolaemus wagleri;
 - (xiii) Sand vipers — Viperidae — Vipera All species and hybrids.
 - (e) Prohibited Fish: Common Name — Family — Genus/species:
 - (A) Order Amiiformes: Bowfin — Amiidae — Amia calva.
 - (B) Order Cypriniformes:
 - (i) Piranha or Caribe — Characidae subfamily Serrasalminae commonly known as caribe or piranha — All species and hybrids except carnivorous species of Pygocentrus, Serrasalmus or Pristobrycon pursuant to ORS 498.242;
 - (ii) Walking catfish (ORS 498.242) — Clariidae — All species and hybrids;
 - (iii) Oriental weatherfish — Cobitidae — Misgurnus anguillicaudatus;
 - (iv) Ide — Cyprinidae — Leuciscus idus;
 - (v) Rudd — Cyprinidae — Scardinius erythrophthalmus.
 - (vi) Asian carp — Cyprinidae — Hypophthalmichthys All species and hybrids;
 - (vii) Black carp — Cyprinidae — Mylopharyngodon piceus
 - (C) Order Lepisosteiformes: Gar — Lepisosteidae — All species and hybrids.
 - (D) Order Perciformes:
 - (i) Snakehead — Channidae — Channa All species and hybrids;
 - (ii) Round goby — Gobiidae — Neogobius melanostomus;
 - (iii) Ruffe — Percidae — Gymnocephalus cernuus;
 - (iv) Zander or Pike-perch — Percidae — Sander lucioperca.
 - (E) Order Salmoniformes: Pikes, Pickerel, Muskellunge — Esocidae — All species and hybrids except tiger muskellunge (Esox lucius X Esox masquinongy) in Phillips Reservoir located in Baker County
 - (f) Prohibited Mollusks Common Name — Family — Genus/species:
 - (A) Order Bivalvia:
 - (i) Asian clam — Corbiculidae — All species;
 - (ii) Zebra mussel, Quagga mussel — Dreissenidae — All species (whether live or dead).
 - (B) Order Neogastropoda: Japanese oyster drill — Muricidae — Ceratostoma inornatum.
 - (C) Order Architaenioglossa:
 - (i) Chinese mystery snail — Viviparidae — Cipangopaludina chinensis

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(ii) Japanese mystery snail — Viviparidae — Cipangopaludina japonica

(g) Prohibited Crustaceans Common Name — Family — Genus/species: Order Decapoda:

(A) Chinese mitten crab — Grapsidae — Eriocheir All species;

(B) Blue crab — Portunidae — Callinectes sapidus;

(C) Crayfish — Cambaridae — All species.

(2) The department may issue a permit for the importation, possession, sale, purchase, exchange or intrastate transportation of prohibited species and those species not yet classified if the department finds that the following standards have been met:

(a) The facility is constructed to minimize escape of prohibited species;

(b) There are adequate security and safety programs and procedures which minimize the possibility of escape;

(c) There is adequate record keeping to aid in tracking of confined animals or recovery of escaped animals;

(d) There are adequate procedures, equipment and trained staff to maximize capture of escaped animals;

(e) Adequate veterinary care is provided to identify and minimize the spread of diseases; and

(f) The applicant has a good reputation for care of animals and compliance with the wildlife laws.

(g) Using forms provided by the department, persons or entities may apply for a permit under subsection (2) as follows:

(A) Facilities accredited by the American Zoo and Aquarium Association (AZA). Because the department finds that the current AZA accreditation process holds these facilities to standards equivalent to those in subsection (2), AZA accreditation shall be evidence that the department's standards for importation, possession, sale, purchase, exchange or intrastate transportation of prohibited species are met. To obtain a permit for these activities, AZA accredited facilities shall submit a completed application form and proof of accreditation.

(B) Universities and colleges. To obtain a permit, universities and colleges shall submit:

(i) A completed application form;

(ii) A written description of escape avoidance procedures and facilities; and

(iii) Identification of the time period(s) during which prohibited species will be held.

(C) Others. To apply for a permit, persons and entities other than universities, colleges and AZA accredited facilities shall submit:

(i) A completed application form; and

(ii) A completed Prohibited Species Questionnaire.

(h) Satisfactory facilities inspections may be required prior to issuance of any permit.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Hist.: FWC 69-1996, f. & cert. ef. 12-20-96; FWC 16-1997(Temp), f. & cert. ef. 3-13-97; FWC 41-1997(Temp), f. & cert. ef. 7-23-97; FWC 59-1997, f. & cert. ef. 9-3-97; FWC 59-1997, f. & cert. ef. 9-3-97; FWC 72-1997, f. & cert. ef. 12-29-97; DFW 21-1998, f. & cert. ef. 3-13-98; DFW 63-1998, f. & cert. ef. 8-10-98; DFW 96-1998, f. & cert. ef. 11-25-98; DFW 99-1998, f. & cert. ef. 12-22-98; DFW 94-1999, f. & cert. ef. 12-23-99; DFW 79-2000, f. & cert. ef. 12-22-00; DFW 116-2001, f. & cert. ef. 12-18-01; DFW 114-2008, f. & cert. ef. 9-19-08; DFW 15-2011, f. & cert. ef. 2-15-11; DFW 69-2011, f. 6-15-11, cert. ef. 7-1-11; DFW 115-2012(Temp), f. & cert. ef. 8-31-12 thru 2-26-13; DFW 148-2012, f. & cert. ef. 12-18-12

635-056-0075

Controlled Fish Species

(1) Controlled Fish

(a) Grass carp (*Ctenopharyngodon idella*): Grass carp may be released into water bodies within Oregon only pursuant to the issuance of a permit from the Department. Complete permit applications shall be submitted to Department headquarters at least 60 days before proposed stocking. A fee of \$100.00 (plus a \$2.00 license agent fee) shall be charged for each Grass carp permit issued. The following restrictions and standards will govern the issuance of grass carp permits:

(A) Stocking will occur only in water bodies which are:

(i) Completely within private land; or

(ii) On land owned or controlled by irrigation districts or drainage districts.

(B) Stocking will occur only in the following types of water bodies:

(i) Lakes, ponds, or reservoirs less than 10 acres; or

(ii) Ditches and canals.

(C) Public use of the water body must be restricted to prevent removal of grass carp (by angling or otherwise) by unauthorized persons. At a min-

imum, the water body must be closed to angling and other use by the general public.

(D) Stocking shall not detrimentally affect any population of species listed as threatened or endangered by the federal or state government.

(E) Stocking shall occur only in water bodies with fish screens approved by the Department. Such screens shall have screen openings 1 inch or less for fish 12–19 inches total length and screen openings 2 inches or less for fish over 19 inches total length. Screens shall be inspected and approved by the Department before a permit will be issued. The applicant must comply with fish passage requirements (OAR 635, division 412); given grass carp screening requirements, this entails applying for and receiving a waiver or exemption from passage requirements if grass carp will be stocked into waters where native migratory fish are or were historically present.

(F) Stocking will not be allowed in water bodies within 100-year floodplains (as delineated by the Federal Emergency Management Agency on federal Flood Insurance Rate Maps) during times of potential flood. Times of potential flood are January 1 through July 31 in watersheds east of the Cascades and October 15 through May 31 in watersheds west of the Cascades. Grass carp will be removed from water bodies in a 100-year floodplain and held or disposed of during times of potential flood. If grass carp will be held and not disposed of, they shall be held at a permitted site outside the 100-year floodplain. Applications for sites within a 100-year floodplain shall contain a detailed removal plan which shall receive Department approval.

(G) Grass carp may only be purchased and imported from approved suppliers outside Oregon. Grass carp may not be propagated or held for further distribution within Oregon. Department pathologists shall approve suppliers. Approval will be based on ability to provide grass carp free of Asian tapeworms and meet health and disease requirements according to OAR 635-007-0555 through 635-007-0585.

(H) Grass carp imported into Oregon shall be:

(i) Sterile triploids. Documentation from the U.S. Fish and Wildlife Service that each fish is triploid must be submitted to the Department prior to release;

(ii) At least 12 inches long;

(iii) Tagged with a Passive Integrated Transponder (PIT) tag of frequency 134.2-kilohertz. Each tag shall be programmed with a unique identification number. A list of unique tag numbers shall be submitted to the Department prior to release; and

(iv) Stocked at a rate not exceeding 22 per affected acre.

(I) In addition to documentation relating to the restrictions above, each permit application shall include:

(i) Applicant's name, address and daytime telephone number. All property owners of the water body to which grass carp will have unrestricted access must be party to the application and permit;

(ii) Location of the water body, including township, range, section and quarter section, with map including written directions for access;

(iii) Map of the water body including, vegetation present in the water body, all inlets and outlets, and screen locations;

(iv) Description of emergency procedures for responding to fish escapes from approved sites;

(v) Description of how fish will be removed and disposed of at the end of the proposed project.

(J) An application becomes the management plan upon approval. Permits and management plans shall be specific to particular sites and particular stocking projects. Permittees shall not deviate from permit conditions and management plans without prior written approval from the Department. No person may remove grass carp from one site (as identified in a management plan) and transport them to any other site without prior written approval from the Department.

(K) An Oregon Department of Fish and Wildlife fish transport permit shall accompany grass carp imported into and transported within Oregon. If transport is required within the management plan and occurs entirely on the permittee's property, a transport permit is not needed. Any other permit or documentation required for fish import, transport, or stocking shall also be obtained prior to importation and stocking.

(L) Permittees shall, as a condition of the permit, allow employees of the Department or the Oregon State Police to inspect at reasonable times the permitted water body, permit, and associated records. Inspection may take place without warrant or notice, but, unless prompted by emergency or other exigent circumstances, shall be limited to regular and usual business hours, including weekends. Nothing in these rules is intended to authorize or allow the warrantless search or inspection of property other than the water bodies or fish holding facilities on the permittee's property.

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(M) Permits are revocable at any time for violation of any wildlife statute or rule of the Department. Upon revocation, if stocking has already occurred, the permittee shall remove all grass carp within two weeks at her/his own cost.

(N) Grass carp which escape a permitted water body are subject to seizure or destruction by the Department at the expense of the permit holder. The permit holder shall be held liable for incidental kill of any other species due to or during destruction of escaped grass carp.

(O) The Commission may grant an exception to OAR 635-056-0075(2)(a)(B) or (2)(a)(F). Exception requests must be submitted in writing in addition to the normal application and must address the requirements in this section. Unless the Commission determines that an alternative provides equivalent protection to fish and wildlife resources and their habitats, exceptions shall have the following additional requirements:

(i) If the water body into which grass carp will be stocked is greater than or equal to 10 acres a professional topographic survey by a licensed surveyor must be provided for the entire perimeter of the water body showing all points of water movement in and out of the water body. A topographic survey completed by a state or federal agency within five years from the date of application for the water body may be used. The Department shall determine screening requirements from the survey;

(ii) Grass carp may remain in a water body within the 100-year floodplain year-round if a professional plan or drawing that is certified by a licensed engineer is provided which indicates that the entire perimeter of the water body is protected from 100-year floods. In order to prevent grass carp escape, screens, dikes, and devices protecting the water body must be able to remain structurally sound within 100-year floods and not be overtopped by a 100-year flood. The Department reserves the right to have a licensed engineer retained by the agency review and approve or deny the plan or drawing submitted by the applicant.

(b) Tilapia (Mozambique tilapia *Oreochromis mossambicus*, Nile tilapia *O. niloticus*, Wami tilapia *O. urolepis*, Blackchin tilapia *Sarotherodon melanotheron*, and hybrids thereof): The possession, propagation, transportation, sale, purchase, exchange and disposition of these tilapia is controlled according to the following restrictions and standards:

(A) A person intending to sell, barter or exchange must apply for and receive an approved propagation license from the Oregon Department of Fish and Wildlife Fish Propagation Program prior to commencing production. A person may raise tilapia in-doors (a house, greenhouse, or other enclosed structure capable of excluding predators) for personal consumption without an Oregon Department of Fish and Wildlife-Fish Propagation license;

(B) Propagation outdoors must occur in ponds or tanks covered with nets or screens adequate to prevent the capture or transport of cultured fish by predators or other animals;

(C) Access to production facilities must be through secure locked gates;

(D) Only animals certified as disease-free by the vendor may be purchased;

(E) Permittees must provide adequate veterinary care to identify and minimize the spread of diseases originating from the animals being held;

(F) No live tilapia or their gametes, fertilized eggs, or larvae may be released into waters of this State, as defined in ORS 506.006; and

(G) An Oregon Department of Fish and Wildlife fish transport permit shall accompany live tilapia imported into and transported within Oregon. If transport occurs entirely on the permittee's property, a transport permit is not needed.

(c) Tiger muskellunge (*Esox lucius* X *Esox masquinongy*): tiger muskellunge are classified as a controlled species for the specific purpose of stocking into Phillips Reservoir (Baker County) for fish management purposes according to the following restrictions and standards:

(A) Stocking will occur only in Phillips Reservoir located in Baker County. No other public or private water bodies will be stocked with tiger muskellunge unless approved by the Commission. Tiger muskellunge will be stocked into Phillips Reservoir at a rate not to exceed the adult density required to achieve the objectives of the introduction; control abundance of yellow perch to restore the rainbow trout fishery.

(B) Tiger muskellunge may only be obtained and imported from approved suppliers outside of Oregon. Tiger muskellunge may not be propagated or held for further distribution within Oregon. Department pathologists shall approve suppliers. Approval will be based on the ability to provide tiger muskellunge which meet health and disease requirements according to OAR 635-007-0960 through 635-007-0995

(C) No allowable "Take" without Department approval, based on management objectives.

(D) Department will establish a monitoring plan and program prior to release which shall include:

(a) Creel monitor

(b) Population monitoring.

(c) Plans to eradicate or suppress any illegal introductions of pike or muskellunge introductions to Phillips Reservoir.

(d) Education and outreach

(E) In conjunction with fish monitoring activities all live tiger muskellunge handled of suitable marking size shall be tagged with a Passive Integrated Transponder (PIT) tag. Each tag shall be programmed with identification number. A list of the PIT tag identification numbers shall be maintained by the District Fish Biologist and submitted to the Invasive Species Wildlife Integrity Coordinator.

(F) Any permit(s) or documentation(s) required for fish import, transport, or stocking shall be obtained prior to and accompany importation and stocking.

(G) Department will develop an environmental monitoring plan for Phillips Reservoir which should include: Basic limnological characterization of the reservoir (nutrient concentrations, light penetration, vertical profiles of physical and chemical characteristics of reservoir water, zooplankton, and phytoplankton composition and densities).

(2) Controlled Mollusks

(a) Suminoe oysters (*Crassostrea ariakensis*), Pacific oysters (*C. gigas*), Kumamoto oysters (*C. sikamea*), Eastern oysters (*C. virginica*), and European flat oysters (*Ostrea edulis*) may be purchased and imported from outside Oregon (or from other estuaries within Oregon) for release into estuaries in Oregon pursuant to the terms of a permit issued by the department. Complete permit applications must be submitted to the department's Marine Resources Program Headquarters (2040 SE Marine Science Drive, Newport, Oregon 97365) at least 15 days before proposed stocking. Oysters may be commercially harvested and sold pursuant to OAR 635-005.

(b) Softshell clam (*Mya arenaria*), Japanese varnish clam (*Nuttallia obscurata*), and Japanese littleneck clam (*Venerupis philippinarum*) may be harvested, possessed and sold commercially pursuant to OAR 635-005 or harvested and possessed recreationally pursuant to 635-039.

(3) Controlled Crustaceans:

(a) Green crabs (*Carcinus maenas*) may be harvested recreationally pursuant to OAR 635-039. Once harvested, it is unlawful to return green crab to state waters. It is unlawful to take green crab for commercial purposes.

(b) Whiteleg shrimp (*Litopenaeus vannamei*): The possession, propagation, transportation, sale, purchase, exchange and disposition of whiteleg shrimp is controlled according to the following restrictions and standards:

(A) A person must apply for and receive an approved propagation license from the Oregon Department of Fish and Wildlife Fish Propagation Program prior to commencing production;

(B) Propagation must occur in ponds covered with nets or screens adequate to prevent the capture or transport of cultured shrimp by predators or other animals;

(C) Access to production facilities must be through secure locked gates;

(D) Only animals certified as disease-free by the vendor may be purchased;

(E) Permittees must provide adequate veterinary care to identify and minimize the spread of diseases originating from the animals being held;

(F) No live whiteleg shrimp or their gametes, fertilized eggs, or larvae may be released into waters of this State, as defined in ORS 506.006; and

(G) An Oregon Department of Fish and Wildlife fish transport permit shall accompany live whiteleg shrimp imported into and transported within Oregon. If transport occurs entirely on the permittee's property, a transport permit is not needed.

(c) Giant river prawns (*Macrobrachium rosenbergii*): The possession, propagation, transportation, sale, purchase, exchange and disposition of giant river prawns is controlled according to the following restrictions and standards:

(A) A person must apply for and receive an approved propagation license from the Oregon Department of Fish and Wildlife Fish Propagation Program prior to commencing production;

(B) Propagation must occur in ponds covered with nets or screens adequate to prevent the capture or transport of cultured prawns by predators or other animals;

(C) Access to production facilities must be through secure locked gates;

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(D) Only animals certified as disease-free by the vendor may be purchased;

(E) Permittees must provide adequate veterinary care to identify and minimize the spread of diseases originating from the animals being held;

(F) No giant river prawns or their gametes, fertilized eggs, or larvae may be released into waters of this State, as defined in ORS 506.006; and

(G) An Oregon Department of Fish and Wildlife fish transport permit shall accompany live giant river prawns imported into and transported within Oregon. If transport occurs entirely on the permittee's property, a transport permit is not needed.

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats. Implemented: ORS 497.308, 497.318, 498.022, 498.052 & 498.222

Hist.: DFW 63-1998, f. & cert. ef. 8-10-98; DFW 94-1999, f. & cert. ef. 12-23-99; DFW 79-2000, f. & cert. ef. 12-22-00; DFW 116-2001, f. & cert. ef. 12-18-01; DFW 64-2003, f. & cert. ef. 7-17-03; DFW 53-2008(Temp), f. & cert. ef. 5-28-08 thru 9-19-08; DFW 114-2008, f. & cert. ef. 9-19-08; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 15-2011, f. & cert. ef. 2-15-11; DFW 131-2012, f. & cert. ef. 10-11-12; DFW 148-2012, f. & cert. ef. 12-18-12

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Rule Caption: Amend Rules Related to 2013 Oregon Sport Fishing Regulations.

Adm. Order No.: DFW 149-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 8-1-2012

Rules Amended: 635-011-0100, 635-011-0102, 635-013-0003, 635-013-0004, 635-014-0080, 635-016-0080, 635-016-0090, 635-017-0080, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134

Subject: Amended rules to adopt changes to the sport fishing regulations for finfish, shellfish, and marine invertebrates for 2013. Housekeeping and Technical corrections were made to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-011-0100

General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2013 Oregon Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2013 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 11-1982, f. & cert. ef. 2-9-82; FWC 2-1984, f. & cert. ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 153-2011(Temp), f. 11-7-11, cert. ef. 11-15-11 thru 5-12-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 142-2012(Temp), f. 11-6-12, cert. ef. 11-15-12 thru 5-12-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-011-0102

Free Fishing Weekend

The first full weekend (Saturday and Sunday) in the month of June shall be designated as an annual free fishing weekend. No angling licenses or tags shall be required for the taking of fish for personal use in Oregon waters on this weekend.

Stat. Auth.: ORS 183.335

Other Auth.: Section 2, Chapter 344, Oregon Laws 1989; House Bill 2221, 1995 Legislature

Stats. Implemented: Sec. 2, Ch. 344, OL 1989; HB 2221, 1995

Hist.: FWC 103-1989, f. 9-29-89, cert. ef. 1-1-90; FWC 92-1995, f. 12-8-95, cert. ef. 12-15-95; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-013-0003

Purpose and Scope

(1) The purpose of division 13 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures as adopted by the Pacific Fishery Management Council in its annual Ocean Salmon Management Measures and Impacts, as finalized in April 2012, and in addition to the extent they are consistent with these rules, Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H.

(3) This rule also incorporates by reference the 2013 Oregon Sport Fishing Regulations.

(4) A copy of the **Pacific Fishery Management Council referenced document** and the Federal Regulations may be obtained by contacting the **Pacific Fishery Management Council** at www.pcouncil.org or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 44-1984(Temp), f. & cert. ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 72-2010, f. & cert. ef. 5-25-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 34-2011, f. 4-27-11, cert. ef. 5-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 38-2012, f. 4-24-12, cert. ef. 5-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-013-0004

Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in Code of Federal Regulations, Title 50, Part 660, Subparts A and H, and the 2013 Oregon Sport Fishing Regulations.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H, and the **2013 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2013 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by Federal Regulations (CFR, Title 50, Part 660, Subparts A and H).

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; Administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp) f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08,

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cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-014-0080

Purpose and Scope

(1) The purpose of division 14 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 14 incorporates by reference the **2013 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2013 Oregon Sport Fishing Regulations** in addition to division 11 and division 14 to determine all applicable sport fishing requirements for the Northwest Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-016-0080

Purpose and Scope

(1) The purpose of division 16 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 16 incorporates by reference the **2013 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2013 Oregon Sport Fishing Regulations** in addition to division 11 and division 16 to determine all applicable sport fishing requirements for the Southwest Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

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.

[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-

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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), f. 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

635-017-0080

Purpose and Scope

(1) The purpose of division 17 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 17 incorporates by reference the **2013 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2013 Oregon Sport Fishing Regulations** in addition to division 11 and division 17 to determine all applicable sport fishing requirements for the Willamette Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-018-0080

Purpose and Scope

(1) The purpose of division 18 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 18 incorporates by reference the **2013 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2013 Oregon Sport Fishing Regulations** in addition to division 11 and division 18 to determine all applicable sport fishing requirements for the Central Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-018-0090

Inclusions and Modifications

(1) The **2013 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2013 Oregon Sport Fishing Regulations**.

(2) Hood River Basin (Hood River Co.) mainstem and tributaries not listed: Emergency regulations opening Chinook angling may be adopted after the printing of the **2013 Oregon Sport Fishing Regulations**. Up-to-date changes can be obtained by calling 1-503-947-6000 or at our internet site: www.dfw.state.or.us/resources/fishing/reg_changes/central.asp. Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95,

cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04; Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11; DFW 42-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 93-2011(Temp), f. 7-13-11, cert. ef. 8-1-11 thru 10-31-11; DFW 123-2011(Temp), f. 9-2-11, cert. ef. 9-3-11 thru 12-31-11; DFW 160-2011(Temp), f. 12-20-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 34-2012(Temp), f. 4-13-12, cert. ef. 4-15-12 thru 7-31-12; DFW 55-2012(Temp), f. & cert. ef. 6-4-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 88-2012(Temp), f. 7-17-12, cert. ef. 8-1-12 thru 10-31-12; Administrative correction 11-23-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-019-0080

Purpose and Scope

(1) The purpose of division 19 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 19 incorporates by reference the **2013 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2013 Oregon Sport Fishing Regulations** in addition to division 11 and division 19 to determine all applicable sport fishing requirements for the Northeast Zone.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-019-0090

Inclusions and Modifications

The **2013 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2013 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99,

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cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. & cert. ef. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-23-12 thru 9-1-12; DFW 50-2012(Temp), f. 5-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12; DFW 70-2012(Temp), f. 6-26-12, cert. ef. 6-27-12 thru 9-1-12; DFW 72-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 86-2012(Temp), f. 7-10-12, cert. ef. 7-15-12 thru 9-1-12; Administrative correction 9-20-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-021-0080

Purpose and Scope

(1) The purpose of division 21 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 21 incorporates by reference the **2013 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2013 Oregon Sport Fishing Regulations** in addition to division 11 and division 21 to determine all applicable sport fishing requirements for the Southeast Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-021-0090

Inclusions and Modifications

The **2013 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2013 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW

125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09; Administrative correction 9-29-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 52-2010(Temp), f. 4-30-10, cert. ef. 5-1-10 thru 9-30-10; DFW 60-2010(Temp), f. 5-13-10, cert. ef. 5-22-10 thru 9-30-10; DFW 67-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 9-30-10; DFW 78-2010(Temp), f. 6-10-10, cert. ef. 6-11-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 50-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 60-2012(Temp), f. 6-11-12, cert. ef. 6-13-12 thru 9-1-12; DFW 114-2012(Temp), f. 8-30-12, cert. ef. 9-1-12 thru 2-27-13; DFW 117-2012(Temp), f. 9-5-12, cert. ef. 9-7-12 thru 2-27-13; DFW 122-2012(Temp), f. 9-21-12, cert. ef. 9-21-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-023-0080

Purpose and Scope

(1) The purpose of division 23 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 23 incorporates by reference the **2013 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2013 Oregon Sport Fishing Regulations** in addition to division 11 and division 23 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

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

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

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 March 31 from the mouth at Buoy 10 upstream to the I-5 Bridge with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2013 Oregon Sport Fishing Regulations**.

(3) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through June 15 it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. & 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-

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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

635-023-0128

Summer 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) Notwithstanding all other specifications and restrictions in the 2013 Oregon Sport Fishing Regulations:

(a) Effective June 16 through July 31 the mainstem Columbia River is open to the retention of adipose fin-clipped jack and adult Chinook salmon from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(b) The combined daily bag limit for adult salmon and steelhead is two fish. Only adipose fin-clipped fish may be retained.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 65-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; DFW 95-2011(Temp), f. 7-15-11, cert. ef. 7-18-11 thru 7-31-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 64-2012(Temp), f. 6-12-12, cert. ef. 6-16-12 thru 7-31-12; [DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; Temporary Suspended by DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12]; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-023-0130

Fall 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) Notwithstanding all other specifications and restrictions in the 2013 Oregon Sport Fishing Regulations:

(a) Effective August 1 through December 31, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, the combined bag limit for adult Chinook salmon, adipose fin-clipped coho salmon, and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook salmon; except: retention of Chinook salmon is prohibited during September 1 through December 31;

(b) Effective August 1 through December 31, in the mainstem Columbia River from a line projected from Rocky Point on the Washington

bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam, the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook salmon; except: retention of Chinook salmon is only allowed during August 1 through September 11 or until the harvest guideline is achieved, in the area bounded by a line projected from the Warrior Rock Lighthouse on the Oregon shore to Red Buoy #4 to a marker on the lower end of Bachelor Island, Washington, downstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 133-2009(Temp), f. 10-20-09, cert. ef. 10-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 131-2010(Temp), f. 9-21-10, cert. ef. 9-22-10 thru 10-31-10; DFW 145-2010(Temp), f. 10-13-10, cert. ef. 10-15-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 100-2011(Temp), f. 7-27-11, cert. ef. 8-1-11 thru 12-31-11; DFW 127-2011(Temp), f. 9-14-11, cert. ef. 9-16-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

635-023-0134

Snake River Fishery

The **2013 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2013 Oregon Sport Fishing Regulations.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10; DFW 107-2010(Temp), f. 7-26-10, cert. ef. 7-31-10 thru 8-4-10; Administrative correction 8-18-10; DFW 119-2010(Temp), f. 8-18-10, cert. ef. 9-1-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 29-2011(Temp), f. 4-12-11, cert. ef. 4-23-11 thru 10-19-11; DFW 118-2011(Temp), f. 8-23-11, cert. ef. 9-1-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 35-2012(Temp), f. 4-16-12, cert. ef. 4-22-12 thru 9-30-12; DFW 93-2012(Temp), f. 7-24-12, cert. ef. 8-5-12 thru 9-30-12; DFW 109-2012(Temp), f. 8-21-12, cert. ef. 9-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13

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Rule Caption: Amendments to Rule for 15-Mile Creek Sanctuary on the Columbia River.

Adm. Order No.: DFW 150-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Amended: 635-041-0020

Subject: Amended rule modifies Treaty Indian subsistence fishing regulations within and around the 15-mile Creek sanctuary on the Columbia River. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0020

Areas Closed to Subsistence Fishing

It is *unlawful* to engage in subsistence fishing at any time in:

(1) Those waters of the main stem Columbia River near Bonneville Dam westerly and downstream of a line from Light "4" on the Oregon shore, located approximately 200 yards upstream of the mouth of Eagle Creek, thence northerly to Light "5" located on Boat Rock in midriver,

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thence perpendicular to the thread of the river to a marker on the Washington shore.

(2) Those waters of the main stem Columbia River near The Dalles Dam easterly and upstream from a line at marker on Covington Point on the Oregon shore, thence in a westerly direction to a marker on the Washington shore beneath the Interstate Bridge to a point 200 feet above The Dalles Dam. Subsistence fishing for salmon and steelhead is allowed within this closed area except:

- (a) Within 600 feet of fishway entrances,
- (b) Within 600 feet of the mouth of Fifteenmile Creek from November 16 through June 15, and
- (c) Within 200 feet above The Dalles Dam.

(3) Those waters of the main stem Columbia River within a radius of one-quarter mile of the mouths of the Hood River, Deschutes River, Wind River, Little White Salmon River, Spring Creek, and Klickitat River.

(4) Those waters of the main stem Columbia River near John Day Dam from a line at marker on the Oregon shore located 600 feet below the fishway entrance, thence westerly to Light "2" located on the navigation lock wing wall, thence to a marker on the Washington shore easterly and upstream to 200 feet above John Day Dam.

(5) Those waters of the mainstem Columbia River near McNary Dam easterly and upstream from a line at marker on the Oregon shore located 600 feet below the fishway entrance, thence westerly to the end of the navigation lock wing wall, thence to a marker on the Washington shore.

(6) All fishways in Oregon tributary streams of the Columbia River within 100 feet above and below such fishways. This closure does not apply to the taking of lamprey eel so long as such taking does not interfere with the migration of salmon or steelhead through such fishways.

(7) Those waters of Eagle Creek from its mouth to 100 feet above the Department intake Dam.

(8) Those waters of Herman Creek from its mouth to 100 feet above the Department holding ponds.

Stat. Auth.: ORS 183.325 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0020; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1991, f. & ef. 1-19-81; FWC 12-1981(Temp), f. & ef. 3-31-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; DFW 43-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10; Administrative correction 10-26-10; DFW 40-2011(Temp), f. & cert. ef. 5-5-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 65-2012(Temp), f. 6-14-12, cert. ef. 6-16-12 thru 11-15-12; DFW 113-2012(Temp), f. & cert. ef. 8-27-12 thru 12-12-12; DFW 150-2012, f. 12-27-12, cert. ef. 1-1-13

Rule Caption: Amendments to Rules for Commercial and Recreational Groundfish Fisheries.

Adm. Order No.: DFW 151-2012

Filed with Sec. of State: 12-27-2012

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Rules Amended: 635-004-0220, 635-004-0310, 635-004-0350, 635-004-0355, 635-004-0465, 635-005-0410, 635-005-0480, 635-005-0585, 635-005-0740, 635-005-0800, 635-006-0001, 635-006-0200, 635-006-0210, 635-006-0211, 635-006-0215, 635-039-0090

Subject: The adopted rules will modify commercial and sport groundfish fisheries and establish annual groundfish management measures for 2013. Modifications to commercial and sport groundfish rules were developed through the Pacific Fisheries Management Council process, which involves advisory committees and public comment. Department staff also conducted several public meetings to discuss proposed changes to federal and state groundfish regulations. Modifications to rules governing fish dealer records and reports were developed in direct consultation with the affected industry. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0220

Closed Season and Areas

(1) It is *unlawful* to take for commercial purposes, the following from Special Regulation Marine Areas described in the "Oregon Sport Fishing Regulations:"

- (a) Shellfish and invertebrates in designated Marine Garden areas.

(b) Shellfish and invertebrates in designated Intertidal and Subtidal Research Reserves.

(c) Fish, shellfish and invertebrates in designated Habitat Refuges.

(d) Fish, shellfish and invertebrates from 1000 feet around and including Pyramid Rock from May 1 through August 31.

(2) It is *unlawful* to move any vessel within 500 feet of the main rocks in Three Arch Rocks National Wildlife Refuge from May 1 through September 15.

(3) It is *unlawful* to take ocean food fish for commercial purposes during the following seasons and areas:

(a) As provided in these rules or in the Code of Federal Regulations, Title 50 Part 660; and

(b) From Oregon coastal bays, the Oregon estuary waters of the Columbia River, or from or within 200 yards of any man-made structures. This closure does not apply to:

(A) Ocean food fish taken in specific fisheries established by rule allowing harvest in inland waters, but only during the times and areas specified in those fishery's regulations;

(B) Ocean food fish taken to be sold or used for scientific or educational purposes, or for live public display;

(C) Pacific herring, Pacific sardine (pilchard), anchovies, and shad that are taken by hook-and-line and sold as bait; or to

(D) Pacific herring, Pacific sardine (pilchard), anchovies, and shad that are taken by beach seine in the Umpqua estuary and sold as bait.

(c) All species other than those whose harvest is authorized under these rules must be immediately returned to the water unharmed.

(4) The following areas have additional closures and prohibitions as specified in ORS Chapter 511, and fishers should consult these regulations before fishing in these areas:

(a) Coastal Streams Areas;

(b) Columbia River Area;

(c) Rogue River Area;

(d) Curry County Area;

(e) Coos, Douglass and Lane County Areas;

(f) Nestucca, Netarts and Tillamook Bay Areas; and

(g) Willamette River Area.

(5) Marine Reserves and Marine Protected Areas within Oregon's Territorial Sea have been established and fishers should consult regulations in OAR Division 012 regarding fishing and transit restrictions.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 38, f. & ef. 1-23-76, Renumbered from 625-010-0550; FWC 8-1979, f. 3-1-79, ef. 3-2-79; FWC 9-1979(Temp), f. & ef. 3-5-79 through 3-31-79; FWC 50-1979, f. & ef. 11-1-79, Renumbered from 635-036-0275; FWC 95-1994, f. 12-28-95, cert. ef. 1-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 97-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 63-2002(Temp) f. & cert. ef. 6-18-02 thru 12-14-02; DFW 103-2002(Temp), f. 9-13-02 cert. ef. 9-14-02 thru 9-30-02; DFW 115-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 91-2009, f. & cert. ef. 8-10-09; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; Renumbered from 635-004-0025, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-004-0310

Eligibility Requirements for a Permit

(1) Vessel owners must meet eligibility requirements for a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit established in ORS 508.947.

(2) An individual is eligible to obtain a Black Rockfish / Blue Rockfish/Nearshore Permit required by OAR 635-004-0300:

(a) By renewal of the previous year's permit as specified in OAR 635-004-0320; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-004-0325.

(3) In making determinations regarding issuance or renewal of a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.129 & 508.947

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-004-0350

Harvest and Landing Caps

(1) For 2013, the commercial harvest cap for black rockfish and cabezon are:

- (a) Black rockfish: 139.2 metric tons; and

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- (b) Cabezon, 30.2 metric tons.
 - (2) For 2013, the commercial landing caps for black rockfish, blue rockfish and other nearshore species are:
 - (a) Black rockfish, 137.9 metric tons;
 - (b) Black rockfish and blue rockfish combined: 141.9 metric tons;
 - (c) Other nearshore rockfish, 14.3 metric tons;
 - (d) Cabezon, 30.0 metric tons; and
 - (e) Greenling, 23.4 metric tons.
- Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-004-0355

Trip Limits

(1) The trip limits outlined in this rule are set at the beginning of each calendar year based on commercial harvest caps and projected fishing effort, and are subject to in-season adjustments and closures. Fishers should refer to Nearshore Commercial Fishery Industry Notices on the Marine Resources Program Commercial Fishing Rules and Regulations webpage for the most up-to-date information regarding trip limits and other regulations affecting the Nearshore Commercial Fishery.

(2) For black and blue rockfish combined, vessels with a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit, with or without a Nearshore Endorsement, may land no more than the following cumulative trip limits:

- (a) 1000 pounds in period 1;
- (b) 1200 pounds in period 2;
- (c) 1700 pounds in period 3;
- (d) 1600 in period 4;
- (e) 1200 pounds in period 5; and
- (f) 1000 pounds in period 6.

(3) For all other nearshore species, vessels with a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit with Nearshore Endorsement may land no more than the following cumulative trip limits in each period:

- (a) 700 pounds of other nearshore rockfish combined;
- (b) 1,500 pounds of cabezon; and
- (c) 300 pounds of greenling species.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 79-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 12-27-12; DFW 118-2012(Temp), f. 9-10-12, cert. ef. 9-11-12 thru 12-31-12; DFW 141-2012(Temp), f. 10-31-12, cert. ef. 11-1-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-004-0465

Permit Fee

(1) The annual fee for a Yaquina Bay Roe-Herring Permit is \$125.00 (plus a \$2.00 license agent fee) for resident applicants and \$175.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.765.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-004-0495. See ORS 508.765.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.765
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-005-0410

Permit Fee

(1) The annual fee for an Ocean Dungeness Crab Permit is \$125.00 (plus a \$2.00 license agent fee) for resident applicants and \$175.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.941.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0440. See ORS 508.936.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.931
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-005-0480

Dungeness Crab Buoy Tag and Gear Marking Requirements

It is *unlawful* for commercial purposes to:

(1) Use commercial Dungeness crab gear in the Columbia River or Pacific Ocean unless the gear is individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and the Department buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All Dungeness crab gear fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-005-0405(5);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear;

(f) Buoys attached to Dungeness crab gear must have the buoy tag securely attached to the buoy closest to the gear at the end away from the buoy line; and

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) As of the first business day after 30 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, as defined in ORS 635-005-0240; or

(C) If the Director finds that the loss of buoy tags was:

(i) Due to an extraordinary event;

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (1)(g)(E) of this rule, and a request for replacement tags under sub-subsection (1)(g)(C) of this rule, the Director or the Director's designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (1)(g)(C) of this rule. The Director or the Director's designee shall provide the Director's order to the permit holder and to the Department's License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-005-0425.

(E) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(2) Possess on a vessel, use, control, or operate any Dungeness crab gear which does not have a tag affixed to the individual pot or ring identifying the gear as belonging to that vessel, a surface buoy bearing the Department buoy brand registered to that vessel, and a Department buoy tag issued by the Department to that vessel, as pursuant to ORS 509.415, except:

(a) To set gear as allowed under OAR 635-005-0405; or

(b) Under a waiver granted by the Department to allow one time retrieval of permitted Dungeness crab gear to shore by another crab permitted vessel provided that:

(A) The vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder as defined by undue hardship in OAR 635-005-0240;

(C) A request must be in writing and a waiver approved and issued prior to retrieval; and

(D) A copy of the waiver must be on board the vessel making the retrieval (Contact Department of Fish and Wildlife Licensing Services, Salem for guidelines).

(c) Under a waiver granted by the Department to allow one time change of buoy tags associated with a Dungeness crab permit transfer under OAR 635-005-0440 provided that:

(A) A request must be in writing and a waiver approved and issued prior to change of buoy tags; and

(B) A copy of the waiver must be on board the vessel making the change of buoy tags (Contact Department of Fish and Wildlife Licensing Services, Salem for guidelines).

(d) When retrieving derelict Dungeness crab gear as pursuant to OAR 635-005-0490;

(e) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing Dungeness crab gear not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized and en route to participate or returning from participating in the Dungeness crab fishery of an adjacent state; or

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(f) When operating crab rings in bays or estuaries, only a tag affixed to the individual ring is required.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-005-0585

Permit Fee

(1) The annual fee for a Pink Shrimp Permit is \$125.00 (plus a \$2.00 license agent fee) for resident applicants and \$175.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.901.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0615. See ORS 508.907.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.901
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-005-0740

Permit Fee

(1) The annual fee for a Weathervane Scallop Permit is \$125.00 (plus a \$2.00 license agent fee) for resident applicants and \$175.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.858.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0770. See ORS 508.864.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.858
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-005-0800

Permit Fee

(1) The annual fee for a Sea Urchin Permit is \$100.00 (plus a \$2.00 license agent fee) for resident applicants and \$150.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.760.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0830. See ORS 508.760.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.760
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-006-0001

Definitions

As used in division 6 regulations:

(1) "Board" means the Commercial Fishery Permit Board.

(2) "Boat" means any vessel, any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish, as specified in ORS 506.006.

(3) "Buy" includes offer to buy, barter, exchange or trade.

(4) "Commercial fishing license" means the commercial fishing licenses required by ORS 508.235 and, for purposes of the Limited Fish Seller Permit, includes an Albacore Tuna Landing License.

(5) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.

(6) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(7) "Department" means the State Department of Fish and Wildlife, as specified in ORS 506.006.

(8) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.

(9) "Fair market value" shall be based on the market price of food fish or shellfish at the same time and place that the fish are landed, or the price established in OAR 635-006-0232 when the market price cannot be determined. For species not listed in 635-006-0232, fair market value shall be based on the average price per pound paid to law enforcement officials for any fish or shellfish confiscated from persons landing legal overages, or the average ex-vessel price per pound paid for that species in that port during the month in which the overage occurred, whichever is greater. Unless otherwise noted, the fair market value is the price per pound and is based on round weight.

(10) "Fish buyer" means an individual employed by a wholesale fish dealer or food fish canner to purchase or receive food fish or shellfish from

commercial fishers at locations other than the licensed premises of the wholesale fish dealer or food fish canner.

(11) "Fish-buying station" means a location other than the licensed premises of a wholesale fish dealer or food fish canner at which such wholesale fish dealer or food fish canner purchases or receives food fish or shellfish from commercial fishers.

(12) "Fishing" means catching, taking or harvesting food fish that results in or can be reasonably expected to result in the sale, barter, trade or other disposition of fish for other than personal use or consumption.

(13) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:

(a) "Fixed gear" means longline, trap or pot, setnet, and stationary hook-and-line gears;

(b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;

(c) "Hook-and-line" means one or more hooks attached to one or more lines;

(d) "Lampara net" means a surrounding net with the sections of netting made and joined to create bagging. It is hauled with purse rings and is generally much smaller in size than a purse seine net;

(e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(f) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(g) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(h) "Purse seine" means an encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets;

(i) "Seine" means any non-fixed net other than a trawl or gillnet;

(j) "Setline" means a bottom longline used in rivers and estuaries for targeting white sturgeon;

(k) "Set net" means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;

(l) "Spear" means a sharp, pointed, or barbed instrument on a shaft;

(m) "Trammel net" means a gillnet made with two or more walls joined to a common float line;

(n) "Trawl gear" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels;

(o) "Troll" means fishing gear that consists of 1 or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation;

(p) "Vertical hook and line" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(14) "Fishing trip" means a period of time between landings when fishing is conducted.

(15) "Food Fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction, as specified in ORS 506.036.

(16) "Food fish canner" means a wholesale fish dealer who cans food fish including shellfish in hermetically sealed containers whereby no further preservation, artificial or otherwise, is required.

(17) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660 (See OAR 635-004-0240).

(18) "Harvester" means any person legally authorized to take food fish for commercial purposes.

(19) "Import" means to transport into Oregon from outside the State of Oregon.

(20) "Inland waters" means all waters of the state except the Pacific Ocean.

(21) "Land, Landed or Landing" means either of the following:

(a) For fisheries where food fish were taken by use of a vessel, "land, landed or landing" means to begin transfer of food fish from a vessel. Once transfer begins, all food fish on board the vessel are counted as part of that landing, except anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation; and

(b) For fisheries where food fish were taken without use of any vessel, "land, landed or landing" means to begin transfer of food fish from a

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harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:

(A) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and

(B) Once transfer begins, all food fish from the harvest area are counted as part of that landing.

(22) "Landing fees" means all fees due to the Department based on the pounds of fish or value of fish landed.

(23) "Length" or "Length Overall" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform.

(24) "Limited fish seller" means any person who holds a valid Oregon commercial fishing license and who has obtained an annual Limited Fish Seller Permit which enables the fisher to sell any species of food fish, taken in lawful activity directly from his or her boat, as specified in ORS 508.550.

(25) "Limited fish seller — non-treaty Columbia River Gillnet Salmon Vessel Permit fishery" means a person who holds a valid Oregon commercial fishing license, a Columbia River Gillnet Salmon Vessel Permit, and who has obtained an annual limited fish seller permit which enables the fisher to sell any species of food fish, taken in lawful activity directly from his or her boat or at locations away from the boat.

(26) "Non-reporting fish dealer" means a wholesale fish dealer or fish bait dealer who buys food fish exclusively from other wholesale fish dealers or bait dealers.

(27) "Overage" means any landing or portion of a landing that exceeds groundfish trip limits. Groundfish trip limits are approved by Pacific Fisheries Management Council and implemented by the National Marine Fisheries Service.

(28) "Owner" means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. Owner does not include a leasehold interest.

(29) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except the Columbia River boundary with the Pacific Ocean is as specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(30) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.

(31) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type of smoking, reducing, loining, steaking, pickling or filleting. Cooking crab is not considered processing.

(32) "Processor" means a person who buys fresh food fish from a licensed commercial fisher or a wholesale fish dealer and processes food fish for sale through retail outlets or for sale to the ultimate consumer.

(33) "Purchase" means to obtain by paying money or its equivalent, trade, or barter.

(34) "Receive" or "Receiving" means to take or come into possession of.

(35) "Replacement vessel" means a vessel purchased to replace a permitted vessel which had been lost due to fire, capsizing, sinking or other event.

(36) "Resident" means an actual bona fide resident of this state for at least one year immediately prior to application.

(37) "Retail fish bait dealer" means a person who buys fresh food fish or shellfish from a wholesale fish dealer or wholesale fish bait dealer, and sells to the ultimate consumer for use as bait.

(38) "Retail fish dealer" means a person who buys fresh food fish or shellfish from wholesale fish dealers, undertakes limited processing activity (limited to loining of tuna, filleting, smoking, steaking, or pickling food fish or shellfish), and sells only to the ultimate consumer.

(39) "Retain" means to keep in possession or use.

(40) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.

(41) "Sell" includes to offer or possess for sale, barter, exchange or trade.

(42) "Shellfish canner" means a wholesale fish dealer who cans only shellfish in hermetically sealed containers whereby no further preservation, artificial or otherwise, is required.

(43) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(44) "Take home" means food fish that are sold commercially to a licensed wholesale fish dealer, reported on a fish receiving ticket and then purchased back for the purpose of private use by the harvester.

(45) "Transport" means, for the purposes of OAR 635-006-0165, to move the food fish after landing.

(46) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:

(a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:

(A) Period 1: January through February;

(B) Period 2: March through April;

(C) Period 3: May through June;

(D) Period 4: July through August;

(E) Period 5: September through October; and

(F) Period 6: November through December.

(b) "Daily trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(c) "Monthly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.

(d) "Weekly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 7 consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(47) "Ultimate consumer" means the party that utilizes the product as food, including restaurants.

(48) "Value" means the monetary value of the food fish, or parts thereof, including eggs and other by-products, at the point of landing as usually determined by the first exchange between the harvester and the first purchaser. In addition:

(a) Value is typically the amount of money which the first purchaser pays at the time and place that the fish are off-loaded from a vessel, or brought to shore if there is no vessel involved in harvesting, before any reductions or deductions in the amount of money as a result of the dealer furnishing ice, fuel, food or other commodities; and

(b) Value includes bonuses and other payments based directly on the quantity or quality of food fish exchanged, regardless of the time of payment of such bonuses or other payments; and

(c) Value includes any payments based on the proportion or percentage of processed products recovered from the food fish landed in the round or other form; and

(d) Value for food fish not sold by the harvester is the value received for comparable fish sold to a wholesale fish dealer at the same time and place that the fish are landed; and

(e) Value for food fish purchased from a harvester, by the harvester when acting as a wholesale fish dealer, is the price that is or would be paid to any other harvester for the same fish; and

(f) Value for food fish sold by a limited fish seller is the retail price received by the harvester from the first purchaser; and

(g) Value for food fish imported from out of state but not previously taxed out of state is the price paid for the fish by the first Oregon purchaser.

(49) "Vessel operator" means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel or permit owner or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one

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person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.

(50) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

(51) "Weighbacks" means fish or shellfish with no commercial value.

(52) "Wholesale fish bait dealer" means a person who buys food fish or shellfish, or parts thereof, from a licensed commercial fisher, licensed commercial bait fisher, or licensed angler, and sells or uses such food fish or shellfish for bait, scientific or educational purposes, or live public display.

(53) "Wholesale fish dealer" means a person who:

(a) Buys food fish or shellfish from a commercial fisher; or

(b) Processes food fish or shellfish or any part thereof; or

(c) Sells food fish or shellfish to retail dealers or other wholesale fish dealers.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 513.020

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 38-1999, f. & cert. ef. 5-24-99;

DFW 63-2003, f. & cert. ef. 7-17-03; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 91-2009,

f. & cert. ef. 8-10-09; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10; DFW 77-2012, f. 6-28-12,

cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-006-0200

Required Records

(1) All retail fish dealers, retail and wholesale fish bait dealers, wholesale fish dealers, buyers, food fish canners and shellfish canners shall keep a record of all food fish and shellfish received whether from a fisher or from other fish dealers. This record shall include the quantity in pounds of each species of food fish or shellfish received, the date received, price paid per pound, and the name and address of the person from whom such food fish or shellfish were received. If received from a fisher, his or her commercial fishing license number shall be used in lieu of an address and the fishing gear used in taking shall also be required. If received from a treaty Indian, his or her tribal affiliation and enrollment number as shown on official identification card issued by the U.S. Department of Interior, Bureau of Indian Affairs, or tribal government shall be used in lieu of an address or commercial fishing license.

(2) This record shall be:

(a) Subject to inspection by the Director, the Director's authorized agent, or the Oregon State Police;

(b) Prepared and available at the time food fish or shellfish are received at the premises of the fish dealer regardless of whether purchased or not;

(c) Retained for a period not less than three years, at a location within Oregon where the record is to be available for inspection as designated in section (2)(a) of this rule. Notice of the physical location is to be provided to the Department.

(d) Written in the English language.

Stat. Auth.: ORS 506.109, 506.119, 506.129, 508.406, 508.530 & 508.535

Stats. Implemented: ORS 506.109, 506.119, 506.129, 508.406, 508.530 & 508.535

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-

040-0125, Renumbered from 635-036-0570; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92;

FWC 68-1994, f. 9-28-94, cert. ef. 10-1-94; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW

142-2008, f. & cert. ef. 11-21-08; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-006-0210

Fish Receiving Ticket — All Fish

(1) Except as provided in OAR 635-006-0211, for each purchase of food fish or shellfish by a licensed wholesale fish dealer, wholesale fish bait dealer, food fish canner, or shellfish canner from a commercial fisher or commercial bait fisher, the dealer or canner shall prepare at the time of landing a Fish Receiving Ticket, or a separate document in lieu of a Fish Receiving Ticket provided the original dock ticket is attached to the completed dealer copy of the Fish Receiving Ticket subsequently submitted to ODFW. Fish dealers shall be required to account for all Fish Receiving Tickets received from the Department. Fish Receiving Tickets shall be issued numerical sequence.

(2) Fish Receiving Tickets shall include the following:

(a) Fish dealer's name and license number, including the buying station and location if the food fish or shellfish were received at any location other than the licensed premises of the fish dealer;

(b) Date of landing;

(c) His or her name from whom purchase is made. If not landed from a vessel, then his or her commercial license number shall be added. If

received from a Columbia River treaty Indian, his or her tribal affiliation and enrollment number as shown on the official identification card issued by the U.S. Department of Interior, Bureau of Indian Affairs, or tribal government, shall be used in lieu of an address or commercial fishing license;

(d) Boat name, boat license number, and federal document or State Marine Board number from which catch made;

(e) Port of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip;

(f) Fishing gear used by the fisher;

(g) For salmon and Dungeness crab, zone or area of primary catch;

(h) Species or species group, as determined by the Department, of food fish or shellfish received;

(i) Pounds of each species or species group, as determined by the Department, received;

(A) Pounds must be determined and reported based on condition of the fish when landed, either dressed or round. Dressed pounds may only be used for species with a conversion factor listed at OAR 635-006-0215(3)(g). Measures must be taken using a certified scale.

(B) Pounds shall include "weighbacks" by species. "Weighbacks" are those fish or shellfish with no commercial value. The following species or species groups are exempt from fish ticket requirements when considered "weighbacks":

(i) Sponges;

(ii) Sea Pens;

(iii) Sea Whips;

(iv) Black Corals;

(v) Sea Fans;

(vi) Anemone;

(vii) Jellyfish;

(viii) Whelks;

(ix) Squids other than Humboldt and market;

(x) Octopus other than Pacific giant octopus;

(xi) Mysids;

(xii) Shrimps other than pink shrimp, coonstripe prawns, and spot prawns;

(xiii) Crabs other than Dungeness, tanner, box, Oregon hair, and red rock crabs;

(xiv) Sea Stars including Brittle Stars;

(xv) Urchins;

(xvi) Sand dollars;

(xvii) Sea cucumbers;

(xviii) Eels other than hagfish;

(xix) Blacksmelts;

(xx) Spookfish;

(xxi) Stomiformes including Viperfish and Blackdragons;

(xxii) Slickheads;

(xxiii) Flatnoses;

(xxiv) Lancetfishes;

(xxv) Barricudinas;

(xxvi) Myctophids;

(xxvii) Tomcod;

(xxviii) Eelpouts including Bigfin, Two line, Black, and Snakehead;

(xxix) Dreamers;

(xxx) Anglerfish;

(xxxi) King of the Salmon;

(xxxii) Melamphids;

(xxxiii) Whalefish;

(xxxiv) Oxeye oreo;

(xxxv) Sculpins other than cabezon, buffalo sculpin, red Irish lord, and brown Irish lord;

(xxxvi) Poachers;

(xxxvii) Snailfish;

(xxxviii) Pricklebacks;

(xxxix) Gunnels;

(xl) Scabbardfish;

(xli) Lancetfish;

(xlii) Ragfish;

(xliii) Slender sole;

(xliv) Deepsea sole;

(xlv) Rays including Pacific and electric Rays and Devilfish;

(xlvi) Wolffishes including wolf eels.

(j) For Columbia River sturgeon the exact number of fish received and the actual round weight of that number of fish;

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- (k) Price paid per pound for each species received;
- (l) Signature of the individual preparing the Fish Receiving Ticket;
- (m) Signature of the vessel operator making the landing;
- (n) Species name, pounds and value of fish retained by fisher for take home use.

(3) Except as provided in OAR 635-006-0212 and 635-006-0213, the original of each Fish Receiving Ticket covering food fish and shellfish received shall be forwarded within five working days of the date of landing to the Oregon Department of Fish and Wildlife, 3406 Cherry Avenue, NE, Salem, OR 97303 or through the Pacific States Marine Fisheries Commission West Coast E-Ticket system or as required by Title 50 of the Code of Federal Regulations, part 660 Subpart C. All fish dealer amendments must be conducted in the same system in which the ticket was initially submitted.

(4) Wholesale fish bait dealers landing small quantities of food fish or shellfish may request authorization to combine multiple landings on one Fish Receiving Ticket and to deviate from the time in which Fish Receiving Tickets are due to the Department. Such request shall be in writing, and written authorization from the Department shall be received by the wholesale fish bait dealer before any such deviations may occur.

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.036, 506.109, 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0135, Renumbered from 635-036-0580; FWC 1-1986, f. & ef. 1-10-86; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-91; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 16-1995(Temp), f. & cert. ef. 2-16-95; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; DFW 10-2004, f. & cert. ef. 2-13-04; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-006-0211

Fish Receiving Ticket — Dungeness crab and Net Caught Groundfish

(1) This regulation is in addition to, and not in lieu of the provisions contained in OAR 635-006-0210.

(2) For net-caught groundfish, at time of landing the following information may be recorded on a separate document in lieu of a Fish Receiving Ticket provided this original document (dock ticket) is attached to the completed dealer copy of the Fish Receiving Ticket subsequently submitted to ODFW:

(a) Date of landing.

(b) Boat name and federal document or State Marine Board number from which catch was made.

(c) Port of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip.

(d) Pounds of fish by species or species group, as determined by the Department:

(A) Pounds must be determined based on condition of the fish when landed, either dressed or round. Dressed pounds may only be used for species with a conversion factor listed at OAR 635-006-0215(3)(g). Measures must be taken using a certified scale.

(B) Pounds shall include "weighbacks" by species. "Weighbacks" are those fish or shellfish with no commercial value. Species or species groups defined in 635-006-0210(2)(i)(B) are exempt from fish ticket requirements when considered "weighbacks."

(e) Signature of the vessel operator delivering the catch.

(3) For Dungeness crab, at time of landing the following may be recorded on a separate document in lieu of a Fish Receiving Ticket, provided this original document (landing receipt) is attached to the completed dealer copy of the Fish Receiving Ticket subsequently submitted to ODFW:

(a) Fish dealer's name and dealer license number;

(b) Date of landing;

(c) Name of vessel operator from whom the food fish were purchased;

(d) Vessel name, vessel license number, and the federal document or State Marine Board number of the vessel from which catch was made;

(e) Port name of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip;

(f) Fishing gear used by the fisher;

(g) Gross pounds of food fish received and price paid per pound; and

(h) Signature of both the vessel operator making the landing and the individual preparing the landing receipt.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

635-006-0215

Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish canners, or shellfish canners receiving food fish or shellfish from licensed commercial fishers or bait fishers;

(b) Limited Fish Sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

(c) Serial numbers of all Fish Receiving Tickets issued during the month;

(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. When landed in a dressed condition, the following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying each applicable below-listed factor by the dressed weight of that species:

(A) Troll salmon:

(i) Gilled and gutted 1.15

(ii) Gilled, gutted, and headed 1.30

(B) Halibut:

(i) Gilled and gutted 1.15

(ii) Gilled, gutted, and headed 1.35

(C) Sablefish, gutted and headed 1.60

(D) Pacific whiting:

(i) Fillet 2.86

(ii) Headed and gutted 1.56

(iii) Headed and gutted with tail removed 2.0

(E) Thresher shark 2.0

(F) Lingcod:

(i) Gilled and gutted 1.1

(ii) Gilled, gutted and headed 1.5

(G) Spot prawn, tails 2.24

(H) Rockfish (including thornyheads), except Pacific Ocean Perch:

(i) Gutted and headed 1.75

(ii) Gutted and headed, with collarbone still attached to body (western cut) 1.66

(iii) Gutted and headed, with collarbone removed from body (eastern cut) 2.0

(I) Pacific Ocean Perch, gutted and headed 1.6

(J) Pacific Cod, gutted and headed 1.58

(K) Dover sole, English sole, and "other flatfish" as defined in Title 50 of the Code of Federal Regulations, part 660 Subpart C, gutted and headed 1.53

(L) Petrale sole, gutted and headed 1.51

(M) Arrowtooth flounder, gutted and headed 1.35

(N) Starry flounder, gutted and headed 1.49

(O) Groundfish, glazed:

(i) Conversion factors must be calculated for each landing for each species or species group categorized in OAR 635-006-0209 when there are 60 or greater individuals of a category in a single landing as follows:

(I) Weigh a sample of at least 20 glazed fish to obtain the glazed weight;

(II) Completely remove glaze from individual fish making up the sample;

(III) Re-weigh the sample to obtain the non-glazed weight;

(IV) Divide the non-glazed weight by the glazed weight to obtain the conversion factor;

(V) A separate conversion factor may be calculated for each size grade of a species, but may only be applied to landings of that size grade;

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(VI) Documentation of this calculation must be retained with the dock receiving ticket.

(ii) A conversion factor of 0.95 must be applied when there are fewer than 60 individuals of any species or species group categorized in OAR 635-006-0209 in a single landing.

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due — in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

(A) All salmon and steelhead, 3.15 percent;

(B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5.00 percent.

(C) Effective January 1, 2010, all other food fish (except tuna, as defined by ORS 508.505), 2.25 percent.

(D) All tuna (as defined by ORS 508.505), 1.09 percent.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Department on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 508.530
Stats. Implemented: ORS 506.109, 506.129, 508.535, 508.505 & 508.550
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp), f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09; Administrative correction 12-23-09; DFW 39-2010(Temp), f. 3-30-10, cert. ef. 4-1-10 thru 9-27-10; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 83-2012(Temp), f. & cert. ef. 7-5-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13

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 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. serripes*).

(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 Humbug Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a), (5)(b) and (5)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (5)(a) and (5)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 71. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

(A) Cape Lookout (45°20'30" N latitude); and

(B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 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.

(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; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05,

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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

Rule Caption: Amendments to Rules for Management of Columbia River Commercial and Recreational Fisheries.

Adm. Order No.: DFW 152-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Adopted: 635-500-6700, 635-500-6705, 635-500-6710, 635-500-6715, 635-500-6720, 635-500-6725, 635-500-6730, 635-500-6735, 635-500-6740, 635-500-6745, 635-500-6750, 635-500-6755, 635-500-6760, 635-500-6765

Rules Amended: 635-014-0090, 635-017-0090, 635-017-0095, 635-023-0090, 635-023-0095

Subject: These adopted and amended rules modify commercial and recreational fisheries in the Columbia River and tributaries; and establish management measures for future fisheries. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

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 Southwest Zone with a 2 adult non adipose fin-clipped coho salmon sea-

sonal 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 to Ojalla Bridge (RM 31) is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 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;

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(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 January 1, 2013, the annual bag limit for white sturgeon is one (1) fish. 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),

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

635-017-0090

Inclusions and Modifications

(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) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Sandy River (Multnomah/Clackamas Co.) mainstem and tributaries upstream from ODFW markers at the mouth of the Salmon River, including the Salmon River:

(a) Open for adipose fin-clipped steelhead and non-adipose fin-clipped steelhead harvest July 1-August 31.

(b) Angling restricted to artificial flies and lures with a single point hook no larger than 1/2 inch gap (size 1) and multiple point hook no larger than 3/8 inch gap (size 4).

(c) No limit on size or number of brook trout taken. Catch limits on other trout species do not apply to brook trout.

(4) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon, steelhead, or trout in the mainstem Willamette River downstream of Willamette Falls (including Multnomah Channel and the Gilbert River) and in the lower Clackamas River upstream to the Highway 99E Bridge.

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-

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99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 61-2010, f. & cert. ef. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; DFW 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; DFW 96-2010(Temp), f. 7-7-10, cert. ef. 8-10-10 thru 10-31-10; DFW 123-2010(Temp), f. 8-26-10, cert. ef. 9-1-10 thru 12-31-10; DFW 134-2010(Temp), f. 9-22-10, cert. ef. 9-23-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 158-2011(Temp), f. 12-14-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 89-2012(Temp), f. 7-17-12, cert. ef. 7-26-12 thru 8-31-12; DFW 99-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

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 January 1, 2013, the annual bag limit for white sturgeon is one (1) 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 period from February 17 until the harvest guideline 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) 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

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Inclusions and Modifications

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.

(1) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon, steelhead, or trout in the mainstem Columbia River from Buoy 10 upstream to the Oregon-Washington border located upstream of McNary Dam (river mile 309.5).

(2) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon or 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 Walluski River upstream to the Highway 202 Bridge.

(b) Within the Knappa/Blind Slough Select Area (Clatsop County) from markers at the west end of Minaker Island upstream to markers at the mouth of Blind Slough, continuing upstream to the railroad bridge in Blind Slough.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 11-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-13-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 111-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-00, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-

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2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

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 and Oregon tributaries upstream to the mainline railroad bridges 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 July 31; and
- (b) October 20 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 12 through July 8 (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 January 1, 2013, the annual bag limit for white sturgeon is one (1) 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.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(8) 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.

(9) Retention of green sturgeon is prohibited all year in all areas.

(10) Catch-and-release angling is allowed year-round except as described above in sections (7)(a) through (7)(d).

(11) Effective January 1, 2014, the mainstem Columbia River from the mouth at Buoy 10 upstream to Bonneville Dam, including Oregon trib-

utaries upstream to the mainline railroad bridges, is closed to the retention of white sturgeon.

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

635-500-6700

Organization of Rules

These rules (OAR 635-500-6700 through 635-500-6765) establish the Commission's policy for the non-tribal Columbia River Recreational and Commercial Fisheries Management Framework.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6705

Guiding Principles for Columbia River fisheries management

(1) Promote the recovery of ESA-listed species and the conservation of wild stocks of salmon, steelhead, and sturgeon in the Columbia River.

(2) Continue leadership on fish recovery actions, including improved fish survival through the federal Columbia River hydropower system, improved habitat conditions in the tributaries and estuary, hatchery reform, reduced predation by fish, birds, and marine mammals, and harvest management that meets conservation responsibilities.

(3) Continue to meet terms of U.S. v. Oregon management agreements with Columbia River Treaty Tribes.

(4) In a manner that is consistent with conservation and does not impair the resource, seek to enhance the overall economic well-being and stability of Columbia River fisheries in Oregon.

(5) For steelhead, salmon and sturgeon, prioritize recreational fisheries in the mainstem and commercial fisheries in off-channel areas of the lower Columbia River. Toward this end:

(a) Assign mainstem recreational fisheries a sufficient share of ESA-impacts and harvestable surplus to enhance current fishing opportunity and economic benefit.

(b) Assign commercial fisheries a sufficient share of the ESA-impacts and harvestable surplus to effectively harvest fish in off-channel areas and harvest surplus fish with selective techniques in the mainstem Columbia River.

(6) Phase out the use of non-selective gill nets in non-tribal commercial fisheries in the mainstem Columbia River. Transition gill net use to off-channel areas.

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(7) Enhance the economic benefits of off-channel commercial fisheries, in a manner consistent with conservation and wild stock recovery objectives. Enhancements include:

(a) Providing additional hatchery fish for release in off-channel areas by shifting currently available production, and where possible providing new production for release in off-channel areas, emphasizing complementary conservation benefits in tributaries.

(b) Expanding existing seasons and boundaries in off-channel areas and/or establishing new off-channel areas, allowing increased harvest in areas where the likelihood of impacting ESA-listed stocks is lower than the mainstem.

(8) Develop and implement selective-fishing gear and techniques for commercial mainstem fisheries to optimize conservation and economic benefits consistent with mainstem recreational objectives, combined with incentives to commercial fishers to expand the development and implementation of these gear and techniques.

(9) Maintain consistent and concurrent policies between Oregon and Washington related to management of non-tribal Columbia River fisheries, to ensure orderly fisheries as well as the sharing of investments and benefits.

(10) To maximize economic return, develop a program that seeks to implement Marine Stewardship Council or other certification of commercial salmon and sturgeon fisheries in the Columbia River as sustainably managed fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6710

Untitled

Department staff shall manage fisheries consistent with the guiding principles and the allocation framework and provisions in OAR 635-500-6715 through 635-500-6765.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6715

Spring Chinook

(1) Transition Period (2013–2016).

(a) In 2013, assign 65%, then 70% of the ESA-impact for upriver spring Chinook stocks to mainstem recreational fisheries.

(b) In 2013, assign 35%, then 30% to off-channel and mainstem commercial fisheries.

(2) Long Term (2017 and Beyond).

(a) Assign 80% of the ESA-impact to mainstem recreational fisheries.

(b) Assign 20% to commercial fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6720

Summer Chinook

(1) Transition Period (2013–2016).

(a) In 2013–14, assign 60%, then 70% of the harvestable surplus available for use downstream from Priest Rapids Dam to mainstem recreational fisheries.

(b) In 2013–14, assign 40%, then 30% to off-channel and mainstem commercial fisheries.

(2) Long Term (2017 and Beyond).

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6725

Sockeye

(1) Transition Period (2013–2016).

(a) Assign 70% of the ESA-impact for Snake River sockeye to mainstem recreational fisheries.

(b) Assign 30% to mainstem commercial fisheries for incidental harvest of sockeye in Chinook-directed fisheries.

(2) Long Term (2017 and Beyond).

(a) Assign approximately 80% of the ESA-impact for Snake River sockeye to mainstem recreational fisheries.

(b) Assign the remaining balance to commercial fisheries for incidental harvest of sockeye in Chinook-directed fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6730

Tule Fall Chinook

(1) Transition Period (2013–2016).

(a) Assign no more than 70% of the ESA-impact for lower Columbia River Tule fall Chinook to mainstem recreational fisheries.

(b) Assign not less than 30% to off-channel commercial fisheries, mainstem commercial fisheries that target Upriver Bright and Lower River Hatchery Fall Chinook.

(2) Long Term (2017 and Beyond).

(a) Assign no more than 80% of the ESA-impact for lower Columbia River Tule Fall Chinook to mainstem recreational fisheries.

(b) Assign not less than 20% to off-channel commercial fisheries and mainstem commercial fisheries that target Upriver Bright and Lower River Hatchery Fall Chinook and hatchery coho.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6735

Upriver Bright Fall Chinook

(1) Transition Period (2013–2016).

(a) Assign no more than 70% of the ESA-impact for Snake River Wild Fall Chinook to mainstem recreational fisheries.

(b) Assign not less than 30% to off-channel and mainstem commercial fisheries. Provide additional mainstem commercial harvest when recreational fishery objectives (OAR 635-500-6760) are expected to be met.

(2) Long Term (2017 and Beyond).

(a) Assign no more than 80% of the ESA-impact for Snake River Wild Fall Chinook to mainstem recreational fisheries.

(b) Assign not less than 20% to off-channel and mainstem commercial fisheries. Provide additional mainstem commercial harvest when recreational fishery objectives (OAR 635-500-6760) are expected to be met.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6740

Coho

(1) Transition Period (2013–2016).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for Lower Columbia Natural coho to implement off-channel coho and fall Chinook fisheries and mainstem fall Chinook fisheries.

(b) Assign the remaining balance to in-river mainstem recreational fisheries. If these fisheries are expected to be unable to use all of the ESA-impact for Lower Columbia Natural coho, assign the remainder to mainstem commercial coho fisheries.

(2) Long Term (2017 and Beyond).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for Lower Columbia Natural coho to implement off-channel coho and fall Chinook fisheries and mainstem fall Chinook and hatchery coho fisheries.

(b) Assign the balance to in-river mainstem recreational fisheries. If these fisheries are unable to use all of the ESA-impact for Lower Columbia Natural coho, assign the remainder to mainstem commercial coho fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6745

Chum

(1) Transition Period (2013–2016).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for chum to implement off-channel and mainstem fisheries targeting other salmon species.

(b) Prohibit the retention of chum salmon in recreational and commercial fisheries.

(2) Long Term (2017 and Beyond).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for chum to implement off-channel and mainstem fisheries targeting other salmon species.

(b) Prohibit the retention of chum salmon in recreational and commercial fisheries

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6750

White Sturgeon

(1) Transition Period (2013–2016).

ADMINISTRATIVE RULES

(a) In years when retention is allowed, allocate 90% of the harvestable surplus downstream from Bonneville Dam for use in non-tribal fisheries and hold 10% in reserve as an additional conservation buffer above the maximum harvest rate allowed in Oregon's white sturgeon conservation plan.

(b) Assign 80% of the white sturgeon available for harvest to the recreational fishery.

(c) Assign 20% to off-channel and mainstem commercial fisheries.

(2) Long Term (2017 and Beyond).

(a) In years when retention is allowed, allocate 90% of the harvestable surplus downstream from Bonneville Dam for use in non-tribal fisheries and hold 10% in reserve as an additional conservation buffer above the maximum harvest rate allowed in Oregon's white sturgeon conservation plan.

(b) Assign 80% of the white sturgeon available for harvest to the recreational fishery.

(c) Assign the balance (20%) to off-channel and mainstem commercial fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6755

Additional Commercial Opportunity

Additional opportunity for mainstem commercial fisheries shall be provided:

(1) If recreational fisheries are predicted to be unable to use their allocated impacts;

(2) If established objectives for mainstem recreational fisheries are predicted to be met; or

(3) If needed to remove lower river hatchery tulle Chinook and coho using selective techniques to meet conservation objectives.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6760

Fall Recreational Fishery Objectives

Within limitations described in OAR 635-500-6730 thru 635-500-6750, fall recreational fishery objectives include:

(1) Buoy 10 to Tongue Point. The recreational fishing objective for Buoy 10 is defined as a season beginning August 1 and continuing through Labor Day (34 days; assuming Labor Day is September 3).

(2) Tongue Point to Warrior Rock. The recreational fishing objective for the area from Tongue Point upstream to Warrior Rock is defined as a season beginning August 1 and continuing through September 7 as non-mark selective with an additional week of mark selective fishing during September 8-14 (45 days).

(3) Warrior Rock to Bonneville Dam. The recreational fishing objective for the area from Warrior Rock upstream to Bonneville Dam is defined as a season beginning August 1 and continuing through October 31 when the season is assumed to be essentially complete (92 days).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

635-500-6765

Adaptive Management

(1) The Department shall use adaptive management principles within its statutory authority in support of achieving the expectations outlined in the guiding principles of this plan.

(2) The Commission will monitor implementation of the plan with an initial review in 2014 and undertake a comprehensive review at the end of the transition period. If the guiding principles are not being met, efforts will be made to determine why and the Commission will direct the Department to identify and evaluate alternative or additional management actions necessary to meet the principles.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13

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Rule Caption: Morgan Lake in the NE Zone Closed to All Angling.

Adm. Order No.: DFW 153-2012(Temp)

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 1-1-13 thru 4-30-13

Notice Publication Date:

Rules Amended: 635-019-0090

Subject: This amended rule closes Morgan Lake, in the NE Zone near La Grande, to all angling from January 1 through April 26, 2013. Closing the lake during this period will assist the City of La Grande, owner and operator of the lake, to resolve issues posed by the inadvertent removal of Special Regulations for Morgan Lake from the 2013 Oregon Sport Fishing Regulations synopsis.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The 2013 Oregon Sport Fishing Regulations provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2013 Oregon Sport Fishing Regulations.

(2) Morgan Lake (near LaGrande) is closed to all angling from January 1 through April 26, 2013.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-23-12 thru 9-1-12; DFW 50-2012(Temp), f. 5-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12; DFW 70-2012(Temp), f. 6-26-12, cert. ef. 6-27-12 thru 9-1-12; DFW 72-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 86-2012(Temp), f. 7-10-12, cert. ef. 7-15-12 thru 9-1-12; Administrative correction 9-20-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 153-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 4-30-13

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Rule Caption: Bonneville Dam Reservoir Recreational White Sturgeon Fishery.

Adm. Order No.: DFW 154-2012(Temp)

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 1-1-13 thru 2-28-13

Notice Publication Date:

Rules Amended: 635-023-0095

Subject: This amended rule sets the season for recreational harvest of white sturgeon in the Bonneville Pool and tributaries effective January 1 through Sunday, February 10, 2013. These modifications are

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consistent with action taken December 18, 2012 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **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 and Oregon tributaries upstream to the mainline railroad bridges 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 July 31; and
- (b) October 20 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 12 through July 8 (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 January 1, 2013, the annual bag limit for white sturgeon is one (1) 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.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(8) Effective 12:01 a.m. Tuesday, January 1 through 11:59 p.m. Sunday, February 10, 2013, the retention of white sturgeon is allowed in the mainstem Columbia River from Bonneville Dam upstream to The Dalles Dam (Bonneville Pool) including adjacent tributaries.

(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)(d).

(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.

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. 7-7-05, 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. 4-12-12, cert. ef. 1-1-13 thru 2-28-13

Rule Caption: White Sturgeon Retention in Marine and Southwest Zones Recreational Fisheries Revised.

Adm. Order No.: DFW 155-2012(Temp)

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 1-1-13 thru 6-29-13

Notice Publication Date:

Rules Amended: 635-016-0090, 635-039-0090

Subject: These amended rules prohibit retention of white sturgeon in the Marine and Southwest zones, recreational fisheries, effective January 1, 2013.

Rules Coordinator: Therese Kucera—(503) 947-6033

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

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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 January 1, 2013, the annual bag limit for white sturgeon is one (1) fish. Catch-and-release angling for white sturgeon 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; FWC 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; FWC 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; FWC 70-1998, f. & cert. ef. 8-28-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 36-1999, f. & cert. ef. 5-20-99; FWC 96-1999, f. 12-27-99, cert. ef. 1-1-00; FWC 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; FWC 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; FWC 1-2001, f. 1-25-01, cert. ef. 2-1-01; FWC 8-2001, f. & cert. ef. 3-5-01; FWC 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; FWC 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; FWC 70-2001, f. & cert. ef. 8-10-01; FWC 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; FWC 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; FWC 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; FWC 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; FWC 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; FWC 123-2001, f. 12-31-01, cert. ef. 1-1-02; FWC 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; FWC 26-2002, f. & cert. ef. 3-21-02; FWC 37-2002, f. & cert. ef. 4-23-02; FWC 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; FWC 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); FWC 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); FWC 130-2002, f. 11-21-02, cert. ef. 1-1-03; FWC 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; FWC 125-2003, f. 12-11-03, cert. ef. 1-1-04; FWC 117-2004, f. 12-13-04, cert. ef. 1-1-05; FWC 127-2004, f. 12-22-04, cert. ef. 1-1-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; FWC 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; FWC 79-2006, f. 8-11-06, cert. ef. 1-1-07; FWC 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; FWC 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; FWC 136-2007, f. 12-31-07, cert. ef. 1-1-08; FWC 137-2007, f. 12-31-07, cert. ef. 1-1-08; FWC 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; FWC 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; FWC 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; FWC 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; FWC 156-2008, f. 12-31-08, cert. ef. 1-1-09; FWC 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; FWC 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; FWC 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; FWC 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; FWC 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; FWC 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; FWC 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

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 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 Humbug Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a), (5)(b) and (5)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (5)(a) and (5)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part

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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 January 1, 2013, the annual bag limit for white sturgeon is one (1) fish. Catch-and-release angling for white sturgeon 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; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; DFW 164-2011, f. 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

Rule Caption: Amend rules relating to Habitat Conservation Stamp retention.

Adm. Order No.: DFW 156-2012(Temp)

Filed with Sec. of State: 12-31-2012

Certified to be Effective: 12-31-12 thru 6-28-13

Notice Publication Date:

Rules Amended: 635-095-0125

Subject: 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—(503) 947-6033

635-095-0125

Other Provisions

(1) The fee for the habitat conservation stamp is \$38.00 (plus \$2.00 agent fee) and includes a free annual ODFW Wildlife Area Parking Permit.

(2) Sale of habitat conservation stamps by the Department shall end at the close of business on December 31, of the respective year. Stamps with numbers corresponding with the prints signed by the artist and the Governor will be retained. These stamps will be distributed with the sale of the corresponding print. Excess stamps shall be shredded after auditing of sales takes place.

(3) The Department shall award three thousand dollars (\$3,000) to the artist whose entry is selected for the habitat conservation stamp.

(4) The winning entry shall become the exclusive property of the Department.

(5) The Department shall retain all reproduction rights and may review proposals for limited edition prints, posters, or other related art products.

(6) The artist shall sign, at no charge, up to two hundred fifty (250) habitat conservation prints for sale by the Department.

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)

Hist.: DFW 13-2012, f. & cert. ef. 2-10-12; DFW 57-2012, f. & cert. ef. 6-11-12; DFW 156-2012(Temp), f. & cert. ef. 12-31-12 thru 6-28-13

Rule Caption: Amendments to Rules for Commercial and Recreational Groundfish Rules

Adm. Order No.: DFW 1-2013

Filed with Sec. of State: 1-3-2013

Certified to be Effective: 1-3-13

Notice Publication Date: 11-1-2012

Rules Amended: 635-004-0275, 635-039-0080

Subject: The amended rules modify commercial and sport groundfish regulations and establish annual groundfish management measures for 2013. These modifications were developed through the Pacific Fisheries Management Council process, which involves advisory committees and public comment. Department staff also conducted several public meetings to discuss proposed changes to federal and state groundfish regulations. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0275

Scope, Inclusion, and Modification of Rules

(1) The commercial groundfish fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking groundfish. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subparts C, D, E and F (October 1, 2012 ed.);

(b) Federal Register Vol. 78, No. 2, dated January 3, 2013 (78 FR 580).

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable groundfish fishing requirements. Where federal regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0280 through 635-004-0365 for additions or modifications to federal groundfish regulations.

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

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 78-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 10-27-12; DFW 106-2012(Temp), f. 8-15-12, cert. ef. 9-1-12 thru 12-31-12; DFW 1-2013, f. & cert. ef. 1-3-13

ADMINISTRATIVE RULES

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. 77, No. 56, dated March 22, 2012 (77FR 16740).

(3) Therefore, persons must consult all publications referenced in this rule in addition to division 11 and division 39 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

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

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 1-2013, f. & cert. ef. 1-3-13

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Rule Caption: Adopt Conservation Plan for Fall Chinook Salmon in the Rogue Species Management Unit

Adm. Order No.: DFW 2-2013

Filed with Sec. of State: 1-14-2013

Certified to be Effective: 1-14-13

Notice Publication Date: 12-1-2012

Rules Adopted: 635-500-6650

Subject: Adopted rule implements the Conservation Plan for Fall Chinook Salmon in the Rogue Species Management Unit.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-500-6650

Implementing the Conservation Plan for Fall Chinook Salmon in the Rogue Species Management Unit

(1) Policy. The Conservation Plan for Fall Chinook Salmon in the Rogue Species Management Unit of 2012 (Rogue Fall Chinook Conservation Plan, available at Department offices) implements the Commission's strategy for the management of these populations of naturally produced native fish by the Department, in cooperation with other state, federal and local partners. The Rogue Fall Chinook Conservation Plan is based on the general premise that habitat management and fishery management are critical to ensure the conservation and enhancement of these populations of native fish. The Commission believes that habitat management is most likely to be successful by working cooperatively with other federal, state, and local management agencies, and by encouraging the maintenance, restoration, and enhancement of aquatic and riparian habitat as outlined by the Oregon Plan for Salmon and Watersheds. This rule describes a strategy for the use of Department statutory authorities to implement the requirements of the Native Fish Conservation Policy (OAR 635-007-0502 thru 635-007-0505). The Rogue Fall Chinook Conservation Plan is not intended to be a rigid recipe, but does prescribe generalized management strategies the Department will pursue; and how the efficacy of those strategies and allied management actions will be evaluated.

(2) Species Management Unit and Population Description. The Species Management Unit (SMU) for Rogue fall Chinook salmon includes

that area of coastal Oregon south of Elk River (near Port Orford). Based on differences in genetic attributes and genetic-based life history attributes, fall Chinook salmon (CHF) populations were assigned to one of two strata: the Rogue Stratum or the Coastal Stratum. There are five independent CHF populations in the Rogue Stratum (Upper Rogue, Middle Rogue, Lower Rogue, Applegate, and Illinois) and four independent CHF populations in the Coastal Stratum (Chetco, Winchuck, Pistol, and Hunter).

(3) Desired Status. The desired status goal is to manage Rogue fall Chinook salmon and their habitat so that:

(a) The population is sustained for a minimum of 100 years;

(b) The productive capacity of the habitat is maintained in order to provide ecological, economic, and cultural benefits; and

(c) The opportunities for sport and commercial fishers are consistent with population status.

(d) The five measurable criteria that describe the desired status goal for fall Chinook salmon populations in the Rogue Stratum are:

(A) Adult abundance;

(B) Adult migration timing;

(C) Adult age composition;

(D) Adult composition (% hatchery); and

(E) Population persistence.

(e) The above measurable criteria are defined in Table 36 of the Desired Biological Status section of the Rogue Fall Chinook Conservation Plan, and are adopted by reference into this rule. The desired status goal for the Rogue Stratum shall be judged to be achieved when all of the populations achieve all of the measurable criteria. Other criteria related to productivity (standardized rate of population growth) and survival rate to each critical life history stage may be developed in the future if new information becomes available. Implementation of any new criteria, or the deletion of any current criteria, will necessitate modification of this rule.

(f) The five measurable criteria that describe the desired status goal for fall Chinook salmon populations in the Coastal Stratum are:

(A) Spawner abundance;

(B) Spawner age composition (Chetco only);

(C) Spawner composition (% hatchery);

(D) Juvenile abundance (Winchuck only); and

(E) Population persistence.

(g) The above measurable criteria are defined in Table 37 of the Desired Biological Status section of the Rogue Fall Chinook Conservation Plan, and are adopted by reference into this rule. The desired status goal for the Coastal Stratum shall be judged to be achieved when all of the populations achieve all of the measurable criteria. Other criteria related to productivity (standardized rate of population growth) and survival rate to each critical life history stage may be developed in the future if new information becomes available. Implementation of any new criteria, or the deletion of any current criteria, will necessitate modification of this rule.

(h) The desired status goal for the entire SMU shall be judged to be achieved when the two strata both achieve desired status.

(4) Current Status. The current status of the Rogue Fall Chinook SMU and constituent independent populations, at the time of adoption of this rule, is described in Tables 43 and 44 of the Current Status section of the Rogue Fall Chinook Conservation Plan. Criteria used to characterize current status are structured so as to allow for the direct comparison of current and desired status of the SMU. The Department shall annually update the current status of the SMU. Annual updates will serve as a measurement of progress toward desired status, and thus will not require rule modification of current status.

(5) Primary Limiting Factors.

(a) Numerous factors could, in the future, contribute to the gap between current and desired status for fall Chinook populations in the Rogue Stratum of the SMU.

(b) At the time of adoption of this Conservation Plan, manageable primary limiting factors are:

(A) Water temperature of the Rogue River in summer during adult migration;

(B) Water temperature of the Rogue River in summer during juvenile rearing;

(C) The intensity of peak flows during egg and sac-fry incubation in the gravel;

(D) Brood harvest rates that sometimes exceed maximum sustained yield; and

(E) Periodic low spawning escapements that follow poor ocean survival conditions.

(c) Numerous factors contribute to gaps between current and desired status for fall Chinook populations in the Coastal Stratum of the SMU.

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(d) At the time of adoption of this Conservation Plan, manageable primary limiting factors are:

- (A) Volume of juvenile rearing habitat in streams and estuaries;
- (B) Water temperature in streams and in the estuaries during summer;
- (C) Habitat quality in the estuaries during summer;
- (D) Brood harvest rates that sometimes exceed maximum sustained yield; and

(E) Periodic low spawning escapements that follow poor ocean survival conditions.

(6) Management Strategies. Department staff shall attempt to implement the following management strategies as mechanisms designed to maintain desired status. These strategies are directed at primary and secondary factors that currently limit attainment of desired status, or are judged to be potential risks to attainment of desired status in future years:

(a) Rogue Stratum Short-term Strategies (1 to 5 years):

(A) Manage recreational and commercial fisheries to sustain productivity for all populations of naturally produced fall Chinook salmon, and to provide harvest opportunities for recreational and commercial fishers.

(B) Manage fall Chinook salmon of hatchery origin to minimize the risk of genetic changes among naturally produced fish.

(b) Rogue Stratum Long-term Strategies (1 to 25 years):

(A) Support habitat restoration, maintenance, and enhancement programs to ensure that aquatic and terrestrial habitat is managed to maintain productive populations of naturally produced fall Chinook salmon.

(B) Develop and support programs designed to decrease introductions of non-native species into areas inhabited by naturally produced fall Chinook salmon.

(C) Decrease rates of predation by introduced species on naturally produced fall Chinook salmon.

(c) Coastal Stratum Short-term Strategies (1 to 5 years):

(A) Manage recreational and commercial fisheries to sustain productivity for all populations of naturally produced fall Chinook salmon, and to provide harvest opportunities for recreational and commercial fishers.

(B) Manage fall Chinook salmon of hatchery origin to minimize the risk of genetic changes among naturally produced fish.

(d) Coastal Stratum Long-term Strategies (1 to 25 years):

(A) Support habitat restoration, maintenance, and enhancement programs to ensure that aquatic and terrestrial habitat is managed to maintain productive populations of naturally produced fall Chinook salmon.

(B) Develop and support programs designed to decrease introductions of non-native species into areas inhabited by naturally produced fall Chinook salmon.

(C) Ensure complete access of fall Chinook salmon to stream habitat capable of producing full sized smolts. The Department is authorized to remove or modify natural migration barriers to enhance Chinook populations at its discretion upon a finding that native fish species would not be negatively impacted.

(7) Deterioration in Status.

(a) Additional conservation actions, or plan modification, will be employed by the Department if monitoring, or pre-season forecasting, indicate that fall Chinook population status has, or will, dropped below criteria levels defined in Tables 48 and 49 of the Criteria Indicating Deterioration in Status section of the Rogue Fall Chinook Conservation Plan; and are adopted by reference into this rule.

(b) Additional conservation actions to be taken will be dependent on Department assessments that predict:

(A) Which criteria will be reached; and

(B) The degree of criteria deterioration.

(c) Implementation of any new criteria, or the deletion of any current criteria, will necessitate modification of this rule.

(8) Adaptive Management. The Department shall employ adaptive management principles within its statutory authority in support of achieving the desired status goal for the Rogue Fall Chinook SMU and constituent fall Chinook populations. The adaptive management approach employed by the Department will include five elements: research; monitoring; evaluation; reporting; and modification of corrective strategies.

(a) *Research*. The Department shall identify and support research that, as funding and staffing allows, addresses uncertainties related to management strategies and actions needed to achieve desired status. Research needs, at the time of plan adoption, are identified in the Rogue Fall Chinook Conservation Plan (but which are not intended to be the exclusive research projects to be pursued). Future research needs may be identified, or research needs described at the time of plan adoption may be modified, as a result of periodic assessments of the Rogue Fall Chinook Conservation Plan.

(b) *Monitoring*. The Department shall identify, implement, and support monitoring, as funding and staffing allow, needed to assess fall Chinook population and SMU status relevant to desired status criteria, current status criteria, and criteria indicating significant deterioration in status. Future monitoring needs may be identified during periodic assessments of the Rogue Fall Chinook Conservation Plan.

(c) *Evaluation*. The Department shall identify and support evaluation that is needed, as funding and staffing allows, to determine the effectiveness of management strategies and actions in achieving intended outcomes. Future evaluation needs may be identified, or evaluation needs described at the time of plan adoption may be modified, as a result of periodic assessments of the Rogue Fall Chinook Conservation Plan.

(d) *Reporting*. The Department will develop, and will make available to the public:

(A) Annual reports of fall Chinook population and SMU status. Annual reports will present:

(i) Current fall Chinook population and SMU status as assessed by monitoring;

(ii) A summary of results from research or evaluation activities; and

(iii) Department rationale associated with any adaptive changes made to management actions.

(B) Summary reports of fall Chinook population and SMU status every five years. Summary reports will outline progress made towards attainment of desired status; and

(C) Comprehensive assessments of the Conservation Plan efficacy. Comprehensive assessments of plan efficacy will be completed for intervals that do not exceed 15 years, beginning with the year 2027.

(9) Process to Modify Strategies.

(a) In the event Department assessments indicate that criteria indicative of status deterioration will likely be realized, the Department will craft management options to address the need to temporarily modify the Rogue Fall Chinook Conservation Plan. These options will be presented in the annual report, and the Department will solicit public input prior to selection of a course of action.

(b) In the event that a status review indicates that management strategies should be modified to ensure attainment of desired status, or in the event of critical changes in local, state, or federal laws, the Department will develop revised options for management strategies to address the need to modify the Rogue Fall Chinook Conservation Plan. These options will be presented in a special report, and the Department will solicit public input prior to selection of a course of action.

(c) Specific management actions for management strategies adopted into rule may be modified by the Department under the principle of adaptive management.

(d) Actions may be revised to improve performance, or actions may be terminated and be replaced by other actions that are determined to be more effective.

(e) Rationale associated with any changes in management actions will be detailed in annual status reports developed by the Department, and where applicable, will be linked to findings from monitoring, evaluation, and research efforts.

(10) Impact on Other Native Fish Species. Management strategies identified in the Rogue Fall Chinook Conservation Plan are likely to be collectively neutral or somewhat beneficial to other native fish species present in the SMU. New or modified management actions shall consider projected impacts to other native species of fish and if needed, will be modified to ensure compliance with:

(a) Department policy; and

(b) State, federal, and local laws.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 2-2013, f. & cert. ef. 1-14-13

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

Adm. Order No.: DFW 3-2013

Filed with Sec. of State: 1-14-2013

Certified to be Effective: 1-14-13

Notice Publication Date: 12-1-2012

Rules Amended: 635-006-0232

Subject: Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-006-0232

Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2012 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:

- (A) Anchovy, Northern \$0.14 (2011 price).
- (B) Cabezon \$3.52.
- (C) Carp \$0.50 (2006 price).
- (D) Cod, Pacific \$0.60.
- (E) Flounder, arrowtooth \$0.12.
- (F) Flounder, starry \$0.39.
- (G) Greenling \$4.60.
- (H) Grenadier \$0.10.
- (I) Hagfish \$0.75.
- (J) Hake, Pacific (Whiting) \$0.14.
- (K) Halibut, Pacific, dressed weight with head on \$5.65.
- (L) Herring, Pacific \$0.21.
- (M) Lingcod \$1.02.
- (N) Mackerel, jack \$0.09; Pacific \$0.08.
- (O) Opah \$2.98 (2008 price).
- (P) Pacific ocean perch, \$0.52.
- (Q) Pollock, Walleye \$0.67 (2001 price).

(R) Rockfish:

- (i) Black, \$2.27.
- (ii) Blue, \$1.37.
- (iii) Canary, \$0.54.
- (iv) Darkblotched, \$0.57.
- (v) Black and yellow, \$4.80.
- (vi) Brown, \$2.50.
- (vii) China, \$5.97.
- (viii) Copper, \$3.82.
- (ix) Gopher, \$4.45.
- (x) Grass, \$6.77.
- (xi) Quillback, \$3.60.
- (xii) Shelf, \$0.50.

(xiii) Shortbelly, using trawl gear \$0.43, using line and pot gear \$1.96 (2008 price).

- (xiv) Slope, using trawl gear, \$0.48 using line and pot gear \$0.95.
- (xv) Tiger, \$4.01.
- (xvi) Vermilion, \$1.69.
- (xvii) Widow \$0.44.
- (xviii) Yelloweye, using trawl gear \$0.53, using line and pot gear

\$1.05.

- (xix) Yellowtail, \$0.53.

(S) Sablefish:

(i) Dressed weight, ungraded \$4.52, extra small \$2.77, small \$4.30, medium \$6.89 and large \$7.80.

(ii) Round weight, ungraded \$2.50, extra small \$1.21, small \$1.95, medium \$2.44 and large \$3.92.

(T) Salmon, Chinook, ocean dressed weight: ungraded \$5.52, small \$5.52, medium \$5.71, and large \$6.01.

(U) Salmon, coho, ocean dressed weight: mixed size \$2.22.

(V) Salmon, pink, ocean dressed weight: ungraded, \$0.84 (2011 price).

(W) Sanddab, Pacific \$0.55.

(X) Sardine, Pacific \$0.09.

(Y) Shad, American:

(i) Coast, ungraded, midwater trawl, \$0.22.

(ii) Columbia, ungraded, gillnet, setnet, and dipnet, \$0.53.

(Z) Shark, blue \$0.16, Pacific sleeper \$0.62 (2000 price), shortfin mako \$1.80, sixgill \$0.05 (2007 price), soupfin \$0.20, spiny dogfish \$0.26, scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$0.60, and other species \$0.02.

(AA) Skates and Rays \$0.44.

(BB) Smelt, Eulachon (Columbia River), \$2.86 and other species \$0.20 (2010 price).

(CC) Sole, butter \$0.36, curlfin (turbot) \$0.36, Dover \$0.43, English \$0.35, flathead \$0.34, petrale \$1.49, rex \$0.38, rock \$0.35 and sand \$0.96.

(DD) Steelhead \$1.16.

(EE) Sturgeon, green \$0.98 (2009 price) and white \$2.68.

(FF) Surfperch \$1.00.

(GG) Swordfish \$4.00 (2008 price).

(HH) Thornyhead (Sebastolobus), longspine \$0.45 and shortspine \$0.66.

(II) Tuna, albacore \$1.53, bluefin \$5.99, bigeye \$4.00 (2008 price), and yellowfin \$2.00 (2011 price).

(JJ) Walleye \$3.08.

(KK) Wolf-eel \$1.55.

(LL) Wrymouth \$0.26.

(b) CRUSTACEANS:

(A) Crab: box \$1.28, Dungeness bay \$3.69 and ocean \$3.45, rock \$1.60 and Tanner \$1.00.

(B) Crayfish \$2.36.

(C) Shrimp: brine \$0.79, coonstripe \$3.56, ghost (sand) \$2.55, mud \$1.27, pink \$0.50 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$11.16.

(D) Water flea (Daphnia) \$0.65 (2002 price).

(c) MOLLUSKS:

(A) Abalone, flat \$21.09 (2008 price).

(B) Clams: butter \$0.85, cockle \$0.54, gaper \$0.45, Manila littleneck \$2.00 (2008 price), Nat. littleneck \$0.63, razor \$2.86, and softshell \$3.00.

(C) Mussels, ocean \$1.00.

(D) Octopus \$0.82.

(E) Scallop, rock \$0.70 (2005 price).

(F) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price).

(G) Squid, market \$0.17 (2011 price).

(H) Squid, other species \$0.27.

(d) OTHER INVERTEBRATES:

(A) Jellyfish \$10.00 (2004 price).

(B) Sea cucumber \$2.50.

(C) Sea urchin, red \$0.58 and purple \$0.30 (2004 price).

(D) Sea stars \$1.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78. Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09; DFW 5-2010, f. & cert. ef. 1-13-10; DFW 1-2011, f. & cert. ef. 1-10-11; DFW 162-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 2-29-12; DFW 11-2012, f. & cert. ef. 2-7-12; DFW 3-2013, f. & cert. ef. 1-14-13

Rule Caption: Establishes 2013 Seasons and Regulations for Game Mammals

Adm. Order No.: DFW 4-2013

Filed with Sec. of State: 1-15-2013

Certified to be Effective: 2-1-13

Notice Publication Date: 9-1-2012

Rules Amended: 635-065-0765, 635-069-0000, 635-073-0000, 635-073-0065, 635-073-0070

Subject: Establishes the 2013 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-065-0765

Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is *unlawful* to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is *unlawful* to possess the meat or carcass of any pronghorn antelope, bighorn sheep, or Rocky Mountain goat without the animal's

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scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, horns, and eyes if the animal is male.

(4) It is *unlawful* to possess the meat or carcass of any deer or elk without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer and elk is:

(a) Evidence of sex for deer and elk which will be taken out of Oregon is:

(A) For Bucks and Bulls: Either the head with antlers naturally attached to at least one quarter of the carcass or reproductive organs (testicles, or scrotum or penis) naturally attached to one quarter of the carcass or to another major portion of meat. For hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, or scrotum or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(B) For Does and Cows: Either the head naturally attached to at least one quarter of the carcass or reproductive organs (vulva or udder or mammary) naturally attached to one quarter of the carcass or to another major portion of meat.

(C) For Either Sex Hunts: Either the head naturally attached to at least one quarter of the carcass or reproductive organs (testicles or scrotum or penis or vulva or udder or mammary) naturally attached to one quarter of the carcass or to another major portion of meat. For bucks or bulls killed in either sex hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles or scrotum or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(D) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(b) Evidence of sex for deer and elk which will not be taken out of Oregon is either:

(A) The animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, antlers, and eyes if the animal is male, or;

(B) The head naturally attached to at least one quarter of the carcass or reproductive organs naturally attached to one quarter of the carcass or to another major portion of meat as described in (4) (a) (i)-(iv) above.

(5) When any game mammal or part thereof is transferred to the possession of another person, a written record describing the game mammal or part being transferred indicating the name and address of the person whose tag was originally attached to the carcass and the number of that tag shall accompany such transfer and shall remain with such game mammal or part so long as the same is preserved or until replaced by a tag or seal of the Department.

(6) All game mammals in possession in the field or forest or in transit more than 48 hours after the close of the open season for such mammal must be tagged with a tag or metal seal by the Department or by the Oregon State Police.

(7) All game mammals or portions thereof shipped by commercial carrier shall be tagged with a tag or metal seal provided by the Department or by the Oregon State Police.

(8) It is *unlawful* to receive or have in possession any game mammal or part thereof which:

(a) Is not properly tagged;

(b) Was taken in violation of any wildlife laws or regulations; or

(c) Was taken by any person who is or may be exempt from the jurisdiction of such laws or regulations.

(9) No person shall possess any game mammal or part thereof which has been illegally killed, found or killed for humane reasons, except shed antlers, unless he has notified and received permission from the Department or personnel of the Oregon State Police prior to transporting.

(10) No person shall possess the horns of bighorn sheep or Rocky Mountain goat that were not taken legally during an authorized season. Any horns of bighorn sheep or Rocky Mountain goat obtained by the Department may be made available to scientific and educational institutions and for ceremonial purposes.

(11) Except for the following parts, importation of a cervid carcass or parts of a cervid carcass is prohibited if the cervid was killed in a state or province with a documented case of Chronic Wasting Disease:

(a) meat that is cut and wrapped commercially or privately;

(b) meat that has been boned out;

(c) quarters or other portions of meat with no part of the spinal column or head attached;

(d) hides and/or capes with no head attached;

(e) skull plates with antlers attached that have been cleaned of all meat and brain tissue;

(f) antlers with no tissue attached;

(g) upper canine teeth (buglers, whistlers, ivories);

(h) finished taxidermy heads.

(12) For the purposes of the parts and carcass import ban in subsection (11), the states or provinces with a documented case of Chronic Wasting Disease (CWD) are Alberta, Colorado, Illinois, Maryland, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Wisconsin, Wyoming, Utah, Virginia, West Virginia, and Saskatchewan. The Department shall add by temporary rule any additional states or provinces when any new cases of CWD arise.

(13) The parts and carcass import ban in subsection (11) does not apply to parts or carcasses shipped to the National Fish and Wildlife Forensics Laboratory (Ashland, Oregon) for the purpose of law enforcement investigations and also does not apply to parts or carcasses of reindeer/caribou.

(14) Cervid carcasses or parts of cervid carcasses found in Oregon in violation of the parts and carcass ban in subsection (11) shall be disposed of in a manner as follows:

(a) Brain tissue, spinal columns, and whole heads or heads minus the cleaned skull plate and attached antlers, shall be disposed of either by incineration at temperatures exceeding 800° F or at lined landfills registered by Oregon Department of Environmental Quality capable of accepting animal carcasses without environmental contamination; rendering is not an allowed means of disposal.

(b) The person(s) who imported parts in violation of the parts and carcass ban in subsection (11) shall pay for appropriate disposal of cervid carcasses or parts of cervid carcasses.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 90-2002(Temp), f. & cert. ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & cert. ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & cert. ef. 11-12-02; DFW 127-2002(Temp), f. & cert. ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 61-2003, f. & cert. ef. 7-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 111-2005(Temp), f. & cert. ef. 9-23-05 thru 10-31-05; Administrative correction 11-18-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 135-2008, f. & cert. ef. 10-17-08; DFW 2-2009, f. & cert. ef. 1-9-09; DFW 8-2010(Temp), f. & cert. ef. 1-25-10 thru 7-24-10; DFW 21-2010(Temp), f. & cert. ef. 2-26-10 thru 8-24-10; DFW 36-2010(Temp), f. & cert. ef. 3-30-10 thru 9-25-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 92-2012(Temp), f. & cert. ef. 7-23-12 thru 1-19-13; DFW 136-2012, f. & cert. ef. 10-24-12; DFW 137-2012(Temp), f. & cert. ef. 10-24-12 thru 4-22-13; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13

635-069-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2012 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 69 by reference.

(3) OAR chapter 635, division 69 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2013 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2013 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big

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Game Regulations are available at hunting license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13

635-073-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2012 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2013 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2013 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13

635-073-0065

Early Western Oregon Bowhunting Seasons

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 53-2004, f. & cert. ef. 6-16-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13

635-073-0070

Early Eastern Oregon Bowhunting Seasons

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 57-2001, f. & cert. ef. 7-6-01; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 4-

2010, f. 1-12-10, cert. ef. 2-1-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13

Department of Human Services, Child Welfare Programs Chapter 413

Rule Caption: Changing OARs affecting Child Welfare programs

Adm. Order No.: CWP 1-2013

Filed with Sec. of State: 1-15-2013

Certified to be Effective: 1-15-13

Notice Publication Date: 12-1-2012

Rules Adopted: 413-030-0456, 413-080-0054

Rules Amended: 413-020-0236, 413-020-0245, 413-030-0000, 413-030-0003, 413-030-0006, 413-030-0009, 413-030-0013, 413-030-0016, 413-030-0019, 413-030-0023, 413-030-0026, 413-030-0030, 413-030-0405, 413-030-0410, 413-030-0445, 413-030-0449, 413-030-0454, 413-040-0005, 413-040-0006, 413-040-0008, 413-040-0009, 413-040-0010, 413-040-0011, 413-040-0013, 413-040-0016, 413-040-0017, 413-040-0024, 413-040-0032, 413-040-0210, 413-040-0215, 413-040-0240, 413-040-0270, 413-040-0290, 413-040-0300, 413-070-0524, 413-070-0536, 413-070-0551, 413-070-0552, 413-070-0556, 413-070-0565, 413-070-0620, 413-070-0625, 413-070-0630, 413-070-0640, 413-080-0040, 413-080-0050, 413-080-0052, 413-080-0055, 413-080-0059, 413-080-0067, 413-120-0860
Rules Repealed: 413-080-0063

Subject: These rules about child welfare programs are being changed to align them with the child contact requirements required under federal law. These rules also are being revised to fully incorporate the provisions of P.L. 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008 and P.L. 106-169, Foster Care Independence Act of 1999 to provide certain children in substitute care information about their credit report annually, information regarding designating another individual to make health care treatment decisions if he or she is unable to participate in those decisions, and to require Department participation in the National Youth in Transition Database.

OAR 413-020-0236 about development, documentation, and termination of a supervision plan is being amended to clarify and correct the administrative rule reference to required contact with a child.

OAR 413-020-0245 about responsibilities in monitoring a child or young adult's supervision in a certified family is being amended to clarify and correct the administrative rule reference to required contact with a child.

OAR 413-030-0000 about the purpose of rules about family support services is being amended to clarify the rule and indicate when terms are defined.

OAR 413-030-0003 about the definitions of terms used in family support services rules is being amended to clarify the terms used in rules about family support services and to reflect current Department terminology.

OAR 413-030-0006 about eligibility for family support services is being amended to clarify who is eligible for family support services under these rules.

OAR 413-030-0009 about determination of service needs is being amended to clarify cross-references and use current Department terminology.

OAR 413-030-0013 about requirements when obtaining medical, psychological, or psychiatric evaluations; OAR 413-030-0016 about requirements for the family support services case plan; OAR 413-030-0019 about developing service agreements; OAR 413-030-0026 about family support services case plan review; and OAR 413-030-0030 about closing a family support services case plan are being amended to clarify cross-references and use current Department terminology.

OAR 413-030-0023 about contact and monitoring requirements for a family support services case plan is being amended to specify when monthly fact-to-face contacts are required, clarify cross-references, and use current Department terminology.

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OAR 413-030-0405 defining terms used in rules about youth transitions is being amended to clarify the terms used in these rules and to reflect current Department terminology.

OAR 413-030-0410 about eligibility for youth transition services is being amended to describe the circumstances when an exception to eligibility requirements may be approved.

OAR 413-030-0445 about development of the comprehensive transition plan and OAR 413-030-0454 about benchmark review of the comprehensive transition plan are being amended to use of current Department terminology about legal guardians and guardians.

OAR 413-030-0449 about review of the comprehensive transition plan is being amended correct the administrative rule reference to required contact with a child.

OAR 413-030-0456 about health care notifications, credit reports, and data tracking is being adopted to describe the Department responsibilities for notification of health care proxy to youth over 17 years, for ensuring an annual consumer credit report is reviewed with any youth in care over age 16, and to describe the requirements for collection and reporting of data for the National Youth in Transition Database.

OAR 413-040-0005 about definitions used in rules about developing and managing the case plan is being amended to clarify the terms used in these rules and to reflect current Department terminology.

OAR 413-040-0006 about requirements for the protective capacity assessment and OAR 413-040-0009 about requirements for conditions for return are being amended to clarify the caseworker responsibility to identify and review the conditions for return as well as to clarify requirements for the determination and documentation of conditions for return and the ongoing safety plan.

OAR 413-040-0008 about requirements for a family decision-making meeting, OAR 413-040-0010 about requirements for the case plan, and OAR 413-040-0011 about requirements of action agreements are being amended to use current Department terminology.

OAR 413-040-0013 about requirements for monitoring the case plan is being amended to clarify reasonable efforts requirements and to correct administrative rule reference to required contact with a child.

OAR 413-040-0016 about requirements for review of the case plan, OAR 413-040-0017 about requirements for return and reunification, OAR 413-040-0024 about requirements for an in-home ongoing safety plan prior to return and next day contact, and OAR 413-040-0032 about requirements for closing the in-home ongoing safety plan and closing the case are being amended to use current Department terminology.

OAR 413-040-0210 defining terms used in rules about the Interstate Compact on the Placement of Children is being amended to clarify the terms used in these rules and to reflect current Department terminology.

OAR 413-040-0215 about required forms is being amended to update the list of forms used in the rules.

OAR 413-040-0240 about the financial and medical responsibility of the sending agency is being amended to clarify and correct cross references.

OAR 413-040-0270 about preparing the referral to send a child out of Oregon is being amended to correct a reference to a Department form, specify Department staff who may approve out-of-state residential placement, and clarify cross-references to defined terms.

OAR 413-040-0290 about requests for placement in Oregon is being amended to use current Department terminology, correct and clarify cross-references, and correct the administrative rule reference to required contact with a child.

OAR 413-040-0300 about requests that by-pass the Oregon ICPC Office is being amended to use current Department terminology and clarify cross-references.

OAR 413-070-0524 about definitions of terms used in rules about another planned permanent living arrangement is being amended to

clarify the terms used in these rules and to reflect current Department terminology.

OAR 413-070-0536 about consideration of APPLA as a permanency plan is being amended to use current terminology and correct cross-references.

OAR 413-070-0551 about contents of an APPLA case plan and OAR 413-070-0556 about APPLA permanency plan reviews are being amended to use current Department terminology.

OAR 413-070-0552 about ongoing Department responsibilities when APPLA is the child's or young adult's permanency plan is being amended to correct the administrative rule reference to required contact with a child and to correct cross-references to other child welfare rules.

OAR 413-070-0565 about termination of APPLA is being amended to correct cross-references.

OAR 413-070-0620 which defines certain terms used in rules about placement matching is being amended to clarify the terms used in these rules and to reflect current Department terminology.

OAR 413-070-0625 about identifying and assessing the needs of the child or young adult when placement in substitute care is required is being amended to use current Department terminology and to correct the required contact with a child.

OAR 413-070-0630 about monitoring the ongoing substitute care placement needs of the child or young adult is being amended to remove administrative rule references that no longer apply.

OAR 413-070-0640 about placement assessment and matching is being amended to use current Department terminology.

OAR 413-080-0040 about monthly contact and monitoring child and young adult safety is being amended to fit the purposes of rules OAR 413-080-0040 to 413-080-0067 consistent with amendments to them.

OAR 413-080-0050 about definitions used in rules about monthly contact and monitoring child and young adult safety is being amended to clarify the terms used in these rules and reflect current Department terminology.

OAR 413-080-0052 about mandatory reporting of a new safety threat on an open case is being amended to clarify the actions Department staff must take when a new or unscreened safety threat is identified in an open case.

OAR 413-080-0054 about monthly face-to-face contact requirements is being adopted to describe the monthly contacts required of Department staff.

OAR 413-080-0055 about monitoring an in-home ongoing safety plan is being amended to clarify the requirements of the Department in monitoring child safety when there is an in-home ongoing safety plan.

OAR 413-080-0059 about monitoring an out-of-home ongoing safety plan is being amended to clarify the requirements of the Department in monitoring child safety when there is an out-of-home ongoing safety plan.

OAR 413-080-0063 about additional documentation required when a child or young adult is placed in Oregon through the Interstate Compact for the Placement of Children is being repealed because these topics are covered in other rules and procedures.

OAR 413-080-0067 about contact requirements and exceptions is being amended to remove exceptions to required child contact not allowed under federal law.

OAR 413-120-0860 about placement and post-placement supervision is being amended to clarify the requirements of the monthly contact required of Department staff and to correct the administrative rule reference.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-020-0236

Development, Documentation, and Termination of a Supervision Plan

(1) After the caseworker has reviewed the CANS screening results for a child or young adult living with a certified family that indicates the child or young adult has enhanced supervision needs and qualifies for a level of care payment, the caseworker must:

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(a) Contact the certified family to explain the supervision needs identified in the CANS screening results; and

(b) During a meeting with the certified family, the child or young adult, as appropriate, and others who may participate in a supervision plan, explain the supervision requirements necessary to maintain the safety and support the well-being of the child or young adult and develop a supervision plan that meets the supervision needs of the child or young adult.

(A) If the child or young adult qualifies for Level 1 (moderate needs), the supervision plan must require the certified family to provide an environment with the additional support, direction, observation, and guidance from the certified family necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(B) If the child or young adult qualifies for Level 2 (intermediate needs), the supervision plan must require the certified family to provide a structured environment, additional support, direction, observation, and guidance necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(C) If the child or young adult qualifies for Level 3 (advanced needs), the supervision plan must require the certified family to provide a highly structured environment, additional support, direction, observation, and guidance necessary to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(2) The supervision plan must include:

(a) The supervision actions or activities that are to be provided by the certified family and other individuals to meet the child or young adult's identified needs. Examples of appropriate supervision actions or activities may include, but are not limited to: proactive use of space, use of routine, structure of the environment, positive reinforcement, and de-escalation techniques;

(b) The actions and assistance the Department will provide to support the certified family in addressing the supervision needs of the child or young adult and to maintain the child or young adult in the home;

(c) The actions the child or young adult will take to support the supervision plan;

(d) The persons responsible for monitoring the child or young adult's supervision needs and the supervision actions and activities;

(e) How the persons responsible for monitoring the child or young adult's supervision needs and the supervision actions and activities are to communicate with each other; and

(f) A requirement that the supervision plan be reviewed during the first monthly face-to-face contact described in OAR 413-080-0054 after the date the supervision plan is signed by the individuals identified in section (3) of this rule.

(3) The supervision plan must be signed by:

(a) The caseworker;

(b) The certified family;

(c) The child or young adult, if able; and

(d) Any other individuals who are to provide specific actions or activities in the supervision plan.

(4) The supervision plan must be approved by the caseworker's supervisor.

(5) A supervision plan may include physical restraint as a supervision action or activity only if the certified family has completed the physical restraint training requirements described in OAR 413-020-0240.

(6) A supervision plan that authorizes a certified family to use physical restraint must:

(a) Focus on intervention strategies that are designed to modify a child or young adult's behavior without the need for physical restraint;

(b) Explain that a physical restraint is to be used only when the child or young adult's behavior poses an imminent danger to self or others, and when no alternate actions are sufficient to stop a child or young adult's behavior;

(c) Be approved by the Child Welfare program manager; and

(d) Require the certified family:

(A) To document and report the circumstances of each use of physical restraint in writing as soon as reasonably possible after the use of physical restraint on a form approved by the Department, which explains:

(i) The behavior that required the use of physical restraint;

(ii) The specific attempts to stop the child or young adult's behavior without the use of physical restraint;

(iii) The time the physical restraint started; and

(iv) The time the physical restraint ended.

(B) To orally report to the child or young adult's caseworker or the caseworker's supervisor within one business day of the physical restraint; and

(C) To submit the documentation required in paragraph (A) of this subsection to the child or young adult's caseworker within two business days after the use of physical restraint.

(7) The caseworker must provide a copy of the signed supervision plan to the certified family and the certified family's certifier, and file a copy in the Department's information system.

(8) When a child or young adult has a supervision plan and the CANS screening results indicate that the child or young adult no longer has enhanced supervision needs and no longer qualifies for a level of care payment, the caseworker must:

(a) Terminate the supervision plan;

(b) Document in the Department's information system the date the supervision plan terminated and the reason the plan terminated; and

(c) Notify the certified family and the certified family's certifier that the supervision plan terminated and the reason the plan terminated.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2013, f. & cert. ef. 1-15-13

413-020-0245

Responsibilities in Monitoring a Child or Young Adult's Supervision in a Certified Family

(1) During each monthly face-to-face contact described in OAR 413-080-0054, in addition to assessing the safety of the child or young adult, Department staff must determine:

(a) Whether the certified family is meeting the supervision needs of the child or young adult.

(b) Whether the supervision needs of the child or young adult have changed.

(c) If there is a current supervision plan, whether the supervision actions and activities described in the supervision plan are effective in meeting the child or young adult's supervision needs.

(2) If, after assessing the safety of the child or young adult as described in OAR 413-080-0054, the caseworker determines that the child or young adult currently is safe in the home but his or her supervision needs are not being met, the caseworker must:

(a) Consult with the certified family's certifier or the certifier's supervisor to determine if available resources or training are able to provide the additional support the certified family may need to meet the child or young adult's supervision needs;

(b) If there is a current supervision plan for the child or young adult, determine whether the supervision plan should be revised, and if so, meet with the certified family to revise the plan; and

(c) Determine whether there has been an observed, ongoing change in a child or young adult's behavior or functioning such that the observed changes must be documented and submitted with a CANS screening under referral OAR 413-020-0230(2).

(3) The caseworker documents the monitoring activities described in this rule in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 9-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 29-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0000

Purpose

The purpose of these rules (OAR 413-030-0000 to 413-030-0030) is to describe the responsibilities of the Department in providing family support services, including:

(1) Eligibility criteria;

(2) Determination of service needs;

(3) Development of the family support services case plan;

(4) Development of Service Agreements;

(5) Caseworker contact and monitoring requirements; and

(6) Timelines for reviewing progress.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

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413-030-0003

Definitions

The following definitions apply to OAR 413-030-0000 to 413-030-0030:

- (1) "Child" means a person under 18 years of age.
- (2) "Department" means the Department of Human Services, Child Welfare.
- (3) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge and when the expert is evaluating a parent or guardian, whether the individual's functioning impacts his or her protective capacity.
- (4) "Family support services case plan" means a goal-oriented, time-limited, individualized plan for a child and the child's family or a former foster child. The Department and the family or former foster child jointly develop a "family support services case plan" that addresses the service goals and the identified needs of the child and the child's family or the former foster child.
- (5) "Former foster child" means a person under 21 years of age who was in substitute care at or after 16 years of age, including substitute care provided by federally recognized tribes, and had been in substitute care for at least 180 cumulative days after 14 years of age.
- (6) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.
- (7) "ILP" means the Independent Living Program services provided by the Department to an eligible foster child or former foster child.
- (8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(9) "Service Agreement" means a written document between the Department and a parent, guardian, or former foster child that identifies one or more of the service goals in a family support services case plan, and the services and activities that are necessary for the parent, guardian, or former foster child to achieve the goal.

(10) "Service goal" means the observable, sustained change in behavior, condition, or circumstance that, when accomplished, achieves the desired effect.

(11) "Short term services" mean actions or activities that are limited in duration to a maximum of 180 days.

(12) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(13) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(14) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0006

Eligibility For Family Support Services

(1) A parent, guardian, or former foster child may be eligible for family support services if the requirements of one of the following subsections are met:

(a) A parent or guardian requests out-of-home placement of a child due solely to the emotional, behavioral, or mental disorder or developmental or physical disability of the child, as described in Child Welfare Policy I-B.1.3.1, "Voluntary Placement Agreement", OAR 413-020-0060 to 413-020-0090.

(b) A parent or guardian requests that the Department take temporary custody of a child due to conditions described in Child Welfare Policy I-B.1.3, "Voluntary Custody Agreement", OAR 413-020-0000 to 413-020-0050.

(c) A former foster child eligible to receive Independent Living Program (ILP) services requests those services.

(d) A parent or guardian requests post adoption or post legal guardianship services in connection with an adoption or legal guardianship that occurred through the Department.

(e) A parent or guardian requests assistance with a child in the home, and all of the following paragraphs apply:

(A) Other community resources have been utilized and determined to be ineffective.

(B) Members of the extended family and other responsible adults who are well known to the child have been explored or utilized and determined to be unsafe, unavailable, unwilling, or ineffective as support for the family.

(C) The parent or guardian is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical or mental health condition.

(D) The inability of the parent or guardian to fulfill parental responsibilities is temporary and immediate; and will be alleviated with short term services or short term services will transition the family to community services.

(E) A Child Welfare program manager approves the request for voluntary services.

(2) Service eligibility requires the full and ongoing cooperation of the parent, guardian, or former foster child in:

(a) The determination of need;

(b) The preparation of the family support services case plan; and

(c) The monitoring of the family support services case plan.

(3) If the Department determines that funds for family support services are unavailable, the Department will not provide services for those who are eligible for services under subsection (1)(e) of this rule.

(4) The Department must provide family support services when a court has ordered the Department to provide services to a pre-adjudicated delinquent.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Renumbered from 413-030-0020, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0009

Determination of the Service Needs

(1) Within 30 days of receiving the family support services screening information, the caseworker must determine the service needs by completing the following actions:

(a) Provide the parent, guardian, or former foster child with a Service Application.

(b) Initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the caseworker must:

(A) Complete a form CF 1270, Verification of ICWA Eligibility, to assist in determining ICWA eligibility.

(B) Contact the child's tribe when an Indian child's family is requesting placement of the child per the requirements of OAR 413-070-0160(1), "Placement of Indian Children."

(C) Consult with the local Child Welfare ICWA liaison or a supervisor if the caseworker has questions regarding the involvement of a tribe or the ICWA status of the child.

(c) Within five working days of receipt of the case, confirm there is no current reported safety threat to the child by reviewing the screening information and the child welfare case records for all family members living in the household.

(d) Within ten working days of receipt of the case, make initial face-to-face contact with the parent, guardian, or former foster child to assess current behaviors, conditions, and circumstances in the family and gather specific information on the needs of the parent, guardian, or former foster child.

(e) Within ten working days of receipt of the case, when the child is in the home of the parent or guardian, make initial face-to-face contact with the child to assess the identified needs of the child.

(f) When the child is in substitute care, make monthly face-to-face contact as required under OAR 413-080-0054.

(g) To determine service needs, the caseworker must, at a minimum, observe:

(A) The parent, guardian, or former foster child in the home environment;

(B) The child or former foster child in his or her home or substitute care placement; and

(C) The interactions between family members.

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(h) Obtain from the parent, guardian, or former foster child the names of persons who can provide additional information on the needs of the child, former foster child, or the family, when appropriate.

(i) Ask the parent, guardian, or former foster child to sign an authorization to release information to enable the Department to obtain additional information from physicians, mental health providers, school employees, or other service and treatment providers, when appropriate.

(j) After obtaining the authorization to release information, contact service and treatment providers, when appropriate, to understand the past and current services and treatment of the family and the child or former foster child.

(k) Obtain expert evaluations when appropriate to determine specific service or treatment needs when a condition or behavior requires additional professional information regarding a person's functioning.

(l) Analyze the behaviors, conditions, and circumstances of the family to determine service or treatment needs based upon information gathered from the activities in subsections (a) to (k) of this section.

(m) Document the findings of the activities in subsections (a) to (k) of this section in the Department's electronic information system.

(2) The caseworker must use the information and determination of service and treatment needs to develop an individualized family support services case plan that addresses the specific identified needs:

(a) The caseworker must also refer to Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260 if the child is an Indian child.

(b) When a family is eligible for out-of-home placement due to the child's special needs or placement is ordered through the court, the caseworker must also refer to Child Welfare Policies I-E.3.1, "Placement Matching", OAR 413-070-0600 to 413-070-0645; I-B.1.3.1, "Voluntary Placement Agreement", OAR 413-020-0060 to 413-020-0090; I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260 if the child is an Indian child, and I-B.1, "Monitoring Child Safety", OAR 413-080-0040 to 413-080-0067.

(c) When a former foster child requests ILP services, the caseworker must also refer to Child Welfare Policies I-B.2.3.5, "Youth Transitions", OAR 413-030-0400 to 413-030-0460 and I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260 if the child is an Indian child.

(d) When a family requests that the Department take voluntary custody of the child, the caseworker must also refer to Child Welfare Policies I-E.3.1, "Placement Matching", OAR 413-070-0600 to 413-070-0645; I-B.1.3, "Voluntary Custody Agreement", OAR 413-020-0000 to 413-020-0050; I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260 if the child is an Indian child; and I-B.1, "Monitoring Child Safety", OAR 413-080-0040 to 413-080-0067.

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

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0013

Requirements when Obtaining Medical, Psychological, or Psychiatric Evaluations

(1) The caseworker may secure an expert evaluation of the parent, guardian, or child, when appropriate, to determine treatment or service needs or to assist in assessing child safety when there is a specific condition or behavior that requires additional professional information regarding a person's functioning. Examples include, but are not limited to:

(a) The parent, guardian, or child is displaying unusual or bizarre behaviors that are indicative of emotional or behavioral problems;

(b) Physical illness, physical disability, or mental illness;

(c) Suicidal ideation; or

(d) Homicidal ideation.

(2) The caseworker must obtain the consent of the parent or guardian prior to arranging an expert evaluation of the parent or guardian.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0016

Requirements for the Family Support Services Case Plan

(1) The caseworker must analyze the information gathered during the determination of service needs to develop a family support services case plan. The family support services case plan must include all of the following information:

(a) Family composition, which includes identifying information for:

(A) Each parent or guardian, and the children of the parent or guardian; or

(B) The former foster child who is 18 years or older and his or her child, if the former foster child is parenting a child.

(b) Conditions identified in the screening or intake referral information.

(c) Determination of service need.

(d) Service goals and activities.

(e) Services, related to a child in substitute care, which include:

(A) Placement information;

(B) Routine and specialized medical, dental, and mental health services;

(C) Education services, including the child's school and any special educational needs; and

(D) A plan for visitation and contact with the parents or guardians.

(f) Services the Department will provide, including:

(A) Case oversight and routine contact with the parent or guardian and the child or the former foster child.

(B) When the court has ordered the Department to provide services to a pre-adjudicated delinquent, routine contact with juvenile department staff, parents or guardians, and the child.

(C) When the child is in substitute care, arranging visitation for the parents or guardians and the child.

(D) Timely referral, access to, and use of culturally appropriate services and service providers to address the identified needs, to the extent that resources are available.

(E) Timely preparation of reports to the court or other service providers that may be required.

(g) A statement of the conditions for which the Department will close the family support services case.

(h) Review date. The family support services case plan is reviewed with the parent, guardian, or former foster child every 90 days; however, the caseworker and the parent, guardian, or former foster child may agree on a review date at any time within the 90-day period.

(2) The persons involved with the Department in the development of the family support services case plan must include the former foster child or the parent or guardian; and may include the child, other relatives, substitute caregiver, and other professionals, as appropriate.

(3) The family support services case plan must include the signature of the caseworker and each parent, guardian, or former foster child.

(4) Approval and distribution of the family support services case plan.

(a) The Child Welfare supervisor must approve and sign the family support services case plan.

(b) The caseworker must give a copy of the family support services case plan to the parents, guardians, or former foster child as soon as possible but no later than seven days after the family support services case plan is approved by the supervisor.

(5) Timeline for family support services case plan development.

(a) Except as provided in subsection (b) of this section, the caseworker must develop the family support services case plan within 30 days of the completion of the determination of service needs.

(b) The supervisor may authorize an extension of the time for developing the family support services case plan when information essential to the development of the family support services case plan is not yet available due to circumstances beyond the control of the Department.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0019

Developing Service Agreements

(1) The caseworker may develop a Service Agreement with a parent, guardian, or former foster child with a family support services case plan. The Service Agreement is a time-limited agreement that documents the services and action steps that will occur under the agreement.

(2) When used, the Service Agreement must include all of the following:

(a) One of the service goals in the family support services case plan.

(b) Specific activities or services that will occur to achieve the service goal.

(c) Participants and responsibilities.

(d) Anticipated start and completion dates.

(e) Treatment services for the child or former foster child (if applicable).

(f) Method of measuring progress.

(g) Timeline for review.

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(3) The caseworker must give a copy of the Service Agreement to the parents, guardians, or former foster child no later than seven days after the agreement is signed.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0023

Contact and Monitoring Requirements for a Family Support Services Case Plan

(1) The caseworker must monitor the family support services case plan and terminate Department involvement in a timely manner.

(2) The caseworker is responsible for all of the following actions:

(a) Monthly face-to-face contact and communication with each parent, guardian, or former foster child about progress toward achieving service goals unless an exception to parent or guardian contact as described in OAR 413-080-0054(3)(b) is approved.

(b) Monthly face-to-face contact with the child required under OAR 413-080-0054.

(c) Regular contact with service providers a minimum of once every 90 days, including monitoring the services provided through the family support services case plan.

(d) Monitoring the visitation and contact plan when the child is in substitute care.

(e) Monitoring progress toward achieving service goals.

(f) Ensuring completion of the actions and activities that are the responsibility of the Department.

(g) Timely response to issues that may impact the safety of the child that become known to the caseworker.

(3) The caseworker must document in the Department's electronic information system:

(a) Observations made by the caseworker during each visit, and behaviors, conditions, or circumstances of the family or former foster child that support the continuation of the family support services case plan; and

(b) Reports from each service provider on progress of the family, child, or former foster child in meeting the service goals of the family support services case plan.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0026

Family Support Services Case Plan Review

(1) The family support services case plan must be reviewed a minimum of every 90 days. This review must take place in a face-to-face meeting with the parents, guardians, or former foster child. The meeting may include the child, service providers, attorneys, family members, and the substitute caregiver when the child is in substitute care.

(2) During the case plan review, the caseworker assesses and determines the progress that has been made in achieving the service goals of the case plan.

(3) If a parent, guardian, or former foster child is not available for the review, the reason must be documented in the Department's electronic information system.

(4) Within 30 calendar days of receiving an expert evaluation requested by the Department, the caseworker must consider revising the family support services case plan to include the recommendations of the expert evaluation. If the caseworker does not implement the recommendations of the expert evaluation, the caseworker must document the reasons for not implementing the recommendations.

(5) Subsequent to the face-to-face meeting, the caseworker documents all of the following in the Department's electronic information system:

(a) The services currently provided and the progress of the parents, guardians, or former foster child in achieving service goals.

(b) Observations of improved behaviors, conditions, or circumstances that have measurably changed.

(c) Written or verbal reports from the child, service providers, attorneys, family members, and the substitute caregiver when the child is in substitute care regarding services currently provided and the progress of the parent, guardian, or former foster child in achieving service goals.

(6) The Child Welfare supervisor approves and documents approval of the family support services case plan review.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0030

Closing a Family Support Services Case Plan

The caseworker closes a family support services case plan when:

(1) The parent, guardian, former foster child, or the Department indicates the service objectives have been achieved;

(2) The parent, guardian, or former foster child states that he or she is withdrawing the request for voluntary family support services;

(3) The caseworker has unsuccessfully attempted to contact the parent, guardian, or former foster child, after diligent efforts, as documented in the Department's electronic information system;

(4) The Department, the parent, guardian, or former foster child determines that the family support services case plan is no longer appropriate or effective;

(5) The child, who had been voluntarily placed in substitute care because a parent or guardian had requested voluntary placement of the child, has returned to the home;

(6) The court dismisses a pre-adjudicated delinquent child from Department custody; or

(7) Another community service resource accepts responsibility for providing services to the child, former foster child, or family.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0405

Definitions

The following definitions apply to these rules (OAR 413-030-0400 to 413-030-0460):

(1) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a child that includes building relationships with significant people in the child's life that may continue after substitute care. APPLA is the least preferred permanency plan of the four permanency plan options for a child and is appropriate only in very limited circumstances.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(2) "Case plan" means a written, goal oriented, time limited individualized plan for the child and the child's family, developed by the Department and the parents or guardians, to achieve the child's safety, permanency, and well being.

(3) "Chafee housing" means a payment to assist in covering the costs of room and board made to an eligible individual between 18 and 20 years of age who was discharged from the care and custody of the Department or one of the federally recognized tribes on or after reaching 18 years of age.

(4) "Child" means a person under 18 years of age.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Former foster child" means a person under 21 years of age who was in substitute care at or after 16 years of age, including substitute care provided by federally recognized tribes, and had been in substitute care for at least 180 cumulative days after 14 years of age.

(7) "GED" means a General Educational Development certificate issued pursuant to ORS 326.550.

(8) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(9) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is at least 16 years of age and is in the care and custody of the Department and living independently.

(10) "Legal custody" means a legal relationship between a person, agency, or institution and a child that imposes on the person, agency, or institution the duties and authority of the child's legal custodian.

(11) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(12) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child through the parents, rel-

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atives, or others who may assume legal responsibility for the child during the child's remaining years of dependency and be accessible and supportive to the child when the child is 18 years of age or older.

(13) "Registered domestic partner" means an individual joined in a civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon.

(14) "Sibling" means one of two or more children or young adults related:

- (a) By blood or adoption through a common legal parent;
- (b) Through the marriage of the children's or young adults' legal or biological parents; or
- (c) Through a legal or biological parent who is the registered domestic partner of the child's legal or biological parent.

(15) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody of the Department.

(16) "Young adult" means a person aged 18 through 20 years.

Stat Auth: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 1-2002, f. & cert. ef. 1-22-02; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 16-2009, f. & cert. ef. 11-3-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0410

Eligibility for Youth Transition Services

A child or young adult must meet the following eligibility criteria for youth transition services, however a child or young adult enrolled in an Oregon youth transition service prior to September 1, 2009 is eligible to continue to receive that service until the child or young adult has achieved independence, reaches 21 years of age, or otherwise is no longer eligible for the specific service.

(1) Life skills training.

(a) A child 14 years of age or older who is in substitute care through the Department or one of the nine federally recognized Oregon tribes; or

(b) A former foster child.

(2) Independent living housing subsidy.

(a) The child or young adult must:

(A) Be 16 years of age or older;

(B) Be in the care and custody of the Department;

(C) Be engaged in 40 hours of productive time per week, including a combined total of 25 hours or more of work and education activities;

(D) Have had at least one prior substitute care placement; and

(E) Have the approval of the court to participate in the independent living housing subsidy service.

(b) If a high school diploma has not been achieved, the child or young adult must be working actively to achieve a high school diploma or GED.

(c) The child or young adult must be enrolled concurrently in skill building services.

(d) The child or young adult may not live with any of his or her parents.

(3) Chafee housing.

(a) To be eligible for Chafee housing an individual must meet all of the following requirements:

(A) Be 18 years of age or older but not yet 21 years of age;

(B) Have been discharged from the care and custody of the Department or one of the federally recognized tribes on or after reaching 18 years of age;

(C) Be engaged in 40 hours of productive time per week, including a combined total of 25 hours or more of work and education activities; and

(D) Have at least four hours of paid employment per week.

(b) If a high school diploma has not been achieved, the individual must be working actively to achieve a high school diploma or GED.

(c) The individual must be enrolled in skill building services.

(d) The individual may not live with any of his or her parents.

(e) The individual may not be eligible for Chafee housing when receiving an education and training grant.

(4) Education and training grant.

(a) To be eligible for an education and training grant the child or young adult must:

(A) Be 14 years of age or older and currently in substitute care through the Department or one of the federally recognized tribes; or

(B) Have been dismissed from substitute care after reaching 16 years of age and had 180 or more cumulative days of substitute care.

(b) The child or young adult initially must receive the grant prior to reaching 21 years of age.

(c) If the child or young adult is receiving the grant upon reaching 21 years of age, he or she may continue to receive the grant until he or she reaches 23 years of age.

(d) The child or young adult may not be eligible for an education and training grant when receiving Chafee housing.

(5) Youth Transition Discretionary Funds. A child or young adult must be eligible for and receiving skill building services as a prerequisite to eligibility for discretionary fund resources.

(6) Services that may be utilized in the transition to independent living, as appropriate and available, when the child or young adult meets all other eligibility requirements, include but are not limited to:

(a) Flex funds as described in Child Welfare Policy I-E.5.4, "Flex Fund";

(b) Payments made for special or extraordinary needs as described in Child Welfare Policy I-E.5.4, "Payments for Special and/or Extraordinary Needs" OAR 413-090-0300 to 413-090-0380;

(c) Housekeeping services as described in Child Welfare Policy I-C.1, "Housekeeping Services" OAR 413-050-0000 to 413-050-0050;

(d) Supportive or remedial day care as described in Child Welfare Policy I-C.3.1, "Supportive and Remedial Day Care" OAR 413-050-0200 to 413-050-0280;

(e) Other resources provided through the Department of Human Services such as Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families program benefits, vocational rehabilitation, teen pregnancy prevention, Seniors and People with Disabilities Division Developmental Disability services; and

(f) Other state or community health care programs.

(7) The ILP Coordinator may approve an exception to the eligibility requirements of sections (2), (3), or (4) of this rule when there is a time-limited plan for meeting requirements for eligibility and written documentation why the exception is necessary for the child or young adult to achieve his or her comprehensive transition plan.

Stat Auth: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 1-2002, f. & cert. ef. 1-22-02; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 16-2009, f. & cert. ef. 11-3-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0445

Development of the Comprehensive Transition Plan

(1) Development of the comprehensive transition plan. The Department must initiate the development of the comprehensive transition plan for a:

(a) Child 16 years of age or older and in substitute care or a young adult;

(b) Child 14 years of age or older with an APPLA; or

(c) Former foster child who requests services as described in Child Welfare Policy, I-B.2.3.1, "Family Support Services" OAR 413-030-0000 to 413-030-0030 and would benefit from a comprehensive transition plan.

(2) The Department must ensure the comprehensive transition plan includes:

(a) The completion of a life skills assessment, which includes:

(A) Assessment of the skills and readiness of the child or young adult through interviews with substitute caregiver, parent or guardian, and any other significant adult; and

(B) Completion of a written independent living assessment in the format required by the Department.

(b) The written life skills assessment must include a description of:

(A) The strengths of the child or young adult; and

(B) His or her need for ongoing skill development in the following ability areas:

(i) Interaction with and connection to adults who can assist in the transition to independent living;

(ii) Transition successfully to independent living;

(iii) Engagement in educational and vocational interests;

(iv) Management of his or her physical and mental health; and

(v) Achievement of residential stability.

(3) After completing the activities in section (2) of this rule, the Department must convene a planning meeting to develop the comprehensive transition plan. The Department must:

(a) Ensure the child or young adult plays a central role in planning for and participating in the meeting, when developmentally appropriate; and

(b) Involve the child or young adult in determining who may participate in the planning meeting which may include a parent or guardian, substitute caregiver, other adult important to the child or young adult, service providers, a court appointed special advocate, representative of a tribe, or the attorney for the child or young adult.

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(4) The comprehensive transition plan must identify goals and services in each of the following domains:

- (a) Education;
- (b) Employment;
- (c) Health;
- (d) Housing;
- (e) Life skills;
- (f) Supportive relationships and community connections; and
- (g) Transportation.

(5) The child age 14 or older, young adult, or former foster child must agree to the comprehensive transition plan and the plan is signed by each person who participated in the planning meeting.

(6) A Department supervisor must review and acknowledge the completion of the comprehensive transition plan in the Department's information system.

(7) When a child is placed in another state through the Interstate Compact on the Placement of Children (ICPC), and the Department is unable to complete the comprehensive transition planning process as described in this rule, the Department remains responsible for working with the receiving state and with the child in developing a comprehensive transition plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.343, 419B.476

Hist.: SOSCF 1-2002, f. & cert. ef. 1-22-02; SOSCF 8-2002, f. & cert. ef. 5-6-02; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 16-2009, f. & cert. ef. 11-3-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0449

Review of the Comprehensive Transition Plan

(1) The caseworker must monitor the implementation of the comprehensive transition plan and make reasonable efforts to ensure timely and appropriate services identified in the comprehensive transition plan are made available.

(2) The caseworker is responsible for regular review of the goals and services of the comprehensive transition plan during the following contacts:

(a) Monthly face-to-face contacts as required under OAR 413-080-0054; and

(b) The 90 day case plan review required under Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan" OAR 413-040-0016.

(3) Subsequent to the review of the comprehensive transition plan under subsection (2)(b) of this rule, the caseworker must document in the Department's information system:

- (a) The progress in achieving the comprehensive transition plan goals;
- (b) Any barriers and plans to address the barriers;
- (c) Any changes in the comprehensive transition plan; and
- (d) Notification to service providers of changes to the comprehensive transition plan.

(4) The supervisor must review and approve the documentation of the comprehensive transition plan review as a part of the required case plan review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.343, 419B.476

Hist.: CWP 16-2009, f. & cert. ef. 11-3-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0454

Benchmark Review of the Comprehensive Transition Plan

(1) For a child with a comprehensive transition plan the caseworker must convene a meeting for the purpose of a benchmark review of the comprehensive transition plan six months prior to the child reaching 18 years of age.

(a) The meeting must include the child, unless the child developmentally is unable to participate, and may include a parent or guardian of the child, substitute caregiver, court appointed special advocate, the attorney for the child, service providers, and others the child determines are important to the meeting.

(b) The child plays a central role in the meeting appropriate with his or her developmental ability.

(c) At the meeting, the following are determined:

(A) Agreement on the person with decision-making authority for education services for the child after the child reaches 18 years of age;

(B) Arrangement of sustainable housing, including periods of time the child or young adult may be on break from college or other residential academic or vocational program after the child reaches 18 years of age;

(C) Identification of persons who may provide supportive relationships to the child after the child reaches 18 years of age;

(D) Identification of community resources available for the special or unique needs of the child after the child reaches 18 years of age;

(E) A plan for the employment, continued academic or vocational education, or specialized training of the child after the child reaches 18 years of age;

(F) Agreement on the person with decision-making authority for health and mental health services for the child and identification of health, mental health, and dental providers for the child after the child reaches 18 years of age; and

(G) The plan to meet life skill development needs of the child by the time the child reaches 18 years of age.

(d) The caseworker must document the determinations made under subsection (1)(c) of this rule and the documentation must be signed by the child, when developmentally able to do so, and the caseworker, and may be signed by other persons attending the meeting.

(2) The caseworker's supervisor must review and acknowledge the completion of the benchmark review of the comprehensive transition plan in the Department's information system.

(3) The caseworker must provide a copy of the comprehensive transition plan, including the documentation of the determinations made during the benchmark review of the comprehensive transition plan, to the court at the next scheduled permanency hearing.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.343 & 419B.476

Hist.: CWP 16-2009, f. & cert. ef. 11-3-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-030-0456

Health Care Notifications, Credit Reports, and Data Tracking

(1) The Department must notify any young adult over 17 years, six months of age in the care or custody of the Department of the following information regarding health care treatment:

(a) The importance of designating another individual to make health care treatment decisions on his or her behalf if he or she becomes unable to participate in such decisions and does not have or does not want a relative who is otherwise authorized under state law to make such decision; and

(b) The option to execute a health care power of attorney, health care proxy, or other similar document recognized under state law.

(2) The Department must ensure any child 16 years of age or older and in the care or custody of the Department:

(a) Annually receives a copy of a consumer credit report when one exists; and

(b) Receives some assistance in interpreting the credit report and resolving any inaccuracies in that report.

(3) National Youth in Transition Database (NYTD) Requirements. Beginning October 2010, the Department must collect and track independent living type services and outcome data as follows:

(a) Served population: The Department will report all independent living type services paid for or provided by the Department during the six month reporting periods under the NYTD timelines.

(b) Baseline population: The Department will report outcome data by conducting a survey with every child 17 years of age in the care or custody of the Department; and

(c) Follow up populations: The Department will report outcome data by conducting follow up surveys of the young adults surveyed under subsection (b) of this section at ages 19 and 21.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 418.475, 419B.343, 419B.476

Hist.: CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0005

Definitions

The following definitions apply to OAR 413-040-0000 to 413-040-0032:

(1) "Action agreement" means a written document between the Department and a parent or guardian that identifies one or more of the services or activities provided by the Department or other community partners, in which the parent or guardian will participate to achieve an expected outcome.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family.

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(3) "Case plan" means a written goal oriented, time limited individualized plan for the child and the child's family, developed by the

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Department and the parents or guardians, to achieve the child's safety, permanency, and well-being.

(4) "Child" means a person under 18 years of age.

(5) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the child to the parents or guardians.

(6) "Conditions for return" mean a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Expected outcome" means an observable, sustained change in a parent or guardian's behavior, condition, or circumstance that, when accomplished, will increase a parent or guardian's protective capacity and reduce or eliminate an identified safety threat, and which, when accomplished, will no longer require Child Welfare intervention to manage a child's safety. It is a desired end result and takes effort to achieve.

(9) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge, and when the expert is evaluating a parent or guardian, whether the individual's functioning impacts his or her protective capacity.

(10) "Family member" means any person related to the child by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes the registered domestic partner of a person related to the child, a child 12 years of age or older, and when appropriate, a child younger than 12 years of age. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(11) "Family plan" means a written document developed at the OFDM that includes family recommendations on planning for the child and may include a permanency plan, concurrent permanent plan, placement recommendations, or service recommendations. The family plan also includes expectations of the parents of the child and other family members; services the Department will provide; time lines for implementation of the plan; benefits of compliance with the plan; consequences of noncompliance with the plan; and a schedule of future meetings if appropriate. The family plan described in ORS 417.375(1) is incorporated into the case plan to the extent that it protects the child, builds on family strengths, and is focused on achieving permanency for the child within a reasonable time.

(12) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(13) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(14) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(15) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(16) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting,

bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(17) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(18) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with the Oregon Family Fairness Act.

(19) "Reunification" means placement with a parent or guardian.

(20) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(21) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(22) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 8-1996(Temp) , f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0006

Requirements for the Conditions for Return and the Protective Capacity Assessment

(1) The caseworker must determine conditions for return during the development of the ongoing safety plan.

(2) The conditions for return are documented in the ongoing safety plan and the case plan, and must describe:

(a) The specific behaviors, conditions, or circumstances that must exist before the Department may develop an in-home ongoing safety plan that assures a child's safety, as described in OAR 413-015-0450(2)(b)(A)(i)—(ii); and

(b) The actions, services, and time requirements of all participants in the in-home ongoing safety plan.

(3) The Department uses the protective capacity assessment to engage the child's parents or guardians in a collaborative process to:

(a) Examine and understand the behaviors, conditions, or circumstances that made the child unsafe and the parent or guardian's strengths that build protective capacity;

(b) Examine and understand how the behavioral, cognitive and emotional characteristics of the parents or guardians impact their ability to care for and keep the child safe;

(c) Determine the changes (expected outcomes) in the behaviors, conditions, or circumstances of the parents or guardians that will increase protective capacity and reduce or eliminate the identified safety threat; and

(d) Identify services or activities that are likely to achieve the expected outcomes.

(4) Whenever possible, the Department and the parents or guardians come to agreement on expected outcomes and the actions, services, and activities to achieve the expected outcomes.

(5) The caseworker must:

(a) Complete the following activities within five days of receipt of the case from the CPS worker:

(A) Review the Child Welfare case history, case documentation, and the actions and decisions of the most recent CPS assessment;

(B) Review the ongoing safety plan by contacting all participants in the safety plan to determine whether the ongoing safety plan assures the safety of the child;

(C) Review the conditions for return; and

(D) Document the review of the ongoing safety plan and conditions for return in the Department's information system.

(b) Complete the following activities:

(A) Conduct reasonable inquiries for the purpose of identifying individuals who may contribute to the caseworker's understanding of the protective capacity of the parents or guardians and the safety of the child. Such individuals may include parents or guardians, grandparents, extended family, an Indian child's tribe, and any other family members, persons with significant attachments to the child, other professionals, substitute caregivers, neighbors, and friends of the family. Reasonable inquiries mean, as defined in ORS 417.371(4)(b), efforts that include reviewing the case file for relevant information, contacting the parents or guardians, and contacting additional sources of information for the purpose of ascertaining the whereabouts of family members, if necessary.

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(B) Gather information from these individuals through individual interviews or meetings for the purpose of identifying and understanding the needs, concerns, strengths, and limitations associated with the protective capacity of parents or guardians and assessing the impact on the child's safety.

(C) Evaluate the relationship between:

(i) The existing protective capacities of parents or guardians that contribute to child safety;

(ii) The diminished protective capacities of parents or guardians that must change for the parents or guardians to care for and keep the child safe; and

(iii) The parents' or guardians' readiness to change.

(D) Whenever possible, collaboratively identify with the parents or guardians:

(i) Other family members, persons with significant attachments to the child, community members, and members of an Indian child's tribe who will contribute to meeting the conditions for return and actively participate in an ongoing safety plan or enhancing the protective capacity of the parents or guardians; and

(ii) Actions and services that will reduce or eliminate identified safety threats or enhance the protective capacity of the parents or guardians.

(E) Inform the parents or guardians of the Department's actions and decisions regarding identified safety threats, conditions for return, protective capacity, and the ongoing safety plan.

(F) Enter the findings of the protective capacity assessment, the information obtained by conducting the activities required in paragraphs (A) to (D) of this subsection, and the conditions for return in the Department's information system.

(6) The caseworker must include the findings of the protective capacity assessment and the conditions for return in the case plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0008

Requirements for a Family Decision-making Meeting

(1) "OFDM" as used in this rule means the family decision-making meeting as defined in ORS 417.365, and is a family-focused intervention facilitated by professional staff that is designed to build and strengthen the natural care giving system for the child. These meetings may include family group conferences, family unity meetings, family mediation, or other professionally recognized interventions that include extended family and rely upon the family to make decisions about planning for its children. The purpose of the family decision-making meeting is to establish a plan that provides for the safety, attachment, and permanency needs of the child. The role of the OFDM is described in ORS 417.365 to 417.375.

(2) When the child has been placed in substitute care for more than 30 days, the Department must consider scheduling an OFDM. When considered appropriate, the meeting is scheduled, whenever possible, between the 30th and 60th day of the out-of-home care placement.

(3) When a decision has been made by the Department and the family to use the OFDM, the Department will conduct and document reasonable inquiries to promptly locate and notify the parents, grandparents, an Indian child's tribe, and any other family member who has had significant, direct contact with the child in the year prior to the substitute care placement. Other participants in the meeting may include the child, if the child is 12 years of age or older, or it is otherwise appropriate to include the child, other professionals, foster parents, neighbors, and friends of the family as appropriate.

(4) Family members or an Indian child's tribe who are located after reasonable inquiries will be notified by the Department of the OFDM in a timely manner to allow them the opportunity to prepare for and attend the meeting.

(5) Other participants will be jointly identified by the parents, guardians, Indian custodian of the child, and the Department, and the Department will notify identified participants in a timely manner to allow them the opportunity to prepare for and attend the meeting.

(6) To assist the family in developing the family's plan for the child, the Department must provide participants with information regarding the federal timeline for determining permanency for the child and the Oregon Administrative Rules that govern the sufficiency of a safety plan, conditions for return, and reunification.

(7) The located family members may attend the OFDM unless the other participants determine that a family member may threaten or place other participants at risk. The Department may exclude family members it

determines are violent, unpredictable, or abusive or an alleged perpetrator of sexual abuse, domestic violence, or severe physical assault.

(8) Family members who are not invited or allowed to participate may submit written information and recommendations to the caseworker prior to the scheduled meeting concerning the subjects of the OFDM, including concerns regarding the placement of the child, permanency plan, concurrent permanent plan, and services.

(9) During the OFDM, family members will develop a family plan for the child.

(10) Any family member or tribal representative participating in an OFDM must sign a written acknowledgment of the content of the family plan developed at the meeting and of his or her attendance at the meeting.

(11) The Department will send a copy of the family plan developed at the OFDM within 21 days after the date of the meeting to family participants, including those who participated by submitting written information and recommendations.

(12) The Department will incorporate the family plan developed at the OFDM into the Department's case plan to the extent that the family plan protects the child, builds on family strengths, and focuses on achieving permanency for the child within a reasonable time. If the family's plan developed at the meeting cannot be incorporated into the Department's case plan, the reasons shall be documented in the Department's case plan.

(13) The Department is responsible for confirming that any family plan developed at an OFDM is sufficient to ensure the safety or permanency of the child before implementing a family plan developed at an OFDM.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 31-2003, f. & cert. ef. 10-1-03; Renumbered from 413-040-0031, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0009

Requirements for Conditions for Return

This topic is covered in OAR 413-040-0006.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0010

Requirements for the Case Plan

(1) The caseworker must analyze the information gathered during the protective capacity assessment to develop a case plan. The case plan must include all of the following information:

(a) Family composition, which includes the information identifying each child, each young adult, and each parent or guardian.

(b) Safety threats identified in the CPS assessment as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(c) The ongoing safety plan as described in OAR 413-015-0450 and recorded in the Department's information system.

(d) The findings of the protective capacity assessment.

(e) Expected outcomes and actions that each parent or guardian is taking to achieve them.

(f) Services (if applicable) to the child or young adult that include:

(A) The identified needs of and services provided to any child or young adult placed in substitute care, including the results of the CANS screening, the personal care services provided to an eligible child or young adult per Child Welfare Policy I-E.5.1.2, "Personal Care Services" OAR 413-090-0100 to 413-090-0210, and other current assessments or evaluations of the child or young adult, and the reasons the substitute care placement is the least restrictive placement to meet the child or young adult's identified needs;

(B) The child or young adult's health information, which documents the child's routine and specialized medical, dental, and mental health services;

(C) The child or young adult's education services, the school or educational placement history of the child or young adult, high school credits earned for a child over 14 years of age or a young adult, and any special educational needs; and

(D) Services to transition the child or young adult to independent living in all cases when the child is 16 years or older, and if provided to the child who is 14 or 15 years old.

(g) Services the Department will provide including:

(A) Case oversight and routine contact with the parents or guardians and the child or young adult;

(B) Appropriate and timely referrals to services and service providers suitable to address identified safety threats or strengthen parental protective capacity;

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(C) Appropriate and timely referrals to services and service providers suitable to address the needs of the child or young adult as identified through the CANS screening and other current assessments or evaluations of the child or young adult; and

(D) Timely preparation of reports to the court or other service providers.

(h) The date that the progress of the parents or guardians in achieving expected outcomes will be reviewed. The case plan must be reviewed with the parents or guardians every 90 days; however, the caseworker and parents or guardians may agree on a review date at any time within the 90-day period.

(i) When the child or young adult is in substitute care, the case plan must also include:

(A) Current placement information including:

(i) The location of the child or young adult and the substitute caregiver of the child or young adult, except when doing so would jeopardize the safety of the child, young adult, or the substitute caregiver, or the substitute caregiver will not authorize release of the address; and

(ii) Documentation that shows that the child or young adult is receiving safe and appropriate care in the least restrictive environment able to provide safety and well-being for the child or young adult.

(B) The child or young adult's record of visits with his or her parents and siblings.

(C) The permanency plan.

(D) The conditions for return.

(E) The concurrent permanent plan and the progress the Department has made in implementing the concurrent permanent plan.

(2) As applicable, the caseworker must also include in the case plan:

(a) The goals and activities required for an Indian child under the Indian Child Welfare Act (see Child Welfare Policy I-E.2.1, "Placement of Indian Children" OAR 413-010-0100 to 413-010-0260) or for a refugee child under the Refugee Act (see Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380 and see ORS 418.925 to 418.945).

(b) Recommendations of expert evaluations requested by the Department whenever the recommendations may impact parental protective capacities or treatment services for the child or young adult. If the recommendations are not included in the case plan, the rationale must be documented in the Department's information system.

(c) Diligent efforts to place the child or young adult with relatives and with siblings who are also in substitute care, sibling connections, and the Department's efforts to keep siblings together.

(d) Orders of the court.

(3) The persons involved with the Department in the development of the case plan include the parents or guardians, unless their participation threatens or places other participants at risk; and may include the child, young adult, adoptive parents, an Indian custodian when applicable, other relatives, persons with significant attachments to the child or young adult, the substitute caregiver, and other professionals when appropriate.

(4) The case plan must include the signature of the caseworker and each parent or guardian, unless subsections (6)(a) or (6)(b) of this rule apply.

(5) Approval and distribution of the case plan.

(a) The Child Welfare supervisor must approve and sign the case plan.

(b) The caseworker must give a copy of the case plan to the parents or guardians of the child or young adult, and the Indian child's tribe when applicable, as soon as possible but no later than seven working days after the case plan is approved by the supervisor, except when doing so would provide information that places another person at risk.

(6) Exceptions and exemptions to the required case plan.

(a) A court may authorize an exception to the involvement of the parents or guardians when it determines that reasonable efforts to return the child home are not required, as described in Child Welfare Policy I-E.3.6, "Achieving Permanency" OAR 413-070-0515.

(b) When the Department has custody of a child or young adult in substitute care and is unable to obtain the signature of a parent or guardian, the caseworker must prepare and send a letter of expectations and a copy of the case plan to the parent or guardian within seven working days after the supervisor has approved and signed the case plan. A letter of expectations means an individualized written statement for the family of the child or young adult that identifies family behaviors, conditions, or circumstances that resulted in an unsafe child; the expected outcomes; and what the Department expects each parent or guardian will do to achieve safety, permanency, and well-being of the child or young adult in the parental home.

(c) A case plan as described in sections (1) to (5) of this rule is not required if a family, child, or young adult is eligible for Family Support Services as described in Child Welfare Policy I-B.2.3.1, "Family Support Services" OAR 413-030-0000 to 413-030-0030.

(7) Timeline for case plan development. The caseworker must develop the case plan within 60 days of a child's removal from home or within 60 days of the completion of the CPS assessment, in cases where the child remains in the home of a parent or guardian.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; SOSCF 4-2000(Temp), f. & cert. ef. 1-31-00 thru 7-28-00; SOSCF 19-2000, f. & cert. ef. 8-8-00; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0011

Requirements of Action Agreements

(1) The Department develops a time-limited action agreement in conjunction with the case plan. If sufficient resources are available, the action agreement must use culturally appropriate services and service providers whose interventions are focused on the achievement by the parents or guardians of the expected outcomes identified in the case plan.

(2) The caseworker must ensure the action agreement includes all of the following:

(a) A minimum of one of the expected outcomes in the case plan.

(b) The specific activities or services required to achieve the expected outcome.

(c) Participants and the responsibilities of each participant.

(d) Anticipated start and completion dates.

(e) If appropriate, identification of an order of the court that relates to the expected outcome or specified activities or services.

(f) The method of measuring progress.

(g) A timeline for review.

(3) A caseworker may develop sequential action agreements with a parent or guardian, and each action agreement must include the information required in section (2) of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0013

Requirements for Monitoring the Case Plan

(1) The caseworker must:

(a) Make reasonable efforts to:

(A) Reduce the stay of a child or young adult in substitute care;

(B) Reunify the child or young adult with the parents or guardians whenever possible; and

(C) Achieve a permanency plan when reunification is no longer possible.

(b) Monitor the case plan; and

(c) Terminate Department intervention services in a timely manner.

(2) The caseworker is responsible for all of the following actions:

(a) Contacting and communicating with each parent or guardian through monthly face-to-face contact about progress toward achieving the conditions for return and the expected outcomes.

(b) Contacting and communicating with the child or young adult during the monthly face-to-face contact required under OAR 413-080-0054.

(c) Monitoring the services provided through the case plan through contact with each service provider a minimum of once every 90 days.

(d) Monitoring the ongoing safety plan.

(e) Monitoring action agreements.

(f) Monitoring the visitation and contact plan when a child or young adult is in substitute care.

(g) Monitoring the parent or guardian's progress toward meeting the conditions for return when a child or young adult is in substitute care.

(h) Monitoring the parent or guardian's progress toward meeting the expected outcomes of the case plan.

(i) Ensuring completion of the actions and activities that are the responsibility of the Department.

(j) Reviewing the progress the parent or guardian has made in reducing or eliminating identified safety threats and enhancing parental protective capacity during each monthly review of the ongoing safety plan.

(k) Arranging for supervision or other services to address the child or young adult's strengths and needs identified through the most recent CANS

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screening as required by Child Welfare Policy I-B.1.6, "Enhanced Supervision" OAR 413-020-0200 to 413-020-0255.

(l) Responding immediately to issues that may impact the safety of the child or young adult which become known to the caseworker.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0016

Requirements for Review of the Case Plan

(1) The case plan is reviewed a minimum of every 90 days. This review must take place in a face-to-face meeting with the parents or guardians, unless excluded under section (3) of this rule. The meeting may include the child, young adult, service providers, safety plan participants, substitute caregivers, attorneys, a child or young adult's CASA, persons with significant attachments to the child or young adult, and family members.

(2) During the case plan review, the caseworker assesses and determines the progress that has been made in achieving the expected outcomes of the case plan, and, when the child or young adult is in substitute care, the progress toward meeting the conditions of return.

(3) Exceptions to the face-to-face case plan review. If a parent or guardian is not available for the review, the caseworker must document the reason the parent or guardian was unavailable and the efforts that were made to involve the parent or guardian in the review.

(4) During a case plan review, the caseworker must consider input received from the child or young adult, the service providers, safety plan participants, substitute caregivers, attorneys, a child or young adult's CASA, persons with significant attachments to the child or young adult, and family members.

(5) Subsequent to the face-to-face meeting, the caseworker documents all of the following in the Department's information system:

(a) The services provided and the progress of the parents or guardians in achieving expected outcomes or, when a child is in substitute care, meeting the conditions of return.

(b) Observations of improved parent or guardian protective capacity based on specific behaviors, conditions, or circumstances that have measurably changed.

(c) Input received from service providers, substitute caregivers, attorneys, the child or young adult's CASA, persons with significant attachments to the child or young adult, and family members.

(d) The reduction or elimination of the identified safety threats.

(e) The actions the Department has taken to develop and implement the concurrent permanent plan for the child or young adult in substitute care if a parent or guardian has not demonstrated progress in achieving the conditions for return in a timely manner including:

(A) A review of the child or young adult's education, health, and mental health services to ensure the needs of the child or young adult are being met;

(B) A review of other services provided to address the identified needs of the child or young adult, including those identified through the CANS screening;

(C) An assessment of the need of the child or young adult for a safe and permanent home; and

(D) An assessment of the capacity of the substitute caregiver to meet the identified needs of the child or young adult as described in OAR 413-070-0640.

(6) Within 30 days of receiving an expert evaluation requested by the Department, the caseworker must consider revising the case plan to include recommendations that will improve parent or guardian protective capacity related to the identified safety threats. If the recommendations are not included in the case plan, the rationale must be documented in the Department's information system.

(7) The Child Welfare supervisor must review the caseworker's documentation of the case plan review, and document completion of the review in the Department's information system every 90 days. The supervisor must review, approve, and sign the six-month case plan review submitted for required administrative review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98, Renumbered from 413-040-0030; CWP 31-2003, f. & cert. ef. 10-1-03, Renumbered from 413-040-0045; Renumbered from 413-040-0063, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0017

Requirements for Return and Reunification

(1) The caseworker recommends returning the child or young adult to a parent or guardian after the caseworker has reviewed the safety threats identified in the CPS assessment that required an out-of-home ongoing safety plan and verified that:

(a) The conditions for return in the case plan have been met;

(b) The identified safety threats can be managed with an ongoing safety plan;

(c) The parents or guardians are willing and able to accept responsibility for the care of the child or young adult with an ongoing safety plan;

(d) The parents or guardians are willing and able to continue participating in case plan services;

(e) Service providers who are currently working with the child, young adult, parents or guardians, and other involved persons including the child or young adult's CASA and attorneys have been informed, in writing, of the plan to return the child or young adult with an in-home ongoing safety plan; and

(f) No safety concerns for the child or young adult are raised in the caseworker's review of the criminal history records and child welfare protective service records of all persons currently residing in a parent or guardian's home.

(2) When the child or young adult is returning to a parent living in a residential treatment facility, an alcohol and drug free housing program, or a residential domestic violence program, the Department does not review the criminal history records and child welfare protective service records of persons living in the state funded facilities and programs.

(3) If the caseworker cannot confirm that identified safety threats can be managed if the child or young adult is returned to a parent or guardian with an in-home ongoing safety plan, the child or young adult must remain in substitute care.

(4) The caseworker's supervisor must review and concur that conditions for return have been met, and that any disagreement with the plan to return the child or young adult has been reviewed and considered in the development of the in-home ongoing safety plan prior to the caseworker recommending to the court that a child or young adult be returned to a parent or guardian.

(5) The in-home ongoing safety plan must specifically document the planned caseworker and safety service provider contacts with the child or young adult and the parent or guardian, when the child or young adult is returned to the parent or guardian.

(6) The caseworker must revise, as necessary, and confirm the sufficiency of an in-home ongoing safety plan that will manage safety threats as they are uniquely occurring within a particular family prior to the child or young adult's physical return.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0024

Requirements for an In-home Ongoing Safety Plan Prior to Return and Next Day Contact

(1) When the caseworker determines the conditions for return have been achieved and identified safety threats can be managed when a child or young adult is returned to a parent or guardian (see OAR 413-040-0017), the caseworker must develop an in-home ongoing safety plan as described in OAR 413-015-0450. The caseworker's supervisor must:

(a) Approve the proposed in-home ongoing safety plan during the five working days prior to the return of a child or young adult to the home of a parent or guardian of the child or young adult; and

(b) Document the approval in the Department's information system.

(2) After a proposed in-home ongoing safety plan returning a child or young adult to the parent or guardian's home is approved by the caseworker's supervisor, the caseworker must complete all of the following activities:

(a) Visit the child or young adult, outside the presence of a parent or guardian, at least once during the five days prior to the return of the child or young adult to the home to confirm the readiness of and prepare the child or young adult for the return home.

(b) Visit the parent or guardian in the home of the parent or guardian, at least once during the five days prior to the return of the child or young adult to the home, to verify:

(A) The behaviors, conditions, and circumstances in the home are safe for the return of the child or young adult;

(B) Confirmation of all persons living in the household;

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(C) The parent or guardian is ready for the return of the child or young adult;

(D) The parent or guardian is willing and able to participate in the ongoing safety plan; and

(E) The parent or guardian is willing and able to continue in case plan services.

(c) If necessary, revise the proposed in-home ongoing safety plan to ensure that it is able to manage safety threats as they are uniquely occurring within the family prior to the child or young adult's physical return.

(d) Confirm the in-home ongoing safety plan with the parent or guardian, and obtain the signature of the parent or guardian.

(e) Document the revised in-home ongoing safety plan in the Department's information system.

(3) After a proposed in-home ongoing safety plan returning a child or young adult to the parent or guardian's residential treatment facility, an alcohol and drug free housing program, or residential domestic violence program is approved by the caseworker's supervisor, the caseworker must complete all of the following activities:

(a) Visit the child or young adult, outside the presence of a parent or guardian, at least once during the five days prior to the return of the child or young adult to the home to confirm the readiness of and prepare the child or young adult for the return.

(b) Contact the parent or guardian at least once during the five days prior to the return of the child or young adult to the home, to verify:

(A) The parent or guardian is ready for the return of the child or young adult;

(B) The parent or guardian is willing and able to participate in the ongoing safety plan;

(C) The parent or guardian is willing and able to continue to participate in case plan services.

(c) Verify that the residential treatment facility, an alcohol and drug free housing program, or residential domestic violence program is a safe environment for the child or young adult.

(d) If necessary, revise the proposed in-home ongoing safety plan to ensure that it is able to manage the safety threats as they are uniquely occurring prior to the child or young adult's physical return.

(e) Confirm the in-home ongoing safety plan with the parent or guardian and obtain the signature of the parent or guardian.

(f) Document the revised ongoing safety plan in the Department's information system.

(4) In the event a court orders the return of a child or young adult to a parent or guardian of the child or young adult before an in-home ongoing safety plan can be developed and approved (in accordance with the criteria in OAR 413-015-0450 and this rule):

(a) The caseworker must complete the activities described in this rule as soon as practicable, but not later than seven working days following the court order; and

(b) If the caseworker disagrees with the order of the court, the caseworker must immediately consult with his or her supervisor.

(5) The caseworker must visit the child or young adult in the residence of the parent or guardian the day following the return home of the child or young adult. The caseworker must:

(a) Monitor the safety of the child or young adult by completing the activities required by OAR 413-080-0055(2);

(b) Follow the requirements of OAR 413-080-0055(4)-(6), as appropriate; and

(c) Document observations and the conditions of the residence in the Department's information system within seven business days of the visit.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0032

Requirements for Closing the In-Home Ongoing Safety Plan and Closing the Case

(1) When a child or young adult is in the home of the parent or guardian and the parent or guardian can sustain the safety of the child or young adult, the caseworker must assess when the in-home ongoing safety plan should close.

(2) When assessing whether the in-home ongoing safety plan can be closed, the caseworker must determine whether:

(a) The parent or guardian has demonstrated capacity to sustain the safety of the child or young adult based upon:

(A) Observations of the child or young adult and the parent or guardian in the home;

(B) Expert evaluations and reports from service providers;

(C) Reports from participants in the in-home ongoing safety plan;

(D) The extent to which the achievement of expected outcomes supports the ability of the parent or guardian to sustain the safety of the child or young adult; and

(E) Consultation with other individuals participating with the parent or guardian to sustain the safety of the child or young adult.

(b) The child or young adult is safe in the home based upon:

(A) The elimination of the identified safety threats or the protective capacity of the parent or guardian is sufficient to manage identified safety threats;

(B) The willingness and ability of the parent or guardian to protect the child or young adult; and

(C) Caseworker confidence in the ability of the parent or guardian to sustain the safety of the child or young adult over time.

(3) The caseworker must document the determination that the in-home ongoing safety plan can be closed and the facts supporting the ability of the parent or guardian to provide safety for the child or young adult and to sustain the safety of the child or young adult.

(4) The caseworker's supervisor must review the caseworker's documentation to ensure the criteria in section (2) of this rule are met, and concur that the in-home ongoing safety plan can be closed prior to approving the closure of the safety plan.

(5) The caseworker closes the in-home ongoing safety plan and the case when the court dismisses the commitment of the child or young adult to the Department or the court's wardship over the child terminates.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0210

Definitions for ICPC Rules

Unless the context indicates otherwise, these terms are defined for use in OAR 413-040-0200 to 0330:

(1) "AAICPC" means the Association of Administrators of the Interstate Compact on the Placement of Children, which is the national professional association of state administrators of the Interstate Compact on the Placement of Children, housed at the American Public Human Services Association (APHSA).

(2) "Compact administrator" means the person for each party to the Compact responsible for carrying out the provisions of the Compact. In Oregon, it is the Assistant Director, Children, Adults and Families, Department of Human Services.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "Deputy compact administrator" means the person appointed by a compact administrator as the coordinator to assure compliance with the law.

(5) "ICPC approved family" means a family approved by the ICPC deputy compact administrator or designee after reviewing a home study.

(6) "Placement" means the arrangement for the care of a child in a foster home, relative foster home, non-paid relative home, or a child-caring agency or institution. It does not include the arrangement for care in an institute caring for the mentally ill, an institution primarily educational in character, or a hospital or other medical facility.

(7) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by a public authority or a private person or agency, whether for placement with a state or local public authority or with a private agency or person.

(8) "Sending agency" means a party state or an officer or employee thereof; a subdivision of a party state or an officer or employee thereof; a court of a party state; or a person, corporation, association, charitable agency, or other entity that sends, brings, or causes to be sent or brought a child to another party state.

(9) "Sending state" means the state from which a proposed placement is made.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0215

Required Forms

(1) Several Department forms are referred to by form number in these rules. The forms are available at the Department's web site except as noted. When use of a form is required by these rules, the current version of the form must be used.

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- (2) To be effective, a form required by these rules must be complete.
 - (3) The following forms are required to be used by these rules:
 - (a) Form CF 93, "ICPC Foster Care Statement"
 - (b) Form CF 100A, "Interstate Compact Placement Request"
 - (c) Form CF 100B, "Interstate Compact on the Placement of Children Report on Child's Placement Status"
 - (d) Form CF 246, "Genetic and Medical History of Child and Biological Family"
 - (e) Form CF 246A, "Non-State Department of Human Services Adoptions"
 - (f) Form CF 246B, "ICPC Interstate Compact Placement of Children Genetic and Medical History of Child's Biological Family"
 - (g) Form CF 307 (available from Department's FACIS system)
 - (h) Form CF 1044, "Interstate Compact Financial/Medical Plan If Child is Placed Out-of-State"
 - (i) Form CF 1297, "Department of Human Services Travel Expense Claim"
 - (j) Form CF 6723 Child Specific Case Plan
 - (k) Form CF 6788 Child Welfare Case Plan Expense Claim."
- [ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 417.200 - 260
Hist.: CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0240

Financial and Medical Responsibility of Sending Agency

- (1) The sending agency is responsible for the support and maintenance of the child during the period of the placement.
- (2) The sending agency is responsible for arranging for medical coverage for the child before the child is placed with an ICPC approved family.
- (3) When, subsequent to ICPC approval, the Department places a child out of state with a foster parent or relative caregiver, foster care payment is determined in accordance with Child Welfare Policy I-E.5.1, "Foster Care Payments for a Child or Young Adult Living with a Certified Family or Living Independently", OAR 413-090-0000 to 413-090-0050.
Stat. Auth.: ORS 409.050, 418.005, & 418.647
Stats. Implemented: ORS 409.010, 417.200-417.260, 418.005 & 418.647
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 3-2010(Temp), f. & cert. ef. 3-15-10 thru 9-10-10; CWP 18-2010, f. & cert. ef. 9-2-10; CWP 20-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; CWP 1-2011, f. & cert. ef. 1-4-11; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0270

Preparing Referral to Send a Child Out of Oregon

- (1) A sending agency making an out-of-state placement of a child must comply with the ICPC and these rules (OAR 413-040-0200 to 413-040-0330).
- (2) A sending agency, other than the Department, that refers a child for an out-of-state placement in a child-caring agency or institution, must submit the following to the Oregon ICPC office:
 - (a) Prior to the referral:
 - (A) A complete, signed form CF 100A; and
 - (B) An acceptance letter from the facility, child-caring agency, or institution.
 - (b) After the placement is made, a form CF 100B.
- (3) When the Department refers a child for placement outside the State of Oregon, the following requirements must be met:
 - (a) Three copies of the following must be submitted by the Department's field office to the Oregon ICPC office:
 - (A) A complete, signed form CF 100A;
 - (B) A cover letter outlining the Department's request;
 - (C) Form CF 1044;
 - (D) The court order or commitment order establishing jurisdiction over the child;
 - (E) The social summary on the child (forms CF 307 and CF 6713), the most recent court report, and, if available, a psychological evaluation of the child and an evaluation identifying the child's current level of functioning and special needs;
 - (b) In addition to the requirements of subsection (a) of this section:
 - (A) If the case involves a request for an adoption home study, the Department's field office must submit to the Oregon ICPC office any available, current home study information that would assist with approval of the placement and the following:
 - (i) A termination-of-parental-rights order; or
 - (ii) A signed Release and Surrender and a Certificate of Irrevocability.
 - (B) Before a child in the Department's custody can be placed in an out-of-state residential treatment facility, a manager in the Department's

Well Being Program authorizes the placement contract before the ICPC is initiated.

(C) If the Department is considering an out-of-state placement with a relative, the relative's home must meet the receiving state's certification criteria. If the receiving state does not require that relatives be licensed or certified, the Oregon ICPC office sends an ICPC Foster Care Statement (form CF 93) to the receiving state for completion.

(4) When an intact Department foster or adoptive family is moving to another state, the Oregon ICPC office will follow regulations adopted by the AAICPC and assist the Department's field office staff in complying with those regulations.

(5) The Oregon ICPC office reviews all referrals for compliance with the ICPC, the Department's administrative rules, and AAICPC regulations and guidelines; signs as the Oregon deputy compact administrator or designee; and forwards the material to the receiving state compact office in duplicate.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 417.200 - 417.260
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 1-2013, f. & cert. ef. 1-15-13

413-040-0290

Requests for Placement in Oregon

(1) A request for a home study and placement of a child in Oregon must be sent to the Oregon ICPC office for review. The Oregon ICPC office will forward the request to the appropriate Department's field office, tribe, court, private agency, or residential treatment center. The Department may contract with private agencies for certain relative adoptive home studies. If an out-of-state court asks a field office to complete a custody study, the field office will send the request to the Oregon ICPC office for review before taking action on the request.

(2) The Department's local branch office, or other agency where appropriate, will conduct a home study or certification study after receiving the request from the Oregon ICPC office. In addition to the suitability of the home, factors such as need for financial assistance, special education, and availability of medical or psychological services are considered. Each home study includes a review of Child Protective Services records, LEDS checks, and fingerprint checks. For a placement regulated by the ICPC, the home study is valid for two years from the date on the study. However, the Oregon ICPC office may request additional information on any home study it finds to be incomplete, inaccurate, or not current.

(3) A relative caregiver or foster-family must meet the requirements of OAR 413 200 0301 to 413-200-0396, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources" and a potential adoptive family must additionally meet the requirements of OAR 413-120-0190 to 413-120-0246, "Adoption Applications, Adoption Home Studies, and Standards for Adoption."

(4) After the study is completed, the local branch office or agency must provide it to the Oregon ICPC office and must not provide the study to the party or agency that requested it. If a criminal history exception was required, a copy of the completed criminal history exception must be forwarded to the Oregon ICPC office with the completed study. The study must include a recommendation regarding placement.

(5) The Oregon ICPC Deputy Administrator or designee will review the study and will either approve or not approve the placement based on information contained in the report and case record. The Oregon Deputy Compact Administrator or designee follows AAICPC regulations, opinions, positions and guidelines when making the determination.

(6) Two copies of the study, along with two copies of the interstate application (form CF 100A), are sent by the Oregon ICPC office to the sending state's Interstate Compact Office. One signed copy of the approved form CF 100A is sent to the Oregon field office.

(7) The Oregon ICPC office is notified of the child's placement into Oregon by the sending state by receipt of the form CF 100B. A copy of this form is sent to the supervising agency to inform it of the placement and to start the supervision.

(8) Following placement of the child, supervision by the Oregon local branch office includes a monthly contact with the child as described in OAR 413-080-0055.

(9) The supervising agency must submit progress reports (three copies) to the Oregon ICPC office as requested by the sending state on the form CF 100A.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 417.200 - 417.260
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 1-2013, f. & cert. ef. 1-15-13

ADMINISTRATIVE RULES

413-040-0300

Requests That By-pass the Oregon ICPC Office

A request for a home study received by the field office directly from another sending agency, including a state, tribe, agency or court, must be sent to the Oregon ICPC office for review and handling. The local branch office will take no action on the request unless approval is given by the Oregon Deputy Compact Administrator or designee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0524

Definitions

The following definitions apply to these rules, OAR 413-070-0520 to 413-070-0565:

(1) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a child or young adult that includes building relationships with significant people in the child's life that may continue after substitute care. APPLA is the least preferred permanency plan of the four permanency plan options for a child or young adult and is appropriate only in very limited circumstances.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(2) "Caregiver relationship" means a relationship between a person and a child or young adult that meets the requirements of all of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age. A caregiver relationship does not include a relationship between a child or young adult and a person who is an unrelated foster parent of the child or young adult unless the relationship continued for a period of at least 12 consecutive months.

(b) The person had physical custody of the child or young adult or resided in the same household as the child and provided the child or young adult on a daily basis with the love, nurturing, and other necessities required to meet the psychological and physical needs of the child or young adult.

(c) The child or young adult depended on the relationship to meet the needs of the child or young adult.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(6) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is at least 16 years of age and is in the care and custody of the Department and living independently.

(7) "Indian child" means any unmarried person who is under age 18 and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(9) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(10) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people

who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(11) "Permanent foster care" means the out of home placement of a child in which there is a long-term foster care agreement between each substitute caregiver and the Department approved by the juvenile court under which the substitute caregiver commits to raise a child in substitute care until the age of majority and be accessible to and supportive of the child into adulthood, until the court determines that APPLA — permanent foster care is no longer the appropriate permanency plan for the child.

(12) "Relative caregiver" means a person who operates a Department approved home providing care for a related child or young adult placed into the home by the Department.

(13) "Substitute care" means the out-of-home placement of a child who is in the legal or physical custody and care of the Department.

(14) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(15) "Young adult" means a person 18 through 20 years.

Stat. Auth.: ORS 418.005, 418.925, 419A.004(17)

Stats Implemented: ORS 418.005, 418.925, 419A.004(17))

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 28-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0536

Consideration of APPLA as a Permanency Plan

(1) The Department may consider APPLA as a permanency plan for a child or young adult only if the Department has determined that there is a compelling reason that it is not in the best interests of the child to implement one of the following preferred permanency plans, listed in order of preference:

(a) Placement with a parent;

(b) Placement in an adoptive home which includes permanent placement with a fit and willing relative through the adoption; or

(c) Placement with a guardian which includes permanent placement with a fit and willing relative as a guardian.

(2) Prior to consideration of a foster parent as the APPLA resource, the caseworker and the caseworker's supervisor have complied with the requirements of both of the following subsections:

(a) Reviewed the Department's diligent efforts to identify, contact, and place a child or young adult with relatives and to place siblings together as required under Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087.

(b) Confirmed there are no current Department actions to identify or assess a child's or young adult's relative who has either expressed an interest in and needs to be or currently is being assessed as a permanency resource.

(3) The Department must base consideration of each permanency plan on the individual safety, permanency, and well-being needs of a child or young adult. A child's age or disability is never a disqualifier for a more preferred permanency plan.

Stat. Auth.: ORS 109.328, 418.005

Stats Implemented: ORS 109.328, 418.005

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 28-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0551

Contents of an APPLA Case Plan

(1) When requesting the change to a permanency plan of APPLA to the court, the caseworker must document how the Department plans to address each subsection of this section in the child or young adult's case plan. The case plan must include the following information:

(a) Family composition, which includes the identifying information of each parent (unless parental rights have been terminated), guardian, and sibling.

(b) Except when parental rights have been terminated, safety threats identified in a CPS assessment under Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485.

(c) Except when parental rights have been terminated, the ongoing safety plan as described in Child Welfare Policy I-AB.4, "CPS Assessment" OAR 413-015-0400 to 413-015-0485 and recorded in the Department's information system.

(d) A description of how the Department determined the APPLA is the most appropriate permanency plan for the child or young adult, and each compelling reason why the more preferred permanency plan options were not selected for the child or young adult.

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(e) A description of how the child or young adult's attachments and relationships with each parent, sibling, other family member, advocate, substitute caregiver, and other person who provides continuity, belonging, stability, support, nurturing, and caring relationships and cultural connections for the child may be developed while the child is in substitute care and maintained when the child reaches the age of majority or the juvenile court relieves the Department of legal custody of the child or young adult. When appropriate, the description may include the following:

(A) A description of how each parent and sibling of the child or young adult may participate actively in the life of the child or young adult.

(B) For each existing relationship the child or young adult has with a permanent adult caregiver or adult parental figure who is capable of sustaining a significant relationship with the child or young adult, a description of how the relationship may be maintained.

(C) A description of how relationships with relatives and other persons involved in the child or young adult's life may be developed and maintained.

(D) Current placement information including the location of the child or young adult when the substitute caregiver authorizes release of the address, except when doing so would jeopardize the safety of the child.

(E) The child or young adult's record of visits with his or her parents or siblings.

(f) When applicable, a description of the plan to transition a developmentally delayed child to an appropriate program for adults who are developmentally delayed.

(g) The comprehensive transition plan required by Child Welfare Policy I-B.2.3.5, "Youth Transitions", OAR 413-030-0400 to 413-030-0460 for any child 14 years of age or older and services that prepare the child or young adult to transition to adulthood.

(h) A description of the reasonable efforts made by the Department to put the services and structures described in this rule in place to meet the needs of the child or young adult and to enhance the stability of the child's living arrangement when the child or young adult is not living with a specified adult.

(i) A description of the services the Department must provide to ensure the emotional, medical, educational, cultural, and physical needs of the child or young adult are being met, including:

(A) The child or young adult's health information, which documents the child or young adult's specialized medical, dental, and mental health services; and

(B) The child or young adult's education services, including the school or educational placement history of the child or young adult, high school credits earned for a child over 14 years of age or a young adult, and any special educational needs.

(j) The services required to prepare the child or young adult to live in the least restrictive setting possible at the most appropriate time.

(k) The services that may make it possible to achieve a more preferred permanency plan listed in OAR 413-070-0536(1) for the child or young adult.

(l) The services the Department may continue to make available to the child or young adult's parents, upon request, that continue to be in the best interests of the child or young adult.

(2) Except when parental rights have been terminated or the Department is unable to obtain the signature of the parent or guardian, the case plan must include the signature of the caseworker, the supervisor, and each parent or guardian as described in Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan", OAR 413-040-0000 to 413-040-0032.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005, 419A.004

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; Renumbered from 413-070-0548, CWP 28-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0552

Ongoing Department Responsibilities When APPLA is the Child's or Young Adult's Permanency Plan

(1) When APPLA is the court approved permanency plan for a child or young adult in the Department's legal custody, the child or young adult's caseworker must:

(a) Discuss the child or young adult's needs with the substitute caregiver and the child or young adult during face to face and other contacts, and routinely discuss needs, benefits, barriers, and solutions towards achieving a more preferred permanency option;

(b) Have contact with the child or young adult, with the substitute caregiver, and monitor child or young adult safety as described in Child

Welfare Policy I-B.1, "Monthly Contact and Monitoring Child and Young Adult Safety", OAR 413-080-0040 to 413-080-0067;

(c) Provide timely assessment and services for identified needs of the child or young adult, the child or young adult's substitute caregiver, or the child or young adult's parents;

(d) As soon as possible after the child reaches 14 years of age initiate comprehensive transition planning as described in Child Welfare Policy I-B.2.3.5, "Youth Transitions", OAR 413-030-0400 to 413-030-0460;

(e) Ensure an annual review of Department efforts to identify and contact a child or young adult's relatives and efforts to place with or develop and maintain a child or young adult's connection and support with relatives is completed;

(f) Monitor the case plan and complete the required case plan reviews; and

(g) Submit to the court and to the citizen review board the case plan updates required in Child Welfare Policy I-I.2, "Narrative Recording", and, when the APPLA plan is APPLA — permanent foster care, submit a copy of the permanent foster care agreement.

(2) In addition to the requirements of section (1) of this rule, when the child or young adult has an approved APPLA — permanent foster care plan:

(a) The Department must continue to assess requirements for certification of a foster home pursuant to Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0270 to 413-200-0296; and

(b) The substitute caregiver must:

(A) Maintain a current Certificate of Approval and follow the requirements of the Department pursuant to Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0301 to 413-200-0396;

(B) Follow the requirements of the Department regarding a child or young adult's education, medical care, mental health care, and other services requested by the Department to meet the needs of the child or young adult;

(C) Maintain residence in the state of Oregon unless the ICPC referral has been submitted to the receiving state and approval to move has been obtained from the Department and the court prior to the move outside of Oregon; and

(D) Maintain residence in the ICPC approved state if the substitute caregiver lives in another state.

Stat. Auth.: ORS 418.005 & 419A.004(17)

Stats Implemented: ORS 418.005 & 419A.004(17)

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 28-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0556

APPLA Permanency Plan Reviews

(1) The caseworker must review the APPLA case plan at least every six months and the review must occur prior to a review by the court or citizen review board as required by ORS 419B.470 and 419A.106(1) respectively.

(a) The review must take place in a face-to-face meeting with the child or young adult, and may include members of the team of the child or young adult.

(A) When appropriate, the meeting may include a parent or guardian, unless the parent or guardian is not available for the review. When a parent or guardian is unavailable, the caseworker must document the reason the parent or guardian was unavailable and the efforts made to involve the parent or guardian.

(B) During the meeting the caseworker must consider input received from the child or young adult, other participants in the meeting, and other information received from service providers, substitute caregivers, a child or young adult's attorney, a child or young adult's court appointed special advocate, the tribe if the child is an ICWA child, persons with significant attachments to the child or young adult, and a child or young adult's relatives.

(b) After the meeting described in subsection (a) of this section, the caseworker must document in the case record:

(A) Whether the current placement continues to be the least restrictive setting available to meet the safety and permanency needs of the child or young adult; or

(B) Whether a more permanent permanency plan, such as reunification, adoption, or guardianship is more appropriate for the child or young adult.

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(2) When an APPLA has been approved by the court as the permanency plan for a child or young adult in the legal custody of the Department, the Department must notify the court and request a review or permanency hearing:

(a) Not less frequently than once every 12 months while the child or young adult remains in substitute care in accordance with ORS 419B.470(2).

(b) Unless good cause is shown, at any time upon the request of the Department, a substitute caregiver directly responsible for the care of the child or young adult, a parent of the child or young adult, an attorney for the child or young adult, a court appointed special advocate, a citizen review board, or a tribal court in accordance with ORS 419B.470(5).

(c) By the citizen review board no less frequently than every six months in accordance with ORS 419A.106(1)(a) unless the court has relieved the citizen review board of its responsibility to review a case in accordance with ORS 419A.106(1)(b).

(d) Within 90 days of a change of substitute care placement.

Stat. Auth.: ORS 418.005, 419A.004(17), 419B.470

Stats Implemented: ORS 418.005, 419A.004(17), 419B.470

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 28-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0565

Termination of APPLA

(1) The APPLA — Permanent Connections and Support must be terminated when:

(a) Court wardship is terminated;

(b) The court relieves the Department of legal custody of the child or young adult; or

(c) The court determines that APPLA — Permanent Connections and Support is no longer the appropriate permanency plan for the child or young adult.

(2) The APPLA — permanent foster care plan and agreement must be terminated when:

(a) The child reaches the age of majority under ORS 419A.004(17);

(b) Court wardship is terminated;

(c) The court determines that APPLA — permanent foster care is no longer the appropriate permanency plan for the child;

(d) One of the more preferred permanency plans described in OAR 413-070-0536(1) is achieved;

(e) The Department and the substitute caregiver mutually consent to termination;

(f) The foster parent or relative caregiver fails to maintain a current Certificate of Approval in accordance to Child Welfare Policies II-B.1, “Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources”, OAR 413-200-0301 to 413-200-0396 and II-B.1.1, “Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources”, OAR 413-200-0270 to 413-200-0296, including when the certificate has been revoked or denied;

(g) The child or young adult is removed from the substitute caregiver by the Department; or

(h) The child or young adult requests, and a Child Welfare Program Manager approves, termination of the agreement because of serious or extraordinary circumstances.

(3) The Department must provide written notification to the court of any change in the placement of the child or young adult.

(4) If a child or young adult is removed from court approved APPLA — permanent foster care, the caseworker must request a permanency hearing within 90 days after the date of the change in placement to review the permanency plan for the child or young adult under ORS 419B.470(3).

Stat. Auth.: ORS 418.005, 419A.004(17), 419B.470

Stats. Implemented: ORS 419A.004(17) & 419B.470

Hist.: CWP 17-2009, f. & cert. ef. 11-3-09; CWP 28-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0620

Definitions

The following definitions apply to OAR 413-070-0600 to 413-070-0645:

(1) “Adoptive resource” means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) “CANS screening” means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult’s needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(3) “Caregiver relationship” means a relationship between a person and a child or young adult that meets the requirements of all of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child’s life if the child is less than six months of age. A caregiver relationship does not include a relationship between a child or young adult and a person who is an unrelated foster parent of the child or young adult unless the relationship continued for a period of at least twelve consecutive months.

(b) The person had physical custody of the child or young adult or resided in the same household as the child and provided the child or young adult on a daily basis with the love, nurturing and other necessities required to meet the psychological and physical needs of the child or young adult.

(c) The child or young adult depended on the relationship to meet the needs of the child or young adult.

(4) “Child” means a person under 18 years of age.

(5) “Department” means the Department of Human Services, Child Welfare.

(6) “Foster parent” means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) “Indian child” means any unmarried person who is under age 18 and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) “Parent” means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. “Parent” also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(9) “Provider” means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(10) “Refugee child” means, as defined under ORS 418.925, a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person’s country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, “persecution” means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. “Persecution” does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, “fear of persecution” means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person’s country.

(11) “Relative” means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

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(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult; or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) The Department has approved the foster parent for consideration as a guardian.

(12) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(15) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419A.004 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0625

Identifying and Assessing the Child or Young Adult's Needs when Placement in Substitute Care is Required

(1) To select a substitute care placement that will meet the safety, permanency, and well-being needs of the child or young adult, the caseworker must:

(a) Involve the parent or guardian of the child or young adult and the child or young adult as developmentally appropriate in identifying substitute care placement resources whenever possible.

(b) Assess the ability of each potential substitute caregiver to provide safety for the child or young adult.

(c) Assess the potential substitute care placements in the order of preference under OAR 413-070-0220 and 413-070-0320, when the child or young adult is an Indian child or refugee child.

(d) Except as provided in subsection (c) of this section, assess the potential substitute care placements in the following order of preference:

(A) A relative of the child or young adult who can be certified by the Department;

(B) A person who has a caregiver relationship with the child or young adult and can be certified by the Department;

(C) A foster parent who is certified by the Department, or a provider who is approved through a licensed child-caring agency.

(e) Consider the use of a family meeting to seek the family's placement preferences if more than one person requests to have the child or young adult placed with them; and

(f) Consider whether the potential substitute care placement:

(A) Has the ability to provide safety for the child or young adult and, when there are one or more siblings, each of the siblings;

(B) Is willing to cooperate with any restrictions placed on contact between the child or young adult, and others;

(C) Has the ability to prevent anyone from influencing the child or young adult in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the child or young adult; and

(E) Has the ability to meet the physical, emotional, and educational needs of the child or young adult, including the need of the child or young adult to continue in the same school or educational placement.

(g) Ensure that the substitute care placement is the most home-like, least restrictive available to meet the needs of the child or young adult.

(h) Assure that the race, color, or national origin of the child, young adult, or substitute care placement is not a consideration when assessing a substitute care placement.

(2) When a child or young adult is placed in substitute care and has a sibling who is currently in or also needs substitute care, the caseworker must make diligent efforts to place siblings together unless placing the siblings together is not in the best interests of the child or young adult, or the sibling of the child or young adult.

(3) Within one month of the placement of the child or young adult in a substitute care setting, the caseworker must reconsider whether the substitute caregiver is able to meet the requirements in subsection (1)(f) of this rule and assess whether the following placement considerations are met:

(a) The placement is in close proximity to the parents or guardians of the child or young adult;

(b) The placement is in close proximity to the community of the child or young adult;

(c) If in the best interests of the child and siblings as set forth in section (2) of this rule, the siblings are together in placement; and

(d) The culture and family identity of the child or young adult are supported by the placement.

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(4) After consultation with the supervisor, when the caseworker determines the substitute care placement does not meet one or more of the placement considerations in subsection (1)(f) or section (3) of this rule, the caseworker must:

(a) Determine whether remaining in the substitute care placement is in the best interests of the child or young adult;

(b) Work with Department staff to secure another substitute care placement for the child or young adult when appropriate; and

(c) Document the basis for the determination and subsequent actions in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0630

Monitoring the Ongoing Substitute Care Placement Needs of the Child or Young Adult

(1) The caseworker must monitor the substitute care placement of the child or young adult and determine whether the relative caregiver, foster parent, or provider:

(a) Meets the placement considerations of OAR 413-070-0625; and

(b) Manages the supervision needs of the child or young adult as identified in the CANS screening and other current assessments or evaluations of the child or young adult.

(2) The caseworker must assess the ongoing and permanency needs of the child or young adult:

(a) For physical and emotional safety;

(b) To promote and preserve existing attachments to family;

(c) For continuity and familiarity;

(d) For appropriate educational, developmental, emotional, and physical support;

(e) For stability and permanency; and

(f) For maintaining his or her identity and cultural and religious heritage.

(3) During the required face-to-face contacts with the child or young adult, the caseworker must:

(a) Confirm that the substitute caregiver can maintain the safety and well-being of the child or young adult;

(b) Develop and maintain a good working relationship with the child or young adult;

(c) Observe the child or young adult in an age-appropriate and comfortable setting;

(d) Gather updated information on the physical and mental health as well as educational, behavioral, and developmental progress of the child or young adult;

(e) Share updated information about the case plan and permanency plan for the child or young adult with the substitute caregiver and as permitted by state or federal law; and

(f) Document the date, time, and location of the contact, observations, and updated information in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-070-0640

Placement Assessment and Matching

(1) The caseworker must assess the extent to which the ongoing needs of the child or young adult for safety, permanency, and well-being:

(a) Are currently met in substitute care at each 90 day case plan review; and

(b) Will be met with a potential adoptive resource or potential guardian during the permanency planning process.

(2) Physical and emotional safety. To determine the extent to which the placement, potential adoptive resource, or potential guardian meets the needs for physical and emotional safety of the child or young adult, the caseworker must determine whether the following conditions exist in the home.

(a) The substitute caregiver, potential adoptive resource, or potential guardian has the skill level or willingness to acquire the skills necessary to meet the physical, emotional, and supervisory needs for the child or young adult;

(b) The substitute caregiver, potential adoptive resource, or potential guardian has the skill level to care for this child or young adult given the age, number, and gender of all other children or young adults in the home;

(c) The behavioral characteristics of children or young adults currently in the placement are such that the substitute caregiver, potential adoptive resource, or potential guardian can protect the child or young adult from further victimization and from harming self or others;

(d) The substitute caregiver, potential adoptive resource, or potential guardian has the ability to protect the child or young adult from inappropriate contact with those who may harm the child or young adult; and

(e) The physical layout of the home permits the substitute caregiver, potential adoptive resource, or potential guardian to safely supervise the children or young adults in the home.

(3) Attachment to family. To determine the extent to which the placement, potential adoptive resource, or potential guardian meets the need of the child or young adult to promote and preserve attachment to his or her family, the caseworker must consider whether:

(a) The family of the child or young adult has expressed a preference in placement;

(b) The child or young adult has requested a particular placement;

(c) The relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian demonstrates the ability:

(A) To promote and support the attachment of the child or young adult through visitation and other types of contact with the family of the child or young adult;

(B) To accommodate the placement of the siblings of the child or young adult in the home;

(C) To accommodate regular contact between the child or young adult and his or her siblings when the child or young adult is not placed with his or her siblings and regular contact is in the best interests of the child or young adult; and

(D) To provide mutual care when both the child and parent require placement. As used in this rule, "mutual care" means the out-of-home placement of a parent and child together where one or both are in the legal custody of the Department.

(4) Continuity and familiarity. To determine the extent that the placement, potential adoptive resource, or potential guardian meets the need of the child or young adult for continuity and familiarity, the caseworker must consider:

(a) The extent of the pre-existing relationship of the child or young adult with the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian;

(b) The proximity of the placement to the neighborhood, school, or educational placement of the child or young adult, and parent or guardian; and

(c) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian can provide a permanent home or facilitate transition to a permanent home for the child or young adult.

(5) To determine the extent that a particular placement, potential adoptive resource, or potential guardian meets the need of the child or young adult for appropriate educational, developmental, emotional, and physical support, the caseworker must consider:

(a) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian demonstrates competency in meeting the specific and unique needs of the child or young adult or is acquiring the skills necessary to meet specific and unique needs of the child or young adult;

(b) Whether the ability of the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian to meet the specific and unique needs of the child or young adult is influenced by the number and type of children in the home; and

(c) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian is willing and able to assist with, participate in, and act as an advocate for the child or young adult in his or her education and treatment plan.

(6) Permanent family relationships. To determine the extent that a potential adoptive resource or potential guardian meets the need of the child or young adult for a current and lifelong family relationship, the caseworker must consider:

(a) Whether the potential adoptive resource or potential guardian can permanently integrate the child into the family during childhood.

(b) Whether potential adoptive resource or potential guardian will be accessible and supportive to the child in adulthood.

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(7) Stability. To determine the extent to which the placement, potential adoptive resource, or potential guardian meets the need of the child or young adult for stability, the caseworker must consider:

(a) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian has expressed a desire to provide permanency for a particular child or young adult;

(b) Whether the ability of the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian to provide support and to nurture the child or young adult is influenced by the number of children or young adults in the home; and

(c) Whether the capacity of the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian to recognize the needs of the child or young adult, and build on the strengths of the child or young adult, is sufficient to meet the long-term or lifelong placement needs of the child or young adult.

(8) Identity, development, cultural, religious, and spiritual background and connections. To determine whether the placement, potential adoptive resource, or potential guardian can support the identity, development, and cultural and religious or spiritual background and connections of the child or young adult, the caseworker must consider:

(a) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian has the ability to appreciate, nurture, support, and reinforce the identity, development, cultural, religious and spiritual background and connections of the child or young adult;

(b) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian has the ability to support the development of the child or young adult, and help the child or young adult with problems that the child or young adult may encounter;

(c) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian has the ability to communicate effectively with the child or young adult; and

(d) Whether the child or young adult has adjusted to the placement or is able to adjust to a guardian's home or an adoptive home.

(9) After making the determinations in sections (2) to (8) of this rule, the caseworker must document the extent to which the need of the child or young adult for safety, permanency, and well-being are or can be met:

(a) In the documentation of the 90-day case plan review when the child is in substitute care; or

(b) In the documentation of the selection of a guardian or adoptive resource.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

413-080-0040

Monthly Contact and Monitoring Child and Young Adult Safety

The purpose of these rules, OAR 413-080-0040 to 413-080-0067, is to describe the responsibilities of the Department regarding:

(1) Monthly contact;

(2) Monitoring the safety, permanency, and well-being needs of the child or young adult in child welfare cases; and

(3) Monitoring the ongoing safety plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-080-0050

Definitions

The following definitions apply to OAR 413-080-0040 to 413-080-0067:

(1) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(2) "Child" means a person under 18 years of age.

(3) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(4) "Contact" means any communication between Child Welfare staff and a child, parent or guardian, foster parent or relative caregiver, provider, or other individual involved in a Child Welfare safety plan or case. "Contact" includes, but is not limited to, communication in person, by tele-

phone, by video-conferencing, or in writing. "Contact" may occur, for instance, during a face-to-face visit; a treatment review meeting for a child, young adult, parent, or guardian; a court or Citizen Review Board hearing; or a family meeting.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Face-to-face" means an in-person interaction between individuals.

(7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(8) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(9) "ICPC" means the Interstate Compact for the Placement of Children (see ORS 417.200).

(10) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(11) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(12) "Protective action" means an immediate, same day, short-term plan sufficient to protect a child from a safety threat in order to allow completion of the CPS assessment.

(13) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(14) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(15) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(16) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(17) "Safety services" means the actions, assistance, and supervision provided by safety service providers to manage the identified safety threats to a child.

(18) "Safety threat" means family behavior, conditions, or circumstances that may result in harm to a child.

(19) "Screener" means a Child Welfare employee with training required to provide screening services.

(20) "Social service assistant" means a Child Welfare employee with training required to provide services to assist a caseworker on an open case.

(21) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(22) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-080-0052

Mandatory Reporting of a New Safety Threat on an Open Case

When Department staff identify a new or unscreened safety threat in a case opened under OAR 413-015-0445(2)(e)(D), staff must:

(1) Immediately report the information regarding the safety threat to a screener;

(2) Consult with the caseworker's supervisor to determine whether an immediate protective action is required to assure the safety of the child and, if required, establish a protective action as described in OAR 413-015-0435; and

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(3) Document the behaviors, conditions, or circumstances observed and any immediate protective action taken in the Department's electronic information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-080-0054

Monthly Face-to-Face Contact Requirements

(1) A child or young adult in a child welfare case.

(a) Except as provided in section (2) of this rule, monthly face-to-face contact with a child or young adult in a child welfare case must be made by one of the following Department staff to ensure the safety, permanency, and well-being of the child or young adult:

(A) The primary caseworker;

(B) The caseworker's supervisor; or

(C) When designated by the caseworker's supervisor as described in OAR 413-080-0067:

(i) Another caseworker or supervisor; or

(ii) A social service assistant.

(b) During the face-to-face contact required in section (1) of this rule, Department staff must:

(A) Ensure the safety, permanency and well-being of the child or young adult;

(B) Address issues pertinent to case planning and service delivery during the contact;

(C) Notify a supervisor when he or she determines that the ongoing safety plan or the living environment is insufficient to ensure the safety of the child or young adult to determine if any immediate protective action is necessary to ensure safety; and

(D) Notify a certifier when the well-being needs of a child or young adult are not being met by a certified family, or notify the Well Being Program when the well-being needs of a child or young adult are not being met by a provider.

(c) Department staff making face-to-face contact must document in the Department's electronic information system:

(A) The date, type, and location of each contact with the child, young adult, parent, or guardian; and

(B) The issues addressed during the contact.

(d) A face-to-face contact with a child or young adult made by a social service assistant:

(A) May be reported as the required face-to-face contact no more than one time in any three-month period and no more than a four times within a year; and

(B) May not be reported as the required face-to-face contact for consecutive months.

(e) Face-to-face contact with a child or young adult in substitute care must occur in the substitute care placement every other month.

(2) A parent or guardian on a child welfare case.

(a) When there is an in-home ongoing safety plan, Department staff must have monthly face-to-face contact in the home with the parents or guardians living in the home with the child.

(b) A caseworker must have face-to-face contact with the child and the child's parent or guardians within five working days of learning any of the following:

(A) A parent or guardian has violated a condition of the ongoing safety plan.

(B) A change in the protective capacity, the family circumstances, or the composition of the household of a parent or guardian may negatively impact the ongoing safety plan.

(C) The caseworker is assigned a case that had been assigned to another caseworker (case transfer).

(c) Department staff must have monthly face-to-face contact with the parents or guardians, unless a supervisor approves an exception to contact with the non-custodial parent who has an in-home ongoing safety plan or, when there is an out-of-home ongoing safety plan, the parent or guardian is unavailable or the contact could compromise the caseworker's safety. The supervisor's exception must be documented in the Department's electronic information system and must document:

(A) The reason for the exception; and

(B) The length of time the exception is in effect, which is not longer than 90 days unless a longer period is approved by a Child Welfare Program Manager.

(3) The substitute caregiver.

(a) Department staff described in OAR 413-080-0054(1)(a) must have monthly contact with the certified family or provider.

(b) The face-to-face contact with the child or young adult required in OAR 413-080-0054(1)(e) must include at least one of the certified adults or providers who provide direct care for the child or young adult.

(4) A child or young adult placed through ICPC or placed internationally.

(a) When a child or young adult is placed in another state through the ICPC or placed internationally, the caseworker must request that officials from the receiving state or country have monthly face-to-face contact to monitor child safety, permanency, and well-being.

(b) When the receiving state or country's child welfare office is unwilling or unable to have monthly face-to-face contact with the child or young adult, a plan must be developed to meet this requirement.

(c) The caseworker must document in the case file the type and level of contact the receiving state or country will provide and how the contact is sufficient to confirm the safety and well-being of the child or young adult.

(d) The documentation received from the receiving state or country must be filed in the Department's electronic information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 1-2013, f. & cert. ef. 1-15-13

413-080-0055

Monitoring an In-home Ongoing Safety Plan

(1) To manage an in-home ongoing safety plan and monitor the child's safety when the child is in the home of the parent or guardian, Department staff must contact the following individuals, as described below:

(a) Face-to-face contact with the child, or review the documentation of the contact made by Department staff under OAR 413-080-0054;

(b) Face-to-face contact with the child's parents or guardians in the home of the parents or guardians; and

(c) Contact with the child's non-custodial parent or guardian, except as provided in OAR 413-080-0054(2).

(d) Contact with each participant in the ongoing safety plan.

(2) To monitor and assure the safety of the child, during the contact required under section (1) of this rule, the caseworker must complete each of the following:

(a) Contact each participant in the ongoing safety plan and assess the documented information regarding all contacts made in section (1) of this rule.

(b) Look for and assess any changes in the protective capacity of parents or guardians, including changes in the ability or willingness of a parent or guardian to keep the child safe.

(c) Assess whether the in-home ongoing safety plan keeps the child safe by determining:

(A) Whether the home environment is stable enough for safety service providers to be in the home and be safe; and

(B) Whether the parent or guardian is:

(i) Agreeable to the safety services in the ongoing safety plan;

(ii) Cooperating in safety services provided as prescribed by the ongoing safety plan;

(iii) Cooperating with all participants in the ongoing safety plan;

(iv) Participating in the actions and the time requirements of the ongoing safety plan; and

(v) Meeting the expectations detailed in the ongoing safety plan.

(d) Determine whether:

(A) The child is safe and the condition of the child is satisfactory; and

(B) Safety threats to the child are managed.

(3) Through contact with the participants in the ongoing safety plan, required under section (1) of this rule, the caseworker must determine whether:

(a) Participants in the ongoing safety plan are engaged and active in the safety activities;

(b) The parents or guardians are cooperating with the safety services prescribed by the ongoing safety plan;

(c) The safety service providers are engaged with the parents or guardians;

(d) The safety service providers have fulfilled their established responsibilities in the ongoing safety plan;

(e) The level of intervention assures the ongoing safety of the child; and

(f) The services are the least intrusive available to assure the child's safety.

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(4) Whenever a participant in the ongoing safety plan or a safety service provider reports information indicating that there is a new safety threat, the caseworker must comply with OAR 413-080-0052.

(5) The caseworker must determine whether:

(a) Behaviors, conditions, or circumstances within the family require an increase in the level of safety intervention;

(b) A less intrusive ongoing safety plan can assure the safety of the child; or

(c) The ongoing safety plan is keeping the child safe and provides the appropriate level of safety intervention.

(6) If the caseworker determines the level of intervention of the in-home ongoing safety plan must be revised, the caseworker must:

(a) End the in-home ongoing safety plan when there is no longer a safety threat to the child.

(b) Reduce the level of intervention whenever:

(A) The improved protective capacity of the parent or guardian is sufficient to impact his or her ability to cooperate with the ongoing safety plan to control safety threats as they are occurring within the family; and

(B) A safety threat can be managed with less intrusive actions or services.

(c) Increase the level of intervention whenever:

(A) A parent or guardian is unable or unwilling to cooperate with the ongoing safety plan to control the safety threats to the child as they are occurring within the family with the ongoing safety plan; or

(B) Any identified safety threat cannot be managed with the current ongoing safety plan.

(d) The revised ongoing safety plan must:

(A) Comply with the criteria of OAR 413-015-0450(2)(d)(A)-(H); and

(B) Be approved by the caseworker's supervisor.

(7) Department staff must document in the Department's electronic information system:

(a) The date, type, and location of each contact with the child, parents, or guardians;

(b) The date and type of each contact with each participant in the in-home ongoing safety plan;

(c) Observations and facts relevant to case planning and service delivery;

(d) How the ongoing safety plan continues to manage the safety threats as they are occurring within the family, or any revised ongoing safety plan and the facts supporting that revision; and

(e) Any immediate protective action if required to assure the safety of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-080-0059

Monitoring the Out-of-Home Ongoing Safety Plan

(1) To manage an out-of-home ongoing safety plan, the caseworker must have monthly contact with the following individuals:

(a) Face-to-face contact with the child, or review the documentation of the contact made by Department staff under OAR 413-080-0054(1);

(b) Face-to-face contact with the child's parents or guardians, except as provided in OAR 413-080-0054(2); and

(c) Contact with each safety service provider.

(2) The caseworker must determine whether the child is safe.

(3) The caseworker must determine whether:

(a) Behaviors, conditions, or circumstances within the family require an increase in the level of safety intervention;

(b) Changes in protective capacity indicate conditions for return have been achieved and an in-home ongoing safety plan can assure the safety of the child; and if so, must develop an in-home ongoing safety plan under the criteria set forth in OAR 413-015-0450(2)(b)(A)(i)-(ii); or

(c) The ongoing safety plan is keeping the child or young adult safe and provides the appropriate level of safety intervention.

(4) If the caseworker determines the out-of-home ongoing safety plan must still be in place but level of intervention of the out-of-home ongoing safety plan must be revised, the caseworker must:

(a) Reduce the level of intervention whenever:

(A) The improved protective capacity of the parent or guardian is sufficient to impact his or her ability to control safety threats as they are occurring within the family; and

(B) A safety threat can be managed with less intrusive actions or services.

(b) Increase the level of intervention whenever an identified safety threat cannot be managed with the current ongoing safety plan.

(5) The revised ongoing safety plan must:

(a) Comply with the criteria of OAR 413-015-0450(2)(d)(A)-(H); and

(b) Be approved by the caseworker's supervisor.

(6) Department staff must document in the Department's information system:

(a) How the ongoing safety plan continues to manage the safety threats as they are occurring within the family, or any revised ongoing safety plan and the facts supporting that revision; and

(b) Any immediate protective action if required to assure the safety of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 10-2007(Temp), f. & cert. ef. 5-14-07, cert. ef. 5-15-07 thru 11-9-07; CWP 18-2007, f. & cert. ef. 11-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-080-0067

Contact Requirements and Exceptions; Required Face-to-Face Contact

(1) The Department may make scheduled or unscheduled face-to-face contacts with the child or young adult, parent, guardian, certified family, or provider.

(2) The caseworker's supervisor may approve Department staff as described in OAR 413-080-0054(1) to make the face-to-face contact required by these rules (OAR 413-080-0040 to 413-080-0067) when a caseworker's schedule or special circumstances prevent the caseworker from making the face-to-face contact.

(a) Prior to conducting the required face-to-face contact, Department staff must have information regarding the case plan, the ongoing safety plan, the parents or guardians, and the child or young adult, including any special needs of the child or young adult.

(b) The Department staff person making the face-to-face contact is responsible for monitoring the safety of the child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; Renumbered from 413-080-0060, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 19-2008, f. & cert. ef. 8-1-08; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13

413-120-0860

Placement and Post-placement Supervision

(1) The child's caseworker must offer support and services to the adoptive resource to assist in a successful adoption transition of the child into the home of a family selected to be the adoptive resource.

(2) Post-placement supervision must include all of the following:

(a) Monthly face-to-face contact with the child described in OAR 413-080-0055;

(b) Assessment of the child's safety and well-being under Child Welfare Policy I-B.1, Monitoring Child Safety, OAR 413-080-0067;

(c) Providing services and support to assist the adoptive resource in meeting the requirements described in Child Welfare Policy I-G.1.3, "Adoption Applications, Adoption Home Studies, and Standards for Adoption", OAR 413-120-0246(1)(b).

(d) Providing support to the adoptive resource in the process of the completion and submission of the adoption assistance application, when applicable; and

(e) Documentation from the supervising worker which includes the supervision reports and a recommendation regarding finalization of the adoption.

(3) When the child is placed through an in-state private agency, the Department must provide supervision of the placement and, when applicable, must coordinate support services with the in-state private agency.

(4) When it becomes known to the Department that there are significant changes to the adoptive resource's situation, including changes in the family structure, the Department may require an updated adoption home study prior to making a determination to proceed with finalization of the adoption.

(5) Prior to finalization of the adoption, the Department must ensure that the adoptive resource is made aware of all of the following:

(a) Available post-legal services;

(b) The potential eligibility for federal or state adoption tax credits, or both; and

(c) The ability to seek voluntary supportive services through the Department to stabilize an adoption and promote lifelong permanency for children.

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(6) The standard supervision period for an adoptive placement is a minimum of six consecutive months and can include the time the adoptive resource was the child's substitute caregiver. When the child's caseworker and the adoption worker agree that it is in the child's best interests to proceed with finalization before the standard six month period:

(a) The child's caseworker or adoption worker must request approval from:

- (A) Their supervisor; and
- (B) The Adoption Program Manager or designee.

(b) The child's caseworker must document in the Department's information system when approval is given for a reduced post-placement supervision time.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13

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 36-2012

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 12-29-12

Notice Publication Date: 11-1-2012

Rules Amended: 461-120-0340, 461-145-0080

Subject: OAR 461-120-0340 about the requirement in the TANF program to obtain child support from a non-custodial parent is being amended to expand the exemption from the requirement that a caretaker relative help the Department establish paternity of each needy child and locate and obtain support payments from the noncustodial parent of each needy child. The exemption would be expanded to any caretaker relative in a filing group that is a two-parent family. This amendment makes permanent the temporary rule change effective July 1, 2012.

OAR 461-145-0080 about the treatment of child support and cash medical support to determine eligibility for the Department's public assistance, medical and SNAP programs is being amended to expand the types of two parent families in the TANF program for whom, for on-going eligibility and benefit determination, child support is considered countable unearned income. This amendment counts child support for all two-parent families, reducing the amount of the cash assistance grant. This amendment makes permanent the temporary rule change effective July 1, 2012.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-120-0340

Client Required To Help Department Obtain Support From Noncustodial Parent; TANF

In the TANF program:

(1) To be eligible for program benefits, except as permitted in section (2) of this rule, a *caretaker relative* (see OAR 461-001-0000) must make a *good faith effort* to help the Department:

- (a) Establish paternity of each needy child; and
- (b) Locate and obtain support payments from the noncustodial parent of each needy child.

(2) A *caretaker relative* is excused from the requirements of section (1) of this rule:

- (a) For *good cause* under OAR 461-120-0350;
- (b) If the *caretaker relative* is a participant in the Post-TANF or SFPSS programs; or
- (c) If the *filing group* (see OAR 461-110-0330) is a two-parent family.

(3) A *good faith effort* includes taking such actions as:

(a) Supplying *sufficient information* for the Division of Child Support (DCS) to proceed with appropriate actions to establish paternity of a dependent child, to locate noncustodial parents, or to establish a support order with respect to the child. *Sufficient information* includes, but is not limited to, the time and place of each child's conception (if paternity is not established) and the following information, if known to the *caretaker relative*, regarding any noncustodial parent of a needy child:

- (A) Full legal name and nicknames.
- (B) Social Security Number.
- (C) Current or last known address.
- (D) Current or last known employer, including name and address.
- (E) If a student, current or last known school.
- (F) Criminal record, including where and when incarcerated.
- (G) Date of birth, or age.
- (H) Race.
- (I) Any known group or organizational affiliations.
- (J) Names and addresses of close friends or relatives.
- (K) Any other information the Department or DCS requests to help locate or identify an absent parent of any children in the benefit group.

(b) Supplying documentation or an explanation of the client's efforts to obtain information requested by the Department or DCS (if unable to provide any necessary information listed in subsection (a) of this section).

(c) Keeping appointments with the Department and DCS related to establishing paternity.

(d) Returning telephone calls and responding to correspondence when requested to do so by the Department or DCS.

(4) If a client who has not been excused under section (2) of this rule has the opportunity to make a *good faith effort* to help the Department establish paternity of a needy child or locate or obtain support payments from the noncustodial parent of a needy child (and is unable to show he or she has *good cause* under OAR 461-120-0350), the Department applies penalties for failure to comply with requirements of section (1) of this rule in the following manner until the client meets the requirements of this rule:

(a) For a *benefit group* (see OAR 461-110-0750) not currently receiving TANF, if the failure to comply occurs while an application for TANF is pending the *filing group* (see OAR 461-110-0330) is ineligible.

(b) For a *benefit group* receiving TANF benefits, if a failure to comply occurs, the net monthly TANF benefit, after reductions for the client's failure to comply with requirements of the JOBS program are made, is reduced by:

(A) 25 percent for the first month following the month in which failure to comply is determined.

(B) 50 percent for the second month following the month in which failure to comply is determined.

(C) 75 percent for the third month following the month in which failure to comply is determined.

(D) 100 percent (total ineligibility for the *benefit group*) for the fourth and subsequent months following the month in which failure to comply is determined.

(c) Once a penalized client complies with the requirements and benefits are no longer reduced under this rule, a subsequent penalty is imposed without regard to any prior penalty.

(d) If the TANF payment is affected by the penalty imposed under this rule, eligibility for and the level of SNAP benefits are determined as if the client were receiving cash benefits without reduction due to the penalty.

(5) The penalty provided by this rule ends when the client meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 412.024, 412.049

Stats. Implemented: ORS 411.060, 411.070, 412.024, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 29-2011(Temp), f. & cert. ef. 10-5-11 thru 4-2-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 24-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12; SSP 36-2012, f. 12-28-12, cert. ef. 12-29-12

461-145-0080

Child Support and Cash Medical Support

(1) Child support and cash medical support paid by a non-custodial parent for a *dependent child* (see OAR 461-001-0000) or *minor parent* (see 461-001-0000) in the *financial group* (see 461-110-0530) are considered income of the *dependent child* or *minor parent*, whether the support is paid voluntarily or in accordance with an order to pay child support.

(2) For the purposes of this rule:

(a) "Disregard" means child support, up to \$50 per *dependent child* or *minor parent* per *financial group* per month and not to exceed \$200 per *financial group* per month, that is not counted as income of the client. "Disregard" includes current child support only.

(b) "Pass-through" means child support, up to \$50 per *dependent child* or *minor parent* per *financial group* per month and not to exceed \$200

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per *financial group* per month, that is sent to the client before any remaining amount of current child support is withheld by the State. "Pass-through" includes current child support only.

(3) In the ERDC program, child support is considered *countable* (see OAR 461-001-0000) unearned income if it is received by the *financial group* or is *countable* under 461-145-0280. Otherwise it is excluded.

(4) In the SNAP program, child support and cash medical support are treated as follows:

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) Child support payments received by a *filing group* (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except:

(A) It is considered *countable* unearned income in the calculation of the wage supplement; and

(B) Any *pass-through* pursuant to section (2) of this rule is considered *countable* unearned income.

(c) All other child support, including any *pass-through* pursuant to section (2) of this rule, is considered *countable* unearned income.

(d) Cash medical support is considered *countable* unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.

(e) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are treated in accordance with OAR 461-145-0280.

(5) Except as provided otherwise in section (9) of this rule for the TANF program, in the MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) In determining initial eligibility, except for *disregard* pursuant to section (2) of this rule, child support received by the Oregon Department of Justice, Division of Child Support (DCS) is considered *countable* unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(b) In determining on-going eligibility, except for clients working under a TANF JOBS Plus agreement and except for child support passed through to the client and disregarded pursuant to section (2) of this rule, child support received by the DCS is considered *countable* unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(c) For clients working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining *countable* income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered *countable* unearned income in the calculation of the wage supplement.

(d) All other child support payments:

(A) Paid directly to the *financial group* that are turned over to the Department or to the DCS are considered *countable* unearned income except for any amount of *pass-through* and *disregard* pursuant to section (2) of this rule.

(B) Paid directly to the *financial group* that are not turned over to the Department or to the DCS are considered *countable* unearned income.

(C) Paid to a third party for the benefit of the *financial group* are considered *countable* unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.

(e) Cash medical support is excluded in determining *countable* income.

(6) In the OHP program:

(a) Child support paid directly to the *financial group* or paid to a third party for the benefit of the *financial group* is considered *countable* unearned income. This includes but is not limited to payments made by a non-custodial parent to a third-party for rent, mortgage, utilities, or child care.

(b) Cash medical support is excluded.

(7) In the OSIP, OSIPM, and QMB programs, all child support and cash medical support paid to the *financial group* are considered *countable* unearned income. Child support and cash medical support paid by the *financial group* are not deductible from income.

(8) In the SFPSS program, notwithstanding section (5) of this rule, for on-going eligibility and benefit determination:

(a) Except for *disregard* pursuant to section (2) of this rule, child support is considered *countable* unearned income.

(b) Cash medical support is excluded in determining *countable* income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are considered *countable* unearned income. This includes but is not limited to payments made by a non-custodial parent to a third-party for rent, mortgage, utilities, or child care.

(9) For on-going eligibility and benefit determination for TANF clients in a two-parent household:

(a) Except for *disregard* pursuant to section (2) of this rule, child support is considered *countable* unearned income.

(b) Cash medical support is excluded in determining *countable* income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are considered *countable* unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.

(d) For a *filing group* (see OAR 461-110-0330) with at least one member working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining *countable* income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered *countable* unearned income in the calculation of the wage supplement.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90;

AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-

1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-

1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-

1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f.

& cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef.

10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 14-2005,

f. 9-30-05, cert. ef. 10-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. &

cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 7-2008(Temp),

f. & cert. ef. 3-21-08 thru 9-17-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert.

ef. 10-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f.

& cert. ef. 10-1-09; SSP 29-2011(Temp), f. & cert. ef. 10-5-11 thru 4-2-12; SSP 9-2012, f. 3-

29-12, cert. ef. 4-1-12; SSP 24-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12; SSP

30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 31-2012(Temp), f. 9-28-12, cert. ef. 10-1-12 thru

12-28-12; SSP 36-2012, f. 12-28-12, cert. ef. 12-29-12

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

Adm. Order No.: SSP 37-2012

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Rules Adopted: 461-135-0407

Rules Amended: 461-115-0016, 461-115-0430, 461-130-0330, 461-130-0335, 461-135-0089, 461-145-0260, 461-145-0580, 461-160-0015, 461-160-0055, 461-160-0580, 461-160-0620, 461-165-0060, 461-180-0100

Rules Repealed: 461-115-0016(T), 461-135-0407(T), 461-145-0260(T), 461-145-0580(T), 461-160-0055(T)

Subject: OAR 461-115-0016 about the application process and reservation list for the Employment Related Day Care (ERDC) program is being amended to make permanent the temporary rule changes effective September 1, 2012, adding additional exemptions under which families would not be placed on the reservation list. Under this amendment, new applicants are exempt from the reservation list when the family is eligible for and being placed in a current opening in a contracted slot for the Oregon Program of Quality or the Head Start program. This amendment supports the Oregon Program of Quality initiative to increase the number of ERDC subsidy children who are able to access quality child care. These contracted slots will help Oregon state government prepare for an emerging statewide Tiered Quality Rating and Improvement System (TQRIS) and address Oregon's diverse populations. Oregon State University will be researching how quality and stable child care impact Oregon's low income ERDC subsidy children.

OAR 461-115-0430 about periodic redeterminations of eligibility is being amended to change the redetermination period for clients in the TANF program, depending on their participation in the Job Opportunity and Basic Skills program. The purpose of this amend-

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ment is to treat similarly situated clients comparably and reduce workload on Department staff determining eligibility for the TANF program.

OAR 461-130-0330 about disqualifications in the Pre-Temporary Assistance to Needy Families (Pre-TANF), Refugee Assistance (REF), Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance to Needy Families (TANF) programs is being amended to clarify the rule by explaining effects of a disqualification in the Refugee and TANF programs in which the needs of an adult in the family are removed. Because the needs are removed, a different payment standard level is applied, which can cause the family to be over income for the Refugee or TANF programs.

OAR 461-130-0335 about removing disqualifications and the effect on benefits in the Temporary Assistance to Needy Families (TANF) program is being amended to clarify the rule by indicating that a disqualification ends when TANF or Refugee Assistance (REF) benefits are closed for a reason other than closure at the end of the second level of disqualification.

OAR 461-135-0089 about demonstrating compliance with substance abuse and mental health requirements and restoring cash benefits in the Pre-Temporary Assistance to Needy Families (Pre-TANF), Refugee Assistance (REF), and Temporary Assistance to Needy Families (TANF) programs is being amended to clarify that a disqualification ends when TANF or REF benefits are closed for a reason other than closure at the end of the second level of disqualification.

OAR 461-135-0407 about clients in the Employment Related Day Care (ERDC) program who receive Oregon Program of Quality contracted child care is being adopted to make permanent a temporary rule adopted effective September 1, 2012, establishing policies that apply when the Department contracts with Oregon Program of Quality designated child care providers. These contracts offer full time contracted child care slots for eligible ERDC children age zero through six who meet the contracted slot criteria. Children receiving child care under the contract will have protected eligibility for up to twelve months as long as they continue to meet the requirements outlined in this rule. Families with a child receiving child care under the contract will pay the minimum copayment of \$27. This rule also supports the Oregon Program of Quality initiative to increase the number of ERDC subsidy children who are able to access quality child care. These contracted slots will help Oregon state government prepare for an emerging statewide Tiered Quality Rating and Improvement System (TQRIS) and address Oregon's diverse populations. Oregon State University will be researching how quality and stable child care impact Oregon's low income ERDC subsidy children.

OAR 461-145-0260 about the treatment of Indian (Native American) benefits in the determination of benefits for various self-sufficiency programs is being amended to change its statement of policy for the SNAP program in the treatment of payments made under Public Law 93-134, Public Law 97-458, and Public Law 103-66. The rule had been incorrect under 25 USC 1408 by including an exclusion for income received in excess of \$2,000 per year per individual from interest in certain trust and restricted lands. This amendment states that such income is counted in the SNAP program. This amendment makes permanent a temporary rule change effective August 7, 2012.

OAR 461-145-0580 about the treatment of veterans benefits in the determination of benefits for various self-sufficiency programs is being amended to make permanent a temporary rule change effective July 11, 2012, changing policy for the SNAP program in the treatment of veterans' aid and attendance payments. Aid and attendance payments are made when a veteran requires the aid of another person in order to perform his or her activities of daily living, such as bathing, feeding, dressing, attending to the wants of nature, adjusting prosthetic devices, or protecting himself or herself from the hazards of his or her daily environment, or the veteran is bedridden, blind or in a nursing home. Previously, aid and attendance payments

were counted as unearned income and the client was allowed a medical deduction. Under this amendment, the aid and attendance payment is excluded as long as it is being used for the identified purpose. Any income that is remaining is counted as unearned income.

OAR 461-160-0015 about resource limits in used to determine eligibility for various Department programs is being amended to clarify the resource limit of \$2,500 for clients who are not progressing in an activity of their case plan or serving a current Job Opportunity and Basic Skills (JOBS) program disqualification.

OAR 461-160-0055 about medical costs that are deductible when benefits are calculated and which describes medical costs for clients in the SNAP program who are elderly or have disabilities is being amended to disallow deductions for any costs related to the medical use of marijuana for these SNAP clients, making permanent temporary rule changes effective July 12, 2012.

OAR 461-160-0580 about resource assessments for married OSIPM (Oregon Supplemental Income Program Medical) clients in long-term care is being amended to reflect the federal changes in the amounts used when calculating the resource assessment.

OAR 461-160-0620 about the community spouse income allowance for married OSIPM clients in long-term care is being amended to reflect the federal changes in the cap used when calculating the community spouse income allowance. During 2012, this cap was set at \$2,841.

OAR 461-165-0060 about minimum benefit amounts is being amended so the text more clearly matches federal law and the current practices for issuing SNAP benefits. The amendment clarifies that the minimum SNAP monthly benefit for an eligible one or two person benefit group is eight percent of the Thrifty Food Plan, except when a benefit month is prorated per OAR 461-160-0070.

OAR 461-180-0100 about the effective date for eligibility following closure in some Department programs is being amended to clarify the date for eligibility following closure in the TANF program.

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

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0016

Application Process; Reservation List for ERDC

Notwithstanding any other rule in chapter 461 of the Oregon Administrative Rules, in the ERDC program:

(1) Eligibility is subject to the availability of funds. The Department may implement a Child Care Reservation List whenever the Department determines that sufficient funding is not available to sustain benefits for all of the applicants requesting assistance.

(2) Except as provided in section (3) of this rule, the following applicants are subject to placement on the Child Care Reservation List when the Child Care Reservation List is in effect:

(a) New applicants for ERDC when no member of the ERDC filing group (see OAR 461-110-0350) meets the requirements of one or more of the following paragraphs:

(A) Received a partial or full month of REF, SFPSS, or TANF program cash benefits from the State of Oregon in at least one of the preceding three months; and no member of the ERDC program filing group may be concurrently receiving TANF program benefits except as allowed under OAR 461-165-0030.

(B) Is eligible for and being placed in a current opening in an Oregon Program of Quality contracted slot under OAR 461-135-0407 or Head Start program contracted slot under 461-135-0405.

(b) Individuals who are reapplying for ERDC after a break in ERDC benefits of two consecutive, calendar months or more.

(3) Except as allowed under OAR 461-165-0030, no member of an ERDC program filing group may be concurrently receiving TANF program benefits. When concurrent benefits are not allowed, the Department sends a decision notice (see OAR 461-001-0000) of ineligibility for the ERDC program and the filing group is not placed on the Child Care Reservation List.

(4) When the Child Care Reservation List is in effect, the Department must place all applicants who are subject to the Child Care Reservation List under section (2) of this rule on the Child Care Reservation List for future

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selection. The Department sends these applicants a decision notice of ineligibility for the ERDC program.

(5) Each month, on the basis of an estimate of available funds, an appropriate number of individuals from the Child Care Reservation List are randomly selected and invited to apply for ERDC.

(6) After an individual is selected from the Child Care Reservation List, the individual must contact the Department to establish a date of request no later than 30 days after the date on the selection letter. The individual may request child care benefits from the Department:

(a) Without completing a new application, when the previous application is within 45 days of its date of request (see OAR 461-115-0030); or

(b) By submitting a new application for child care benefits to the Department.

(7) The processing time frame for the ERDC application is the same as that specified in OAR 461-115-0190, except that:

(a) An individual who requests benefits after the 30 day deadline to apply (see section (6) of this rule) will be returned to the Child Care Reservation List.

(b) If the Department does not receive a request for benefits within the deadline to apply, the individual is dropped from the Child Care Reservation List.

Stat. Auth.: ORS 409.050, 411.060, 411.116

Stats. Implemented: ORS 409.010, 409.610, 411.060, 411.116, 411.121, 411.122, 411.135

Hist.: SSP 23-2011(Temp), f. & cert. ef. 8-1-11 thru 1-27-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 29-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-115-0430

Periodic Redeterminations; Not EA, ERDC, EXT, OHP, REF, REFM, SNAP, or TA-DVS

The Department periodically redetermines the eligibility of clients for benefits and assigns a redetermination date by which the next determination is required. The Department selects the redetermination date based on the client's circumstances and according to the following requirements:

(1) In the BCCM, GA, GAM, and HKC programs, the Department determines eligibility each 12 months.

(2) In the MAA, MAF, and SAC programs, the Department redetermines eligibility at least once every 12 months.

(3) In the OSIP and OSIPM programs, the Department determines eligibility each 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(4) In the QMB program, the Department determines eligibility each 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for MAA, MAF or OSIPM, a redetermination for QMB is completed with the redetermination of the other program.

(5) In the SFPSS program, the Department determines eligibility at least once every 12 months. The Department redetermines program eligibility by redetermining eligibility for the TANF program.

(6) In the TANF program, the Department redetermines eligibility according to the following schedule:

(a) At least once every six months for each of the following:

(A) Clients not participating in an activity (see OAR 461-001-0025) of an open case plan (see OAR 461-001-0025).

(B) Clients who are currently serving a JOBS disqualification.

(b) At least once every 12 months for all other clients.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 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 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-130-0330

Disqualifications; Pre-TANF, REF, SNAP, TANF

(1) In the Pre-TANF, REF, SNAP, and TANF programs, the Department may not disqualify from program benefits a client who is a volunteer (see OAR 461-130-0305) participant in an employment program.

(2) In the Pre-TANF, REF, and TANF programs, a mandatory (see OAR 461-130-0305) client who fails to comply with an employment program participation requirement and does not have good cause (see OAR

461-130-0327) for the failure to comply is subject to disqualification under this rule only after the requirements of all of the following subsections are met:

(a) The client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231;

(b) The Department has determined the client is willfully non-compliant and does not have good cause for failing to comply with a requirement of the program;

(c) The Department has offered (and the client has refused) or conducted screenings (and assessed if appropriate) for physical or mental health needs, substance abuse, domestic violence, and learning needs;

(d) The Department has determined the client has no barriers (see OAR 461-001-0025) or refuses to take appropriate steps to address identified barriers;

(e) The Department has determined the client has not met federally required participation rates (see OAR 461-001-0025); and

(f) The Department has assessed for any risk of harm posed to the children by a reduction in cash assistance.

(3) In the REF and TANF programs, the effects of a JOBS disqualification are progressive. There are two levels of disqualification. Once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

(a) At the first level, the penalty is removal of the disqualified client from the need group (see OAR 461-110-0630) for up to three months or until the client has completed the two-consecutive week cooperation period.

(b) At the second level, the need group receives no cash benefit in the program for one month.

(c) At the first or second level of disqualification, the penalty may cause the need group to be over income for REF or TANF program benefits (see OAR 461-160-0100).

(d) At the end of the second level, program benefits are closed and the filing group may not receive program benefits for the following two consecutive months. This may be prevented if the disqualified client:

(A) Contacts a representative of the Department in order to re-engage in the JOBS program prior to the end of the second level; and

(B) Begins the two consecutive weeks of cooperation as outlined in section (4) of OAR 461-130-0335 prior to the end of the second level; or

(C) Is no longer a member of the household group (see OAR 461-110-0210 and 461-130-0335(2)); or

(D) Is unable to participate because there are no appropriate activities (see OAR 461-001-0025) or support services (see OAR 461-001-0025) necessary to support the activity (see OAR 461-001-0025).

(4) In the SNAP program:

(a) A mandatory client who fails to comply with the requirements of an employment program is subject to disqualification. A disqualified client is removed from the need group until he or she meets the employment program requirements and serves the applicable progressive disqualification under the following subsections:

(A) One calendar month for the first failure to comply.

(B) Three calendar months for the second failure to comply.

(C) Six calendar months for the third and subsequent failures to comply.

(b) A client who is exempt (see OAR 461-130-0305) from participation in the SNAP employment program because he or she is a mandatory participant in the JOBS program, receiving unemployment compensation benefits, or has applied for unemployment compensation benefits and is waiting on an initial decision must comply with the requirements of those programs. If the client fails to comply with the requirements of the applicable program the client is disqualified from receiving SNAP benefits, unless he or she can show good cause under OAR 461-130-0327.

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-130-0335

Removing Disqualifications and Effect on Benefits

(1) An applicant who would be subject to an employment program disqualification under OAR 461-130-0330 but withdraws the application before benefits are approved is not subject to disqualification.

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(2) In the SNAP and TANF programs, a filing group (see OAR 461-110-0330 and 461-110-0370) is not subject to the impact of a disqualification for a disqualified member who has left the household group (see OAR 461-110-0210). Should the member join another filing group, that group is subject to the member's most recent disqualification.

(3) In the SNAP program, the disqualification ends the first day of the month following the month in which information is provided to the Department justifying the change in the client's participation classification, even if the date falls within the disqualification period provided in OAR 461-130-0330(4).

(4) In the REF and TANF programs, a client disqualified for failure to meet the requirements of an employment program under division 190 of these rules:

(a) At the first level of disqualification must cooperate for two consecutive weeks with each activity (see OAR 461-001-0025) specified in the client's current or revised case plan (see OAR 461-001-0025) before the Department may remove the disqualification. Cash benefits are restored effective the date the client completes the two consecutive week cooperation period.

(b) When the second level of disqualification ends, TANF program benefits are closed for two consecutive months, unless the client begins two consecutive weeks of cooperation with each activity specified in the client's current or revised case plan before the end of the level two. If the client completes the two consecutive weeks of cooperation, cash benefits are restored effective the date the client completes the two consecutive week cooperation period.

(c) Cash benefits are restored effective the date it is determined, by the Department, there are no appropriate activities or support services (see OAR 461-001-0025) necessary to support the activity available in order for the client to demonstrate participation.

(5) In the REF and TANF programs, a disqualification ends when:

(a) The Department changes the participation classification of the disqualified individual to exempt (see OAR 461-130-0305);

(b) The client complies with the requirements of the employment program (see section (4) of this rule); or

(c) REF or TANF program benefits are closed for a reason other than described in OAR 461-130-0330(3)(d).

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-135-0089

Demonstrating Compliance with Substance Abuse and Mental Health Requirements; Restoring Cash Benefits

In the Pre-TANF, REF, and TANF programs:

(1) In order to end a penalty imposed under OAR 461-135-0085:

(a) At the first level of disqualification (see OAR 461-130-0330(3)), a client must:

(A) Cooperate for a period of two consecutive weeks with each activity (see OAR 461-001-0025) specified in the client's current or revised case plan (see OAR 461-001-0025); and

(B) Demonstrate a willingness to participate in treatment required under OAR 461-135-0085 if treatment is still required.

(b) When the second level of disqualification (see OAR 461-130-0330(3)) ends, program benefits are closed for two consecutive months, unless the client:

(A) Begins two consecutive weeks of cooperation with each activity specified in the client's case plan before the end of the level two; and

(B) Demonstrates a willingness to participate in treatment required under OAR 461-135-0085 if treatment is still required.

(2) The penalty imposed under OAR 461-135-0085 ends when REF or TANF program benefits are closed for a reason other than described in OAR 461-130-0330(3)(d).

(3) When the Department removes a disqualification due to a client's compliance with the requirements under OAR 461-135-0085, cash benefits are restored effective the date the client completed the two consecutive week cooperation period.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049, 412.089

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049, 412.089

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-135-0407

ERDC; Children in Oregon Program of Quality Contracted Child Care

The following provisions apply when a child (see OAR 461-001-0000) in the ERDC program receives child care under a contract between an Oregon Program of Quality (OPQ) provider and the Department:

(1) The payment made by the Department on behalf of the child is made only to the OPQ provider. The child is ineligible for child care payments for care not provided under the contract between the OPQ provider and the Department.

(2) Once the Department makes a child care payment for the child under the contract, the child is presumed to meet the ERDC program eligibility requirements until the next August 31, unless:

(a) The caretaker (see OAR 461-001-0000) of the child has been found ineligible for ERDC program benefits under OAR 461-135-0415 for failure to make a copayment;

(b) The filing group (see OAR 461-110-0350) was found eligible because of inaccurate information provided to the Department or because information was withheld from the Department when eligibility was determined;

(c) The filing group fails to meet the requirements of the agreement between the client and the OPQ provider; or

(d) The caretaker of the child is found ineligible for ERDC program benefits under OAR 461-160-0040(6) or 461-135-0400.

(3) For any month in which the child is eligible to be served under a contract covered by this rule, the client's copayment is established under OAR 461-155-0150(12)(a).

Stat. Auth.: ORS 409.050, 411.060, 411.116

Stats. Implemented: ORS 409.010, 409.610, 411.060, 411.116, 411.121, 411.122 & 411.135; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

Hist.: SSP 29-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

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 OAR 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.

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(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), 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

461-145-0580

Veterans' Benefits

(1) Veterans' benefits, other than the educational and training and rehabilitation program benefits, are treated as follows:

(a) Except as specified in sections (2) and (5) of this rule, monthly payments are counted as unearned income.

(b) Other payments are counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Veterans' benefits that include aid-and-attendance payments are treated as follows:

(a) For OSIP and OSIPM clients receiving long term care or Title XIX waived services:

(A) When determining eligibility, the entire veterans' benefit payment is excluded.

(B) When calculating monthly benefits or patient liability, the entire veterans' benefit payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home- or community-based waived care provided to the client during the months covered by the payment. A client's failure to reimburse the Department in this instance constitutes an overpayment of public assistance in accordance with OAR 461-195-0501 and 461-195-0521 and ORS 411.640 and 411.690. Any excess veterans' benefit payment made to the client is counted as lump sum or periodic income.

(b) For all other clients not covered under subsection (a) of this section:

(A) In the SNAP program, aid-and-attendance payments used to pay for an attendant are treated as a reimbursement and excluded (see OAR 461-145-0440). The remaining benefits, if any, are counted as unearned income.

(B) In the OHP and QMB programs, the aid-and-attendance payments are excluded. The remaining benefits are counted unless excluded under another rule or another section of this rule.

(C) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client as an overpayment of public assistance pursuant to OAR 461-195-0501, 461-195-0521, and 461-195-0551. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income (see OAR 461-140-0110 and 461-140-0120).

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) A subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated:

(a) In the SNAP program, as earned income (see OAR 461-145-0130).

(b) In all other programs, as unearned income.

(5) The following payments are excluded:

(a) Payments under 38 USC 1805 to biological children of Vietnam veterans who are born with spina bifida.

(b) Payments under 38 USC 1815 to children with birth defects born to female Vietnam veterans.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.620, 411.640, 411.690, 411.700, 411.816, 412.014, 412.049

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Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 26-2012(Temp), f. & cert. ef. 7-11-12 thru 1-7-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

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 OAR 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.

(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 OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) \$2,000 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; 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

461-160-0055

Medical Costs That are Deductible; GA, GAM, OSIP, OSIPM, SNAP

(1) This rule applies only to SNAP clients who are elderly (see OAR 461-001-0015) or who have a disability (see OAR 461-001-0015), and to clients in the GA, GAM, OSIP, and OSIPM programs.

(2) Medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and in this rule.

(3) Health and hospitalization insurance premiums and coinsurance are deductible. In the OSIPM and SNAP programs, health insurance premiums paid less frequently than monthly may be prorated over the period covered by the premium.

(4) In the OSIPM and SNAP programs:

(a) Long-term care insurance premiums are deductible if the insurance pays for services while an individual is ---

(A) Receiving waived services;

(B) Receiving nursing facility services; or

(C) In an intermediate care facility for the mentally retarded (ICF/MR).

(b) A policy that is set up to pay a lump sum, similar to life insurance, is not deductible.

(5) The cost of a medical service is deductible if it is---

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the SNAP program, a medical necessity approved by the Department.

(6) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the SNAP program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for an individual who was a member of the household group (see OAR 461-110-0210) immediately prior to entering a hospital or a nursing home certified by the state. Deduction of these payments is also allowed for an individual who was a member of the household group immediately prior to death if the remaining household members are legally responsible for payment of the expenses.

(B) Services of an attendant, home health aid, housekeeper, or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person SNAP benefit group if the client furnishes the majority of an attendant's meals.

(C) Prescribed assistance animals (such as a Seeing Eye Dog, Hearing Dog, or Housekeeper Monkey) that have received special training to provide a service to the client. This deduction includes the cost of acquiring these animals, their training, food, and veterinarian bills.

(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

(7) In the SNAP program, the costs for and related to medical use of marijuana, including registry identification cards, are not deductible.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 27-2012(Temp), f. & cert. ef. 7-12-12 thru 1-8-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-160-0580

Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD)

In the OSIPM (except OSIPM-EPD) program:

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because he or she is in or will be in a continuous period of care (see OAR 461-001-0030).

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are

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applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$115,920.

(B) \$23,184 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015(4)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$115,920) plus the OSIPM resource standard for one person.

(B) \$23,184 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the court-ordered community spouse resource allowance.)

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse of the client.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-160-0620

Income Deductions and Client Liability; Long-Term Care Services or Waivered Services; OSIPM

In the OSIPM program:

(1) Deductions from income are made for a client residing in or entering a long-term care facility or receiving Title XIX waived services as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is \$85 in the OSIPM-AB program.

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

(c) One of the following need standards:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIPM maintenance standard for a client who receives waived services.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$1,892 is added to the amount over \$567 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,898 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

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(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,892. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,892.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home if the client meets the criteria in OAR 461-160-0630.

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving waived services (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the waived service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waived mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060, 411.070 & 411.706

Stats. Implemented: ORS 411.060, 411.070 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 23-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-165-0060

Minimum Benefit Amount; REF, SNAP, TANF

(1) In the SNAP program:

(a) A *benefit group* (see OAR 461-110-0750) is not eligible for benefits in the initial month (see OAR 461-001-0000) if the allotment is less than \$10.

(b) Except as provided otherwise in section (1) of this rule and in OAR 461-160-0070, minimum benefits are determined as follows:

(A) An eligible benefit group of one or two persons receives the monthly calculated benefit with a minimum monthly allotment of eight per-

cent of the Thrifty Food Plan (TFP) for one person as determined annually by FNS.

(B) An eligible benefit group of three or more persons receives the monthly calculated benefit, except that a group whose calculated benefit is \$1, \$3, or \$5 receives instead an allotment of \$2, \$4, or \$6 respectively. A benefit group in a categorically eligible filing group may be eligible for zero benefits (\$0) for the certification period (see OAR 461-001-0000).

(2) In the REF and TANF programs, except as provided in section (3) of this rule, benefits are not issued if the monthly benefit is less than \$10. Individuals who do not receive a cash payment because the monthly benefit is less than \$10 may be eligible for medical benefits.

(3) The \$10 requirement in section (2) of this rule does not apply to any of the following:

(a) Special payments, such as one-time special needs, emergency assistance, supplements, or a benefit reduced from \$10 or more to under \$10 due to the recovery of an overpayment.

(b) Dual payee payments made in money management cases if the monthly benefit amount is \$10 or more.

(c) Wage supplements issued to JOBS Plus participants.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 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 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 19-2004(Temp), f. 7-30-04, cert. ef. 8-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 24-2008(Temp), f. & cert. ef. 11-6-08 thru 5-5-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

461-180-0100

Effective Dates; Eligibility Following Closure

The new effective date of eligibility following closure of benefits or following the end of a certification period is determined as follows:

(1) For the SNAP program, see OAR 461-115-0450.

(2) In the OHP program, if the client completes the application process within the time period described in OAR 461-115-0190, the effective date is determined as follows:

(a) If the Department initiates a recertification of eligibility for the OHP program, the effective date for the subsequent certification period is the first day that the client meets all eligibility requirements for OHP following the prior certification period.

(b) If the filing group establishes a date of request before the end of a certification period in the OHP program, the effective date for the subsequent certification period is the first day that the client meets all eligibility requirements for OHP following the prior certification period.

(c) If the filing group requests medical benefits while eligible for medical assistance from a program other than OHP, the effective date for the certification period is the first day that the client meets all eligibility requirements following the closure of the program under which the group was receiving medical assistance.

(d) If the filing group requests medical benefits after the closing date for the prior certification period, or if an effective date cannot be determined by subsection (a), (b), or (c) of this section, the effective date is determined by OAR 461-180-0090.

(3) In the ERDC program, eligibility starts the first day of the month of the date of request.

(4) In the TANF program:

(a) Eligibility starts on the date provided by OAR 461-180-0070 for TANF unless the client meets the requirements of subsection (b) of this section.

(b) Eligibility starts the first day of the month following closure if:

(A) The client contacts the Department during the month of closure; and

(B) Submits to the Department a complete application not later than the end of the month following closure.

(5) In all other programs, if the client completes the application process within the applicable time period described in chapter 461 of the Oregon Administrative Rules, eligibility starts on the first day of the month following closure if the filing group meets all eligibility requirements on that date and if:

(a) The filing group established a date of request (see OAR 461-115-0030 for the meaning of date of request) prior to closure; or

(b) The Department initiated a redetermination of eligibility prior to closure.

(6) For all programs except ERDC, SNAP, and TANF, if the client does not complete the application process within the time period described in chapter 461 of the Oregon Administrative Rules, the determination of an

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effective date requires a new date of request (see OAR 461-115-0030 for the meaning of date of request).

Stat. Auth.: ORS 411.060, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.816 & 412.049
Hist.: AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13

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

Adm. Order No.: SSP 38-2012(Temp)

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 1-1-13 thru 5-5-13

Notice Publication Date:

Rules Amended: 461-190-0211

Rules Suspended: 461-190-0211(T)

Subject: OAR 461-190-0211 about case plan activities and standards for support service payments in the JOBS, TANF, and SFPSS programs is being amended to add on-the-job training as an available activity, retroactive to December 12, 2012. This rule is also being amended to make the rule consistent with January 1, 2012 amendments to OAR 461-130-0310. Under these amendments, 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.

Rules Coordinator: Annette Tesch—(503) 945-6067

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 sections (10) or (11) of this rule apply, 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 OAR 461-101-0010) is limited to six months per individual, unless circumstances unique to the employment situation are identified and warrant the Department — starting November 1, 2012 — to approve a limited number of additional months.

(c) Starting December 12, 2012, on-the-job training (see OAR 461-001-0025).

(d) Work experience (see OAR 461-001-0025).

(e) Sheltered or supported work (see OAR 461-001-0025).

(f) High School or GED Completion Attendance (see OAR 461-001-0025) limited to a teen parent (see OAR 461-001-0000 and 461-001-0025).

(g) Parents as Scholars (see OAR 461-001-0025).

(h) 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).

(i) Starting November 1, 2012, 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)(h) of this rule applies.

(c) Family Support & Connection.

(d) Post-TANF.

(e) Program entry (see OAR 461-001-0025).

(f) Self Initiated Training (see OAR 461-001-0025).

(g) SSI Application Process.

(h) 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) Starting November 1, 2012: other 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)(h) 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 OAR 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.

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(B) The minimum hours necessary, including meal and commute time, for the individual to participate in an approved JOBS program activity.

(c) 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 payments needed to look for work, accept a job offer, or for a teen parent to attain a high school diploma or GED. Other payments needed to complete district-approved vocational training may be provided with manager approval.

(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.

(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

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

Adm. Order No.: SSP 39-2012(Temp)

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 1-1-13 thru 6-30-13

Notice Publication Date:

Rules Amended: 461-125-0830, 461-130-0310, 461-135-0400, 461-135-0780, 461-145-0220, 461-145-0260, 461-155-0150, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0015

Subject: 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.

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.

OAR 461-135-0400 about specific requirements in the Employment Related Day Care (ERDC) program is being amended to specify 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 individuals whose circumstances are considered in the eligibility process).

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.

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.

OAR 461-155-0150 about child care eligibility standard, payment rates, and copayments is being amended to align with the amendments to OAR 461-125-0830 that allows clients to turn in medical documentation from a broader range of medical professionals.

Rules Coordinator: Annette Tesch—(503) 945-6067

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 licensed or certified psychologists; and measurement of visual acuity and visual fields only from 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 from licensed nurse practitioners and physician assistants; mental evaluations from psychiatrists and psychiatric mental health nurse practitioners; and measurement of visual acuity and visual fields from ophthalmologists.

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(4) The client must provide or cooperate in obtaining sufficient medical documentation for the Department to determine eligibility.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.710, 412.014
Stat. Implementation: ORS 411.060, 411.070, 411.404, 411.710, 412.014
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

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 OAR 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 OAR 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 substantially 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 OAR 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, 411.660, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049, HB 2049 (2011)

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

461-135-0400

Specific Requirements; ERDC

(1) The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules.

(2) To be eligible for ERDC, a filing group (see OAR 461-110-0350) must meet the requirements of all of the following subsections:

(a) At least one caretaker (see OAR 461-001-0000) must receive income from employment (other than self-employment, see OAR 461-145-0910), including employment through a work study program.

(b) The filing group must include a child who needs child care.

(c) The filing group must have an allowable child care need as described in OAR 461-160-0040. If there are two adults required to be in the filing group, and one of the adults is unemployed or self-employed, the unemployed or self-employed adult is considered available to provide child care, making the filing group ineligible, except in the following situations:

(A) The unemployed adult is physically or mentally unable to provide adequate child care. This must be verified (see OAR 461-125-0830).

(B) The unemployed adult is unavailable to provide child care while participating in the requirements of a case plan (see OAR 461-001-0025) other than requirements associated with post-secondary education.

(d) The filing group must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(e) The child needing child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

(3) A filing group is not eligible for a child care payment for more than six calendar months if the filing group is unwilling to obtain a Certificate of Immunization Status for the child.

(4) The child care must be necessary to enable the caretaker to remain employed (other than self-employed).

(5) A filing group is not eligible for child care when the caretaker or parent in the filing group receives a grant for child care from the Oregon Student Assistance Commission for any month the grant is intended to cover, regardless of when the grant is received.

Stat. Auth.: ORS 409.050, 411.060, 411.070

Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.010, 411.060, 411.070, 411.122, 411.141, 418.485, 2009 OL ch. 827

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 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 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; 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 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-

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2005, f. & cert. ef. 7-1-05; 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 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 34-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 7-2011(Temp), f. & cert. ef. 2-16-11 thru 8-15-11; SSP 9-2011(Temp), f. & cert. ef. 3-22-11 thru 8-15-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13

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 OSIP is used as the individual's countable Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's countable Social Security for purposes of this rule and the Pickle Amendment. Add that figure to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the \$20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment. For spouses in the same financial group (see OAR 461-110-0530), perform the above calculation for each spouse, combine the results and add the subtotal to all other countable unearned and adjusted earned income. If the total is less than the full SSI standard for a couple plus the \$20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Calculations not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.404

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13

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:

(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

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).

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(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 OAR 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) Blackfoot 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), 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

461-155-0150

Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 18 months.

(b) Toddler: For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 18 months to 3 years.

(c) Preschool: A child aged 3 years to 6 years.

(d) School: A child aged 6 years or older.

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) Medical documentation per OAR 461-125-0830.

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(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Child Care Division.

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in paragraph (2)(b) of this rule.

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (2)(b), (f), or (g) of this rule.

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Child Care Division.

(3) The following provisions apply to child care payments:

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate (subject to the maximum full-time monthly rate) and is designated as the primary provider for the case.

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.

(d) Unless required by the circumstances of the client or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(4) The following are the child care rates, the rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly):

(a) [Table not included. See ED. NOTE.]

(5) Except to the extent provided otherwise in section (12) of this rule, this section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is met for need groups (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180(6). The eligibility standard for a need group size of eight applies to any need group larger than eight.

(b) The minimum monthly ERDC copay is \$25.

(c) For filing groups (see OAR 461-110-0310) whose countable income is at or below 50 percent of the 2007 FPL, the copay is \$25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.

(d) For filing groups whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:

(A) Determine filing group's countable income as a percent of FPL (rounding to the nearest hundredth of the percentage), subtract 50, and multiply this difference by 0.12.

(B) Add 1.5 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income to determine the copay amount.

(e) The 2007 federal poverty level used to determine copay amounts under subsections (c) and (d) of this section is set at the following amounts: [Table not included. See ED. NOTE.]

(6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (4) of this rule.

(b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.

(7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

(8) The number of payable billed hours of care for a child is limited as follows:

(a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed:

(A) 125 percent of the number of hours necessary for the client to perform the duties of his or her job, or to participate in activities included in a case plan (see OAR 461-001-0025) including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client; or

(B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client meets the criteria for extra hours under section (10) of this rule.

(b) In the ERDC program, for a client who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(c) In the TANF program, for a client who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:

(a) The amount billed by the provider or providers; or

(b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.

(10) The limit allowed by section (9) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this section, a client has special circumstances when it is necessary for the client to obtain child care in excess of 215 hours in a month to perform the requirements of his or her employment or training. This is limited to the following situations:

(a) The commute time to and from work exceeds two hours per day.

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(b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.

(c) The caretaker works a split shift and it is not feasible to care for the child between shifts.

(d) The caretaker consistently works more than 40 hours per week.

(e) Weekend work or other nonstandard work hours require care by more than one provider, and the total allowable hours billed by both providers exceeds the maximum limit.

(f) The caretaker needs child care for both full-time work and participation in Department assigned activities.

(11) The payment available for care of a child who meets the special needs criteria described in subsection (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(12) Starting May 1, 2012:

(a) The minimum monthly ERDC copay is \$27.

(b) Except as stated in subsection (a) of this section, the Department adds 10 percent to the monthly client co-payment amount set under section (5) of this rule.

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

Stat. Auth.: ORS 411.060, 411.070, 412.006 & 412.049

Stats. Implemented: ORS 409.610, 411.060, 411.070, 412.006 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 13-2012(Temp), f. & cert. ef. 4-10-12 thru 10-7-10; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13

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 OAR 461-145-0540(9)(c).

(3) The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(4) A client, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020. [Table not included. See ED. NOTE.]

(5) In the OSIPM program, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

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

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp), f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 2-2009(Temp), f. 2-27-09, cert. ef. 3-1-09 thru 8-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 5-2012(Temp), f. & cert. ef. 2-1-12 thru 7-30-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13

461-155-0270

Room and Board Standard; OSIPM

Effective January 1, 2013, 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

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

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.

ADMINISTRATIVE RULES

(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 OAR 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.

(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 OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) \$2,000 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-1; 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

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

Adm. Order No.: SSP 1-2013(Temp)

Filed with Sec. of State: 1-8-2013

Certified to be Effective: 1-8-13 thru 6-30-13

Notice Publication Date:

Rules Amended: 461-155-0270

Rules Suspended: 461-155-0270(T)

Subject: OAR 461-155-0270 about room and board standards in a waived community based facility is being amended to reflect Social Security Administration cost of living adjustments (COLA) for 2013. The rule was previously amended by temporary rule to reflect the COLA, but the amount listed (\$551.70) was incorrect. This amendment corrects the room and board amount (to \$552.70) effective January 1, 2013.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0270

Room and Board Standard; OSIPM

Effective January 1, 2013, 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

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

Rule Caption: Nursing Assistant Training and Competency Evaluation and Training Program (NATCEP) – Request for Reimbursement.

Adm. Order No.: SPD 16-2012(Temp)

Filed with Sec. of State: 12-31-2012

Certified to be Effective: 1-1-13 thru 6-30-13

Notice Publication Date:

Rules Amended: 411-070-0470

Subject: The Department of Human Services (Department) is temporarily amending OAR 411-070-0470 to implement the online reimbursement requests system for the Nursing Assistant Training and Competency Evaluation and Training Program (NATCEP). Effective January 1, 2013, the current paper process used by Medicaid nursing facilities to request reimbursement for NATCEP is being eliminated 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 reim-

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bursement 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.

(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.

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(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

Rule Caption: Comprehensive In-Home Support Services for Adults with Developmental Disabilities — Standards for Employers

Adm. Order No.: SPD 1-2013

Filed with Sec. of State: 1-4-2013

Certified to be Effective: 1-4-13

Notice Publication Date: 12-1-2012

Rules Adopted: 411-330-0065

Rules Amended: 411-330-0020

Rules Repealed: 411-330-0020(T), 411-330-0065(T)

Subject: The Department of Human Services (Department) is permanently updating the comprehensive in-home support services rules for adults with developmental disabilities in OAR chapter 411, division 330. The permanent rules create employer standards for an individual or an individual's representative who is an employer of an independent provider who is paid with public assistance funds through comprehensive in-home support services.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-330-0020

Definitions

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(3) "Adult" means an individual 18 years or older with developmental disabilities.

(4) "Advocate" means a person, other than paid staff, who has been selected by an individual with developmental disabilities, or by an individual's legal representative, to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(5) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources and services.

(6) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(7) "Client Process Monitoring System (CPMS)" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(8) "Collective Bargaining Agreement" means a contract based on negotiation between organized workers and their designated employer for purposes of collective bargaining to determine wages, hours, rules, and working conditions.

(9) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for the planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(10) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department or Oregon Health Authority.

(11) "Comprehensive Services":

(a) Means a package of developmental disability services and supports that includes one of the following living arrangements regulated by

the Department alone or in combination with any associated employment or community inclusion program regulated by the Department:

(A) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(B) In-home supports provided to an individual in the individual or family home costing more than the individual cost limit.

(b) Do not include support services for adults enrolled in brokerages or for children enrolled in long-term supports or children's intensive in-home services.

(12) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(13) "Developmental Disability (DD)" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(14) "Director" means the Director of the Department's Office of Developmental Disability Services, or that person's designee. The term "Director" is synonymous with "Assistant Director".

(15) "Employer-Related Supports" mean activities that assist individuals and, when applicable, the individual's legal representatives or family members, with fulfilling roles and obligations as employers as described in the In-Home Support Plan. Supports to the employer include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(16) "Entry" means admission to a Department-funded developmental disability service.

(17) "Exit" means either termination from a Department-funded developmental disability service or transfer from one Department-funded service to another.

(18) "Family":

(a) Means a unit of two or more persons that includes at least one individual with developmental disabilities where the primary caregiver is:

(A) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(iii) Joint responsibility for supporting a member of the household with developmental disabilities when the individual with developmental disabilities is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining individual eligibility for in-home support as a resident in the family home;

(B) Identifying persons who may apply, plan, and arrange for individual supports; and

(C) Determining who may receive family training.

(19) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of an individual to employ persons to provide services, supervision, or training in the home or community according to the individual's In-Home Support Plan. The fiscal intermediary acts as an agent for the individual or the individual's legal representative and performs activities and maintains records related to payroll and payment of employer-related taxes and fees. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(20) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(21) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with in-home support funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

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(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(22) "Home Care Services" means assistance with activities of daily living, activities of community inclusion, and self-management provided by a home care worker for an elderly person or a person with a physical disability, developmental disability, or mental illness.

(23) "Immediate Family" means the spouse of an adult individual for the purposes of determining whether in-home support funds may be used to pay a family member to provide services.

(24) "Incident Report" means a written report of any unusual incident involving an individual.

(25) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(26) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with in-home support funds who personally provides services to the individual.

(27) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(28) "In-Home Support (IHS)" means support that is:

(a) Required for an individual to live in the individual's home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with an IHS Plan.

(29) "In-Home Support (IHS) Plan" means the written details of the supports, activities, costs, and resources required for an individual to achieve personal goals, or for a family to achieve outcomes related to supporting an individual in the home. The IHS Plan is developed by the community developmental disability program, the individual, and the individual's legal representative (if applicable) or family to articulate decisions and agreements made during a person-centered process of planning and information gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The IHS Plan is the individual's Plan of Care for Medicaid purposes.

(30) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals with developmental disabilities in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with persons in their community.

(31) "Intervention" means the action the Department or the Department's designee requires when an individual or an individual's representative fails to meet the employer responsibilities described in OAR 411-330-0065. Intervention includes but is not limited to:

(a) A documented review of the employer responsibilities described in OAR 411-330-0065;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of an independent provider filing a complaint with the Department, the Department's designee, or other agency who may receive labor related complaints;

(d) Identifying a representative if an individual is not able to meet the employer responsibilities described in OAR 411-330-0065; or

(e) Identifying another representative if an individual's current representative is not able to meet the employer responsibilities described in OAR 411-330-0065.

(32) "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.

(33) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The Board of Directors of a public or private corporation if the county declines to operate a contract for all or part of a community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Department.

(34) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under 40.225 to 40.295.

(35) "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.

(36) "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.

(37) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(38) "Person-Centered Planning":

(a) Means a process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals and lifestyle preferences; and

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(39) "Personal Support Worker":

(a) Means a person:

(A) Who is hired by an individual with a developmental disability or a legal representative of an individual with a developmental disability;

(B) Who receives money from the Department for the purpose of providing home care services to an individual with a developmental disability in the home or community; and

(C) Whose compensation is provided in whole or in part through the Department or Community Developmental Disability Program.

(b) This definition of personal support worker is intended to reflect the term as defined in ORS 410.600.

(40) "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.

(41) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(42) "Provider" means a person, organization, or business that is selected by an individual or the individual's legal representative and paid with in-home support funds to provide support according to the individual's In-Home Support Plan.

(43) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with in-home support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

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(44) “Representative” means, for the purposes of obtaining in-home support through an independent provider, the person selected by an individual or the individual’s legal representative to act on the individual’s behalf to provide the employer responsibilities described in OAR 411-330-0065.

(45) “Services Coordinator” means an employee of the community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. The term “case manager” is synonymous with “services coordinator”.

(46) “Social Benefit” or “Social Service” means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual’s home or in the family home and must be either:

(A) Reimbursement for an expense previously authorized in an In-Home Support (IHS) Plan; or

(B) An advance payment in anticipation of an expense authorized in a previously authorized IHS Plan.

(47) “Substantiated” means an abuse investigation has been completed by the Department or the Department’s designee and the preponderance of the evidence establishes the abuse occurred.

(48) “Support” means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(49) “These Rules” mean the rules in OAR chapter 411, division 330.

(50) “Unusual Incident” means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(51) “Variance” means a temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the community developmental disability program.

(52) “Volunteer” means any person assisting a provider without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13; SPD 1-2013, f. & cert. ef. 1-4-13

411-330-0065

Standards for Employers

(1) **EMPLOYEE — EMPLOYER RELATIONSHIP.** The relationship between an independent provider and an individual or the individual’s representative is that of employee and employer.

(2) **JOB DESCRIPTION.** As an employer, it is the responsibility of the individual or the individual’s representative to create and maintain a job description for potential independent providers that is in coordination with the services authorized by the individual’s services coordinator.

(3) **PERSONAL SUPPORT WORKER BENEFITS.** The only benefits available to independent providers are for those who are personal support workers and negotiated in the collective bargaining agreement and provided in Oregon Revised Statute. The collective bargaining agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Independent providers, including personal support workers, are not state or CDDP employees.

(4) EMPLOYER RESPONSIBILITIES.

(a) For an individual to be eligible for in-home support provided by an independent provider, an individual or an individual’s representative must demonstrate the ability to:

(A) Locate, screen, and hire a qualified independent provider;

(B) Supervise and train the independent provider;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the independent provider;

(E) Recognize, discuss, and attempt to correct, with the independent provider, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory independent provider.

(b) Indicators that an individual or an individual’s representative may not be meeting the employer responsibilities described in subsection (4)(a) of this section include but are not limited to:

(A) Independent provider complaints;

(B) Multiple complaints from an independent provider requiring intervention from the Department or CDDP;

(C) Frequent errors on time sheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department or CDDP;

(D) Complaints to Medicaid Fraud involving the individual or the individual’s representative; or

(E) Documented observation by the CDDP of services not being delivered as identified in the individual’s In-Home Support Plan.

(c) The Department or the CDDP may require intervention as defined in OAR 411-330-0020 when an individual or an individual’s representative has demonstrated difficulty meeting the employer responsibilities described in subsection (4)(a) of this section.

(d) After appropriate intervention and assistance, an individual unable to meet the employer responsibilities described in subsection (4)(a) of this section may be determined ineligible for in home support provided by an independent provider.

(A) An individual determined ineligible to be an employer of an independent provider and unable to designate a representative, may not request in-home support provided by an independent provider until the individual’s next annual ISP. Improvements in health and cognitive functioning may be factors in demonstrating the individual’s ability to meet the employer responsibilities described in section (4)(a) of this rule. If an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the next annual ISP, the individual may request the waiting period be shortened.

(B) An individual determined ineligible to be an employer of an independent provider shall be offered other available service options that meet the individual’s service needs, including in-home support through a contracted qualified provider organization or general business provider when available. As an alternative to in-home support, the Department or the Department’s designee may offer other available services in the Home and Community Based Services Waiver.

(5) DESIGNATION OF EMPLOYER RESPONSIBILITIES.

(a) An individual not able to meet all of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate a representative in order to receive or continue to receive in home support; or

(B) Select other available services.

(b) An individual able to demonstrate the ability to meet some of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate a representative to fulfill the responsibilities the individual is not able to meet to receive or continue to receive in home support; and

(B) On a Department approved form, document the specific employer responsibilities performed by the individual and the employer responsibilities performed by the individual’s representative.

(c) When an individual’s representative is not able to meet the employer responsibilities described in section (4)(a) or the qualifications in section (6)(c) of this rule, an individual must:

(A) Designate a different representative to receive or continue to receive in home support; or

(B) Select other available services.

(6) REPRESENTATIVE.

(a) An individual or an individual’s legal representative may designate a representative to act on their behalf to meet the employer responsibilities described in section (4)(a) of this rule. An individual’s legal representative may be designated as the individual’s representative.

(b) A representative who is also an individual’s independent provider of in-home support must seek an alternate representative for purposes of the independent provider’s employment. The alternate representative must:

(A) Track the hours worked and verify the authorized hours completed by the independent provider; and

ADMINISTRATIVE RULES

Hist.: SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13; SPD 1-2013, f. & cert. ef. 1-4-13

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(B) Document the specific employer responsibilities performed by the individual and the individual's representative on a Department approved form.

(c) The Department or the CDDP may suspend, terminate, or deny an individual's request for a representative if the designated representative has:

(A) A history of substantiated abuse of an adult as described in OAR 411-045-0250 to 411-045-0370;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities in section (4)(a) or (6)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (4)(a) or (6)(b).

(d) An individual shall be given the option to select another representative if the Department or CDDP suspends, terminates, or denies an individual's request for a representative for the reasons described in subsection (6)(c) of this section.

(7) APPEALS.

(a) The Department or the CDDP, respectively, shall mail a notice identifying the individual, the individual's representative, and if applicable the individual's legal representative when:

(A) The Department or the CDDP denies, suspends, or terminates an individual or an individual's representative from performing the employer responsibilities described in sections (4)(a) or (6)(b) of this rule; and

(B) The Department or the CDDP denies, suspends, or terminates an individual's representative from performing the employer responsibilities described in section (4)(a) or (6)(b) of this rule because the individual's representative does not meet the qualifications in section (6)(c) of this rule.

(b) CDDP ISSUED NOTICES. An individual receiving in-home support, the individual's legal representative, or the individual's representative may appeal a notice issued by the CDDP by requesting a review by the CDDP's Director.

(A) For an appeal regarding denial, suspension, or termination of an individual, the individual's legal representative, or the individual's representative to be valid, written notice of the appeal and request for review must be received by the CDDP within 45 calendar days of the date of the notice.

(B) The CDDP Director shall complete a review and issue a decision within 30 calendar days of the date the written appeal was received by the CDDP.

(C) If an individual, individual's legal representative, or the individual's representative is dissatisfied with the CDDP Director's decision, the individual or the individual's representative may request an administrative review by the Department's Director or the Department's designee.

(D) For an appeal of the CDDP's decision to be valid, written notice of the appeal and request for an administrative review must be received by the Department within 15 calendar days of the date of the CDDP's decision.

(E) The Department's Director or the Department's designee shall complete an administrative review within 30 calendar days of the date the written appeal was received by the Department.

(F) The Department's decision of an administrative review is considered final.

(c) DEPARTMENT ISSUED NOTICES. An individual receiving in-home support, the individual's legal representative, or the individual's representative may appeal a notice issued by the Department by requesting an administrative review by the Department's Director or the Department's designee.

(A) For an appeal regarding denial, suspension, or termination of an individual, and individual's legal representative, or the individual's representative to be valid, written notice of the appeal and request for an administrative review must be received by the Department within 45 calendar days of the date of the notice.

(B) The Department's Director or Department's designee shall complete an administrative review and issue a decision within 30 calendar days of the date the written appeal was received by the Department.

(C) The Department's decision of an administrative review is considered final.

(d) An individual has appeal rights as described in OAR 411-330-0130 when the denial, suspension, or termination of the individual or the individual's representative results in the Department or CDDP denying, suspending, or terminating an individual from comprehensive in-home supports.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610-430.670

Rule Caption: Adoption of Permanent Rules for Public Records Requests for Concealed Handgun License Records or Information.

Adm. Order No.: DOJ 16-2012

Filed with Sec. of State: 12-21-2012

Certified to be Effective: 1-2-13

Notice Publication Date: 11-1-2012

Rules Adopted: 137-004-0900

Rules Repealed: 137-004-0900(T)

Subject: The 2012 Legislature enacted House Bill 4045, which addresses when public bodies may disclose certain records or information concerning concealed handgun licenses. Specifically, that law prohibits public bodies from disclosing records or information that identify a person as a current or former holder of, or applicant for, a concealed handgun license, except in certain circumstances. One exception is when a public body determines that a compelling public interest requires disclosure in a particular instance, and the disclosure is limited to the name, age and county of residence of the holder or applicant.

Additionally, section 2(4) of House Bill 4045 requires the Attorney General to adopt administrative rules to carry out the law. At a minimum, the administrative rules must contain (1) a description of the procedures for submitting a request based upon the "compelling public interest" exception described above, and (2) a description of the materials that an individual must provide to the public body to establish a compelling public interest that supports the disclosure. This rule satisfies the Attorney General's obligation under the law to adopt administrative rules.

Rules Coordinator: Carol Riches—(503) 947-4700

137-004-0900

Public Records Requests for Concealed Handgun License Records or Information

(1) A public body, except the Judicial Department, may not disclose records or information that identifies a person as a current or former holder of, or applicant for, a concealed handgun license, unless:

(a) The disclosure is made to another public body and is necessary for criminal justice purposes;

(b) A court enters an order in a criminal or civil case directing the public body to disclose the records or information;

(c) The holder of, or applicant for, the concealed handgun license consents to the disclosure in writing;

(d) The public body determines that a compelling public interest requires disclosure in the particular instance and the disclosure is limited to the name, age and county of residence of the holder or applicant;

(e)(A) The disclosure is limited to confirming or denying that a person convicted of a person crime, or restrained by a protective order, is a current holder of a concealed handgun license;

(B) The disclosure is made to a victim of the person crime or to a person who is protected by the protective order, in response to a request for disclosure that provides the public body with the name and age of the person convicted of the person crime or restrained by the protective order; and

(C) The person seeking disclosure provides the public body with written proof that the person is a victim of the person crime or is protected by the protective order; or

(f)(A) The disclosure is limited to confirming or denying that a person convicted of a crime involving the use or possession of a firearm is a current holder of a concealed handgun license;

(B) The disclosure is made to a bona fide representative of the news media in response to a request for disclosure that provides the name and age of the person convicted of the crime involving the use or possession of a firearm; and

(C) The person seeking disclosure provides the public body with written proof that the person is a bona fide representative of the news media.

(2) Requests seeking records or information on the basis of a compelling public interest pursuant to subsection (1)(d) shall:

(a) Be considered by public bodies on a case-by-case basis;

(b) Be made in writing and signed by the requestor;

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(c) Be addressed to the custodian of public records of the public body that possesses the records or information;

(d) Identify the records or information being sought;

(e) State with specificity the reasons why the requestor contends that a compelling public interest requires disclosure of the requested records or information; and

(f) Include any documentation (including but not limited to written materials, pictures, video, other media, etc.) that supports the requestor's contention that a compelling public interest requires disclosure.

(3) Notwithstanding any other provision of law, a public body that receives a request for disclosure under subsection (1)(e) or (1)(f) of this rule may conduct an investigation, including a criminal records check, to determine whether a person described in paragraph (1)(e)(A) or (1)(f)(A) of this rule has been convicted of a person crime or a crime involving the use or possession of a firearm or is restrained by a protective order.

(4) As used in this rule:

(a) "Convicted" does not include a conviction that has been reversed, vacated or set aside or a conviction for which the person has been pardoned.

(b) "Custodian" has the meaning given that term in ORS 192.410.

(c) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission, or any other crime constituting domestic violence, as defined in ORS 135.230.

(d) "Protective order" has the meaning given that term in ORS 135.886.

(e) "Victim" has the meaning given that term in ORS 131.007.

Stat. Auth.: 2012 OL Ch. 93, §2(4)

Stats. Implemented: 2012 OL Ch. 93, §2(4)

Hist.: DOJ 14-2012(Temp), f. & cert. ef. 8-21-12 thru 2-8-13; DOJ 16-2012, f. 12-21-12, cert. ef. 1-2-13

Rule Caption: Adopts Rules Required by 2012 Legislation to Implement Foreclosure Avoidance Measure Notices

Adm. Order No.: DOJ 1-2013

Filed with Sec. of State: 1-3-2013

Certified to be Effective: 1-7-13

Notice Publication Date: 11-1-2012

Rules Adopted: 137-120-0010, 137-120-0020

Rules Repealed: 137-120-0010(T), 137-120-0020(T)

Subject: These rules implement Oregon Laws 2012, chapter 112, section 4a. They specify the form and content of the notice issued by a beneficiary when the beneficiary determines that a grantor is not eligible for any foreclosure avoidance measure or that the grantor has not complied with the terms of a foreclosure avoidance measure to which the grantor has agreed. They also provide the address to which a copy of the notice must be sent to the Attorney General.

Rules Coordinator: Carol Riches—(503) 947-4700

137-120-0010

Application

These division 120 rules apply to any beneficiary seeking to foreclose a residential trust deed pursuant to ORS 86.705 to 86.795.

Stat. Auth.: 2012 OL Ch. 112, Sec. 4a

Stats. Implemented: 2012 OL Ch. 112, Sec. 4a

Hist.: DOJ 11-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 1-2013, f. 1-3-13, cert. ef. 1-7-13

137-120-0020

Determination of Grantor Ineligibility for or Noncompliance With Foreclosure Avoidance Measure

(1) If a beneficiary determines that a grantor is not eligible for any foreclosure avoidance measure or that the grantor has not complied with the terms of a foreclosure avoidance measure to which the grantor has agreed, the beneficiary or the beneficiary's agent shall serve a notice of that determination to the grantor as provided in ORS 86.740(1) that includes:

(a) The name of the grantor;

(b) The name of the beneficiary;

(c) The address of the property at issue;

(d) A statement that the beneficiary has either:

(A) Determined that the grantor is not eligible for any of the following: a forbearance agreement, a temporary or permanent loan modification, a short sale, a deed-in-lieu of foreclosure, or any other foreclosure avoidance measure, stating each foreclosure avoidance measure considered. The basis for the beneficiary's determination must be described with specificity in plain language; or

(B) Determined that the grantor is not in compliance with the terms of an agreement for forbearance, a temporary or permanent loan modification, a short sale, a deed-in-lieu of foreclosure, or another foreclosure avoidance measure. The basis for the beneficiary's determination must be described with specificity in plain language;

(c) A statement of whether the beneficiary has been able to make contact with the grantor or receive adequate response from the grantor. If the grantor is ineligible for a foreclosure avoidance measure because the beneficiary has been unable to make contact with the grantor or receive adequate response from the grantor, stating what efforts were made to contact the grantor and the inadequacy of the response;

(f) The date specified for the property's trustee sale; and

(g) Provide contact information for low-cost legal service providers and the Oregon State Bar.

(2) The notice described in section (1) of this rule shall substantially comply with the model form provided in the Appendix to these division 120 rules and available as "Form 20" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(3) A copy of the notice described in section (1) of this rule shall be submitted to the Attorney General of Oregon at 1162 Court St. NE, Salem OR, 97301 or foreclosureavoidance@doj.state.or.us.

Stat. Auth.: 2012 OL Ch. 112, Sec. 4a(4)

Stats. Implemented: 2012 OL Ch. 112, Sec. 4a(4)

Hist.: DOJ 11-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 1-2013, f. 1-3-13, cert. ef. 1-7-13

Rule Caption: Adopts Rules Required by 2012 Legislation to Implement Foreclosure Avoidance Mediation Program

Adm. Order No.: DOJ 2-2013

Filed with Sec. of State: 1-3-2013

Certified to be Effective: 1-7-13

Notice Publication Date: 11-1-2012

Rules Adopted: 137-110-0001, 137-110-0005, 137-110-0010, 137-110-0020, 137-110-0110, 137-110-0200, 137-110-0210, 137-110-0410, 137-110-0420, 137-110-0430, 137-110-0500, 137-110-0510, 137-110-0520, 137-110-0600, 137-110-0610, 137-110-0620, 137-110-0630, 137-110-0640, 137-110-0650, 137-110-0660, 137-110-0670

Rules Repealed: 137-110-0001(T), 137-110-0005(T), 137-110-0010(T), 137-110-0020(T), 137-110-0110(T), 137-110-0200(T), 137-110-0210(T), 137-110-0410(T), 137-110-0420(T), 137-110-0430(T), 137-110-0500(T), 137-110-0510(T), 137-110-0520(T), 137-110-0600(T), 137-110-0610(T), 137-110-0620(T), 137-110-0630(T), 137-110-0640(T), 137-110-0650(T), 137-110-0660(T), 137-110-0670(T)

Subject: These rules implement the Foreclosure Avoidance Mediation Program established by Oregon Laws 2012, chapter 112. These rules provide:

- The accepted methods for providing statutorily-required notice to the Attorney General;

- The minimum training, qualifications and experience required of program mediators;

- The fees that must be paid by the parties, the timing of fee payments, and the requirements for obtaining a waiver by low-income grantors;

- The form for, and contents of, the notice of mediation that must be created by certain beneficiaries seeking non-judicial foreclosure;

- The form for, and contents of, the mediation scheduling notice issued by the program's mediation service provider;

- The form for, and contents of, an affidavit exempting a grantor from the requirement to see a housing counselor within a certain timeframe;

- The mediation guidelines that provide for the role of program mediators; documents required of both parties and the schedule for providing those documents; procedures for rescheduling or adjourning mediation sessions; confidentiality provisions; role of interpreters; means of executing agreements; and the procedure for providing a certificate of compliance to the beneficiary and the contents of that certificate.

Rules Coordinator: Carol Riches—(503) 947-4700

ADMINISTRATIVE RULES

137-110-0001

Purpose

These division 110 rules govern the foreclosure avoidance mediation program created by Oregon Laws 2012, chapter 112.

Stat. Auth.: OL 2012 Ch. 112, Sec. 2(2), 2(5), 2(7), 2a(3), 3 & 4a(4)

Stats. Implemented: OL 2012 Ch. 112

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0005

Application

These division 110 rules apply to any mediation resulting from the issuance of a notice of mediation by a beneficiary seeking to foreclose a residential trust deed pursuant to ORS 86.735 and to an at-risk grantor's request to enter into foreclosure avoidance mediation with respect to a residential trust deed.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5) & 2(7)

Stats. Implemented: 2012 OL Ch. 112

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0010

Definitions

As used in these division 110 rules, unless a specific rule provides otherwise for purposes of that rule:

(1) "Date of mediation" means the date of the mediation session with the beneficiary or the beneficiary's agent and a mediator and grantor present.

(2) "Foreclosure Avoidance Mediation Program" means the mediation program established under Oregon Laws 2012, chapter 112.

(3) "Foreclosure avoidance mediation roster" means the roster of qualified mediators maintained by the mediation service provider.

(4) "Housing counselor" means an individual or entity offering guidance on home buying, renting, reverse mortgages and default and foreclosure prevention.

(5) "Mediation" means a process undertaken under the Foreclosure Avoidance Mediation Program in which a mediator assists and facilitates the grantor and beneficiary in attempting to reach a mutually acceptable resolution of a controversy involving a residential trust deed loan and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties. Mediation begins with the first contact between a grantor or beneficiary and the mediation service provider and concludes when an agreement is reached between the grantor and the beneficiary or, in the event an agreement is not reached, with the issuance of a certificate of compliance by the mediation service provider or the closure of the case by the mediation service provider without the issuance of a certificate of compliance.

(6) "Mediation agreement" means an agreement arising out of a mediation, including any term or condition of the agreement.

(7) "Mediation communications" means:

(a) All communications that are made in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and

(b) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or submitted by a mediator, the mediation service provider or a party to, or any other person present at, a mediation session.

(8) "Mediation program" means a community dispute resolution program, mediator organization or the mediation service provider through which mediation is made available under the Foreclosure Avoidance Mediation Program and includes the director, agents and employees of the Foreclosure Avoidance Mediation Program.

(9) "Mediation service provider" means the entity appointed by the Attorney General pursuant to Oregon Laws 2012, chapter 112, section 2.

(10) "Mediation session" means a meeting involving the mediator, the grantor and the beneficiary or its representatives.

(11) "Mediator" means a third party who performs mediation within the Foreclosure Avoidance Mediation Program.

(12) "Party" means the grantor, the beneficiary and the beneficiary's agent if the beneficiary authorizes the agent to appear on the beneficiary's behalf at mediation.

Stat. Auth.: OL 2012 Ch. 112, Sec. 2(2), 2(5), 2(7), 2a(3), 3 & 4a(4)

Stats. Implemented: OL 2012 Ch. 112

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0020

Notice to Attorney General

For the purposes of these division 110 rules and the Foreclosure Avoidance Mediation Program, any requirement or option to mail a copy of a notice to or otherwise notify the Attorney General may be met through either one of the following means:

(1) By U.S. mail addressed to Attorney General of Oregon, Foreclosure Avoidance Mediation Program, 1162 Court St. NE, Salem, OR 97301-4096; or

(2) By electronic mail addressed to DOJ@foreclosuremediationOR.org. Electronic mail notifications may be accomplished using the web-based computer program provided by the mediation service provider to the extent that such functionality is available for a particular notice or form.

Stat. Auth.: 2012 OL Ch. 112, Sec. 4a(4)

Stats. Implemented: 2012 OL Ch. 112, Sec. 4a(2), (3) & (4)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0110

Mediator Qualifications, Training and Experience

(1) For purposes of this rule only:

(a) "Mediation" means a process in which a mediator assists and facilitates two or more parties to any controversy in attempting to reach a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated; and

(b) "Mediator" means a third party who performs mediation.

(2) A mediator conducting a mediation under the Foreclosure Avoidance Mediation Program shall:

(a) Have conducted at least 20 mediations of any type or subject matter as a mediator. Work performed as an assistant or apprentice mediator under the supervision of a lead mediator may also be counted toward the 20-mediation requirement;

(b) Provide evidence of at least 100 hours of mediation experience as a mediator or as an assistant or apprentice mediator. Work that a mediator performs to prepare for and schedule the mediation or to prepare the parties for a mediation session, may be counted towards this 100-hour requirement;

(c) Disclose to the mediation service provider the professional standards to which the mediator subscribes;

(d) Have successfully participated in at least 30 hours of training that is consistent with the curriculum found in Section 3.2 of the Oregon Judicial Department Court Connected Mediator Qualification Rules effective August 1, 2005;

(e) Demonstrate that the mediator is familiar with ORS 36.110 to 36.238;

(f) Provide evidence of successful participation in at least 16 hours of training on the substantive law and legal processes regarding foreclosures in Oregon including ORS Chapter 86; and

(g) Provide evidence of successful participation in at least 8 hours of training on the procedures, practices and policies of the Foreclosure Avoidance Mediation Program. This training shall include some interactive instruction, such as role-playing.

(3) The mediation service provider may grant a waiver from the training requirements in subsections 2(d) and (f) of this rule upon a showing by the mediator of significant and related education or experience.

(4) The mediation service provider shall decide whether or not an individual:

(a) Meets the minimum qualifications as a mediator under these rules;

(b) Is included on the foreclosure avoidance mediation roster; or

(c) Is assigned to a mediation.

(5) An individual who meets the minimum qualifications as a mediator under these rules or who is added to the foreclosure avoidance mediation roster may not represent that fact as license or certification of their competency for anything other than their role in the Foreclosure Avoidance Mediation Program.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(2)(b)(B)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(2)(b)(B)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0200

Fees Paid by the Grantor, Fee Waiver

(1) In mediations initiated in connection with a notice of default, the grantor shall pay a fee of \$200 to the mediation service provider at the time

ADMINISTRATIVE RULES

the grantor confirms his or her participation in the mediation as required by Oregon Laws 2012, chapter 112, section 2(3)(c). If there are joint or multiple grantors, only one grantor must pay this fee.

(2) In mediations initiated at the request of an at-risk grantor, the grantor shall pay a fee of \$200 to the mediation service provider at the time the grantor confirms his or her participation in the mediation as required by Oregon Laws 2012, chapter 112, section 2(3)(c). If there are joint or multiple grantors, only one grantor must pay this fee.

(3) The grantor may apply for a waiver of \$150 of the fees described in sections (1) and (2) of this rule at the time the grantor confirms his or her participation in the mediation as required by Oregon Laws 2012, chapter 112, section 2(3)(c). The grantor shall pay a \$50 fee at the time of requesting a fee waiver.

(4) A grantor's application for a fee waiver under section (3) of this rule shall be granted if the grantor is able to provide satisfactory evidence to the mediation service provider that the grantor's annual household income is less than:

- (a) \$22,340 for a household of one;
- (b) \$30,260 for a household of two;
- (c) \$38,180 for a household of three;
- (d) \$46,100 for a household of four;
- (e) \$54,020 for a household of five;
- (f) \$61,940 for a household of six;
- (g) \$69,860 for a household of seven;
- (h) \$77,780 for a household of eight;
- (i) \$85,700 for a household of nine; or
- (j) \$93,620 for a household of ten or more.

(5) If the mediation service provider denies a grantor's application for a fee waiver made under section (3) of this rule, the grantor shall pay the remaining \$150 within 15 days of receiving the mediation service provider's determination not to grant a fee waiver but never later than the date of the scheduled mediation session.

(6) A grantor who fails to timely pay fees will be considered to have declined mediation. Failure by a grantor to timely pay fees will result in cancellation of the mediation session.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(2)(b)(C) & 2(2)(c)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(2)(b)(C) & 2(2)(c)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0210

Fees Paid by Beneficiary

(1) In mediations initiated in connection with a notice of default, the beneficiary or the beneficiary's agent shall pay a total mediation fee of \$425 to the mediation service provider. The beneficiary shall pay \$200 of that fee at the time of serving or mailing the notice of mediation. The beneficiary shall pay the remaining \$225 prior to the scheduled mediation session.

(2) In mediations initiated at the request of an at-risk grantor, the beneficiary or the beneficiary's agent shall pay a total mediation fee of \$500 to the mediation service provider. The beneficiary shall pay \$200 of that fee at the time the beneficiary notifies the mediation service provider of the grantor's request for mediation pursuant to Oregon Laws 2012, chapter 112, section 2(7). The beneficiary shall pay the remaining \$300 prior to the scheduled mediation session.

(3) A junior lienholder that participates in a mediation shall pay the fee stated in section (1) of this rule.

(4) A beneficiary that is otherwise exempt from mediation pursuant to Oregon Laws 2012, chapter 112, section 2(2)(d) may participate in mediation by paying the fees described in section (1) of this rule and by following the mediation guidelines set forth in OAR 137-110-0600 to 137-110-0670.

(5) Failure by a beneficiary to timely pay fees will result in cancellation of the mediation session.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(2)(b)(C)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(2)(b)(C)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0410

Beneficiary Requirements

(1) Unless exempt under Oregon Laws 2012, chapter 112, section 2(2)(d), a beneficiary filing a notice of default pursuant to ORS 86.735 on a residential trust deed shall:

(a) Provide a notice of mediation to the grantor and the mediation service provider at least 60 days before serving or mailing the notice of sale described in ORS 86.740(1)(a);

(b) Include the following contents in the notice of mediation:

(A) List the last known name, address, telephone number and other contact information for the grantor or other person named in the residential trust deed;

(B) Specify the account number or other means by which the beneficiary or trustee or an agent of the beneficiary or trustee identifies the obligation that is secured by the residential trust deed;

(C) Provide the address, telephone number and other contact information for:

(i) The beneficiary or an agent of the beneficiary that the beneficiary authorizes to negotiate on the beneficiary's behalf;

(ii) The Oregon State Bar's Lawyer Referral Service;

(iii) Service agencies or other providers that offer free or low-cost legal services from a list of agencies or providers that the Attorney General adopts by rule; and

(iv) A list of not-for-profit housing counselors approved by the United States Department of Housing and Urban Development or an agency of this state compiled by the Oregon Housing and Community Services agency;

(D) State that the grantor must consult with a housing counselor approved by the United States Department of Housing and Urban Development. State that the grantor may choose to have an attorney or United States Department of Housing and Urban Development-approved housing counselor represent the grantor at the mediation;

(E) State that the beneficiary is required to enter into mediation with the grantor for the purpose of negotiating a foreclosure avoidance measure;

(F) Contain a brief, plain language description of the foreclosure avoidance measures offered by the beneficiary or the beneficiary's agent or a description of the foreclosure avoidance measures described in section 2(1) of Oregon Laws 2012, chapter 112;

(G) List the documents the grantor is required to provide pursuant to OAR 137-110-0610;

(H) State the fees associated with mediation and specify the maximum cost for which the grantor will be responsible;

(I) State that the mediation and mediation communications, as defined in ORS 36.110, are confidential in accordance with and to the extent provided in ORS 36.220 to 36.238;

(J) State that within 30 days after the date of the notice a mediation service provider will send another notice to the grantor with a date, time and location for the mediation and other requirements of Oregon law.

(2) The notice required by section (1) of this rule:

(a) Shall be served on the mediation service provider in the manner prescribed by ORS 86.740. However, the mediation service provider shall accept service if the notice is submitted using a web-based computer program provided by the mediation service provider and the provider acknowledges its actual receipt of the notice by electronic mail or confirmation generated within the provider's web-based computer program.

(b) Shall substantially comply with the model form provided in Appendix A to these division 110 rules and available as "Form 410" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(3) When mailed or served on a person other than the grantor, the notice required by subsection (1) of this rule may be redacted to remove personal information, such as the grantor's telephone number or account number.

(4) The beneficiary shall comply with the mediation guidelines set out in OAR 137-110-600 to 137-110-670.

Stat. Auth.: OL 2012 Ch. 112, Sec. 3 & 2(5)
Stats. Implemented: OL 2012 Ch. 112, Sec. 3 & 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0420

Mediation Service Provider Requirements

(1) Within 30 days after the date on which the beneficiary caused a notice of mediation to be served or mailed as provided in ORS 86.740, the mediation service provider shall send a mediation scheduling notice to the grantor and beneficiary. The mediation scheduling notice must:

(a) State the date, time and location of the scheduled mediation session;

(b) Identify and provide contact information for the mediation service provider;

(c) Provide a date at least 30 days before the scheduled mediation by which the grantor shall contact the mediation service provider to confirm that the grantor will enter into mediation and pay fees. The notice shall conspicuously state that failure to confirm participation and pay applicable fees by the specified date will be deemed refusal to participate by the grantor;

(d) State the fees associated with mediation;

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(e) Provide the address, telephone number and other contact information for a list of not-for-profit housing counselors approved by the United States Department of Housing and Urban Development and other housing counselors compiled by the Oregon Housing and Community Services Department;

(f) State that the grantor must consult with a housing counselor approved by the United States Department of Housing and Urban Development;

(g) List the documents each party shall provide for the mediation; and

(h) Provide contact information for low cost legal service providers and the Oregon State Bar.

(2) The notice required by section (1) of this rule shall substantially comply with the model form provided in Appendix B to these division 110 rules and available as "Form 420" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(3)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(3)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0430

Grantor Requirements

If the grantor wishes to participate in mediation, the following requirements apply:

(1) On or before the date specified by the mediation service provider in its mediation scheduling notice, the grantor shall confirm with the mediation service provider that the grantor wishes to enter into mediation.

(2) The grantor shall consult with housing counseling with a United States Department of Housing and Urban Development-approved housing counselor prior to the mediation session.

(3) The requirement in section (2) of this rule does not apply if the grantor notifies the mediation service provider that the grantor has been unable to obtain an appointment to consult with a qualified housing counselor within 30 days after receiving the notice of mediation and executes an affidavit including:

(a) The name of the grantor;

(b) The name of the beneficiary;

(c) The address of the property; and

(d) A statement that the grantor of the named property has been unable to obtain an appointment to consult with a qualified housing counselor within 30 days after receiving the notice of mediation.

(4) The affidavit described in section (3) shall substantially comply with the model form provided in Appendix C to these division 110 rules and available as "Form 430" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(5) The grantor shall comply with the mediation guidelines set out in OAR 137-110-600 to 137-110-670.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(3) & 2a(3)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(3) & 2a

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0500

Grantor Requirements

(1) A grantor who is at risk of default may request mediation with their beneficiary. The grantor may use a paper or web-based computer form available for this purpose from the mediation service provider. The grantor must deliver this request to the beneficiary or trustee or the beneficiary's agent or trustee's agent.

(2) A grantor that requests mediation may notify the mediation service provider and the Attorney General of the request. A request for mediation made using the web-based computer form available from the mediation service provider shall be sufficient notice to the mediation service provider and the Attorney General.

(3) A grantor shall consult with housing counseling with a United States Department of Housing and Urban Development-approved housing counselor prior to the mediation session.

(4) The grantor shall comply with the mediation guidelines set out in OAR 137-110-600 to 137-110-670.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5) & 2(7)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0510

Beneficiary or Trustee Requirements

(1) Within 15 days of receiving a request for mediation from an at-risk grantor, the beneficiary or trustee or the beneficiary's or trustee's agent

shall respond to the grantor's request, and this response shall include contact information for the Attorney General and the mediation service provider.

(2) Within 15 days of receiving a request for mediation from an at-risk grantor, the beneficiary or trustee or the beneficiary's or trustee's agent shall notify the Attorney General and the mediation service provider of the grantor's request and the beneficiary's response by:

(a) Mailing notice to the mediation service provider; or

(b) By electronic means using the web-based computer program provided by the mediation service provider.

(3) At the time of providing the notice required by section (2) of this rule, the beneficiary shall pay the fee required by OAR 137-110-0210(2).

(4) The beneficiary shall comply with the mediation guidelines set out in OAR 137-110-600 to 137-110-670.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5) & 2(7)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0520

Mediation Service Provider Requirements

Within 10 days after receiving a beneficiary's notification of a request for mediation by an at-risk grantor, the mediation service provider shall send a mediation scheduling notice to the grantor and the beneficiary that, with the exception of the deadline by which such notice must be sent out, complies with the requirements of OAR 137-110-420.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(3) & 2(7)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(3) & 2(2)(7)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0600

Mediator Authority and Role

(1) The mediator has no authority to impose a settlement on the grantor or the beneficiary or to render any decisions on any substantive issue or make any legal determinations.

(2) The mediator may rely on assertions made in the documents provided by the parties and need not make an independent inquiry into the proper chain of title or any other matter.

(3) The mediator shall:

(a) Act as an impartial intermediary and not as an advocate for the beneficiary or the grantor;

(b) Make appropriate disclosures to the parties about the mediator's skills and the specific mediation approaches the mediator uses;

(c) Support the ability of the parties to make informed decisions regarding the mediation process and outcomes by ensuring that parties are provided with information regarding the mediation process and by ensuring that relevant documents are available to the parties;

(d) Conduct mediations fairly, diligently, even-handedly, and with no personal stake in the outcome;

(e) Avoid actual, potential, or perceived conflicts of interest that can arise from a mediator's relationships or experiences that reasonably raise a question about the mediator's impartiality;

(f) Affirmatively disclose to the mediation service provider and the parties any actual, potential or perceived conflicts of interest that could raise a question about the mediator's impartiality;

(g) Where a party, the mediator or the mediation service provider questions the mediator's ability to act impartially, and the issue cannot be resolved to the satisfaction of the questioner, the mediator shall decline to serve or withdraw if already serving as the mediator in a particular mediation. Having questioned a mediator's impartiality, and that mediator having declined to serve, the ability of a party to exclude any subsequent mediator shall be at the discretion of the mediation service provider;

(h) Not engage in any other services, other than mediation, for any of the parties involving the same or significantly related issues, unless the parties agree in writing; and

(i) Preserve the grantor's and the beneficiary's desired levels of confidentiality consistent with OAR 137-110-0640.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0610

Documents Required of the Grantor

(1) The grantor shall provide the following documents to the mediation service provider for provision to the beneficiary at least 15 days prior to the first scheduled mediation session:

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(a) A completed "Universal Intake Form" provided in Appendix D and available by selecting "Form 610" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml or a substantially similar form;

(b) Pay stubs that confirm the grantor's income for the two full months immediately preceding the month during which the grantor submits the pay stubs;

(c) A profit and loss statement, if available, if the grantor is self-employed;

(d) Bank statements for the two full months immediately preceding the month during which the grantor submits the bank statements;

(e) A benefits statement or letter from the benefit provider showing the amount, frequency and duration of the benefit, if relying on social security, disability, unemployment or other non-wage benefit income;

(f) A divorce decree or judgment or separation agreement, if the grantor is relying on child support, alimony or maintenance payments;

(g) The grantor's most recent electric, heat, gas, or other utility bill;

(h) Most recent property tax statement or appraisal; and

(i) The grantor's tax returns from the two most recent years.

(2) If a grantor fails to timely provide documents as required by section (1) of this rule the grantor and the beneficiary shall nevertheless appear at the first scheduled mediation session. A grantor who does not timely provide a document required by this rule is at increased risk of the mediation concluding without the beneficiary being able to agree to a foreclosure avoidance measure.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5) & 3

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5) & 3

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0620

Documents Required of the Beneficiary

(1) The beneficiary shall provide the following documents to the mediation service provider for provision to the grantor at least 15 days prior to the first scheduled mediation session:

(a) The grantor's complete payment history for the obligation that is secured by the residential trust deed that the beneficiary seeks to foreclose;

(b) Evidence that the beneficiary is the real party in interest with respect to the obligation, including:

(A) A true copy of the original debt instrument that is the basis for the right the beneficiary seeks to foreclose; and

(B) Documents showing chain of title for the property at issue, including recorded and unrecorded conveyances, endorsements and assignments of the trust deed, the note and the security instrument;

(c) A copy of the authorization from the beneficiary to the beneficiary's agent, if the beneficiary's agent appears at mediation;

(d) A copy of any of the following documents that apply to the note or obligation that is secured by the trust deed:

(A) A servicing agreement the beneficiary entered into with another person; or

(B) An agreement by means of which the beneficiary pledged as collateral for a security the beneficiary issued or sold all or a part of the ownership interest in the note or other obligation;

(2) To the extent that the grantor has timely provided their documents as required by OAR 137-110-0610, the beneficiary or the beneficiary's agent shall provide the following documents to the mediation service provider or mediator for presentation to the grantor at or before the first scheduled mediation session:

(a) The beneficiary's or the beneficiary's agent's most recent broker price opinion or appraisal;

(b) A document that identifies each net present value model used by the beneficiary or the beneficiary's agent to assess the grantor for a foreclosure avoidance measure and the input values used by the beneficiary or the beneficiary's agent, and the output values produced by the net present value model;

(c) A document that lists the total amount that a grantor must submit to the trustee to discontinue foreclosure proceedings, along with an itemized description of all costs and expenses incurred by the beneficiary or beneficiary's agent in connection with the foreclosure, including trustee and attorney fees; and

(d) Any other document the beneficiary believes limits the scope of the agent's authority to agree to a particular foreclosure avoidance measure.

(3) Nothing in section (2) of this rule requires a beneficiary or the beneficiary's agent to disclose the algorithmic formula of the net present value model used by the beneficiary or the beneficiary's agent.

(4) If a beneficiary fails to timely provide documents as required by section (1) of this rule, the grantor and the beneficiary shall nevertheless

appear at the first scheduled mediation session. A beneficiary who fails to provide a document required by this rule is at risk of the mediation concluding without the beneficiary receiving a certificate of compliance.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(4)(a)(A) & 2(5)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(4)(a)(A) & 2(5)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0630

Rescheduling or Adjourning the Mediation Session

(1) All parties shall attend the scheduled mediation session unless the mediation is rescheduled in accordance with the provisions of this rule.

(2) Within 10 days of the mediation scheduling notice, either party may request that the mediation service provider reschedule the date for the mediation session to a date or location that is more convenient. The rescheduled mediation session must be no earlier than 45 days and not later than 90 days after the date on which the notice of mediation was served or mailed as provided in ORS 86.740.

(3) Except as provided in section (2) of this rule, no request from a party for rescheduling of the mediation session may be granted except upon a showing of good cause or upon a written agreement of the parties. Notice of such written agreement shall be provided by facsimile, electronic mail, regular mail or by use of a web-based computer program provided by the mediation service provider.

(4) A request to reschedule the mediation session for good cause shall be in writing and delivered to the mediation service provider and the other party. The request shall set forth the circumstances demonstrating good cause with particularity.

(5) If the mediation service provider grants rescheduling, the mediation service provider shall issue a notice that provides the new date, time, and location of mediation within 10 days of the request for rescheduling.

(6) With the consent of the parties, a mediation session may be adjourned and an additional mediation session scheduled.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0640

Confidentiality

(1) Except as otherwise provided in this rule or by the terms of any agreement to mediate executed by the parties prior to a mediation session, the foreclosure avoidance mediation process is confidential and mediation communications are inadmissible as provided in ORS 36.110 to ORS 36.238.

(2) The mediation service provider is a mediation program for the purposes of ORS 36.100 to 36.238.

(3) No videotaping, transcription or other recording of mediation sessions is permitted except by written agreement of the parties and the mediator.

(4) Before participating in a mediation session, the grantor and beneficiary may execute an "agreement to mediate" specifying the confidentiality provisions of the mediation, consistent with these rules and ORS 36.110 to 36.238.

(5) Mediations in which a state agency is a party are subject to ORS 36.224.

(6) An agreement to mediate executed by the parties prior to mediation is not confidential.

(7) Nothing in this rule prevents a mediator from disclosing the outcome of the mediation to the mediation service provider or from completing a report of the mediation outcomes on forms approved by the Attorney General. Such disclosures and reports are not confidential and may be disclosed or admitted as evidence in a subsequent proceeding.

(8) Nothing in this rule limits the ability of the mediation service provider or the Attorney General to compile and disclose general statistical information concerning matters that have gone to mediation if the information does not identify specific cases.

(9) Nothing in this rule limits the ability of the mediation service provider or the Attorney General to disclose confidential mediation communications, the disposition of matters referred for mediation and the terms of mediation agreements to another person for use in research, training or educational purposes, subject to the following:

(a) A mediator or mediation program may only use or disclose confidential mediation communications if the communications are used or disclosed in a manner that does not identify individual mediations or parties.

(b) A mediator or mediation program may use or disclose confidential mediation communications that identify individual mediations or parties

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only if and to the extent allowed by a written agreement with, or written waiver of confidentiality by, the parties.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0650

Participation in the Mediation Session

(1) Any party wishing to participate in mediation, including otherwise exempt beneficiaries or junior lienholders, shall do so in accordance with all other provisions of OAR 137-110-0001 to 137-110-0670.

(2) If a trust deed includes joint or multiple grantors, and fewer than all grantors confirm participation in the mediation session, the mediation may nevertheless occur with the consent of the beneficiary.

(3) The mediation service provider may assist the parties in obtaining an interpreter. However, if the mediation service provider is unable to provide an interpreter, the party needing an interpreter is responsible for securing and paying for the interpreter. The manner of participation of a language interpreter during a mediation session will be determined by the mediator.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0660

Agreements

(1) In the event the foreclosure issues are resolved before the scheduled mediation session, the parties shall advise the mediation service provider of their settlement using paper or web-based forms provided by the mediation service provider.

(2) Any agreement reached as a result of mediation shall be reduced to writing.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

137-110-0670

Certificate of Compliance

(1) The mediation service provider shall issue a certificate of compliance if, after consulting with the mediator, the mediation service provider determines that the mediation has concluded and the beneficiary has complied with the requirements of these rules. The certificate of compliance that has been signed and notarized by the mediation service provider shall be issued to the beneficiary or the beneficiary's agent no later than five days following the conclusion of the mediation.

(2) The mediation service provider shall issue a certificate of compliance if a grantor fails to confirm by the date provided by Oregon Laws 2012, chapter 112, section 2(3)(c) that the grantor intends to enter into mediation.

(3) The certificate of compliance shall include:

- (a) The name of the grantor;
- (b) The name of the beneficiary;
- (c) The address of the property at issue;
- (d) Reference to the recording information of the trust deed at issue;
- (e) A certification that either:

(A) The beneficiary or its agent appeared at mediation and complied with the requirements of Oregon Laws 2012, chapter 112, sections 4 and 5;

(B) The grantor elected to enter into mediation but failed to appear at the time and place scheduled for mediation; or

(C) The grantor declined to enter into mediation with the beneficiary, or did not confirm intent to participate by the required date.

(4) The certificate of compliance described in this rule shall substantially comply with the model form provided in Appendix E to these division 110 rules and available as "Form 670" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(5) The certificate of compliance described in this rule shall be submitted via hard copy to the grantor(s) and beneficiary(ies) by facsimile machine, by U.S. mail, or in person. In addition, the mediation service provider may make the certificate of compliance available to the grantor and the beneficiary via a web-based computer program.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(6)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(6)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Define full-time undergraduate student; Remove reimbursement; Add department notification requirement; Housekeeping changes.

Adm. Order No.: DPSST 27-2012

Filed with Sec. of State: 12-24-2012

Certified to be Effective: 12-24-12

Notice Publication Date: 12-1-2012

Rules Amended: 259-070-0020

Subject: ORS 243.954(1) defines a "child" as "a person who is the natural child, adopted child or stepchild of a public safety officer who is *** (b) 18 through 22 years of age and enrolled as a full-time undergraduate student ***." To provide clarity, a definition of "full-time undergraduate student" was added to the rule using the current IRS definition as a guideline. Also, the word "reimbursement" was removed as the program currently pay the health/dental benefit proactively, and a requirement to immediately notify the Department upon any change of beneficiary eligibility status is added. Finally, "designee" was added to subsection (2)(a)(A) to correct and oversight from a previous rule revision.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-070-0020

Discretionary Benefits

(1) The Board will consider financial need, available funds in the Public Safety Memorial Fund and the anticipated demands on the fund in determining payment amounts of discretionary benefits.

(2) Health and Dental Insurance. The Board may award benefits to afford health and dental coverage comparable to that provided by the public safety officer to eligible family members or designees if alternate coverage is not provided.

(a) For the purposes of this rule, "alternate coverage" refers to health and dental coverage that is available to the applicant and beneficiaries at the time of application.

(A) An application for health and dental insurance benefits made by an eligible family member or designee who has declined or lost alternate coverage will be reviewed by the Board to determine eligibility for reimbursement.

(B) The Board will take into consideration the totality of the circumstances surrounding the application, including but not limited to, the reasons for the loss of alternate coverage.

(b) Spouses or designees are eligible for five years after the date of the final order confirming eligibility or until re-marriage, whichever occurs first. A spouse or designee is required to notify the Department immediately upon change of marital status.

(c) An eligible child between the ages of 18 and 23 years is eligible for the benefit only if enrolled as a full-time undergraduate student.

(A) For the purposes of this rule, "full-time undergraduate student" means an undergraduate student who is enrolled for the number of course hours determined to be full-time by the school during each of five calendar months during the calendar year.

(B) Recipients are required to notify the Department immediately upon change of student enrollment status of an eligible child.

(3) Mortgage Payments. An application requesting mortgage payments must be made within the first 12 months following the initial determination of eligibility.

(4) Scholarship Considerations. In determining the amount of scholarship benefits under ORS 243.956(8) and (10), "State Institution of Higher Education" means an institution listed in ORS 352.002.

Stat. Auth.: ORS 243.950
Stats. Implemented: ORS 243.962 & 243.968
Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 5-2000, f. & cert. ef. 9-29-00; BPSST 3-2002, f. & cert. ef. 2-11-02; DPSST 12-2005, f. & cert. ef. 11-15-05; DPSST 14-2012, f. 6-27-12, cert. ef. 7-1-12; DPSST 20-2012, f. & cert. ef. 9-24-12; DPSST 27-2012, f. & cert. ef. 12-24-12

Rule Caption: Clarify OLCC exemption (SB 1524); Define De Minimis consideration (SB 635).

Adm. Order No.: DPSST 28-2012

Filed with Sec. of State: 12-24-2012

Certified to be Effective: 12-24-12

Notice Publication Date: 12-1-2012

ADMINISTRATIVE RULES

Rules Amended: 259-060-0010, 259-060-0015

Subject: SB 1524, passed in the 2012 legislative session, updated the definition of “private security services” and adds to the list of individuals exempt from regulation as a private security provider persons with valid service permits issued by the OLCC and employed by an OLCC licensee when performing age verification and controlling access to a premises of the licensee if the person is not armed, permitted to initiate confrontational activities or hired with the preliminary responsibility of taking enforcement.

SB 635, passed during the 2011 legislative session, adds to the list of individuals exempt from regulation as private security providers persons who provide “security services as a volunteer or for de minimis consideration other than money for an event operated for the benefit of a corporation that is organized not for profit ...”

This rule update synchronizes program definitions found in administrative rule to the statutory definitions. It also clarifies the OLCC licensure exemption and defines “de minimis consideration.”

Rules Coordinator: Linsay Hale—(503) 378-2431

259-060-0010

Definitions

(1) “Accreditation Program Manager” means a person who is designated as the administrator of an employer accredited training program and is primary liaison with the Department.

(2) “Alarm Monitor” means an individual whose primary duties are the processing of alarms in an alarm monitoring facility.

(3) “Alarm Monitoring Facility” mean any organization, contract or proprietary, with the primary responsibility of reviewing incoming traffic transmitted to alarm receiving equipment and follows up with actions that may include notification of public agencies to address imminent threats related to public safety. This does not include:

(a) Facilities that monitor only production or environmental signals not directly impacting public safety;

(b) Proprietary alarm systems being monitored by Department-certified private security professionals that generate an internal response by another Department-certified private security professional;

(c) Facilities that monitor Personal Emergency Response Systems (PERS) only; or

(d) Facilities utilizing alarms that never generate a response from a public safety agency.

(4) “Applicant” means an individual who is applying for or renewing certification or licensure as a private security provider.

(5) “Armed Private Security Professional” means a private security professional who is certified to possess or has access to a firearm at any time while performing private security services.

(6) “Assessment module” means a Department-approved curriculum given to private security providers that includes, but is not limited to, the demonstration of task-related skills learned in the classroom instruction as applied to hypothetical situations.

(7) “Board” means the Board on Public Safety Standards and Training.

(8) “Certification” means recognition by the Department that a private security professional meets all the qualifications listed in ORS 181.875 and these rules.

(9) “Consideration” means something of value promised, given or done that has the effect of making an agreement to provide private security services.

(10) “De Minimis” means non-monetary compensation received by a volunteer performing private security services for a non-profit organization as defined in ORS 181.871. The compensation may not exceed a fair market value of \$125 per day.

(11) “Denial” or “Deny” means the Department’s refusal to grant private security certification or issue a license to an applicant who fails to meet the minimum standards for certification or licensure as identified in OAR 259-060-0020, including the mandatory and discretionary disqualifying misconduct identified in OAR 259-060-0300.

(12) “Department” and “DPSST” means the Department of Public Safety Standards and Training.

(13) “Director” means the Director of the Department of Public Safety Standards and Training.

(14) “Direct Supervision” means actively monitoring work by the ongoing and uninterrupted presence of a certified private security professional, or a licensed executive or supervisory manager.

(15) “Employer” means an individual or entity who employs persons to provide private security services.

(16) “Executive Manager” means a person:

(a) Who is authorized to act on behalf of a company or business in matters of licensure and certification;

(b) Who is authorized to hire and terminate personnel;

(c) Whose primary responsibility is the management of certified private security professionals; and

(d) Who has final responsibility for a company’s or business’s compliance with the ORS 181.870 to 181.991.

(18) “Flagrant Violation” means an act by a provider, contractor, owner or manager who, after being notified of a violation, intentionally continues or repeats the violation within a 36 month period after the initial violation.

(19) “Fundamental” means a duty that is a basic task or function and may be low frequency, but is an essential component of a job.

(20) “Instructor” means any person who has been certified by the Department as meeting the requirements to provide instruction to private security providers or applicants.

(21) “License” means recognition by the Department that executive manager or supervisory manager meets the requirements listed in ORS 181.875 and these rules.

(22) “Policy Committee” means the Private Security and Investigator Policy Committee.

(23) “Primary Responsibility” means an activity that is fundamental to, and required or expected in, the regular course of employment and is not merely incidental to employment.

(24) “Private” as used in the Act means those activities intended for or restricted to the use of a particular person, group or interest, or belonging to or concerning an individual person, company or interest.

(25) “Private Security Professional” means an individual who performs, as the individual’s primary responsibility, private security services for consideration, regardless of whether the individual, while performing private security services, is armed or unarmed or wears a uniform or plain clothes, and regardless of whether the individual is employed part-time or full-time to perform private security services.

(26) “Private Security Provider” means any individual who performs the functions of a private security professional, executive manager, supervisory manager or instructor.

(27) “Private Security Services” means the performance of at least one of the following activities:

(a) Observing and reporting unlawful activity;

(b) Preventing or detecting theft or misappropriation of any goods, money or other items of value;

(c) Protecting individuals or property, including, but not limited to proprietary information, from harm or misappropriation;

(d) Controlling access to premises being protected or, which respect to a licensee of the Oregon Liquor Control Commission, controlling access to premises at an entry to the premises or any portion of the premises where minors are prohibited;

(e) Securely moving prisoners;

(f) Taking enforcement action by detaining persons or placing persons under arrest under ORS 133.225; or

(g) Providing canine services for guarding premises or for the detection of unlawful devices or substances.

(28) “Private Security Services Providers Act” or “The Act” means the Private Security Providers Act (ORS Chapter 181.870 through 181.991).

(29) “Revocation” or “Revoke” means action taken by the Department to rescind the certification or licensure of a private security provider who fails to meet the minimum standards for certification or licensure as identified in OAR 259-060-0020, including the mandatory and discretionary disqualifying misconduct identified in OAR 259-060-0300.

(30) “Supervisory Manager” means an employee of or a person supervised by an executive manager who has as a primary responsibility the supervision of certified private security professionals.

(31) “Surrender” means the voluntary relinquishment of private security certification or licensure to the Department.

(32) “Suspension” or “Suspend” means action taken by the Department in temporarily depriving the holder of a license or certificate that authorizes the individual to provide private security services.

(33) “Temporary Work Permit” means a temporary certification or licensure issued by the employer to allow a company to employ and deploy a private security professional, executive or supervisory manager while the

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application for certification or licensure is being processed. A temporary work permit will not be issued for armed security professionals.

(34) "Unarmed Private Security Professional" means a private security professional who is not in possession of, or has access to, a firearm at any time while performing private security services.

(35) "Violation" means an act or omission that is prohibited under the Act or these rules.

(36) "Withdraw" means action taken by the applicant or private security provider to remove an application from consideration.

Stat. Auth.: ORS 181.870 & 181.878

Stats. Implemented: ORS 181.870 & 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; 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 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 11-2007, f. & cert. ef. 10-15-07; DPSST 6-2008, f. & cert. ef. 4-15-08; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 28-2012, f. & cert. ef. 12-24-12

259-060-0015

Private Security Provider Responsibilities

(1) A person may not act as a private security provider unless that person is certified or licensed under the Private Security Services Providers Act and these rules.

(2)(a) Persons described in ORS 181.871 are exempt from regulation as private security providers.

(b) The exemption found in ORS 181.871(L) does not apply to an individual who has the primary responsibility of controlling access to premises at an entry to the premises or any portion of the premises where minors are prohibited.

(3) Private security providers are prohibited from:

(a) Providing private security services as a private security professional without having a certificate or license issued under the Act and these rules in the person's possession;

(b) Carrying a concealed weapon while providing security services unless currently certified as an armed private security professional and licensed under ORS 166.291; and

(c) Providing training to private security professionals or applicants unless currently certified as an instructor.

(4) For purposes of these administrative rules, these prohibitions apply to any business, employer, or entity that provides private security services within this state regardless of whether the business, employer, or entity is located in this state.

(5) Change of Information.

(a) An applicant or private security provider must notify the Department within 14 calendar days of any change of address by using Form PS-23 (Private Security Services Provider Change of Information).

(b) Executive managers may use the Form PS-23 to advise the Department of terminations of employment.

(6) Notification of Arrest. Pursuant to ORS 181.885, any private security provider or applicant who is charged with a crime must notify his or her employer or, if not employed, the Department no later than 48 hours after the charge is filed.

(a) The initial notification may be made by telephone or with a Recent Arrest Form.

(b) The Department may request immediate written notification documenting specific charges, the county and state where any charges are pending, the investigating agency, and the date of arrest.

(7) Should any certified armed private security provider become ineligible to purchase, own or possess a firearm, the provider and the manager, employer or supervisor of the provider must notify the Department in writing within 48 hours of the circumstances causing the ineligibility. The notification must list all facts known and must identify a person whom the Department may contact for additional information.

Stat. Auth.: ORS 181.873, 181.871 & 181.878

Stats. Implemented: ORS 181.873, 181.871 & 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; 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 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 9-2012, f. & cert. ef. 4-2-12; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 28-2012, f. & cert. ef. 12-24-12

Rule Caption: Establish denial, revocation and suspension procedures for polygraph examiners and trainees.

Adm. Order No.: DPSST 29-2012

Filed with Sec. of State: 12-26-2012

Certified to be Effective: 12-26-12

Notice Publication Date: 12-1-2012

Rules Amended: 259-020-0010, 259-020-0015, 259-020-0030

Rules Repealed: 259-020-0031

Subject: ORS 703.230 authorizes DPSST to adopt rules to administer and enforce the Polygraph Examiner's Act. Rule language was developed which clearly identifies minimum behavioral standards for polygraph examiners and trainees as well as a defensible denial/suspension/revocation process, which includes a discretionary review process, a time period in which an individual whose application for licensure has been denied or whose licensure has been revoked is ineligible to hold any level of polygraph examiner licensure, and a reconsideration process.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-020-0010

Minimum Standards for a Polygraph Examiner Trainee License

(1) Any applicant for a license as a polygraph examiner trainee must:

(a)(A) Have graduated from a polygraph examiner's course approved by the Department; or

(B) Provide documentation of military experience or training that the Department determines is substantially equivalent to the education required by subsection (a)(A) above.

(b) Be at least 18 years of age;

(c) Be a citizen of the United States;

(d) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030.

(e) For the purposes of this rule, an applicant demonstrates a course of behavior indicating they are unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public if the applicant:

(A) Has been convicted of a Person Felony as defined by the Criminal Justice Commission in OAR 213-003-0001 or any crime with similar elements in any other jurisdiction;

(B) Has been convicted of a Person Class A Misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 or any crime with similar elements in any other jurisdiction;

(C) Demonstrates a lack of respect for the laws of this state and nation by engaging in a pattern of behavior which leads to 3 or more arrests; or

(D) Engages in conduct involving untruthfulness.

(f) Provide any information required by the Department relating to the circumstances of a conviction, if the applicant has previously been convicted of a criminal offense. ORS 670.280 is applicable when the Department considers information provided under this paragraph.

(g) Be fingerprinted and submit one (1) completed fingerprint cards to the Department for subsequent submission to the Oregon State Police, Identification Services Section.

(A) Appropriate fees must accompany the applicant's fingerprints to pay the costs of the state and federal fingerprint background checks.

(B) Currently employed corrections officers, parole and probation officers, or police officers as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.

(h) Submit a completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as may be required by the Department.

(i) Submit appropriate fees to the Department as prescribed by OAR 259-020-0035.

(2) The internship requirements of any person who is licensed as a trainee under this rule include:

(a) Periodic consultation with licensed general polygraph examiners of the trainee's own choice;

(b) A total review of 20 examinations from the first 200 examinations conducted must be reviewed by a licensed general polygraph examiner. The following review format is mandatory:

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- (A) 1st series — 5 examinations reviewed of the first 20 conducted;
- (B) 2nd series — 5 examinations reviewed of the next 30 conducted;
- (C) 3rd series — 5 examinations reviewed of the next 50 conducted;
- (D) 4th series — 5 examinations reviewed of the last 100 conducted.

(E) During each review series, the trainee must have a general polygraph examiner complete a Polygraph Review Critique (DPSST Form F-203a) on each set of examinations reviewed. The trainee must forward the original critiques to the Department. One copy of the form must be retained by the reviewer, and one copy must be retained by the trainee. These reviews must be completed and forwarded to the Department within 30 days of the completion date of each of the four (4) series of examinations shown above. The Department will not renew a trainee license unless the trainee has complied with the examination requirements in this subsection.

(F) At least two (2) review series must be completed with a general polygraph examiner during personal interviews. However, if time and distance are a distinct problem, up to two of the review series may be completed by mail. These review procedures cannot be interpreted as detracting from the trainee examiner's ability or expertise, but will be considered as legitimate, professional consultation.

(c) When participating in this prescribed course of study, trainees may administer specific issue examinations. If the trainee conducts a test which is to be offered as evidence in a court of law, the trainee must seek and utilize the assistance of a general polygraph examiner during the administration of the case and must have that general polygraph examiner available for continued consultation, including joint court appearances, if necessary. Each trainee should obtain legal advice concerning all questions relating to admissibility of polygraph examination evidence.

(d) Every trainee must maintain basic records of examinations conducted. A numerical log or ledger (beginning with #1) must provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the trainee examiner considers pertinent. Folder or envelope "case" files containing all available test information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five years unless State Archivist rules require longer maintenance.

(e) A person may not hold a license as a trainee for more than two years. An extension of the two-year period may be granted for good cause.

(A) If the applicant requests an extension of time to hold the trainee license beyond the initial two year limitation, the Department may grant an extension to the date of the next regularly scheduled Polygraph Licensing Advisory Committee meeting. The applicant will be scheduled to appear at the next committee meeting. The applicant must provide his/her request/justification for the extension, polygraph log, and ten of the last polygraph reports and charts performed by the trainee. If just cause is presented, the Polygraph Licensing Advisory Committee may recommend an extension to the Department.

(B) The Polygraph Licensing Advisory Committee may recommend additional requirements that must be met during the extension period. Failure to complete any additional requirements imposed by the Department during an extension period may be grounds to deny any additional extension requests.

(f) Trainees must clearly indicate their trainee status on all letterhead, business cards, advertising, signage, and any other type of written material that describes a polygraph examination or review of a polygraph examination.

(3) A trainee must not conduct more than five (5) completed examinations, of any type, in any one calendar day. A completed examination is an examination as defined in OAR 259-020-0005(2).

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

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 10-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 23-2008(Temp), f. & cert. ef. 12-29-08 thru 5-30-09; DPSST 1-2009, f. & cert. ef. 2-2-09; DPSST 15-2012, f. & cert. ef. 6-28-12; DPSST 29-2012, f. & cert. ef. 12-26-12

259-020-0015

Minimum Standards for a Polygraph Examiner

- (1) Any applicant for a license as a general polygraph examiner must:
 - (a) Be at least 18 years of age;
 - (b) Be a citizen of the United States;
 - (c) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the pub-

lic. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030;

(d) For the purposes of this rule, an applicant demonstrates a course of behavior indicating they are unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public if the applicant:

(A) Has been convicted of a Person Felony as defined by the Criminal Justice Commission in OAR 213-003-0001 or any crime with similar elements in any other jurisdiction;

(B) Has been convicted of a Person Class A Misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 or any crime with similar elements in any other jurisdiction;

(C) Demonstrates a lack of respect for the laws of this state and nation by engaging in a pattern of behavior which leads to 3 or more arrests; or

(D) Engages in conduct involving untruthfulness.

(e) If previously convicted for a criminal offense, provide information relating to the circumstances of the conviction as required by the Department. ORS 670.280 is applicable when the Department considers information provided under this paragraph;

(f) Be fingerprinted and submit one (1) completed fingerprint cards to the Department for subsequent submission to the Oregon State Police, Identification Services Section.

(A) Appropriate fees must accompany the applicant's fingerprints to pay costs of the state and federal fingerprint background checks. No general license will be issued until the Department has received fingerprint clearance from the Oregon State Police Identification Services Section.

(B) Currently employed corrections officers, parole and probation officers, or police officers, as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.

(g)(A) Have received a baccalaureate degree from an accredited college or university; or

(B) Have graduated from high school or have been awarded a General Educational Development (GED) certificate; and have at least five years of active investigative experience before the date of the application.

(i) Active investigative experience is acquired through full-time employment as an investigator. An investigator is a person whose primary assigned duty is the investigation of actual or suspected violations of law, either criminal or civil.

(ii) Administering polygraph examinations will satisfy the investigative experience requirement of this section.

(iii) The Department may, upon application of an individual polygraph examiner, accept the examiner's professional experience as being equal in professional value to the five years of active investigative experience required by this section.

(h) Have graduated from a polygraph examiner's course approved by the Department and have completed at least 200 examinations, or have worked as a polygraph examiner for a period of at least five years for a governmental agency within the State of Oregon and have satisfactorily completed at least 200 examinations.

(i) An applicant may meet the requirements of subsection (f) and (g) of this section if the applicant provides the Department with documentation of military training or experience that the Department determines is substantially equivalent to the education or experience requirements.

(j) Have successfully completed an examination conducted by the Department in consultation with the Advisory Committee as defined in OAR 259-020-0055, to determine competency to act as a polygraph examiner. The Department, in consultation with the Advisory Committee, will prescribe the manner and contents of any examination conducted by the Department under provisions of the Act.

(k) Submit a fully-completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as required by the Department.

(1) Submit to the Department appropriate fees as prescribed by OAR 259-020-0035.

(2) Any person who has held a trainee license for longer than 12 months and who has completed the 200 exams required under OAR 259-020-0015 must take the general license examination within 12 months of completing the required exams.

(3) The Department in consultation with the advisory committee may prescribe requirements for:

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(a) The internship of an applicant who fails to pass the first or second oral or written part of the examination described in OAR 259-020-0015(1)(h);

(b) An applicant who resides in a state other than Oregon. The minimum requirements for an out-of-state examiner who does not qualify under ORS 703.130 must include:

(A) Substantial compliance with the applicable requirements for in-state examiners;

(B) A log meeting Oregon guidelines;

(C) Passing the Oregon licensing examination;

(D) Submitting at least 20 of the last 100 polygraph examinations conducted to a licensed Oregon general polygraph examiner for review. A Polygraph Review Critique (DPSST Form F-203a) must be completed on the examinations and provided to the Department for review by the Polygraph Licensing Advisory Committee; and

(E) Demonstrating proficiency in the field of polygraphy by an oral interview with the Polygraph Licensing Advisory Committee.

(c) Any individual whose license has expired for a period of more than two years and who reapplies for licensure. These requirements may include, but are not limited to:

(A) Documentation indicating any necessary training requirements have been met; and

(B) Verification that the individual has the current knowledge, skills and ability to perform the duties of a polygraph examiner.

(4) The Department will immediately suspend an applicant's trainee license if the applicant fails the third examination. The applicant may submit a new application for a general license only after retaking and successfully completing a polygraph examiner's course approved by the Department and meeting any additional requirements.

(5) The Director, acting on the written recommendation of the Polygraph Examiners Licensing Advisory Committee, may require a licensed general polygraph examiner to appear for reexamination as directed.

(a) In preparing its written recommendation, the Committee must identify the good cause reasons for its recommendation.

(b) Based on the written recommendation, the reexamination may include the written examination, the oral examination, or both.

(c) Failure of the licensee to comply with the directive to appear for reexamination will result in the suspension of the license by the Department, until the licensee appears as directed.

(6) Every examiner must maintain basic records of examinations conducted. A numerical log or ledger (beginning with #1) will provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the examiner considers pertinent. Folder or envelope "case" files containing all available test information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five years unless any applicable Oregon State Archives Records Retention Schedules require longer retention.

(7) An examiner must not conduct more than five (5) completed examinations, of any type, in any one calendar day.

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

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.210, 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 10-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 1-2009, f. & cert. ef. 2-2-09; DPSST 10-2010, f. 10-15-10, cert. ef. 11-1-10; DPSST 19-2011, f. & cert. ef. 12-30-11; DPSST 2-2012(Temp), f. & cert. ef. 2-24-12 thru 8-15-12; DPSST 15-2012, f. & cert. ef. 6-28-12; DPSST 29-2012, f. & cert. ef. 12-26-12

259-020-0030

Denial, Suspension, or Revocation of Licenses

(1) It is the responsibility of the Department to set and uphold the standards to ensure the highest level of professionalism and discipline. These standards will be upheld at all times unless the Department determines that neither the safety of the public or respect of the profession is compromised.

Definitions

(2) For the purposes of this rule, the following definitions apply:

(a) "Denial" or "Deny" means the Department's refusal to issue a general polygraph examiner or polygraph examiner trainee license to an applicant who fails to meet the minimum standards for licensure as identified in OAR 259-020-0010 and 259-020-0015.

(b) "Revocation" or "Revoke" means action taken by the Department to rescind the licensure of a polygraph examiner or trainee for behavior identified in section (3) of this rule.

(c) "Surrender" means the voluntary relinquishment of a general polygraph examiner or polygraph examiner trainee licensure to the Department.

(d) "Suspension" or "Suspend" means action taken by the Department temporarily depriving the license of a polygraph examiner trainee.

(e) "Withdraw" means action taken by the applicant, polygraph examiner or trainee to remove an application from consideration.

(3) The Department may deny or revoke the license of any applicant, general polygraph examiner or trainee after written notice and hearing, upon finding that the applicant, general polygraph examiner or trainee:

(a) Fails to appear for re-examination as directed by the Director, on the recommendation of the Polygraph Licensing Advisory Committee;

(b) Engages in any of the behaviors described in ORS 703.210.

(c) For the purposes of ORS 703.210(6), the following are indicators that an applicant, general polygraph examiner or trainee demonstrates the inability or incompetency to carry out the duties of a polygraph examiner:

(A) Misconduct. Misconduct includes conduct that violates the law, practices or standards generally followed in the polygraph profession;

(B) Criminal convictions;

(C) Conduct that is prejudicial to the administration of justice;

(D) Use of test questions relating to sexual, religious, or political matters, unless such matters relate to the issue under investigation;

(E) Deliberately using unclear, misleading, circuitous, or ambiguous language in describing or explaining the relevant issue of the examination, including, but not limited to, the results of the examination;

(F) Failing to maintain any or all written records of all polygraph examinations conducted, along with polygraph charts or polygrams in a manner consistent with State Archivist rules pertaining to reports of investigations conducted by Oregon State Police; or

(G) Failing to meet the minimum standards for a polygraph examiner or trainee as described in OAR 259-020-0010 and 259-020-0015.

(4) The Department will suspend the license of any trainee who fails to pass the oral or written portion of the examination required by OAR 259-020-0015 after three attempts. The applicant may not reapply for internship until after retaking and successfully completing a polygraph examiner's course approved by the Department.

Procedure for Denial or Revocation of Licensure

(5) Denial and Revocation Procedure.

(a)(A) Citizen Request: When the Department receives information that a polygraph examiner or trainee may not meet established standards for Oregon polygraph examiners or trainees, the Polygraph Licensing Advisory Committee will review the request and supporting, factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(B) Department Initiated Review: Upon receipt of factual information from any source, the Department may request that a polygraph examiner's or trainee's license be denied, suspended or revoked.

(b) The Polygraph Licensing Advisory Committee will review and investigate any complaints and allegations, including the basis for the complaint and all supporting, factual information, and make a recommendation to the Director on all allegations against the polygraph examiner or trainee.

(c) The Director will review the complaint and the Committee recommendation to determine whether to proceed with denial, suspension or revocation.

(d) If the issues of a citizen complaint do not meet the statutory and administrative rule requirements, the Department will notify the citizen.

(e) If the complaint and the Committee recommendation meets statutory and administrative rule requirements, but are not supported by adequate factual information, the Department may request further information from the complaining citizen or Polygraph Licensing Advisory Committee.

(f) The Department may choose to conduct its own investigation of the matter separate from, or in conjunction with, that of the Polygraph Licensing Advisory Committee.

(g) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, the Department will prepare a Contested Case Notice.

(h) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the person whose license is being affected.

(i) Response time:

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(A) A party who has been served with a Contested Case Notice of Intent to Deny Licensure has 60 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing or a written notice withdrawing their application for consideration.

(B) A party who has been served with a Contested Case Notice of Intent to Revoke Licensure has 20 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing or written notice surrendering their license.

(C) A party who has been served with a Contested Case Notice of Intent to Suspend Licensure has 10 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing or written notice surrendering their license.

(j) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying, revoking or suspending licensure pursuant to OAR 137-003-0645.

(k) Stipulated Order Revoking Licensure: The Department may enter a stipulated order revoking the licensure of a general polygraph examiner or trainee upon the person's voluntary agreement to terminate an administrative proceeding to revoke a license under the terms and conditions outlined in the stipulated order.

(l) Upon receipt of written notification of the suspension or revocation of a license by the Department, a polygraph examiner or trainee must immediately surrender the license to the Director.

Appeals, Ineligibility Periods and Reconsideration

(6) Appeal Procedure. General polygraph examiners or trainees aggrieved by the findings and Order of the Department may file an appeal with the Court of Appeals from the Final Order of the Department, as provided in ORS 183.480.

(7) The Department may restore a suspended licensure to the prior holder upon written application and receipt by the Department of evidence that the conditions which caused the suspension have been corrected to the satisfaction of the Department.

(8) In denial or revocation cases, the Department and the Polygraph Licensing Advisory Committee will take into consideration any aggravating or mitigating factors surrounding the incident.

(9) Notwithstanding subsection (10), any general polygraph examiner or trainee whose licensure is denied or revoked will be ineligible to hold any polygraph examiner licensure for a period of ten years from the date of the final order issued by the Department.

(10) Reconsideration Process. Any individual whose licensure has been denied or revoked for grounds other than a failure to meet the minimum standards for polygraph examiner or trainee as described in OAR 259-020-0010 and 259-020-0015 may apply for reconsideration after a minimum three-year ineligibility period from the date of the final order.

(a) All applicants for reconsideration are required to submit an application in accordance with OAR 259-020-0060. The applicant may provide any mitigating information for the consideration of the Department, Polygraph Licensing Advisory Committee, and Director.

(b) In reconsidering the application of an applicant whose licensure was previously denied or revoked, the Department and the Polygraph Licensing Advisory Committee may consider any mitigating and aggravating circumstances.

(c) If a polygraph examiner or trainee whose licensure has been denied or revoked has satisfied the minimum three-year ineligibility period and the Director, in collaboration with the Polygraph Licensing Advisory Committee, denies an application for reconsideration, the individual will remain ineligible to apply for licensure. The original ineligibility date remains in effect as described in subsection (8) of this rule and the Department will not consider any further requests for reconsideration.

(d) The Director's decision to deny an application for reconsideration will be subject to the contested case procedure described under subsection (5) of this rule.

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 7-2011, f. & cert. ef. 6-23-11; DPSST 29-2012, f. & cert. ef. 12-26-12

Rule Caption: Update Private Security forms list.

Adm. Order No.: DPSST 30-2012

Filed with Sec. of State: 12-26-2012

Certified to be Effective: 12-26-12

Notice Publication Date: 12-1-2012

Rules Amended: 259-060-0600

Subject: Updates the Private Security forms list found in rule. The title of Form PS-8 was changed to "Private Security Instructor Continuing Education" and Form PS-30 "Reconsideration Application for Private Security Providers" was added.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-060-0600

Forms

The Department utilizes the following forms:

(1) PS-1 — Application for Licensure or Certification of Private Security Services Provider.

(2) PS-3 — Private Security Order Forms Sheet.

(3) PS-4 — Affidavit of Person Rolling Fingerprints.

(4) PS-6 — (Affidavit of Instructor and Private Security Provider Testing Results).

(5) PS-7 — Private Security Instructor Evaluation.

(6) PS-8 — Private Security Instructor Continuing Education.

(7) PS-9 — Private Security Waiver for Reciprocity.

(8) PS-20 — Private Security Services Provider Temporary Work Permit.

(9) PS-21 — Renewal of Private Security Services Licensure or Certification.

(10) PS-23 — Private Security Services Provider Change of Information.

(11) PS-27 — Private Security Code of Ethics.

(12) PS-30 — Reconsideration Application for Private Security Services Providers

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

Stat. Auth.: ORS 181.878

Stats. Implemented: ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; 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 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 15-2006, f. & cert. ef. 10-13-06; DPSST 30-2012, f. & cert. ef. 12-26-12

Rule Caption: Update certification recall process to certification suspension process.

Adm. Order No.: DPSST 31-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 12-27-12

Notice Publication Date: 12-1-2012

Rules Amended: 259-008-0005, 259-008-0060, 259-008-0064, 259-008-0065, 259-008-0066, 259-008-0076

Subject: Changes the certification recall process to a certification suspension process in cases of maintenance training deficiencies or other administrative deficiencies. Pursuant to statute, a suspension is subject to contested case proceedings, affording the holder of the certification the right to an administrative hearing prior to the suspension of a certification. All suspensions are effective upon the entry of a final order and would remain in effect until the missing training is completed.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-008-0005

Definitions

(1) "Assistant Department Head" means an officer occupying the first position subordinate to a Department Head who is primarily responsible for supervision of middle managers and supervisors.

(2) "Board" means the Board on Public Safety Standards and Training.

(3) "Casual employment" means employment that is occasional, irregular, or incidental for which the employee does not receive seniority rights or fringe benefits.

(4) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

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(5) "Commissioned" means being authorized to perform various acts or duties of a police officer or reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(6) "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.

(7) "Corrections Officer" means an officer or member employed full-time by a law enforcement unit who:

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles;

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers as described in paragraph (a) of this subsection; or

(c) Is any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(8) "Department" and "DPSST" means the Department of Public Safety Standards and Training.

(9) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under OAR 259-008-0045.

(12) "Emergency Medical Dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(13) "First-Level Supervisor" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between the operational level and the middle manager position who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(14) "Full-time employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.

(15) "High School" is a school accredited as a high school by the Oregon Department of Education, a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

(16) "Law Enforcement Officers" means police, corrections, and parole and probation officers as described in the Public Safety Standards and Training Act.

(17) "Law Enforcement Unit" means:

(a) A police force or organization of the state, a city, university that has established a police department under ORS 352.383, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal governments as defined in section 1, chapter 644, Oregon Laws 2011, that employs authorized tribal police officers as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, the Security and Emergency Preparedness Office of the Judicial Department or common carrier railroad the primary duty of which, as prescribed by law, ordinance, or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;

(c) A district attorney's office;

(d) The Oregon Liquor Control Commission with regard to liquor enforcement inspectors; or

(e) A humane investigation agency as defined in section 1, chapter 67, Oregon Laws 2012.

(18) "Leave" means a leave granted to a public safety professional by their employing public or private safety agency.

(19) "Middle Manager" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between first-level supervisor and department head position and is primarily responsible for management and command duties. A middle manager position does not include a position with limited, or acting middle manager duties.

(20) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for 80 hours or less per month for a period of more than 90 consecutive calendar days.

(21) "Parole and Probation Officer" means:

(a) An officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) Any officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(c) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(22) "Police Officer" means:

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.383, the Governor or the Department of State Police; and

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;

(c) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011;

(d) A special agent commissioned under section 1, chapter 67, Oregon Laws 2012;

(e) An individual member of the judicial security personnel identified pursuant to ORS 1.177 who is trained pursuant to section 3, chapter 88, Oregon Laws 2012; or

(f) Any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.665.

(23) "Public or private safety agency" means:

(a) A law enforcement unit; or

(b) A unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, police, ambulance or emergency medical services.

(24) "Public Safety Personnel," "Public Safety Officer," and "Public Safety Professional" include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, and telecommunicators and liquor enforcement inspectors.

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(25) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.

(26) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181.690, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(27) "Reserve Officer" means an officer or member of a law enforcement unit who is:

(a) A volunteer or employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, the Governor, or the Department of State Police;

(b) Armed with a firearm; and

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(28) "Seasonal Employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.

(29) "Staff" means those employees occupying full-time, part-time, or temporary positions with the Department.

(30) "Suspension" means the administrative inactivation of a certificate issued by the Department until maintenance requirements or other administrative requirements for certification are met and certification is restored.

(31) "Telecommunicator" means:

(a) A person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 403.105; or

(b) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(32) "Temporary employment" means employment that lasts no more than 90 consecutive calendar days and is not permanent.

(33) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.715).

(34) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0010, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 3-1997, 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 7-2000, f. & cert. ef. 9-29-00; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 6-2012, f. & cert. ef. 3-27-12; DPSST 24-2012, f. & cert. ef. 10-26-12; DPSST 31-2012, f. & cert. ef. 12-27-12

259-008-0060

Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and must be acquired by all police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers must be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers must subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers must subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T).

(7) Application for certification must be submitted on Form F7 (Application for Certification), with all applicable sections of the form completed. The form must be signed by the applicant. In order to ensure that the applicant meets the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative must sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision must be specified in writing and must accompany the Form F7.

(8) When a department head is the applicant, the above recommendation must be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant must have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule will equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule will equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training:

(a) Basic courses certified by the Department shall be approved by the Board.

(b) The Department may record training hours for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records must include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented, may be accepted, subject to staff evaluation and approval. These records must include the subject, date, and classroom hours, and must be certified true copies of the original.

(d) College credits earned may be counted for either training hours or education credits, whichever is to the advantage of the applicant.

(e) College credit awarded based on training completed may be applied toward either training hours or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level.

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(f) No credit can be applied toward both education credits and training hours when originating from the same training event.

(11) Experience/Employment:

(a) Experience gained as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on leave. A public safety professional may submit a written request for credit for military time served upon return from

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his or her military duty. The Department will evaluate each written request to determine whether an individual is eligible for any credit for time served;

(C) From the date a public safety professional's certification is suspended until it is reinstated by the Department; or

(D) When a public safety professional fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety professional.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator or emergency medical dispatcher as defined in OAR 259-008-0005, or part time parole and probation officer as defined under 259-008-0005 and 259-008-0066, will count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants must have completed a period of service of not less than nine (9) months with one or more law enforcement units or public or private safety agencies in a certifiable position in the field in which certification is being requested;

(b) Applicants must have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department; and

(c) Applicants must have valid first aid and cardiopulmonary resuscitation (CPR) cards.

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants must possess a Basic Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the combinations of education hours and training hours combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective through October 31, 2012: [Table not included. See ED. NOTE.]

(14) Effective November 1, 2012:

(a) Applicants for an Intermediate Certificate in police, corrections or parole and probation must have acquired the combinations of education hours and training hours combined with the prescribed years of experience, or college degree designated combined with the prescribed years of experience as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(b) Applicants for an Intermediate Certificate in telecommunications must have acquired the following combinations of education hours, training hours, prescribed years of telecommunications experience, and competency as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(c) The years experience must be full-time employment within the discipline for which Intermediate certification is being applied.

(d) The training hours originating from a single training event that are used to meet the training hour requirement for Intermediate certification cannot be applied towards future levels of certification.

(e) The required years of experience are for the purpose of developing and demonstrating competency at the Intermediate level. The signature of the agency head or designee on an F-7 Application for Certification at the Intermediate level represents the agency's attestation that the applicant is performing at a level of competence expected at that certification level.

(15) Applicants for Intermediate certification may apply by satisfying the requirements described in subsection (13) or the requirements described in subsection (14) through October 31, 2014.

(16) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants must possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the combinations of education and training hours combined with the prescribed years of corrections, parole

and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective through October 31, 2012: [Table not included. See ED. NOTE.]

(17) Effective November 1, 2012:

(a) Applicants for an Advanced Certificate in police, corrections or parole and probation must have acquired the following combinations of education and training hours combined with the prescribed years of experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(b) Applicants for an Advanced Certificate in telecommunications must have acquired the following combinations of education hours, training hours, prescribed years of telecommunications experience, and competency as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(c) The years of experience must be full-time employment within the discipline for which Advanced certification is being applied.

(d) The training hours originating from a single training event that are used to meet the training hour requirement for Advanced certification cannot be applied towards future levels of certification.

(e) The required years of experience are for the purpose of developing and demonstrating competency at the Advanced level. The signature of the agency head or designee on an F-7 Application for Certification at the Advanced level represents the agency's attestation that the applicant is performing at a level of competence expected at that certification level.

(18) Applicants for Advanced certification may apply by satisfying the requirements described in subsection (16) or the requirements described in subsection (17) through October 31, 2014.

(19) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants must possess or be eligible to possess the Advanced Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Supervision training within five (5) years prior to application for the Supervisory Certificate; and

(d) Applicants must be presently employed in, or have satisfactorily performed the duties associated with, the position of a first-level supervisor as defined in OAR 259-008-0005 and as attested to by the applicant's department head during the time such duties were performed for a period of one (1) year. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(20) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants must possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Middle Management training within five (5) years prior to application for the Management Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as a Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(21) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants must possess or be eligible to possess the Management Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

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(c) Applicants must have satisfactorily completed 100 hours of Department-approved executive level training within five (5) years prior to application for the Executive Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(22) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification. A law enforcement officer who is certified in one discipline may apply for multi-discipline certification if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification. Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the emergency medical dispatcher discipline since it only exists at the basic certification level.

(c) Retention of multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds emergency medical dispatcher certification, a minimum of four (4) hours of training specific to the emergency medical dispatcher discipline must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds telecommunicator certification, a minimum of twelve (12) hours of training specific to the telecommunicator discipline must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (20) hours of training specific to each law enforcement discipline in which certification is held must be reported annually as required under subsections (h) through (l) of this section.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on a Form F-6 (Course Attendance Roster), required maintenance training must be submitted to the Department by June 30th of each year. Training reported on a Form F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by a Form F-6 Course Attendance Roster.

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records. A Contested Case Notice of Intent to Suspend will be prepared and served on the law enforcement officer pursuant to ORS 181.662(c) and these rules. A copy of the Notice will be sent to the officer's employing agency.

(A) All Contested Case Notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) A law enforcement officer who has been served with a Contested Case Notice of Intent to Suspend has 30 days from the date of mailing or

personal service of the notice to notify the Department of the training status identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one (1) year reporting period, or to file a written request for hearing with the Department.

(C) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(K) A law enforcement officer with a suspended certification is prohibited from being employed in any position for which the certification has been suspended.

(I) Recertification following a suspension may be obtained, subject to Department approval, by submitting the following:

(A) A written request from the employing agency head requesting recertification, along with a justification of why the maintenance training was not completed; and

(B) Verification that the missing training was completed.

(m) Failure to complete the required maintenance training may not result in a suspension of certification if the law enforcement officer is on leave from a public or private safety agency.

(23) Certificates and awards are the property of the Department. The Department has the power to revoke or suspend any certificate or award as provided in the Act.

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

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665

Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08; DPSST 4-2009, f. & cert. ef. 4-8-09; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 4-2010, f. & cert. ef. 6-2-10; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 8-2010, f. & cert. ef. 8-13-10; DPSST 8-2011, f. & cert. ef. 6-24-11; DPSST 17-2011, f. & cert. ef. 12-23-11; DPSST 23-2012, f. 10-25-12, cert. ef. 11-1-12; DPSST 31-2012, f. & cert. ef. 12-27-12

259-008-0064

Maintenance of Certification for Telecommunicators and Emergency Medical Dispatchers

(1) Basic Certification:

(a) All certified telecommunicators must complete 12 hours of maintenance training annually, regardless of whether they are employed as a telecommunicator.

(b) All certified emergency medical dispatchers must complete four (4) hours of maintenance training annually, regardless of whether they are employed as an emergency medical dispatcher.

(c) The maintenance training cycle begins on July 1st each year and ends on June 30th the following year.

(2)(a) The employing agency must maintain documentation of all required telecommunicator or emergency medical dispatcher maintenance training completed;

(b) An individual who is certified as a telecommunicator or emergency medical dispatcher, but is no longer employed in a certifiable position, is responsible for meeting all maintenance training requirements and maintaining documentation of any maintenance training completed.

(3)(a) If reported on an F-6 Course Roster, required maintenance training must be submitted to the Department by June 30th of each year. Training reported on an F-6 will result in credit for training hours. No training hours will be added to an individual's record, unless accompanied by an F-6 Course Roster.

(b) On or after July 1 of each year, the Department will identify all telecommunicators and emergency medical dispatchers who are deficient in maintenance training according to Department records. A Contested Case Notice of Intent to Suspend will be prepared and served on the telecommunicator or emergency medical dispatcher pursuant to ORS 181.662(c) and these rules. A copy of the notice will be sent to the telecommunicator's or emergency medical dispatcher's employing agency.

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(A) All contested cases notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) A telecommunicator or emergency medical dispatcher who has been served a Contested Case Notice of Intent to Suspend has 30 days, from the date of mailing or personal service of the notice to notify the Department of the training status identified as deficient by submitting a Form F-16 to the Department identifying the maintenance training completed during the previous one (1) year reporting period or to file a written request for hearing with the Department.

(C) Maintenance training hours reported to the Department on an F-16 will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(c) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(6) A telecommunicator or emergency medical dispatcher with a suspended certification is prohibited from being employed in a certifiable position as a telecommunicator or emergency medical dispatcher.

(7)(a) Instructors may apply hours spent instructing a class one (1) time annually toward maintenance training, but instructed hours reported for a class may not exceed the lesser of:

(A) The actual class hours; or

(B) The actual number of hours the instructor spent instructing the class.

(b) The total number of instructed hours applied towards the annual maintenance training requirement may not exceed:

(A) Six (6) hours for a telecommunicator; or

(B) Two (2) hours for an emergency medical dispatcher;

(8) Recertification following a suspension may be obtained, subject to Department approval, by submitting the following:

(a) A written request from the employing agency head, or individual if unemployed, requesting recertification, along with a justification of why the maintenance training was not completed; and

(b) Verification that the missed training was completed.

(9) Failure to complete required maintenance training will not result in suspension of certification if the telecommunicator or emergency medical dispatcher is on leave from a public or private safety agency.

(10) The Department may grant an extension of time for completion of any required training or in-service training based upon good cause. A written request for an extension of time must be submitted to the Department by the agency head.

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

Stat. Auth.: ORS 181.640 & 181.644

Stats. Implemented: ORS 181.640 & 181.644

Hist.: PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 5-2001, f. & cert. ef. 8-22-01; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 15-2008, f. & cert. ef. 10-15-08; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 7-2010, f. & cert. ef. 7-15-10; DPSST 31-2012, f. & cert. ef. 12-27-12

259-008-0065

Maintenance of Certification For Active Police Officers

(1)(a) The Board is responsible for setting the standards for active police officer training and the maintenance of certification. The Department is required to uphold those standards, while each agency determines what training will be provided to meet the standards.

(b) It is recommended that agencies provide training time and training opportunities to enable the active police officer to meet the required maintenance training hours.

(2) In order to maintain certification:

(a) All active police officers must maintain current First Aid/CPR certification.

(b) Proof of First Aid/CPR certification renewal must be reported to the Department once every three years as part of each officer's mandatory maintenance training cycle. Proof includes submission of the following:

(A) An F-6 Course Roster received by the Department prior to the end of an officer's maintenance reporting period that verifies completion of training and identifies certification expiration dates. This will result in credit for training hours and update of the officer's First Aid/CPR certification expiration dates; or

(B) A photocopy of the front and back of an officer's current First Aid/CPR certification card prior to the end of the maintenance period. This will result in an update of the officer's First Aid/CPR expiration dates only.

No training hours will be added to the officer's record, unless accompanied by an F-6 Course Roster; or

(C) An F-15 Maintenance-Police form identifying new expiration dates. The F-15 Maintenance-Police form must be submitted in accordance with subsection (5) of this section, following the end of the officer's maintenance period.

(c) All active police officers must complete a total of at least eighty-four (84) hours of agency approved training every three (3) years. The eighty-four (84) hours will include:

(A)(i) Eight (8) CORE hours of training annually, from either the "Firearms" or "Use of Force" subject areas:

(ii) This training must be reported to the Department as twenty-four (24) hours of CORE training, once every three years.

(B)(i) Active police officers who hold a Supervision, Mid-Management or Executive certification, must complete at least twenty-four (24) hours of agency approved Leadership/Professional training, every three years:

(ii) This training must be reported to the Department as twenty-four (24) hours of agency approved Leadership/Professional training, once every three (3) years.

(C)(i) In addition to the CORE (A)(i) (required of all officers) and Leadership/Professional (B)(i) training hours (only required of officers with Supervision Certification and above), the remaining hours must be completed from the category of "General Law Enforcement" training in the recommended, but not limited to, subject areas of Law and Legal, Ethics and Communication, Investigations, Survival Skills, Child Abuse, Sex Abuse, and Elder Abuse:

(ii) These remaining training hours must be reported to the Department as "General Law Enforcement" training, once every three (3) years.

(3) Beginning on the date a police officer returns to work from any leave of absence, the following requirements must be met:

(a) Maintenance Training Requirements as described in section (7) or (8) of this section;

(b) Proof of current First Aid and CPR cards;

(c) Any other applicable requirement for employment, training or certification as specified in OAR 259-008-0010, 259-008-0025 or 259-008-0060.

(4) Documentation of Maintenance Training:

(a) The employing agency must maintain documentation of required training and First Aid/CPR certification on each police officer;

(b) Any training submitted to the Department on an F-6 Course Roster will be entered into each officer's DPSST training record.

(c) Maintenance training submitted on an F-6 will be credited towards the number of hours required for each maintenance training category in section (2) above.

(5) On or after January 2 of each year, the Department will identify all police officers who are deficient in maintenance training or First Aid/CPR certification according to Department records. A Contested Case Notice of Intent to Suspend will be prepared and served on the officer pursuant to ORS 181.662(c) and these rules. A copy of the notice will be sent to the officer's employing agency.

(a) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(b) An officer who has been served with a Contested Case Notice of Intent to Suspend has 30 days from the date of mailing or personal service of the notice to notify the Department of the training status or First Aid/CPR certification identified as deficient by submitting a Form F-15M-Police to the Department, identifying the training or First Aid/CPR certification completed during the previous three (3) year reporting period or file a written request for hearing with the Department.

(A) Maintenance training and First Aid/CPR training hours reported to the Department on an F-15M-Police will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(B) Default Order: If the required training is not reported to the Department or a request for hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(7) A police officer with a suspended certification may not work in a certified position.

(8) Recertification following a suspension:

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(a) Recertification following a suspension may be obtained, subject to Department approval, by submitting the following:

(A) A written request for re-certification from the employing agency head, along with an explanation of why the training or First Aid/CPR certification was not obtained;

(B) An F-6 Course Roster verifying that any missed training has been completed, and identifying the training as "Maintenance make-up" training; and

(C) Verification of current First Aid/CPR certification, submitted as provided in subsection (2) (b) of this rule.

(b) After 2-1/2 years in a suspended status a police officer will be required to complete a Career Officer Development Course before recertification.

(c) After more than 5 years in a suspended status a police officer will be required to complete basic training in the appropriate discipline.

(9) Agency heads of the employing agency may document "leave" in extreme circumstances for not completing the annual requirements but must provide documentation as to the reason and indicate when the missed training was completed.

(10) Maintenance Training Requirements for Police Officers on Leave.

(a) A police officer who is on leave for any period between 90 to 180 days will have the same maintenance training deadline as the date established prior to the officer's leave date.

(b) A police officer who is on leave for more than 180 days, but less than one year, will receive a one year extension from the maintenance training deadline established prior to the officer's leave.

(c) A police officer who is on leave for more than one year will receive an extension of the maintenance training deadline established prior to the officer's leave. The extension will be prorated, based on the duration of the officer's leave. Upon the officer's return to work, the officer must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

(d) Failure to meet the requirements of subsection (c) of this section will result in a Notice of Intent to Suspend as described in subsection (5) of this rule.

(11) Maintenance Training Requirements for Previously Certified Police Officers. Any police officer who has not been employed as a police officer for between one year and five years must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(a) Qualification with the appropriate duty weapon(s); and

(b) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

Stat. Auth.: ORS 181.652, 181.653 & 181.667

Stats. Implemented: ORS 181.652, 181.653 & 181.667

Hist.: PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 22-2002, f. & cert. ef. 11-18-02; BPSST 9-2003, f. & cert. ef. 4-22-03; DPSST 11-2006(Temp), f. & cert. ef. 8-15-06 thru 2-1-07; DPSST 13-2006, f. & cert. ef. 10-13-06; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2009, f. & cert. ef. 4-8-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 31-2012, f. & cert. ef. 12-27-12

259-008-0066

Maintenance of Certification for Part-time Parole and Probation Officers

(1) Basic Certification. All certified parole and probation officers who have obtained basic certification and employment as a full-time parole and probation officer for a minimum of one year may continue certification if:

(a) That officer begins working as a parole and probation officer in a part-time capacity, as defined in OAR 259-008-0005 and ORS 181.610 within three (3) months of leaving a full-time position; and

(b) The employing agency notifies the Department of all personnel actions involving part-time parole and probation officers whose certification is to be continued on a Personnel Action Report (DPSST Form F-4) as required under OAR 259-008-0020.

(2) In order to maintain certification, part-time parole and probation officers must complete at least 20 hours of maintenance training annually. The content of the training is determined by the agency head of the employing agency.

(a) The annual maintenance training cycle for part-time parole and probation officers begins on January 1st and ends on December 31st of each year.

(b) The employing agency must maintain documentation of all required maintenance training for each part-time parole and probation officer.

(c) The employing agency must provide documentation to the Department of training completed from January 1st through December 31st of each year.

(3) On or after December 31st of each year, the Department will identify all part-time parole and probation officers who are deficient in maintenance training hours according to Department records. A Contested Case Notice of Intent to Suspend will be prepared and served on the officer pursuant to ORS 181.662(c) and these rules. A copy of the notice will be sent to the officer's employing agency.

(a) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(b) An officer who has been served with a Contested Case Notice of Intent to Suspend has 30 days from the date of mailing or personal service of the notice to notify the Department of the training status identified as deficient by submitting a Part-Time Parole & Probation Officer Maintenance Training Log (Form F-17) to the Department identifying the maintenance training hours completed during the previous one (1) year reporting period or to file a written request for hearing with the Department.

(c) Maintenance training hours reported to the Department on a Form F-17 will be used solely to verify completion of maintenance training requirements and will not be added to the officer's training record. A Form F-6 (Course Attendance Roster) must be forwarded to the Department to have training hours added to an officer's record.

(4) Default order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(5) An officer with a suspended certification is prohibited from being employed in any position for which the certification has been suspended.

(6) Recertification following a suspension may be obtained, subject to Department approval, by submitting the following to the Department:

(a) A written request from the employing agency head requesting recertification, along with a justification of why the required maintenance training hours were not reported; and

(b) Verification that maintenance training hours were completed.

(6) Upon written request from the head of an employing agency, the Department may grant an extension for the completion of maintenance training hours if an officer was on an extended leave of absence or the Department finds there is other good cause to grant an extension. The granting of such an extension is within the sole discretion of the Department.

(8) Certificates and awards are the property of the Department. The Department has the power to revoke or suspend any certificate or award as provided in the Act.

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

Stat. Auth.: ORS 181.640 & 181.653

Stats. Implemented: ORS 181.640 & 181.653

Hist.: BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 8-2012, f. & cert. ef. 3-29-12; DPSST 31-2012, f. & cert. ef. 12-27-12

259-008-0076

Eligibility Requirements for Police Chief

(1) In addition to the minimum standards for employment and training as a law enforcement officer as described in OAR 259-008-0010 and 259-008-0025, a person accepting employment as a Police Chief must:

(a) Be currently certified as a police officer by the Department; or

(b) If the person is not currently certified as a police officer by the Department, the person accepting employment as Police Chief must obtain certification no later than 18 months after accepting such employment.

(2) Any person accepting employment as Police Chief must obtain Management certification by the Department within two (2) years of accepting employment as Police Chief, unless an extension is requested in writing and granted by the Department.

(3) The Department may grant an extension of time to obtain a Management certificate upon presentation of evidence by a law enforcement unit that a Police Chief was unable to obtain the certification within the required time limit due to being on leave, or any other reasonable cause as determined by the Department. No extension will be granted beyond one year.

(4) The employing agency must maintain documentation of a Police Chief's qualifications.

(5) The employing agency must notify the Department within 10 days of the date that a Police Chief is appointed, resigns, retires, terminates

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employment, is discharged, deceased, is on leave, or transfers within a law enforcement unit, or private or public safety agency as required by OAR 259-008-0020.

(6) Failure to obtain a Management Certificate as required in section (2) or (3) above, will result in the immediate suspension of the Police Chief's certification:

(a) A Police Chief with a suspended certification is prohibited from performing the duties of, or working in any capacity as, a Police Chief or Acting Police Chief;

(b) Prior to recertification of a Police Chief's suspended certificate, the employing agency head must submit the following:

(A) A written request for recertification, along with an explanation of the individual's current job duties and why the Department should recertify the individual if they are not currently in a certifiable police officer position; or

(B) Verification that a Management Certificate was obtained, if the individual is requesting reinstatement as a Police Chief.

(c) A police chief whose certification has been suspended pursuant to this rule must submit a completed F-4 (Personnel Action Form) identifying that the individual is no longer serving as, or performing the duties of, police chief prior to reactivating their police certification;

(d) A Police Chief who fails to recertify within 2-1/2 years is subject to the provisions of OAR 259-008-0025(2);

(e) A Police Chief who fails to recertify within five (5) years is subject to the provisions of OAR 259-008-0025(1)(c).

Stat. Auth.: ORS 181.640, 181.665

Stats. Implemented: ORS 181.640, 181.665

Hist.: DPSST 13-2005, f. & cert. ef. 12-7-05; DPSST 9-2007, f. & cert. ef. 8-15-07; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 31-2012, f. & cert. ef. 12-27-12

Rule Caption: Clarify Private Investigator licensure fee schedule; Add current fees to rule

Adm. Order No.: DPSST 1-2013

Filed with Sec. of State: 1-2-2013

Certified to be Effective: 1-2-13

Notice Publication Date: 12-1-2012

Rules Amended: 259-061-0010

Rules Repealed: 259-061-0015

Subject: DPSST is given statutory authority to prescribe and collect fees not to exceed the cost of administering the Private Investigator program. Administrative rule has been updated to include the fee amounts currently being charged for application, issuance of licensure, renewal, temporary licensure and inactivation/reactivation of licensure. Additionally, the information contained in OAR 259-061-0015 (Payment of Fees) has been added into OAR 259-061-0010 (Fees) for readability and consistency. As a result, OAR 259-061-0015 is repealed.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-061-0010

Fees

(1) Payments to the Department are due at the time of application. All payments are non-refundable and must be paid by business check, money order, cashier's check or credit card. No personal checks or cash will be accepted.

(2) The Department will charge the following fees:

(a) The fee of \$79 for the application for licensure as a private investigator. This fee includes the cost of a criminal background check and private investigator examination;

(b) The fee of \$550 for the issuance of a two-year license as a private investigator;

(c) The fee of \$50 for application of inactive status as described in OAR 259-061-0160;

(d) The fee of \$50 for application of reactivation from inactive status as described in OAR 259-061-0170;

(e) The fee of \$125 for the issuance of a temporary license as private investigator;

(f) The fee of \$550 for the renewal of a two-year private investigator license;

(g) A late submission fee of \$25 will be added to the fees for licensure renewal if the private investigator fails to complete the application process by the expiration date of the license; and

(h) The fee of \$20 for the issuance of a duplicate or replacement card or license.

(3) In the event a non-sufficient check is received for payment, an additional \$25 administrative fee will be assessed.

Stat. Auth.: ORS 703.415, 703.425, 703.430, 703.435, 703.445, 703.450, 703.460, 703.465 & 703.480

Stats. Implemented: ORS 703.401 - 703.995

Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 1-2013, f. & cert. ef. 1-2-13

Rule Caption: Clarify Private Investigator application process

Adm. Order No.: DPSST 2-2013

Filed with Sec. of State: 1-2-2013

Certified to be Effective: 1-2-13

Notice Publication Date: 12-1-2012

Rules Amended: 259-061-0020

Rules Repealed: 259-061-0030, 259-061-0050, 259-061-0055, 259-061-0060, 259-061-0070, 259-061-0080, 259-061-0090

Subject: The application process for Private Investigators is combined into one rule. The title of OAR 259-061-0020 is changed from "Initial and Renewal Applications" to "Application for Private Investigator Licensure" and contains the information previously found in OAR 259-061-0030 (Application Requirements for Licensees with Expired License), OAR 259-061-0050 (Bonds and Letters of Credit), OAR 259-061-0055 (Errors and Omission Insurance), OAR 259-061-0060 (Photographs for Identification), OAR 259-061-0070 (Fingerprint ID Cards), OAR 259-061-0080 (References) and OAR 259-061-0090 (Review of Application Materials). As a result, these rules are repealed.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-061-0020

Application for Private Investigator Licensure

(1) All applicants for licensure must meet all minimum standards for licensure as described in OAR 259-061-0040.

(2) Applications for new licensure as a private investigator must include:

(a) A completed Form PS-1 (Application for Licensure as a Private Investigator);

(b) A completed fingerprint packet. A fingerprint packet must include a pre-printed FBI fingerprint card and a Form PS-4 (Affidavit of Person Rolling Fingerprints) completed by the person rolling or scanning the fingerprints. The card and form must be enclosed in a tamper-proof bag and sealed by the person who rolled the fingerprints before the packet is returned to the applicant. The Department will supply pre-printed FBI fingerprint cards and tamper-proof bags;

(A) The Department will only accept fingerprint cards correctly rolled and completed by private or public safety personnel trained to roll fingerprints, or a person who is employed and trained by a private business that provides fingerprinting services.

(B) If a fingerprint card is rejected twice by the Federal Bureau of Investigation (FBI), the applicant will be charged a fee for a third submittal of a fingerprint card.

(c) Proof of a corporate surety bond, an irrevocable letter of credit issued by an Oregon commercial bank as defined in ORS 706.008, or errors and omission insurance in the amount of at least \$5,000;

(A) Bonds and letters of credit must have the applicant's name listed as the principal.

(B) Proof of surety bonds must be submitted on a Department-approved form and will not be valid for the purposes of licensure unless filed with the Department within 60 days of the signature on the bond.

(C) An irrevocable letter of credit submitted to the Department is subject to approval by the Department prior to the issuance of a license.

(d) Two identical, passport-quality photographs for identification;

(A) Photographs must be in color with a solid-colored background and must be a cropped head shot. The applicant's face must be clearly visible and free from shadows or other obstacles.

(B) The applicant's head in the photograph must no be more than 1" wide and 1.25" high.

(C) Photographs must have been taken not more than six months prior to filing of the application for licensure.

(D) Photographs may be submitted to the Department digitally in the format prescribed on the Form PI-1.

(e) A completed Form PI-27 (Private Investigator Professional Code of Ethics) affirming moral fitness and professional standards; and

(f) Non-refundable application fees as prescribed by OAR 259-061-0010.

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(3) Applications for renewing licensure as a private investigator must include:

(a) A Form PI-21 (Private Investigator Renewal Application) completed in its entirety;

(b) A completed Form PI-27 (Private Investigator Professional Code of Ethics) affirming moral fitness and professional standards; and

(c) Nonrefundable renewal application fees as prescribed by OAR 259-061-0010.

(4) Timelines.

(a) A completed application packet must be mailed to the Department and postmarked prior to the applicant performing any private investigator services.

(b) Renewal application documents must be received by the Department within 90 days prior to the expiration date of the licensure to allow for processing of the forms and criminal history check.

(c) A late submission fee will be assessed as prescribed by OAR 259-061-0010 if reapplying after the license expiration date of the licensure.

(d) Applicants renewing their licensure more than 30 days after the expiration date of the original license must submit a new application packet in accordance with subsection (2) of this rule.

(6) Applicants for licensure who were previously licensed in Oregon must provide proof of completion of continuing education requirements or a written explanation detailing why continuing education requirements were not met and a written plan detailing how the continuing education will be made up, including a time line. The Department, at its discretion, may accept the plan in place of completed continuing education.

(7) Submission of any false information in connection with an application, supporting documentation or attachments for a license or registration may be grounds for discipline, criminal penalty, or civil penalty.

(8) The Department may administratively terminate, upon written notification to the applicant, the application process if the Department for any of the following reasons:

(a) The Department has reason to believe that the applicant has committed an act that constitutes ground for denial of a license as described in OAR 259-061-0300. The termination of an application due to criminal conviction disqualification is subject to the contested case procedures set for in 259-061-0300;

(b) The application or any required documentation is incomplete or the Department is unable to satisfactorily verify application information due to non-response or non-compliance of the application;

(c) The fingerprint cards of an applicant have been rejected and returned by the Oregon State Police or Federal Bureau of Investigation;

(9) The Department may administratively terminate the application process after exhausting the following efforts:

(a) A letter will be mailed by the Department to the applicant at the last known mailing address identifying the deficiencies in the application process. The applicant will have 21 calendar days from the date of the mailing to notify the Department that the deficiencies are corrected. The Department may extend the time for compliance upon good cause shown by the applicant.

(b) If the Department is unable to determine a current address for the application, or if the applicant does not respond and correct the deficiencies within 21 calendar days, or such additional time authorized by the Department, the Department will list the applicant's status as "administratively termination." The Department will notify the applicant at the last known address that the Department has administratively terminated the application process.

(c) Once the application process has been administratively terminated, the applicant can reapply at any time by submitting a new completed application and fees to the Department.

(10) Applicants and licensed private investigators must notify the Department in writing of any changes to their name, home address, home phone number, mailing address, business name, business address, business phone number, or e-mail address within 10 days of a change.

Stat. Auth.: ORS 703.415, 703.425, 703.430, 703.435, 703.445, 703.450, 703.460, 703.465 & 703.480

Stats. Implemented: ORS 703.401 - 703.995

Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 2-2013, f. & cert. ef. 1-2-13

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Department of Revenue Chapter 150

Rule Caption: Supervisory authority, conferences, senior deferral, property tax refunds.

Adm. Order No.: REV 8-2012

Filed with Sec. of State: 12-18-2012

Certified to be Effective: 1-1-13

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: 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

Turnovers 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

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

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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.

(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 ORS 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 ORS 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 ORS 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 ORS 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

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 ORS 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

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.

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(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 decision 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

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.

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

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.

(5) 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

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,

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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 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

Rule Caption: College Savings plan, surplus refund, appeal language, pass-through entity payments, gain deferral.

Adm. Order No.: REV 9-2012

Filed with Sec. of State: 12-18-2012

Certified to be Effective: 1-1-13

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: 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

150-291.349

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 ($\$2,000 \times 0.05$) and Robin's surplus credit is \$150 ($\$3,000 \times 0.05$). 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

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credits based on their 20XX AGI. Shawna will claim a surplus credit of \$140 ($5,000 \times 0.04 \times 0.70$). Nathan will claim a surplus credit of \$60 ($5,000 \times 0.04 \times 0.30$).

(c) From married/RDP filing jointly to married/RDP filing jointly with a different spouse/RDP. The provisions of this subsection apply to a 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 ORS 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: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Stat. Auth.: ORS 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

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: Publication(s) 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

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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

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 OAR 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 nonselecting 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 ORS 316.037; and

(b) For nonselecting 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 ORS 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;

(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 nonselecting owner's share of the aggregate withholding tax payments made by the pass-through entity for the taxable year and the nonselecting 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 nonselecting 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 nonselecting 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 nonselecting 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

Rule Caption: Updating interest rates charged and paid; cigarette tax invoices, single pack sales language.

Adm. Order No.: REV 10-2012

Filed with Sec. of State: 12-18-2012

Certified to be Effective: 1-1-13

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: 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

150-323.220-(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

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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

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, 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, 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.

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

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

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

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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

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

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 dealer's 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 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

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

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

Rule Caption: DMV/DOC Program for Providing Inmates a Driver License or Identification Card Before Release.

Adm. Order No.: DMV 16-2012

Filed with Sec. of State: 12-21-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 10-1-2012

Rules Adopted: 735-001-0062

Subject: ORS 802.087 requires the Department of Transportation (DMV) and the Department of Corrections (DOC) to work together to assist inmates in obtaining a driver license or identification (ID) card prior to release from custody. The aim of this program is for an inmate to have state-issued photo ID at the time of release to remove

a significant barrier to successful reentry into local communities. DMV and DOC completed a feasibility study looking at various options for issuance. The study evaluated the costs of the options and security concerns both for DMV and DOC along with how many inmates might be issued a driver license or ID card under each option. It was determined that the most efficient and effective method is to issue a driver license (replacement or renewal) or an ID card using the inmate's last photo on file with DMV. DMV has a similar program for issuing a driver license or ID card to a person who is out-of-state, out-of-country, or medically unable to go to a DMV field office.

Through interagency agreement and this rulemaking, DMV and DOC have established a program for issuing a driver license or ID card to an inmate prior to his or her release from custody. DMV has adopted OAR 735-001-0062 to authorize eligible inmates to obtain either a driver license or an ID card using a photo on file with DMV. The rule also outlines eligibility requirements, application requirements, and the requirements when an inmate renews or replaces a driver license or ID card issued pursuant to this rule.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-001-0062

DMV/DOC Program for an Inmate Obtaining a Driver License or Identification Card Prior to Release

(1) The Oregon Department of Transportation, Driver and Motor Vehicle Services Division (DMV) and the Oregon Department of Corrections (DOC) have established, through interagency agreement, the following program to help an inmate obtain a driver license or identification card prior to his or her release from custody.

(2) For purposes of this rule, the term "inmate" means any person under the supervision of the DOC and who is not on parole, probation or post-prison supervision status.

(3) Notwithstanding OAR 735-062-0016, DMV may issue a renewal or replacement driver license or an identification card containing the last photograph of the inmate on file with DMV. The photograph on file must not be older than nine years and two months. DMV will issue as follows:

(a) A replacement driver license to an inmate whose driving privileges are valid or are reinstated at the time of issuance;

(b) A renewal driver license to an inmate whose driving privileges are valid or are reinstated at the time of issuance and whose driver license is within 14 months of expiring or has been expired for less than one year; or

(c) An original, renewal or replacement identification card to an inmate:

(A) Who is not eligible for driving privileges under sections (4), (7) or (8) of this rule;

(B) Whose previous driver license has been expired for more than one year;

(C) Whose driving privileges are suspended, revoked or cancelled; or (D) Who has never been issued or does not currently qualify for a driver license under ORS 807.040.

(4) DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) and the Commercial Driver License Information System (CDLIS), to determine if the inmate's driving privileges are suspended, revoked, cancelled or otherwise not valid in any other jurisdiction. An inmate whose driving privileges are not valid in any other jurisdiction is not eligible to replace or renew driving privileges in Oregon.

(5) DOC may complete an application packet for each eligible inmate within no more than 90 days prior to the inmate's date of release from DOC custody. The application packet must include:

(a) A completed Valid with Previous Photo DL/ID Card (VWPP) Application, DMV Form 735-171C, signed by the inmate. The application must include the inmate's Social Security Number (SSN). DMV must verify, or have previously verified, the SSN with the Social Security Administration, as required by OAR 735-062-0005;

(b) Proof of legal name as required by OAR 735-062-0014;

(c) Proof of legal presence as required by OAR 735-062-0015 and the interagency agreement;

(d) Proof of date of birth and identity as required by OAR 735-062-0020; and

(e) A photo of the inmate, which contains the state identification (SID) number.

(6) On the application DOC must certify:

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(a) That the copies of the documents submitted to meet the requirements of section (5) of this rule are true copies of the original documents and that the documents pertain to the inmate for whom DOC is submitting the VWPP application; and

(b) That the inmate will be living in Oregon when released and the address provided on the application meets the requirements for residence or mailing address as outlined in the interagency agreement.

(7) An inmate is not eligible for driving privileges, under ORS 807.060(4) or (5), and DMV will not replace or renew a driver license, if on the VWPP Application the inmate:

(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?";

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?"; or

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?"

(8) An inmate who is eligible to renew his or her driving privileges, and is or will be 50 years of age or older at the time his or her driving privileges expire, must meet the requirements of OAR 735-062-0060. As the inmate will not be at a DMV field office for the vision screening, DOC must provide a vision examination form, Certificate of Vision, DMV Form 735-24, completed by a licensed ophthalmologist or optometrist with the VWPP application. If no Certificate of Vision form is included or the inmate does not meet the vision standards set forth in OAR 735-062-0050, the inmate is only eligible for an identification card.

(9) When an inmate's driving privileges are valid (not suspended, revoked, cancelled or expired more than one year) the inmate must surrender driving privileges in order to be eligible for an identification card. A completed Surrender of Driving Privilege(s), DMV Form 735-7206, must be included with the VWPP application of any inmate who is surrendering driving privileges. A person who surrenders driving privileges must pass all tests and pay all fees associated with an original driver license to regain driving privileges at a later date.

(10) DOC will pay the fee listed in ORS 807.370 or 807.410, as appropriate, for each inmate issued a driver license or identification card in a manner outlined in the interagency agreement.

(11) When an inmate's driver license or identification card issued pursuant to this rule is renewed or replaced, he or she must provide proof of citizenship or permanent legal residency as required by OAR 735-062-0015, unless DMV records show the person has previously provided such proof.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.087 and 807.110
Stats. Implemented: 802.087
Hist.: DMV 16-2012, f. 12-21-12, cert. ef. 1-1-13

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

Rule Caption: Repeal of Bus Length Rule.

Adm. Order No.: HWD 13-2012

Filed with Sec. of State: 12-21-2012

Certified to be Effective: 12-21-12

Notice Publication Date: 11-1-2012

Rules Repealed: 734-073-0090

Subject: OAR 734-073-0090 was written to specify the maximum length for a bus following the adoption of Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) that established federal size and weight limitations on the National Network of Highways. The rule allowed for a bus to operate at a maximum length of 45 feet based on provisions provided from ISTEA; however, ORS 818.080 Table I (3) that describes the maximum length limits only allows for a bus to operate at a maximum length of 40 feet. The rule repeal was necessary to resolve the conflict between statute and rule.

Rules Coordinator: Lauri Kunze — (503) 986-3171

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**Economic Recovery Review Council
Chapter 966**

Rule Caption: This new chapter of rules relates to the designation of Regionally Significant Industrial Areas.

Adm. Order No.: ERRC 1-2013

Filed with Sec. of State: 1-2-2013

Certified to be Effective: 1-2-13

Notice Publication Date: 12-1-2012

Rules Adopted: 966-100-0100, 966-100-0200, 966-100-0300, 966-100-0400, 966-100-0500

Subject: The passage of SB 766 in the 2011 Legislative Session created the Economic Recovery Review Council (ERRC). The ERRC is tasked with designating Regionally Significant Industrial Areas. These rules describe the property that has been designated regionally significant.

Rules Coordinator: Mindee Sublette — (503) 986-0036

966-100-0100

Purpose

This division of administrative rules describes regionally significant industrial areas approved and designated by the Economic Recovery Review Council.

Stats Auth: ORS 197.723
Stats Implemented: ORS 197.723
Hist.: ERRC 1-2013, f. & cert. ef. 1-2-13

966-100-0200

Definitions

(1) "Brownfields" means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1);

(2) "ERRC" means the Economic Recovery Review Council.

(3) "RSIA" means a Regionally Significant Industrial Area designated by the ERRC based on criteria as defined in ORS 197.722(2).

Stats Auth: ORS 197.723
Stats Implemented: ORS 197.723
Hist.: ERRC 1-2013, f. & cert. ef. 1-2-13

966-100-0300

Regionally Significant Industrial Areas

(1) The ERRC shall designate at least five but not more than fifteen RSIA's by June 28, 2014.

(2) RSIA's are approved after a public review process. The ERRC will designate an area as an RSIA only after consideration of whether the area:

(a) Is planned and zoned for industrial use;

(b) Contains vacant sites, including brownfields, that are suitable for the location of new industrial uses or expansion of existing industrial uses and that can collectively provide significant additional employment in the region;

(c) Has site characteristics that give the area significant competitive advantages that are difficult or impossible to replicate in the region;

(d) Has superior access to transportation; and

(e) Is located in proximity to major labor markets.

Stats Auth: ORS 197.723
Stats Implemented: ORS 197.723
Hist.: ERRC 1-2013, f. & cert. ef. 1-2-13

966-100-0400

Goshen Industrial Area

(1) The Goshen Industrial Area was approved by the ERRC as a designated RSIA on September 28, 2012.

(2) The Goshen Industrial Area, located in Lane County consists of 316.51 acres and is comprised of the following:

(a) Tax Map — 18031444:

Tax Lots — 100, 200, 300, 400, 500, 1400, 1800, 1900.
Total Acres — 2.44.

(b) Tax Map — 18032300:

Tax Lots — 500, 801, 1000, 1100.
Total Acres — 122.6.

(c) Tax Map — 18032310:

Tax Lots — 100, 1700, 1701, 3700, 4500, 4600, 5200, 5201, 5301, 5402, 5403, 5404, 5405, 5406, 5500, 5600, 5700, 5800, 5900, 6000, 6001, 4800.
Total Acres — 98.1

(d) Tax Map — 18032340:

Tax Lots — 101, 1400, 1600, 1800, 1801, 1900, 1999, 2000, 2100, 2200, 2300, 2400, 2401, 2500, 2600, 3700, 3900, 3902, 4000, 4300, 4400, 4500, 4600, 4900, 5000, 6100.
Total Acres — 48.72.

(e) Tax Map — 18032400:

Tax Lots — 6100.
Total Acres — 9.21.

(f) Tax Map — 18032500:

Tax Lots — 205.
Total Acres — 2.54.

(g) Tax Map — 18032600:

Tax Lots — 100, 101, 200, 201, 202, 302.
Total Acres — 32.9.

ADMINISTRATIVE RULES

Stats Auth: ORS 197.723
Stats Implemented: ORS 197.723
Hist.: ERRC 1-2013, f. & cert. ef. 1-2-13

966-100-0500

Central Douglas Industrial Area

(1) The Central Douglas Industrial Area was approved by the ERRC as a designated RSIA on September 28, 2012.

(2) The Central Douglas Industrial Area located in Douglas County, consists of 328.12 acres and is comprised of the following:

(a) Three parcels at Back Nine Development/Del Rio Road

(A) Tax Lot — 26-06W-24-00500:

Acres — 99.58 and .023.

Property ID — R#52576 & 119851.

Address — 425 & 407 Del Rio Road.

(B) Tax Lot — 26-06W-24-00300:

Acres — 29.65.

Property ID — R#49342.

Address — 0 Old Highway 99.

(C) Tax Lot — 26-06W-13DD-00800:

Acres — 2.05.

Property ID — R#49391.

Address — 7500 Old Highway 99.

(b) Four parcels at Stearns Lane/Sutherland Knolls.

(A) Tax Lot — 25-06W-12-00900:

Acres — 33.50.

Property ID — R#26128/16136.

Address — 0 Stearns Lane, Oakland/ 3070 Stearns Lane, Oakland.

(B) Tax Lot — 25-06W-13-00100:

Acres — 80.92.

Property ID — R#122694/26240.

Address — 0 Scardi Blvd., Sutherland/0 Stearns Lane, Oakland.

(C) Tax Lot — 25-05W-07-01600:

Acres — 43.2.

Property ID — R#122690 (excludes R#20400).

Address — 0 Stearns Lane, Oakland/0 Stearns Lane.

(D) Tax Lot — 25-05W-07-01500:

Acres — 39.2.

Property ID — R#122689 (excludes R#20392).

Address — 0 Stearns Lane Oakland /0 Stearns Lane.

Stats Auth: ORS 197.723

Stats Implemented: ORS 197.723

Hist.: ERRC 1-2013, f. & cert. ef. 1-2-13

Oregon Business Development Department Chapter 123

Rule Caption: These Business, Innovation and Trade fund rules have been amended to include minor housekeeping changes.

Adm. Order No.: OBDD 1-2013

Filed with Sec. of State: 1-2-2013

Certified to be Effective: 1-2-13

Notice Publication Date: 12-1-2012

Rules Amended: 123-009-0060, 123-009-0090

Subject: Minor housekeeping changes have been made to the definitions, deleting two definitions and making a small change to one. Statutory references and language was added to the criteria.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-009-0060

Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(1) Fund means the Oregon Business, Innovation and Trade Fund established in ORS 285A.227, which includes lottery funding for grant and loan programs and contracted services and all interest earnings that accrue to the Fund.

(2) "Allocation Plan" means the distribution plan of the legislatively authorized Fund biennial budget.

Stat. Auth.: ORS 285A.075 & 285A.227(2)

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08; EDD 11-2009, f. & cert. ef. 10-1-09; OBDD 1-2013, f. & cert. ef. 1-2-13

123-009-0090

Criteria for Allocations

The Commission shall make biennial allocations from the Fund based on the following criteria:

(1) Funding shall be based on the principles established in ORS 285A.020, 285A.045 and 285A.055 to further business and economic development.

(2) Funds may be reserved and allocated to address opportunity-driven investments, projects and unanticipated needs.

(3) Consideration may be given to eliminating or combining funding for programs in allocations.

Stat. Auth.: ORS 285A.075 & 285A.227(2)

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08; OBDD 1-2013, f. & cert. ef. 1-2-13

Oregon Department of Education Chapter 581

Rule Caption: Clarifies that references to Superintendent in rules, policies and motions also refer to Deputy.

Adm. Order No.: ODE 1-2013

Filed with Sec. of State: 1-15-2013

Certified to be Effective: 1-15-13

Notice Publication Date: 9-1-2012

Rules Adopted: 581-001-0016

Subject: Senate Bill 552 (2011) amended state law to make the Governor the Superintendent of Public Instruction at the end of Superintendent Castillo's term of office or when there is a vacancy in the office. Superintendent Castillo resigned from office effective June 30, 2012. Therefore, the Governor became Superintendent on July 1, 2012. SB 552 also directed the Governor, acting as superintendent, to appoint a Deputy Superintendent of Public Instruction. The deputy "shall perform any act or duty of the office of Superintendent of Public Instruction that is designated by the Governor, and the Governor is responsible for any acts of the deputy superintendent."

The Governor appointed Rob Saxton as Acting Deputy Superintendent of Public Instruction effective July 31, 2012 pending confirmation by the Senate in September. The Governor has designated Mr. Saxton, as Deputy, to perform the duties of the Superintendent of Public Instruction including acting as administrative officer of the state board and executive head of the Department of Education.

The state board, by rule, policy and motion, has directed the superintendent to perform acts and duties as the executive head of the department. The rule clarifies that the state board's intent is that these directions by rule also include the deputy.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-001-0016

Deputy Superintendent of Public Instruction

Except as otherwise designated or limited by the Governor pursuant to ORS 326.300:

(1) References to the "Superintendent of Public Instruction" in rules, policies or in motions adopted by the State Board of Education shall be considered references to the Superintendent of Public Instruction and the Deputy Superintendent of Public Instruction.

(2) The Deputy Superintendent shall perform any act or duty which the State Board of Education has designated by rule, policy or vote to the Superintendent of Public Instruction.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.300 & 326.310

Hist.: ODE 24-2012(Temp), f. 9-13-12, cert. ef. 9-17-12 thru 3-15-13; ODE 1-2013, f. & cert. ef. 1-15-13

Rule Caption: Creates Accountability Reporting Advisory Committee and repeals outdated substantive appeals committee.

Adm. Order No.: ODE 2-2013

Filed with Sec. of State: 1-15-2013

Certified to be Effective: 1-15-13

Notice Publication Date: 11-1-2012

Rules Adopted: 581-002-0090

Rules Repealed: 581-022-1065

ADMINISTRATIVE RULES

Subject: Creates Accountability Reporting Advisory Committee (ARAC) to contribute technical expertise, stakeholder input and as arbiter of issues regarding education accountability data.

Repeals obsolete substantive appeals committee.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-002-0090

Accountability Reporting Advisory Committee

(1) The Superintendent of Public Instruction shall appoint a committee, called the Accountability Reporting Advisory Committee (ARAC), consisting of at least eight members of the educational community. No more than one voting member of the ARAC may be employed by the Oregon Department of Education. The Superintendent shall appoint a chairperson and vice chairperson.

(2) The ARAC will have the following responsibilities:

(a) Recommend to the Oregon Department of Education policies, procedures and methodologies regarding:

(A) School and district report cards;

(B) Cohort graduation rate;

(C) Annual Measurable Objectives;

(D) Business rules for accountability reporting;

(E) Measurement of student growth; and

(F) Other measures for holding schools and districts accountable for student success.

(b) Make recommendations to the Oregon Department of Education on appeals from districts regarding accountability data where:

(A) The school or district submitted incorrect data or failed to submit data due to unique events that could not be predicted and/or controlled by the school or district; and

(B) The data issue could not otherwise be remedied by correcting data used in a school or district rating during the validation window available for each data collection; and

(C) The data have not been publicly released in final form.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: ODE 2-2013, f. & cert. ef. 1-15-13

Rule Caption: Reduces fee charged to private career schools for criminal background checks.

Adm. Order No.: ODE 3-2013

Filed with Sec. of State: 1-15-2013

Certified to be Effective: 1-15-13

Notice Publication Date: 10-1-2012

Rules Amended: 581-045-0003

Subject: Changes fees charged by Department of Education for processing criminal background checks for private career schools. The overall fee is being reduced from \$62 to \$59 to reflect a change in the fee charged by the FBI to the Department.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-045-0003

Fingerprinting of Subject Individuals in Schools Accepting Enrollment of Minors

(1) Pursuant to ORS 345.030(6), subject individuals include:

(a) Faculty, and agents of a career school, and individuals who hold positions of authority and control in any career school accepting enrollment of persons under the age of 18; and

(b) Any agents of career schools who will have contact with persons under the age of 18 on behalf of the career school.

(2) Each application for a new school license or renewal of an existing school license shall be accompanied by, for each subject individual:

(a) One properly completed FBI fingerprint card #USGPO 1990-262-201-2000;

(b) A properly completed Department of Education criminal history information form; and

(c) A fee in an amount equal to the actual charges of conducting the criminal background check as allowed under ORS 181.534. The fee amount and distribution shall be as follows:

(A) Oregon State Police (OSP) — \$28.00;

(B) Federal Bureau of Investigation (FBI) — \$16.50;

(C) Oregon Department of Education (ODE) — \$14.50;

(D) TOTAL — \$59.00

(3) An applicant school is not required to submit fingerprints for subject individuals if the Department of Education has conducted a criminal

records check of the subject individual within the three years preceding the date of application.

(4) For the purposes of criminal background checks pursuant to ORS 345.030, conducted in relation to individuals subject to such criminal background verification, the following definitions of a crime applies:

(a) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(b) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining the individual committed a crime, which if done by an adult, would constitute a crime listed in ORS 342.143.

(c) Any conduct which resulted in either mandatory registration or reporting, or both, as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of either the sex offender registration or reporting requirement, or both, does not affect the status of the conduct as a conviction for purposes of this rule.

(d) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(e) A conviction exists for the purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with diversion or on any sort of deferred adjudication or delayed entry of judgment.

(f) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(g) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(5) Fingerprints may be collected by a local or state law enforcement agency.

(6) The Oregon Department of Education shall:

(a) Request criminal information from the Department of State Police in the manner prescribed by law;

(b) Review the criminal records of the subject individual upon the submission of the required FBI and state forms and the Superintendent or designee shall issue a statement of criminal history status and related impact on employment or contract qualification.

(c) Not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(7) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment by the applicant school.

(8) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, shall be refused employment or continued employment, or have their employment terminated, by the career school upon notification from the Superintendent.

(9) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 or an attempt to commit any of the crimes listed in 324.143 shall be refused employment, continued employment, or have their employment terminated by the applicant school upon notification from the Superintendent.

(10) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(11) Prior to making a determination that results in a notice and opportunity for hearing, as allowed under ORS 181.534, the Superintendent may cause an investigation to be undertaken. Subject individuals and applicant schools shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(12) Subject individuals may appeal a determination that prevents their employment or eligibility to contract with an applicant school as a contested case under ORS 183.413 to 183.470 to the Superintendent.

ADMINISTRATIVE RULES

(13) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.

(14) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

- (a) Card sequence number;
- (b) Name of applicant school submitting the cards;
- (c) Date cards and Department forms were received;
- (d) Date incomplete cards returned to applicant school, if applicable;
- (e) Date completed cards sent to Oregon State Police;
- (f) Date denial or probationary approval sent to applicant schools;
- (g) Date FBI card returned to Department; and
- (h) Date denial or final approval sent to applicant school.

Stat. Auth.: ORS 345.020

Stats. Implemented: ORS 345.030

Hist.: ODE 3-2010, f. & cert. ef. 2-8-10; ODE 31-2012(Temp), f. 11-7-12, cert. ef. 11-9-12 thru 5-7-13; ODE 3-2013, f. & cert. ef. 1-15-13

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

Rule Caption: Temporary amendments to OAR 415-020, which implement criteria for “take-home” doses of buprenorphine.

Adm. Order No.: ADS 1-2013(Temp)

Filed with Sec. of State: 1-11-2013

Certified to be Effective: 1-14-13 thru 7-12-13

Notice Publication Date:

Rules Amended: 415-020-0053

Subject: On December 5, 2012 Substance Abuse and Mental Health Services Administration (SAMHSA) issued a Federal rule which allows, under specific criteria, patients to receive “take-home” doses of buprenorphine.

This rule activity implements that Federal decision into the applicable rules of the Addictions and Mental Health (AMH) Division.

Rules Coordinator: Nola Russell—(503) 945-7652

415-020-0053

Unsupervised Use of Opioid Agonist Medications

(1) Any patient in comprehensive maintenance treatment may receive a single take-home dose for a day that the clinic is closed for business, including Sundays, and state or federal holidays.

(2) Decisions on dispensing opioid treatment medications to patients for unsupervised use shall be made by the program medical director. In determining whether a patient is responsible in handling opioid medications and may be permitted unsupervised use, the medical director shall consider the following criteria:

- (a) Absence of drugs of abuse, including alcohol;
- (b) Regularity of program attendance;
- (c) Absence of serious behavioral problems at the program;
- (d) Absence of criminal activity while enrolled at the program;
- (e) Stability of the patient’s home environment and social relationships;
- (f) Length of time in comprehensive maintenance treatment;
- (g) Assurance that take-home medication can be safely stored in the patient’s home; and

(h) Whether the rehabilitative benefit the patient derives from decreasing the frequency of program attendance outweighs the potential risks of diversion.

(3) Decisions to approve unsupervised use of opioid medications, including the rationale for the approval, shall be documented in the patient record.

(4) If it is determined that a patient is responsible in handling opioid agonist medications, the supply shall be limited to the following schedule:

(a) During the first 90 days of treatment, the take-home supply is limited to a single dose each week, in addition to take-home doses allowed when the clinic is closed;

(b) During the second 90 days of treatment, the take-home supply is limited to two doses per week, in addition to take-home doses allowed when the clinic is closed;

(c) During the third 90 days of treatment, the take-home supply is limited to three doses per week, in addition to take-home doses allowed when the clinic is closed;

(d) In the remaining months of the first year, a patient may be given a maximum 6-day supply of take-home medication;

(e) After one year of continuous abstinence in treatment, a patient may be given a maximum two-week supply of take-home medication;

(f) After two years of continuous abstinence treatment, a patient may be given a maximum one-month supply of take-home medication.

(5) The dispensing restrictions set forth in (4)(a) through (4)(f) of this rule do not apply to the partial agonist opioid medication buprenorphine and buprenorphine products. Patients must meet criteria established in (2)(a) through (2)(h) of this rule for unsupervised use of buprenorphine and buprenorphine products.

Stat. Auth.: ORS 409.410 & 409.420

Stats. Implemented: ORS 430.010(4)(b) & 430.560 - 430.590

Hist.: ADS 1-2003, f. 6-13-03, cert. ef. 7-1-03; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 1-2013(Temp), f. 1-11-13, cert. ef. 1-14-13 thru 7-12-13

Rule Caption: Temporary amendments to OAR 415-012, which clarify standards regarding the location of methodone treatment programs.

Adm. Order No.: ADS 2-2013(Temp)

Filed with Sec. of State: 1-14-2013

Certified to be Effective: 1-14-13 thru 7-12-13

Notice Publication Date:

Rules Amended: 415-012-0000, 415-012-0010, 415-012-0020, 415-012-0030

Subject: These rules establish the standards for the licensing of alcohol or drug abuse service providers, alcohol and drug evaluation specialists, and residential treatment facilities.

Rules Coordinator: Nola Russell—(503) 945-7652

415-012-0000

Purpose

Purpose. These rules establish procedures for approval of the following:

(1) Any alcohol or drug abuse service provider which is, or seeks to be, contractually affiliated with the Addictions and Mental Health Division, a Coordinated Care Organization, or local mental health authority for the purpose of providing alcohol and other drug abuse treatment and prevention services;

(2) Any service provider using public funds in the provision of alcohol or drug abuse prevention, intervention, or treatment services in Oregon;

(3) Performing providers under Addictions and Mental Health Division rules under OAR 309-016-0000 through 309-016-0120;

(4) Organizations that provide alcohol or drug abuse treatment services seeking approval from the Division to establish eligibility for insurance reimbursement as provided in ORS 430.065;

(5) Organizations seeking approval from the Division for provision of residential services as provided in ORS 430.010 and 443.400 or detoxification services under ORS 430.306; or

(6) Alcohol and drug evaluation specialists designated to do Driving Under the Influence of Intoxicants (DUII) diagnostic assessments under ORS 813.020 and 813.260.

Stat. Auth.: ORS 409.410 & 409.420

Stats. Implemented: ORS 426.450, 430.010-041, 430.260, 430.306, 430.405, 430.450, 430.590, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

Hist.: ADAP 2-1993, f. & cert. ef. 11-5-93; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 2-2013(Temp), f. & cert. ef. 1-14-13 thru 7-12-13

415-012-0010

Definitions

(1) “Applicant” means any person or entity who has requested, in writing, a letter of approval or license.

(2) “Assistant Director” means the Assistant Director of the Addictions and Mental Health Division of the Oregon Health Authority.

(3) “Client” means an individual receiving services under these rules.

(4) “Community Mental Health Program (CMHP)” means the organization of all services for individuals with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

ADMINISTRATIVE RULES

Hist.: ADAP 2-1993, f. & cert. ef. 11-5-93; ADAP 1-2001, f. 3-29-01, cert. ef. 4-1-01; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 2-2013(Temp), f. & cert. ef. 1-14-13 thru 7-12-13

(5) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members.

(6) "Direct Contract" or "Contract" is the document describing and limiting the relationship and respective obligations between an organization other than a county and the Division for the purposes of operating the alcohol and drug abuse program within a county's boundaries, or operating a statewide, regional, or specialized service.

(7) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(8) "Intergovernmental Agreement" or "Agreement" is the document describing and limiting the contractual relationship and respective obligations between a county or other government organization and the Division for the purpose of operating an alcohol and drug abuse service.

(9) "Letter of Approval (LOA)" means a certificate issued by the Assistant Director to applicants who are in substantial compliance with applicable administrative rules for alcohol and drug abuse treatment in an outpatient setting, Driving Under the Influence of Intoxicants (DUI) diagnostic assessment, or prevention services, and which is renewable every three years.

(10) "License" means a certificate issued by the Assistant Director to applicants who are in substantial compliance with applicable administrative rules for alcohol and drug abuse treatment in a residential setting and which is renewable every two years.

(11) "Licensed Child Care Facility" means a facility licensed under ORS 657A.280.

(12) "Non-Funded Provider" means an organization not contractually affiliated with the Division, a CMHP, or other contractor of the Division.

(13) "Provider" means an organization providing alcohol or drug abuse prevention, intervention, or treatment services under contract with the Division or under subcontract with a local entity or public body or otherwise receiving public funds for these services.

(14) "Provisional" means a LOA or license issued for one year or less pending completion of specified requirements because of substantial failure to comply with applicable administrative rules.

(15) "Quality Assurance" means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of client care to identify and resolve identified problems.

(16) "Restriction" means any limitations placed on a LOA or license such as age of clients to be served or number of clients to be served.

(17) "Revocation" means the removal of authority for a provider to provide certain services under a LOA or license.

(18) "School Attended Primarily By Minors" means an existing public or private elementary, secondary or career school attended primarily by individuals under age eighteen.

(19) "Service Element" means a distinct service or group of services for persons with alcohol or other drug abuse problems defined in administrative rule and included in a contract or agreement issued by the Division.

(20) "Subcontract" means the document describing and limiting the relationship and respective obligations between a government and other entity having an agreement or contract with the Division and a third organization (subcontractor) for the purpose of delivering some or all of the services specified in the agreement or contract with the Division.

(21) "Substantial Compliance" means a level of adherence to applicable administrative rules which, while not meeting one or more of the requirements, does not, in the determination of the Division:

(a) Constitute a danger to the health or safety of any individual;

(b) Constitute a willful or ongoing violation of the rights of service recipients as set forth in administrative rules; or

(c) Prevent the accomplishment of the state's purposes in approving or supporting the subject service.

(22) "Substantial Failure to Comply" is used in this rule to mean the opposite of "substantial compliance."

(23) "Suspension" means a temporary removal of authority for a provider to conduct a service for a stated period of time or until the occurrence of a specified event under a LOA or license.

(24) "Temporary" means a LOA license issued for 185 days to a program approved for the first time. A temporary LOA license cannot be extended.

(25) "Variance or Exception" means a waiver of a regulation or provision of these rules granted by the Division upon written application.

Stat. Auth.: ORS 409.410 & 409.420

Stats. Implemented: ORS 426.450, 430.010-041, 430.260, 430.306, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

415-012-0020

General Requirements

(1) Providers That Must Have LOA or License: Every provider that operates a service element by contract with the Division or subcontracts with a local entity or public body or otherwise receives public funds for providing alcohol or drug abuse prevention, intervention, or treatment services must have an LOA or license:

(a) No provider shall represent themselves as conducting any service described in this rule without first obtaining an LOA or license;

(b) A provider that does not have an LOA or license for conducting a service described in this rule may not admit a person needing that service; and

(c) The LOA or license shall be posted in the facility and available for inspection at all times.

(2) Discretionary LOA: The Division may also issue an LOA to organizations seeking approval for insurance reimbursement as provided in ORS 430.065 or to other non-funded providers.

(3) Facilities Requiring License: Any facility which meets the definition of a residential treatment facility for alcohol or drug-dependent persons under ORS 443.400 or a detoxification center as defined in ORS 430.306 must be licensed by the Division:

(a) No individual or entity shall represent themselves as a residential treatment facility for alcohol or drug-dependent persons or as a detoxification center without first being licensed;

(b) A residential treatment facility or a detoxification center that is not licensed may not admit individuals needing residential or detoxification care or treatment; and

(c) A license shall be posted in the facility and available for inspection at all times.

(4) LOA or License is not a Contract: Approval or licensure of a service element pursuant to this rule does not create an express or implied contract in the absence of a fully executed written contract.

(5) Distance Requirements for Methadone Treatment Programs: Programs using methadone to treat opioid addiction may not operate within 1,000 linear feet of a licensed child care facility or school primarily attended by minors pursuant to ORS 430.590. The Division will not issue a variance to programs unable to meet this requirement.

(6) List of Service Elements: Services eligible for an LOA include but are not limited to:

(a) Outpatient alcohol or other drug treatment;

(b) Outpatient methadone maintenance and outpatient methadone detoxification;

(c) Outpatient DUI alcohol and other drug information and rehabilitation programs and marijuana education and treatment programs;

(d) Outpatient occupational drivers license program;

(e) Title XIX program;

(f) Prevention programs;

(g) Alcohol and drug evaluation specialists; and

(h) Marijuana evaluation specialists.

Stat. Auth.: ORS 409.410 & 409.420

Stats. Implemented: ORS 426.450, 430.010-041, 430.260, 430.306, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

Hist.: ADAP 2-1993, f. & cert. ef. 11-5-93; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 2-2013(Temp), f. & cert. ef. 1-14-13 thru 7-12-13

415-012-0030

Initial Application Procedures

(1) Application Packet: The Division shall mail an application packet to all applicants upon request. This application process applies to all providers except persons who wish to become Alcohol and Drug Evaluation Specialists (ADES) who should refer to OAR 415-054-0045 to 415-054-0100.

(2) Initial Meeting: All programs applying for the first time for a LOA or license to operate a treatment or prevention program shall schedule a meeting with Division staff for the purpose of receiving needed technical assistance regarding the approval and licensure criteria and procedures.

(3) Multiple Locations: A separate application is required for each location where the provider intends to operate.

(4) Copy of Application: A copy of the application shall be provided by the applicant to the local mental health authority (CMHP) and to the Local Alcohol Planning Committee (LAPC) for review and comment. A program seeking to provide services on a statewide or regional basis must provide application material to the CMHP and the LAPC in the county where the program resides.

ADMINISTRATIVE RULES

(5) **Withdrawal of Application:** The applicant may withdraw the application at any time during the application process by notifying the Division in writing. At such time, all materials shall be returned to the applicant.

(6) **Initial Application Information:** An applicant for a LOA or license shall submit the information listed below on forms provided by the Division:

- (a) Name and address of the applicant;
- (b) Name, address, and qualifications of the executive director or administrator;
- (c) Outline of the staff organization with names and qualifications;
- (d) Articles of incorporation and bylaws;
- (e) Names and addresses of the board of directors, sponsors, or advisory boards of the program;
- (f) Names and addresses of physicians, other professionally trained personnel, medical facilities, and other individuals or organizations with whom the program has a direct referral agreement or is otherwise affiliated;
- (g) Description of the treatment services provided by the program setting forth program philosophy, goals, objectives, and a description of the treatment methodology for each service element;
- (h) Materials demonstrating compliance with the administrative rules governing the specific service provided;
- (i) Materials showing compliance with all related federal, state and local acts, ordinances, rules and amendments such as State Fire Marshal rules, board of health and building zoning codes, and the American Disabilities Act;
- (j) Materials substantiating compliance with distance requirements subject to ORS 430.590 for programs using methadone to treat opioid addiction. These application procedures apply to new programs and existing programs moving to a new location after 1-14-2013.
- (k) Materials substantiating compliance with other licensing authorities such as the Children, Adults and Families (CAF) Division for residential adolescent programs or the Drug Enforcement Administration and Food and Drug Administration for methadone treatment programs;
- (l) For residential treatment and detoxification facilities, the maximum client capacity requested;
- (m) Source of funds used to finance the program such as an annual budget of the organization or a copy of the most current fiscal audit or review;
- (n) Written evidence of applicable insurance such as liability insurance;
- (o) Floor plan for the proposed facility;
- (p) Representative sample client file;
- (q) Written nondiscrimination policy including:
 - (A) Explanation of methods used to disseminate the policy;
 - (B) Description of procedures used to communicate with sensory impaired person or persons of limited English proficiency;
 - (C) Written statement about the accessibility of the facility and programs for disabled persons; and
 - (D) Written grievance procedure for handling discrimination complaints.

(7) **Application Satisfactory:** If the application is found to be complete and if the material documents compliance with applicable administrative rules, the Division shall issue a temporary LOA or license no later than 30 days after final approval of the application.

Stat. Auth.: ORS 409.410 & 409.420
Stats. Implemented: ORS 426.450, 430.010-041, 430.260, 430.306, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500
Hist.: ADAP 2-1993, f. & cert. ef. 11-5-93; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 2-2013(Temp), f. & cert. ef. 1-14-13 thru 7-12-13

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**Oregon Health Authority,
Addictions and Mental Health Division:
Mental Health Services
Chapter 309**
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Rule Caption: Amendments to rules regarding forensic mental health evaluators and evaluations.

Adm. Order No.: MHS 16-2012

Filed with Sec. of State: 12-26-2012

Certified to be Effective: 12-26-12

Notice Publication Date: 11-1-2012

Rules Amended: 309-090-0005, 309-090-0025

Subject: These rules establish minimum standards for the certification of psychiatrists and licensed psychologists related to performing forensic examinations and evaluations as described in ORS 161.309-161.370 and 419C.524. The rules are intended to ensure that forensic evaluations meet consistent quality standards and are conducted by qualified and trained evaluators. The Oregon Health Authority (OHA) shall provide training, certify qualified applicants and maintain a list of certified forensic evaluators for statewide use.
Rules Coordinator: Nola Russell—(503) 945-7652

309-090-0005

Definitions

- (1) “Authority” means the Oregon Health Authority.
- (2) “Competence” is defined according to ORS 161.360.
- (3) “Conditional Certification” means a psychologist or psychiatrist is temporarily Court-designated as a certified evaluator as defined in OAR 309-090-0010(c).
- (4) “Criminal Responsibility” is defined according to ORS 161.295
- (5) “Division” means the Addictions and Mental Health (AMH) Division of the Authority.
- (6) “Evaluator” means a psychiatrist or psychologist certified by the Authority to perform forensic evaluations.
- (7) “Forensic Psychiatric or Psychological Evaluation” means the assessment of a defendant in which the certified forensic evaluator opines on a specific psycho-legal referral question related to ORS 161.360 or 161.295, and is ordered by the Court or requested by associated attorneys.
- (8) “Full Certification” means a psychiatrist or licensed psychologist in the state of Oregon satisfying the requirements of this chapter as defined in OAR 309-090-0010(a).
- (9) “Licensed Psychologist” means a psychologist licensed pursuant to ORS 675.110 through 675.065 by the Board of Psychologist Examiners.
- (10) “Mental Defect” means mental retardation, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual’s functioning, as defined in the current Diagnostic and Statistical Manual of Mental Disorders Fourth Edition; Text Revised (DSM-IV-TR) or hereto forward editions of the DSM of the American Psychiatric Association.
- (11) “Mental Disease” means any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual’s functioning, as defined in the current Diagnostic and Statistical Manual of Mental Disorders Fourth Edition; Text Revised (DSM-IV-TR) or hereto forward editions of the DSM of the American Psychiatric Association.
 - (a) The term “mental disease or defect” does not include an abnormality manifested solely by repeated or criminal or otherwise antisocial conduct;
 - (b) For offenses committed on or after January 1, 1984, the term “mental disease or defect” does not include any abnormality constituting solely a personality disorder.
- (12) “Oregon Forensic Evaluator Training Program” means a training program approved by the Authority to teach psychiatrists and psychologists the knowledge and skills required to perform forensic evaluations and testimony for the state courts.
- (13) “Psychiatrist” means a psychiatrist licensed by the Board pursuant to ORS 677.010 through 677.450 and who has completed an approved residence training program in psychiatry.
- (14) “Substantial Danger to Self or to Others” means the person requires a hospital level of care due to a mental disease or defect.
- (15) “Successful completion of training” shall mean attendance at the entire training and passing the exam given at the conclusion of the training.
- (16) “Temporary Certification” means a psychiatrist or licensed psychologist in the state of Oregon satisfying the requirements as defined in OAR 309-090-0010(b)
- (17) “Testimony” means a declaration, usually made orally by a witness under oath in response to interrogation by a lawyer or authorized public official.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12; MHS 16-2012, f. & cert. ef. 12-26-12

ADMINISTRATIVE RULES

309-090-0025

Content of Written Evaluations Assessing Competency and Criminal Responsibility

(1) At minimum each forensic evaluation shall include the following:
(a) Identifying information of the defendant, a description of the forensic examination, criminal charges, the referral source and the referral question;

(b) The evaluative procedure, techniques and tests used in the examination and the purpose for each, informed consent and limits of confidentiality;

(c) Background information, relevant history of mental and physical illnesses, substance use and treatment histories, medications, hospital or jail course, and current setting.

(d) Summary of a mental status examination;

(e) A substantiated multi-axial diagnosis in the terminology of the American Psychiatric Association's current edition of the Diagnostic and Statistical Manual;

(f) A consideration of malingering must be present in every evaluation; and

(g) A summary of relevant records reviewed for the evaluation.

(2) In addition to 309-090-0025(1), when the defendant's competency is in question, the evaluation shall also include, at a minimum, opinions and explanations related to the defendant's:

(a) Understanding of his or her charges, the possible verdicts and the possible penalties;

(b) Understanding of the trial participants and the trial process;

(c) Ability to assist counsel in preparing and implementing a defense;

(d) Ability to make relevant decisions autonomously; and

(e) If determined incapacitated:

(i) An opinion and explanation as to whether or not the individual is a substantial danger to self or to others as defined in these rules; and

(ii) A recommendation of treatment and other services necessary for the defendant to gain or restore capacity.

(3) In addition to 309-090-0025(1), related to the question of criminal responsibility, the evaluation shall also include, at a minimum, opinions and explanations addressing:

(a) The defendant's account of the alleged offense(s) including thoughts, feelings and behavior;

(b) Summary of relevant records; including police reports,

(c) An expert opinion regarding the role of substance use in the alleged offense;

(d) The defendant's mental state at the time of the alleged offense(s) and

(e) An expert opinion regarding whether the defendant, as a result of mental disease or defect at the time of engaging in the alleged criminal conduct, lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law.

(f) An expert opinion regarding; if the individual is determined guilty except for insanity of a misdemeanor is the individual a substantial danger to others as defined in these rules.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12; MHS 16-2012, f. & cert. ef. 12-26-12

Rule Caption: New set of rules regarding the Consumer Advisory Committee.

Adm. Order No.: MHS 17-2012

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 12-28-12

Notice Publication Date: 12-1-2012

Rules Adopted: 309-011-0024, 309-011-0026, 309-011-0028, 309-011-0031, 309-011-0032, 309-011-0034, 309-011-0036

Rules Amended: 309-011-0120, 309-011-0125, 309-011-0130

Rules Repealed: 309-011-0135

Rules Renumbered: 309-011-0140 to 309-011-0019

Subject: These rules implement ORS 430.073, related to the Addiction and Mental Health (AMH) Division's Consumer Advisory Council (CAC). The scope of these rules is limited strictly to the CAC, and will clarify CAC's purpose, scope, membership, roles, and responsibilities, and those of AM.

Rules Coordinator: Nola Russell—(503) 945-7652

309-011-0019

Membership on Task Forces, Commissions, Advisory Groups and Committees

(1) As defined in ORS 174.109, at least 20 percent of the membership of all task forces, commissions, advisory groups and committees established by Division shall be consumers, with representation balanced by age.

(2) This rule applies only to task forces, commissions, advisory groups and committees that:

(a) Primarily relate to persons with mental health or addiction issues; and

(b) Are subject to ORS 192.630.

(3) Membership is subject to the limitations outlined in ORS 430.073.

Stat. Auth.: ORS 413.042 & 430.078

Stats. Implemented: ORS 430.078

Hist.: MHS 10-2010, f. & cert. ef. 7-22-10, Renumbered from 309-011-0140 by MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0024

Purpose and Scope

The purpose of these rules is to implement ORS 430.073, related to the Addiction and Mental Health (AMH) Division's Consumer Advisory Council (CAC). The scope of these rules is limited strictly to the CAC, and will clarify CAC's purpose, scope, membership, roles, and responsibilities, and those of AMH.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 10-2010, f. & cert. ef. 7-22-10, Renumbered from 309-011-0140 by MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0026

Definitions

(1) "Administrative Support" means the tasks provided by AMH, which are detailed in OAR 309-011-0230(b) below.

(2) "Advise" means to recommend, suggest or inform.

(3) "AMH Representative" means the individual(s) identified by AMH to provide administrative support to CAC.

(4) "CAC" means the Consumer Advisory Council authorized by ORS 430.073 and comprised of consumers appointed by the Director.

(5) "Consumer" means a person who has received or is currently receiving mental health or addiction services.

(6) "Director" means the Director of the Oregon Health Authority or his or her designee.

(7) "Director's Designee" means the Director of the Addictions and Mental Health (AMH) Division.

(8) "Majority Vote" means a decision agreed upon by the majority of the quorum present.

(9) "Present", related to meetings, means being physically present, or connected to the meeting process via conference call or tele-conference.

(10) "Public Meeting" means those meetings open to the public and governed by ORS 192.610 through 192.690.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0028

CAC Roles

(1) The role of CAC is to provide to the Director's Designee advice on the provision of mental health services by AMH.

(2) CAC may provide evaluation and feedback on site reviews related to mental health services provided by AMH.

(3) CAC shall work in cooperation with the Director's Designee or other designated AMH representative to promote, support and communicate AMH's mission, vision and values.

(4) CAC shall adhere to public meeting laws.

(5) CAC may develop a mission statement and goals, which shall not contradict the authorizing statutes or these rules.

(6) After the first of each calendar year, the CAC shall, in consultation with the AMH Representative, develop and adopt a work plan for the ensuing twelve months.

(7) CAC may establish committees to investigate and report back to CAC regarding areas of interest to CAC.

(8) CAC shall not establish AMH policies, rules, internal directives or procedures.

Stat. Auth.: ORS 413.042 & 430.073

Stats. Implemented: ORS 430.073

Hist.: MHS 17-2012, f. & cert. ef. 12-28-12

ADMINISTRATIVE RULES

309-011-0031

CAC Responsibilities

- (1) CAC shall meet at least once every two months.
- (2) A meeting may continue without a quorum participating, but authorities granted to CAC may not be exercised without a quorum.
- (3) Advice to the Director's Designee shall be provided in writing when CAC has a recommendation accepted by a majority of the quorum.
- (4) Advice to the Director's Designee shall be signed and dated by the chair or vice-chair.
- (5) CAC in collaboration with the AMH Representative may determine the procedures related to conducting CAC business.

Stat. Auth.: ORS 413.042 & 430.073
Stats. Implemented: ORS 430.073
Hist.: MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0032

Memberships: Selection and Terms

(1) Members shall be appointed by the Director's Designee, considering CAC recommendations, and shall be appointed for a two year term following a written acceptance of the offer.

(2) CAC shall consist of between 15 and 25 consumers, and selection shall strive to represent:

- (a) A broad range of ages, parents or guardians of children, youth in transition (ages 16 to 25), adults age 55 or older;
 - (b) A variety of cultures and ethnicities;
 - (c) An approximate division of gender; and
 - (d) A balance of geographic areas within the state.
- (3) AMH may appoint any member for a second two year term.
- (4) No person shall be excluded from serving as a member of CAC due to affiliation with any organization or institution, or on the basis of race, ethnic origin, religious affiliation, gender, age, disability or sexual orientation.

(5) Only the Director's Designee may remove a person from CAC prior to the end of his or her current two year term.

(6) Members of CAC are not entitled to compensation or reimbursement of expenses under ORS 292.495. [2007 c.805, 2; 2009 c.595 463]

Stat. Auth.: ORS 413.042 & 430.073
Stats. Implemented: ORS 430.073
Hist.: MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0034

Chair and Vice-Chair: Election and Duties

(1) The CAC shall elect by a majority of participating votes, one of its members as chair and one as vice-chair, to serve for a two year term each, with the possibility of re-election for one additional consecutive term.

(2) The chair shall have the powers and duties necessary for the performance of the office. These duties shall include, but not be limited to the following:

- (a) Facilitate CAC meetings;
- (b) Assign members to panels or committees;
- (c) Ensure the content of CAC meetings remain within the boundaries of its scope, purpose and authorities;
- (d) Identify meeting agenda items, in collaboration with the AMH representative;
- (e) Call special meetings
- (f) Sign documents from CAC addressed to the Director's Designee;
- (g) Make membership recommendations, in collaboration with the CAC and AMH representative.
- (h) With approval from the AMH Representative, the Chair may represent CAC by responding to requests for information or participation pertaining to CAC.

(3) The vice-chair shall be responsible for the chair's duties in his or her absence.

(4) Early termination or resignation of the chair or vice-chair's position shall be filled by a majority vote of those present, to serve a two year term.

Stat. Auth.: ORS 413.042 & 430.073
Stats. Implemented: ORS 430.073
Hist.: MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0036

AMH Responsibilities

- (1) AMH shall provide:
- (a) Necessary training and orientation to CAC members, including but not limited to the following subject areas:
 - (A) AMH's mission, vision, goals, roles and scope of business.
 - (B) CAC's purpose and scope of business;
 - (C) CAC's internal protocol and practices;

- (D) Lobbying restrictions;
- (E) Conflict of interest;
- (F) Public meeting laws;
- (G) These administrative rules; and
- (H) Other administrative rules, AMH policies and procedures, internal management directives, and state and federal laws related to topics CAC is considering as part of a recommendation to the Director's Designee.

(b) Administrative support such as but not limited to:

- (A) Secure meeting spaces;
- (B) Public meeting notices in accordance with public meeting laws;
- (C) Take attendance;
- (D) Scribe, distribute and maintain records of approved minutes;
- (E) Participate in the development of CAC meeting agendas; and
- (F) Send and receive communications to and from the Director's Designee.

(2) The Director's Designee shall respond in writing within 60 days following receipt of CAC's recommendations.

Stat. Auth.: ORS 413.042 & 430.073
Stats. Implemented: ORS 430.073
Hist.: MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0120

Purpose

These rules prescribe standards to be implemented by the Addictions and Mental Health (AMH) Division in order to establish the Self-Determination Policy as used in ORS 430.071.

Stat. Auth.: ORS 413.042 & 430.078
Stats. Implemented: ORS 430.078
Hist.: MHS 10-2010, f. & cert. ef. 7-22-10; MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0125

Definitions

As used in these rules:

(1) "Director" means the Director of the Addictions and Mental Health (AMH) Division of the Oregon Health Authority (Authority), or his or her designee.

(2) "Consumer" means a person who has received or is receiving mental health or addiction services.

(3) "Consumer Advisory Council" means the council appointed by the Assistant Director to advise the Division on the provision of mental health services.

(4) "Division" means the Addictions and Mental Health (AMH) Division of the Oregon Health Authority.

(5) "Olmstead v. L.C." means the 1999 Supreme Court decision under which states are required to place persons with disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual and the placement can be reasonably accommodated, taking into account the resources of the State and needs of others with disabilities.

(6) As used in ORS 430.075, these terms have the following meanings:

(a) "Task force" means a group or committee, usually composed of experts or specialists, formed for analyzing, investigating, or solving a specific problem or objective;

(b) "Commission" means a group of individuals that meet on a regular basis, and that are officially authorized to perform certain duties or functions;

(c) "Advisory group" means a collection of individuals who bring unique knowledge and skills, and who are appointed to support a particular service or function, or to investigate, report on, or act upon a particular matter; and

(d) "Committee" means a body of persons that are officially delegated or assigned to consider, investigate, act on, or report on a particular service or function.

Stat. Auth.: ORS 413.042 & 430.078
Stats. Implemented: ORS 430.078
Hist.: MHS 10-2010, f. & cert. ef. 7-22-10; MHS 17-2012, f. & cert. ef. 12-28-12

309-011-0130

Policy

(1) The Addictions and Mental Health (AMH) Division shall adopt a policy that supports and promotes self-determination for persons receiving mental health services. The policy shall be designed to remove barriers that:

- (a) Segregate persons with disabilities from full participation in the community in the most integrated setting in accordance with the United

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States Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999); and

(b) Prevent persons with disabilities from enjoying a meaningful life, the benefits of community involvement and citizen rights guaranteed by law.

Stat. Auth.: ORS 413.042 & 430.078
Stats. Implemented: ORS 430.078
Hist.: MHS 10-2010, f. & cert. ef. 7-22-10; MHS 17-2012, f. & cert. ef. 12-28-12

Rule Caption: Temporary new Medicaid rule, regarding supported employment and Assertive Community Treatment Services.

Adm. Order No.: MHS 1-2013(Temp)

Filed with Sec. of State: 1-7-2013

Certified to be Effective: 1-7-13 thru 7-1-13

Notice Publication Date:

Rules Adopted: 309-016-0825

Subject: Supported employment services are delivered to individuals with serious mental illness to enable them to obtain and maintain employment as part of their recovery from mental illness. Assertive Community Treatment services are delivered to individuals with serious mental illness as an evidence-based practice to assist these individuals with engagement in medically appropriate services. The requirements for providers that will deliver these services are being added to this rule. CCOs must include assessment of members needs and make supported employment and assertive community treatment services available when medically appropriate and when an appropriate provider is available. The rule also explains that to be an appropriate provider, providers must meet the requirements set forth in this rule. This rule also sets forth the fidelity review requirements and provides information on how these requirements may be accessed electronically.

Rules Coordinator: Nola Russell—(503) 945-7652

309-016-0825

Provider Requirements

(1) Evidenced-based supported employment services are provided to individuals with serious behavioral issues to enable them to obtain and maintain employment. Supported Employment services include:

(a) Development, supervision, and job training, on-the-job visitation, consultation with the employer, job coaching, counseling, skills training and transportation; and

(b) Are provided in the context of paid competitive employment.

(2) Assertive Community Treatment (ACT) services are delivered to individuals with serious mental illness as an evidence-based practice that assists them engage in medically appropriate services.

(3) Evidence-based supported employment serviced and ACT services must be provided by an appropriate provider.

(4) Appropriate providers must use the Dartmouth College model of Individual Placement and Support (IPS) Supported Employment and maintain acceptable fidelity scores, based on the Dartmouth College IPS supported employment fidelity scale, which may be found at <http://cco.health.oregon.gov/pages/resourcesCHA.aspx>

Stat. Auth.: ORS 414.032, 414.615, 414.625 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: MHS 1-2013(Temp), f. & cert. ef. 1-7-13 thru 7-1-13

Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Amendment of DMEPOS rules due to legislative buyback and additional budget reductions

Adm. Order No.: DMAP 57-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 12-27-12

Notice Publication Date: 12-1-2012

Rules Amended: 410-122-0186, 410-122-0325

Subject: The Division needs to permanently amend OAR 410-122-0186 to implement new payment methodology that reflects additional reimbursement provided by the legislative buyback to the DMEPOS program and factoring in additional budget reductions for the remainder of the biennium. The Division needs to permanently

amend OAR 410-122-0325 to implement new payment methodology as a cost saving to meet budget mandates

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-122-0186

Payment Methodology

(1) The Division of Medical Assistance Programs (Division) utilizes a payment methodology for covered durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) which is generally based on the 2010 Medicare fee schedule.

(a) The Division fee schedule amount is 84.5% of 2010 Medicare Fee Schedule for items covered by Medicare and the Division, except for:

(A) Ostomy supplies fee schedule amounts are 95.4% of 2010 Medicare Fee Schedule (See Table 122-0186-1 for list of codes subject to this pricing); and

(B) Prosthetic and Orthotic fee schedule amounts (L-codes) are 84.5% of 2010 Medicare Fee Schedule; and

(C) Complex Rehabilitation/Wheelchair fee schedule amounts are 90% of 2010 Medicare Fee Schedule (See Table 122-0186-2 for list of codes subject to this pricing);

(b) For items that are not covered by Medicare, but covered by the Division, the fee schedule amount shall be 99% of DMAP's published rate effective 7/31/11.

(c) For new codes added by the Center for Medicare and Medicaid Services (CMS), payment will be based on the most current Medicare fee schedule and will follow the same payment methodology as stated in (1)(a) and (b).

(2) Payment is calculated using the lesser of the following:

(a) The Division fee schedule amount, using the above methodology in (1)(a) & (b); or

(b) The manufacturer's suggested retail price (MSRP); or

(c) The actual charge submitted.

(3) The Division reimburses for the lowest level of service that meets medical appropriateness. See OAR 410-120-1280 Billing and 410-120-1340 Payment.

(4) The Division shall reimburse miscellaneous codes E1399 (durable medical equipment, miscellaneous) and K0108 (wheelchair component or accessory, not otherwise specified), and any code that requires manual pricing, using the lesser of the following:

(a) 75% of Manufacturer's Suggested Retail Price (MSRP) verifiable with quote, invoice or bill from the manufacturer which clearly states the amount indicated is MSRP; or

(b) If MSRP is not available then reimbursement shall be acquisition cost plus 20%, verifiable with quote, invoice, or bill from the manufacturer which clearly states the amount indicated is acquisition cost; or

(c) Actual charge submitted by the provider. (5) Reimbursement on miscellaneous codes E1399 and K0108 shall be capped at \$3,200.00.

(6) Prior authorization (PA) is required for miscellaneous codes E1399, K0108 and A4649 (surgical supply; miscellaneous) when the cost is greater than \$150, and the DMEPOS provider must submit the following documentation:

(a) A copy of the items from (4)(a) or (b) that will be used to bill; and,

(b) Name of the manufacturer, description of the item, including product name/model name and number, serial number when applicable, and technical specifications;

(c) A picture of the item upon request by the Division.

(7) The DMEPOS provider must submit verification for items billed with miscellaneous codes A4649, E1399, and K0108 when no specific Healthcare Common Procedure Coding System (HCPCS) code is available. Providers are allowed to submit verification from an organization such as the Medicare Pricing, Data Analysis and Coding (PDAC) contractor.

(8) The Division may review items that exceed the maximum allowable or cap on a case-by-case basis and may request the provider submit the following documentation for reimbursement:

(a) Documentation that supports the client meets all of the coverage criteria for the less costly alternative; and,

(b) A comprehensive evaluation by a licensed clinician (who is not an employee of or otherwise paid by a provider) that clearly explains why the less costly alternative is not sufficient to meet the client's medical needs, and;

(c) The expected hours of usage per day, and;

(d) The expected outcome or change in the client's condition.

(9) For codes A4649, E1399 and K0108 when the cost is \$150.00 or less per each unit:

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(a) Only items that have received an official product review coding decision from an organization such as PDAC with codes A4649, E1399 or K0108 may be billed to the Division. These products may be listed in the PDAC Durable Medical Equipment Coding System Guide (DMECS) DMEPOS Product Classification Lists;

(b) Subject to service limitations of the Division's rules;

(c) PA is not required.

(d) The amount billed to the Division must not exceed 75% of Manufacturer's Suggested Retail Price (MSRP). The provider is required to retain documentation of the quote, invoice or bill to allow the Division to verify through audit procedures.

(10) For rented equipment, the equipment is considered paid for and owned by the client when the Division fee schedule allowable is met or the actual charge from the provider is met, whichever is lowest. The provider must transfer title of the equipment to the client.

(11) Table 122-1086-1: Ostomy Codes, Table 122-0186-2: Complex Rehabilitation/Wheelchair Codes

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 42-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 31-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-27-12; DMAP 57-2012, f. & cert. ef. 12-27-12

410-122-0325

Motorized/Power Wheelchair Base

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division of Medical Assistance Programs (Division) may cover a power wheelchair (PWC) (K0813-K0816, K0820-K0829, K0835-K0843, K0848-K0864, K0898) when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs); places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010, Definitions, for complete definition of MRADLs;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day:

(i) Assessment of upper extremity function should consider limitations of strength, endurance, range of motion or coordination, presence of pain, and deformity or absence of one or both upper extremities;

(ii) An optimally-configured manual wheelchair is one with an appropriate wheelbase, device weight, seating options, and other appropriate non-powered accessories;

(D) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for the operation of the PWC that is being requested;

(E) Use of a PWC will significantly improve the client's ability to move within the home to the areas customarily used for their MRADLs to allow completion of these activities within a reasonable time frame;

(F) The client is willing to use the requested PWC in the home, and the client will use it on a regular basis in the home;

(G) The client has either:

(i) Strength, postural stability, or other physical or mental capabilities insufficient to safely operate a power-operated vehicle (POV) in the home; or

(ii) Living quarters that do not provide adequate access between rooms, maneuvering space, and surfaces for the operation of a POV with a small turning radius;

(H) The client has either:

(i) Sufficient mental and physical capabilities to safely operate the PWC that is being requested; or

(ii) A caregiver who is unable to adequately propel an optimally-configured manual wheelchair, but is available, willing, and able to safely operate the PWC that is being requested;

(I) The client's weight is less than or equal to the weight capacity of the PWC that is being requested;

(b) Only when conditions of coverage as specified in (1) (a) of this rule are met, may the Division authorize a PWC for any of the following situations:

(A) When the PWC can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits, and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a PWC will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a PWC may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive non-compliance, whether willing or involuntary, can be grounds for denial of PWC coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a PWC;

(B) When a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement costs;

(C) When a covered client-owned wheelchair is in need of repair, the Division may pay for one month's rental of a wheelchair (see OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing);

(c) For a PWC to be covered, the treating physician or nurse practitioner must conduct a face-to-face examination of the client before writing the order and the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must receive a written report of this examination within 45 days after the face-to-face examination and prior to delivery of the device:

(A) When this examination is performed during a hospital or nursing facility stay, the DMEPOS provider must receive the report of the examination within 45 days after date of discharge;

(B) The physician or nurse practitioner may refer the client to a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), to perform part of this face-to-face examination. This person may not be an employee of the DMEPOS provider or have any direct or indirect financial relationship, agreement or contract with the DMEPOS provider. When the DMEPOS provider is owned by a hospital, a PT/OT working in the inpatient or outpatient hospital setting may perform part of the face-to-face examination;

(i) If the client was referred to the PT/OT before being seen by the physician or nurse practitioner, then once the physician or nurse practitioner has received and reviewed the written report of this examination, the physician or nurse practitioner must see the client and perform any additional examination that is needed. The physician's or nurse practitioner's report of the visit should state concurrence or any disagreement with the PT/OT examination. In this situation, the physician or nurse practitioner must provide the DMEPOS provider with a copy of both examinations within 45 days of the face-to-face examination with the physician or nurse practitioner;

(ii) If the physician or nurse practitioner examined the client before referring the client to a PT/OT, then again in person after receiving the report of the PT/OT examination, the 45-day period begins on the date of that second physician or nurse practitioner visit. However, it is also acceptable for the physician or nurse practitioner to review the written report of the PT/OT examination, to sign and date that report, and to state concurrence or any disagreement with that examination. In this situation, the physician or nurse practitioner must send a copy of the note from his/her initial visit to evaluate the client plus the annotated, signed, and dated copy of the PT/OT examination to the DMEPOS provider. The 45-day period begins when the physician or nurse practitioner signs and dates the PT/OT examination;

(iii) If the PWC is a replacement of a similar item that was previously covered by the Division or when only PWC accessories are being ordered and all other coverage criteria in this rule are met, a face-to-face examination is not required;

(d) The Division does not reimburse for another chair if a client has a medically appropriate wheelchair, regardless of payer;

(e) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. The Division does not reimburse for adapting the living quarters;

(f) The equipment must be supplied by a DMEPOS provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Professional (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the client;

(g) The provider's ATP must be employed by a provider in a full-time, part-time or contracted capacity as is acceptable by state law. The

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provider's ATP, if part-time or contracted, must be under the direct control of the provider;

(h) Documentation must be complete and detailed enough so a third party would be able to understand the nature of the provider's ATP involvement, if any, in the licensed/certified medical professional (LCMP) specialty evaluation;

(i) The provider's ATP may not conduct the provider evaluation at the time of delivery of the power mobility device to the client's residence;

(j) Reimbursement for wheelchair codes include all labor charges involved in the assembly of the wheelchair and all covered additions or modifications. Reimbursement also includes support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education and on-going assistance with use of the wheelchair;

(k) The delivery of the PWC must be within 120 days following completion of the face-to-face examination;

(l) A PWC may not be ordered by a podiatrist;

(m) The following services are not covered:

(i) A PWC for use only outside the home;

(ii) A PWC with a captain's chair for a client who needs a separate wheelchair seat and/or back cushion;

(iii) Items or upgrades that primarily allow performance of leisure or recreational activities including but not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, head lights, and tail lights;

(iv) Power mobility devices, not coded by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) or does not meet criteria (K0899);

(v) Power wheelchairs, group 4 (K0868-K0871, K0877-K0880, K0884-K0886);

(vi) Power wheelchairs, not otherwise classified (K0898);

(vii) Seat elevator PWCs (E2300, K0830, K0831).

(2) Coding Guidelines:

(a) Specific types of PWCs:

(A) A Group 1 PWC (K0813-K0816) or a Group 2 Heavy Duty (HD), Very Heavy Duty (VHD), or Extra Heavy Duty (EHD) wheelchair (K0824-K0829) may be covered when the coverage criteria for a PWC are met;

(B) A Group 2 Standard PWC with a sling/solid seat (K0820, K0822) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client is using a skin protection and/or positioning seat and/or back cushion that meets the coverage criteria defined in Wheelchair Options/Accessories, 410-122-0340;

(C) A Group 2 Single Power Option PWC (K0835-K0840) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Requires a drive control interface other than a hand or chin-operated standard proportional joystick (examples include but are not limited to head control, sip and puff, switch control); or

(II) Meets the coverage criteria for a power tilt or recline seating system (see Wheelchair Options/Accessories, 410-122-0340) and the system is being used on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(D) A Group 2 Multiple Power Option PWC (K0841-K0843) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Meets the coverage criteria for a power tilt or recline seating system with three or more actuators (see Wheelchair Options/Accessories, 410-122-0340); or

(II) Uses a ventilator which is mounted on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT, OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(E) A Group 3 PWC with no power options (K0848-K0855) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client's mobility limitation is due to a neurological condition, myopathy or congenital skeletal deformity; and

(iii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical necessity for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, physician or nurse practitioner may have no financial relationship with the DMEPOS provider;

(F) A Group 3 PWC with Single Power Option (K0856-K0860) or with Multiple Power Options (K0861-K0864) may be covered when:

(i) The Group 3 criteria (2)(a)(E) (i-ii) are met; and

(ii) The Group 2 Single Power Option (2)(a)(C)(i)(I) or (II) and (2)(a)(C)(ii) or Multiple Power Options (2)(a)(D)(i)(I) or (II) and (2)(a)(D)(ii) (respectively) are met;

(b) PWC Basic Equipment Package: Each PWC code is required to include the following items on initial issue (i.e., no separate billing/payment at the time of initial issue, unless otherwise noted):

(A) Lap belt or safety belt (E0978);

(B) Battery charger single mode (E2366);

(C) Complete set of tires and casters any type (K0090, K0091, K0092, K0093, K0094, K0095, K0096, K0097, K0099);

(D) Legrests. There is no separate billing/payment if fixed or swing-away detachable non-elevating legrests with/without calf pad (K0051, K0052, E0995) are provided. Elevating legrests may be billed separately;

(E) Fixed/swingaway detachable footrests with/without angle adjustment footplate/platform (K0037, K0040, K0041, K0042, K0043, K0044, K0045, K0052);

(F) K0040 may be billed separately with K0848 through K0864;(G) Armrests. There is no separate billing/ payment if fixed/swingaway detachable non-adjustable armrests with arm pad (K0015, K0019, K0020) are provided. Adjustable height armrests may be billed separately;

(H) Upholstery for seat and back of proper strength and type for patient weight capacity of the power wheelchair (E0981, E0982);

(I) Weight specific components per patient weight capacity;

(J) Controller and Input Device: There is no separate billing/payment if a non-expandable controller and proportional input device (integrated or remote) is provided. If a code specifies an expandable controller as an option (but not a requirement) at the time of initial issue, it may be separately billed;

(c) If a client needs a seat and/or back cushion but does not meet coverage criteria for a skin protection and/or positioning cushion, it may be appropriate to request a captain's chair seat rather than a sling/solid seat/back and a separate general use seat and/or back cushion;

(d) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified (see OAR 410-122-0720 Pediatric Wheelchairs);

(e) Contact the Medicare Pricing, Data Analysis and Coding (PDAC) contractor regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements: Submit all of the following documentation with the prior authorization (PA) request:

(a) A copy of the written report of the face-to-face examination of the client by the physician or nurse practitioner:

(A) This report must include information related to the following:

(i) This client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(iii) Why a manual wheelchair can't meet this client's mobility needs in the home;

(iv) Why a POV can't meet this client's mobility needs in the home;

(v) This client's physical and mental abilities to operate a PWC safely in the home;

(I) Besides a mobility limitation, if other conditions exist that limit a client's ability to participate in activities of daily living (ADLs), how these conditions will be ameliorated or compensated by use of the wheelchair;

(II) How these other conditions will be ameliorated or compensated sufficiently such that the additional provision of mobility assistive equipment (MAE) will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home;

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(B) The face-to-face examination should provide pertinent information about the following elements, but may include other details. Only relevant elements need to be addressed:

- (i) Symptoms;
- (ii) Related diagnoses;
- (iii) History:
- (I) How long the condition has been present;
- (II) Clinical progression;
- (III) Interventions that have been tried and the results;
- (IV) Past use of walker, manual wheelchair, POV, or PWC and the

results;

- (iv) Physical exam:

- (I) Weight;
- (II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;
- (III) Presence of abnormal tone or deformity of arms, legs or trunk;
- (IV) Neck, trunk, and pelvic posture and flexibility;
- (V) Sitting and standing balance;
- (v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

- (I) Transferring between a bed, chair, and power mobility device;
- (II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Although a client who qualifies for coverage of a PWC may use that device outside the home, because the Division coverage of a wheelchair is determined solely by the client's mobility needs within the home, the examination must clearly distinguish the client's abilities and needs within the home from any additional needs for use outside the home;

(b) The physician's or nurse practitioner's written order, received by the DMEPOS provider within 45 days (date stamp or equivalent must be used to document receipt date) after the physician's or nurse practitioner's face-to-face examination. The order must include all of the following elements:

- (A) Client's name;

(B) Description of the item that is ordered. This may be general — e.g., "power wheelchair" or "power mobility device"— or may be more specific:

(i) If this order does not identify the specific type of PWC that is being requested, the DMEPOS provider must clarify this by obtaining another written order which lists the specific PWC that is being ordered and any options and accessories requested;

(ii) The items on this clarifying order may be entered by the DMEPOS provider. This subsequent order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority, but does not have to be received within 45 days following the face-to-face examination;

- (C) Date of the face-to-face examination;

(D) Pertinent diagnoses/conditions and diagnosis codes that relate specifically to the need for the PWC;

- (E) Length of need;

- (F) Physician's or nurse practitioner's signature;

- (G) Date of physician's or nurse practitioner's signature;

(c) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options;

(d) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable;

(e) For the home assessment, prior to or at the time of delivery of a PWC, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a PWC. Assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc; and

(f) A written document (termed a detailed product description) prepared by the DMEPOS provider and signed and dated by the physician or nurse practitioner that includes:

(i) The specific base (HCPCS code and manufacturer name/model) and all options and accessories (including HCPCS codes), whether PA is required or not, that will be separately billed;

(ii) The DMEPOS provider's charge and the Division fee schedule allowance for each separately billed item;

(iii) If there is no Division fee schedule allowance, the DMEPOS provider must enter "not applicable";

(iv) The DMEPOS provider must receive the signed and dated detailed product description from the physician or nurse practitioner prior to delivery of the PWC;

(v) A date stamp or equivalent must be used to document receipt date of the detailed product description; and

(g) Any additional documentation that supports indications of coverage are met as specified in this rule;

(h) The DMEPOS provider must keep the above documentation on file;

(i) Documentation that the coverage criteria have been met must be present in the client's medical records and made available to the Division on request.

- (4) Prior Authorization:

(a) All codes in this rule required PA and may be purchased, rented and repaired;

(b) Codes specified in this rule are not covered for clients residing in nursing facilities;

(c) Reimbursement on standard Group 1 and 2 wheelchairs without power option (K0813-K0816, K0820-K0829) will only be made on a monthly rental basis.

(d) Rented equipment is considered purchased when the Division fee schedule allowable for purchase is met, or the actual charge from the provider is met, whichever is the lowest;

- (5) Table 122-0325

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 13-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-27-12; DMAP 57-2012, f. & cert. ef. 12-27-12

Rule Caption: Align with other rules referenced; establish clarity, and change in coding for pharmacy clozaril monitoring

Adm. Order No.: DMAP 58-2012(Temp)

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 12-28-12 thru 6-25-13

Notice Publication Date:

Rules Amended: 410-130-0180, 410-130-0240

Subject: The Medical Surgical Program administrative rules (Division 130) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-130-0180: Rule amended to update clozaril monitoring and outline Division's response to changes in national code set requirements.

410-130-0240: Rule re-written to align with other OHP rules and provide more clarity on medical services.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-130-0180

Drugs

(1) The Division of Medical Assistance Programs' (Division) Medical-Surgical Services Program reimburses practitioners for drugs only when administered by the practitioner in the office, clinic or home settings. The Division does not reimburse practitioners for drugs that are self-administered by the client, except for contraceptives such as birth control pills, spermicides and patches:

(a) Use an appropriate Current Procedural Terminology (CPT) therapeutic injection code for administration of injectables;

(b) Use an appropriate Healthcare Common Procedure Coding System (HCPCS) code for the specific drug. Do not bill for drugs under code 99070; The Division requires both the NDC number and HCPCS codes on all claim forms.

(c) When there is no specific HCPCS code for a drug or biological, use an appropriate unlisted code from the list below and bill at acquisition cost (purchase price plus postage):

- (A) J3490;

- (B) J3590;

- (C) J7599;

- (D) J7699;

- (E) J7799;

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- (F) J8499;
- (G) J8999;
- (H) J9999;

(I) Include the name of the drug, National Drug Code (NDC) number and dosage.

(d) Do not bill for local anesthetics; reimbursement is included in the payment for the tray and/or procedure.

(2)(3) For codes requiring prior authorization and codes that are Not Covered/Bundled, refer to OAR 410-130-0200 Table 130-0200-1 and OAR 410-130-0220 Table 130-0220-1.

(4) Not covered services and supplies include:

- (a) Laetrile;
 - (b) Home pregnancy kits and products designed to promote fertility;
 - (c) Dimethyl sulfoxide (DMSO), except for instillation into the urinary bladder for symptomatic relief of interstitial cystitis;
 - (d) Infertility drugs;
 - (e) Sodium hyaluronate and Synvisc.
- (5) Follow criteria outlined in the following:
- (a) Billing Requirements — OAR 410-121-0150;
 - (b) Brand Name Pharmaceuticals — OAR 410-121-0155;
 - (c) Prior Authorization Procedures — OAR 410-121-0060;
 - (d) Drugs and Products Requiring Prior Authorization — OAR 410-121-0040;
 - (e) Drug Use Review — OAR 410-121-0100;
 - (f) Participation in Medicaid's Drug Rebate Program — OAR 410-121-0157.

(A) The Division cannot reimburse providers for a drug unless the drug manufacturer has signed an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in the Medicaid Drug Rebate Program.

(B) To verify that a drug manufacturer participates in the Medicaid Drug Rebate Program, visit the CMS website below to verify that the first five digits of the NDC number (labeler code) are listed as a participating drug company:
http://www.cms.hhs.gov/MedicaidDrugRebateProgram/10_DrugComContactInfo.asp

(6) Clozaril/Clozapine therapy:

(a) Clozapine is covered only for the treatment of clients who have failed therapy with at least two anti-psychotic medications;

(b) Clozapine supervision is the management and record keeping of clozapine dispensing as required by the manufacturer of clozapine. This is part of an evaluation and management service conducted by the appropriately licensed prescribing medical practitioner;

(c) Dispensing pharmacies are instructed to follow clozaril monitoring as required by law and follow OAR 410-121-0190.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0620; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; 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 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 33-2002, f. & cert. ef. 8-1-02; OMAP 39-2002, f. 9-13-02, cert. ef. 9-15-02; OMAP 52-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 69-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 58-2012(Temp), f. 12-27-12, cert. ef. 12-28-12 thru 6-25-13

410-130-0240

Medical Services

(1) Coverage of medical and surgical services are subject to the Health Evidence Review Commission's List of Prioritized Services. Medical and surgical services requiring prior authorization (PA) are listed in OAR 410-130-0200, PA Table 130-0200-1, and medical and surgical services that are Not Covered/Bundled services are listed in OAR 410-130-0220, Table 130-0220-1.

(2) Coverage for acupuncture:

(a) Oregon Health Plan Standard benefit package covers acupuncture services only for chemical dependency;

(b) Oregon Health Plan Plus benefit package covers acupuncture services according to the HERC List of Prioritized Services.

(3) Coverage for chiropractic services provided by an enrolled chiropractor are subject to the HERC List of Prioritized Services, and benefit plan for:

(a) Diagnostic visits, including evaluation and management services;

(b) Chiropractic manipulative treatment;

(c) Laboratory and radiology services.

(4) Maternity care and delivery:

(a) The Division may consider payment for delivery within a clinic, birthing center or home setting;

(b) Within the home setting the Division may consider payment for appropriate supplies in addition to delivery payment. The additional payment for supplies includes all supplies, equipment, staff assistance, new born screening cards, and local/topical anesthetics;

(c) Division may consider payment for physician administered medications associated with delivery except for local/topical anesthetics;

(d) When labor management conducted by a LDEM does not result in a delivery and client is appropriately transferred the provider shall code for labor management only. Bill 59899 and attach a report;

(e) For multiple births, use the appropriate CPT code for the first vaginal or cesarean delivery that includes antepartum and postpartum care, and the subsequent births under the respective delivery only code. (For example, for total obstetrical care with cesarean delivery of twins, bill 59510 for the first delivery and 59514 for the second delivery.)

(5) Neonatal Intensive Care Unit (NICU) procedures:

(a) Are reimbursed only to neonatologists and pediatric intensivists for services provided to infants when admitted to a Neonatal or Pediatric Intensive Care Unit (NICU/PICU). All other pediatricians must use other CPT codes when billing for services provided to neonates and infants;

(b) Neonatal intensive care codes are not payable for infants on Extracorporeal Membrane Oxygenation (ECMO). Use appropriate CPT ECMO codes.

(6) Neurology/Neuromuscular—Payment for polysomnograms and multiple sleep latency tests (MSLT) are each limited to two in a 12 month period.

(7) Oral Health Services provided by medical practitioners may include an oral assessment and application of topical fluoride varnish during a medical visit to children under the age of 7 years. Refer to Dental Services rule 410-123-1260.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: PWC 839(Temp), f. & ef. 4-28-77; PWC 849, f. 7-15-77, ef. 8-1-77; PWC 868, f. 12-30-77, ef. 2-1-78; AFS 14-1978(Temp), f. 4-14-78, ef. 4-15-78; AFS 31-1978, f. & ef. 8-1-78; AFS 26-1980, f. 5-21-80, ef. 6-1-80; AFS 56-1980(Temp), f. 8-29-80, ef. 9-1-80; AFS 2-1981, f. 1-9-81, ef. 2-1-81; AFS 36-1981, f. 6-29-81, ef. 7-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 38-1983, f. & ef. 8-1-83; AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0021 & 461-014-0056; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0650, 461-014-0690 & 461-014-0700; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 18-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 2-1992, f. & cert. ef. 1-2-92; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 18-1992, f. & cert. ef. 7-1-92; HR 36-1992, f. & cert. ef. 12-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 16-1993, f. & cert. ef. 7-2-93; HR 6-1994, f. & cert. ef. 2-1-94, Renumbered from 410-130-0320, 410-130-0340, 410-130-0360 & 410-130-0740; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 69-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 88-2004, f. 11-24-04, cert. ef. 12-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 58-2012(Temp), f. 12-27-12, cert. ef. 12-28-12 thru 6-25-13

Rule Caption: Change in Clozaril Monitoring coding and re-write rule for clarity

Adm. Order No.: DMAP 59-2012(Temp)

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 12-28-12 thru 6-25-13

Notice Publication Date:

Rules Amended: 410-121-0190

Subject: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division temporarily amended 410-121-0190 for clarity.

410-121-0190 — rule re-written to clarify Clozaril Management Monitoring and Medication Therapy Management Services billing.

Rules Coordinator: Cheryl Peters—(503) 945-6527

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410-121-0190

Medication Therapy Management Services and Clozapine Therapy Monitoring

(1) Clozapine monitoring protocol requires enhanced record keeping and reporting to the drug manufacturer in order to dispense the medication;

(2) Clozapine monitoring includes documentation of client's diagnosis, dosage, dosage changes, appropriate laboratory reports (e.g. white blood cell counts), evaluation intervals, and submission of appropriate information to drug manufacturer to allow dispensing of medication;

(3) Clozapine monitoring is to be billed using appropriate Medication Therapy Management Services (MTMS) Current Procedural Terminology (CPT) code with the modifier TC appended. This is limited to no more than 5 units in 30 day time period per client, including the 30 day period from the date of discontinuation of clozapine therapy;

(4) Clozapine monitoring must be billed by a pharmacy;

(5) MTMS rendered outside of clozapine management must be performed by a licensed pharmacist and must be billed to appropriately reflect the performing provider. These encounters must be billed using the appropriate MTMS CPT code without the TC modifier.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 17-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 45-2002, f. & cert. ef. 10-1-02; OMAP 20-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 59-2012(Temp), f. 12-27-12, cert. ef. 12-28-12 thru 6-25-13

Rule Caption: Align with OAR chapter 461, division 155 medical eligibility rules

Adm. Order No.: DMAP 60-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Amended: 410-120-0006

Rules Repealed: 410-120-0006(T)

Subject: The General Rules Program administrative rules govern the Division's payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services' (Department) temporary revision of medical eligibility rules in chapter 461, the Division is 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 January 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 proce-

dures 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

Rule Caption: Permanent Adoption of the Pharmacy & Therapeutics Committee, Prior Authorization and Preferred Drug List Rules

Adm. Order No.: DMAP 61-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 12-1-2012

Rules Adopted: 410-121-0111

Rules Amended: 410-121-0030, 410-121-0033, 410-121-0040, 410-121-0100

Rules Repealed: 410-121-0030(T), 410-121-0033(T), 410-121-0040(T), 410-121-0100(T), 410-121-0111(T)

Subject: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division permanently adopted 410-121-0111 retroactive to September 5, 2011, pursuant to Oregon Laws 2011, chapter 720 (HB 2100) and amended 410-121-0033 & 410-121-0100 to comply with State and Federal mandates regarding the combined Drug Use Review (DUR)/Pharmacy & Therapeutics Committee. The Division permanently amended 410-121-0030 & 410-121-0040 based on recommendations by the Oregon Pharmacy & Therapeutics Committee to ensure the safety of Oregon Health Plan recipients. The Division will also permanently repeal 410-121-0030(T), 410-121-0033(T), 410-121-0040(T), 410-121-0100(T), & 410-121-0111(T).

410-121-0030 — Permanently adopt temporary changes filed on September 24, 2012 based on recommendations made by the Pharmacy & Therapeutics Committee during the July 28, 2012 meeting. Preferred drug list was updated based on recommendations made by the Pharmacy & Therapeutics Committee during the September 27, 2012 meeting. Table 121-0030-1 (Preferred Drug List) has been removed and incorporated in rule by reference.

410-121-0033 — Permanently adopt temporary changes filed on September 19, 2012 based on recommendations made by a Rules Advisory Committee meeting held on November 11, 1011.

410-121-0040 — Permanently adopt temporary changes filed on September 24, 2012 based on recommendations made by the Pharmacy & Therapeutics Committee during the July 28, 2012 meeting. The prior authorization guide was updated based on recommendations made by the Pharmacy & Therapeutics Committee during the September 27, 2012 meeting.

410-121-0100 — Permanently adopt temporary changes filed on September 19, 2012 based on recommendations made by a Rules Advisory Committee meeting held on November 11, 1011.

410-121-0111 — Permanently adopt temporary changes filed on September 19, 2012 based on recommendations made by a Rules Advisory Committee meeting held on November 11, 1011.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-121-0030

Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee-for-service clients of the Oregon Health Plan shall

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have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool that the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000 (cc)) consists of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drug(s) available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T, that result from an evidence-based evaluation process, as the basis for selecting the most effective drug(s);

(b) The Division shall determine the drugs selected in (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drug(s) in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate selected drug(s) for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information which makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all changes or revisions to the PDL, using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision;

(5) Pharmacy providers shall dispense prescriptions in the generic form, unless:

(a) The practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner, in their professional judgment, wishes to prescribe a physical health drug not on the PDL, they may request an exception, subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL

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

Stat. Auth.: ORS 409.025, 409.040, 409.110, 414.065, 413.042 & 414.325

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05;

OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13

410-121-0033

Polypharmacy Profiling

(1) The Division may impose prescription drug payment limitations on clients with more than 15 unique fee-for-service drugs in a six-month period.

(2) The Division will review the client's drug therapy in coordination with the client's prescribing practitioner to evaluate for appropriate drug therapy.

(3) Appropriate drug therapy criteria will include, but is not limited to, the following:

(a) Overuse of selected drug classes;

(b) Under-use of generic drugs;

(c) Therapeutic drug duplication;

(d) Drug to disease interactions;

(e) Drug to drug interactions;

(f) Inappropriate drug dosage;

(g) Drug selection for age;

(h) Duration of treatment;

(i) Clinical abuse or misuse.

(4) The Division Medical Director in conjunction with the Drug Use Review/Pharmacy & Therapeutics Committee will make final determinations on imposed drug prescription payment limitations relating to this policy.

Stat. Auth.: ORS 409.120, 413.042 & 414.380

Stats. Implemented: ORS 414.065

Hist.: OMAP 1-2004, f. 1-23-04, cert. ef. 2-1-04; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 42-2012(Temp), f. & cert. ef. 9-12-12 thru 3-10-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by Oregon Health Plan (OHP) in a manner consistent with the Oregon Health Services Commission's Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication shall not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited;

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Oregon Health Authority (Authority) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the OHP Fee-For-Service Pharmacy PA Criteria Guide (PA Criteria Guide) dated January 1, 2013, incorporated in rule by reference and found on our Web page at: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html>

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

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(5) New drugs shall be evaluated when added to the weekly upload of the First DataBank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant must be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA is required for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP or;

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: ORS Ch. 409.110, 413.042, 414.325, 414.065 & 414.334

Stats. Implemented: 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03, cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03, cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03, cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04, cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13

410-121-0100

Drug Use Review

(1) Drug Use Review (DUR) in Division of Medical Assistance Programs (Division) is a program designed to measure and assess the proper utilization, quality, therapy, medical appropriateness, appropriate selection and cost of prescribed medication through evaluation of claims data. This is done on both a retrospective and prospective basis. This program shall include, but is not limited to, education in relation to over-utilization, under-utilization, therapeutic duplication, drug-to-disease and drug-to-drug interactions, incorrect drug dosage, duration of treatment and clinical abuse or misuse:

(a) Information collected in a DUR program that identifies an individual is confidential;

(b) Staff of the Drug Use Review (DUR)/Pharmacy & Therapeutics (P&T) Committee and contractors may have access to identifying information to carry out intervention activities approved by the Division. The Division, DUR/P&T Committee or contractors shall adhere to all requirements of the Health Insurance Portability and Accountability Act (HIPAA) and all Division policies relating to confidential client information.

(2) Prospective DUR is the screening for potential drug therapy problems before each prescription is dispensed. It is performed at the point of sale by the dispensing pharmacist:

(a) Dispensing pharmacists must offer to counsel each Division client receiving benefits who presents a new prescription, unless the client refuses such counsel. Pharmacists must document these refusals;

(A) Dispensing pharmacists may offer to counsel the client's caregiver rather than the client presenting the new prescription if the dispensing pharmacist determines that it is appropriate in the particular instance;

(B) Counseling must be done in person whenever practicable;

(C) If it is not practicable to counsel in person, providers whose primary patient population does not have access to a local measured telephone service must provide access to toll-free services (for example, some mail order pharmacy services) and must provide access to toll-free service for long-distance client calls in relation to prescription counseling;

(b) Prospective DUR is not required for drugs dispensed by Fully Capitated Health Plans (FCHPs);

(c) Oregon Board of Pharmacy rules defining specific requirements relating to patient counseling, record keeping and screening must be followed.

(3) Retrospective DUR is the screening for potential drug therapy problems based on paid claims data. The Division provides a professional drug therapy review for Medicaid clients through this program:

(a) The criteria used in retrospective DUR are compatible with those used in prospective DUR. Retrospective DUR criteria may include Pharmacy Management (Lock-In), Polypharmacy, and Psychotropic Use in Children. Drug therapy review is carried out by pharmacists with the Oregon State University College of Pharmacy, Drug Use Research and Management Program.

(b) If therapy problems are identified, an educational letter is sent to the prescribing provider, the dispensing provider, or both. Other forms of education are carried out under this program with Division approval.

(4) The DUR/P&T Committee is designed to develop policy recommendations in the following areas in relation to Drug Use Review:

(a) Appropriateness of criteria and standards for prospective DUR and needs for modification of these areas. DUR criteria are predetermined elements of health care based upon professional expertise, prior experience, and the professional literature with which the quality, medical appropriateness, and appropriateness of health care service may be compared.

(b) The use of different types of education and interventions to be carried out or delegated by the DUR/P&T Committee and the evaluation of the results of this portion of the program; and

(c) The preparation of an annual report on Oregon Medicaid DUR Program which describes:

(A) DUR/P&T Committee Activities;

(i) A description of how pharmacies comply with prospective DUR;

(ii) Detailed information on new criteria and standards in use; and

(iii) Changes in state policy in relation to DUR requirements for residents in nursing homes;

(B) A summary of the education/intervention strategies developed; and

(C) An estimate of the cost savings in the pharmacy budget and indirect savings due to changes in levels of medical visits and hospitalizations.

Stat. Auth.: ORS 413.042, 414.355, 414.360, 414.365, 414.370 & 414.380

Stats. Implemented: ORS 414.065

Hist.: HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 38-1992, f. 12-31-92, cert. ef. 1-1-93; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 18-2004, f. 3-15-04, cert. ef. 4-1-04; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 42-2012(Temp), f. & cert. ef. 9-12-12 thru 3-10-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13

410-121-0111

Drug Use Review/Pharmacy and Therapeutics Committee

(1) Pursuant to Oregon Laws 2011, chapter 720 (HB 2100), the Drug Use Review Board (DUR Board) is abolished and the tenure of office for the members of the DUR Board expires. The legislature transferred the duties, functions and powers previously vested in the DUR Board to the Drug Use Review (DUR)/Pharmacy and Therapeutics (P&T) Committee. This rule is retroactively effective on September 5, 2011, the date the DUR/P&T Committee was created and the DUR Board was abolished by

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HB 2100, and expires on March 10, 2013 or whenever the Oregon Health Authority (Authority) suspends the rule, whichever comes first.

(2) Unless otherwise inconsistent with these administrative rules or other laws, any administrative rule or agency policy with reference to the DUR Board or a DUR Board volunteer, staff or contractor shall be considered to be a reference to the DUR/P&T Committee or a DUR/P&T Committee volunteer, staff or contractor. The current preferred drug list (PDL), prior authorization process and utilization review process developed by the DUR Board remains in effect until such time as the Authority, after recommendations and advice from the DUR/P&T Committee, modifies them through the adoption of new administrative rules or policies and procedures.

(3) The DUR/P&T Committee shall advise the Oregon Health Authority (Authority) on the:

(a) Implementation of the medical assistance program retrospective and prospective programs, including the type of software programs to be used by the pharmacist for prospective drug use review and the provisions of the contractual agreement between the state and any entity involved in the retrospective program;

(b) Implementation of the Practitioner Managed Prescription Drug Plan (PMPDP);

(c) Adoption of administrative rules pertaining to the DUR/P&T Committee;

(d) Development of and application of the criteria and standards to be used in retrospective and prospective drug use review programs in a manner that ensures that such criteria and standards are based on compendia, relevant guidelines obtained from professional groups through consensus-driven processes, the experience of practitioners with expertise in drug therapy, data and experience obtained from drug utilization review program operations. The DUR/P&T Committee must have an open professional consensus process, establish an explicit ongoing process for soliciting and considering input from interested parties, and make timely revisions to the criteria and standards based on this input and scheduled reviews;

(e) Development, selection and application of and assessment for interventions being educational and not punitive in nature for medical assistance program prescribers, dispensers and patients.

(4) The DUR/P&T Committee shall make recommendations to the Authority, subject to approval by the Director or the Director's designee, for drugs to be included on any PDL adopted by the Authority and on the PMPDP. The DUR/P&T Committee shall also recommend all utilization controls, prior authorization requirements or other conditions for the inclusion of a drug on the PDL.

(5) The DUR/P&T Committee shall, with the approval of the Director or designee, do the following:

(a) Publish an annual report;

(b) Publish and disseminate educational information to prescribers and pharmacists regarding the DUR/P&T Committee and the drug use review programs, including information on the following:

(A) Identifying and reducing the frequency of patterns of fraud, abuse or inappropriate or medically unnecessary care among prescribers, pharmacists and recipients;

(B) Potential or actual severe or adverse reactions to drugs;

(C) Therapeutic appropriateness;

(D) Overutilization or underutilization;

(E) Appropriate use of generic products;

(F) Therapeutic duplication;

(G) Drug-disease contraindications;

(H) Drug-drug interactions;

(I) Drug allergy interactions;

(J) Clinical abuse and misuse.

(6) Adopt and implement procedures designed to ensure the confidentiality of any information that identifies individual prescribers, pharmacists or recipients and that is collected, stored, retrieved, assessed or analyzed by the DUR/P&T Committee, staff of the DUR/P&T Committee, contractors to the DUR/P&T Committee or the Authority.

Stat. Auth.: ORS 413.042, 414.065, 414.355, 414.360, 414.365, 414.370, 414.380, Or Law 2011, chap. 720 (HB 2100)

Stats. Implemented: ORS 414.065, Or Law 2011, chap. 720 (HB 2100)

Hist.: SPD 12-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DMAP 42-2012(Temp), f. & cert. ef. 9-12-12 thru 3-10-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13

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Rule Caption: Amending to add exemption from mandatory CCO enrollment for women in third trimester of pregnancy

Adm. Order No.: DMAP 62-2012(Temp)

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13 thru 6-29-13

Notice Publication Date:

Rules Amended: 410-141-3060

Subject: This rule establishes a process for the Authority to allow exemptions to enrollment for eligible women in their third trimester of pregnancy. The Authority needs to amend this rule to explain the enrollment exemption for women in the third trimester of pregnancy. This rule change needs to be in effect January 1, 2013, the start date of the current requirement for mandatory enrollment post 60 days from birth.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-141-3060

Enrollment Requirements in a CCO

(1) In order to achieve the objectives of providing CCO members' integrated person centered care and services, CCOs must assure that physical, behavioral and oral health services are consistently provided to members in all age groups and all covered populations when medically appropriate and consistent with the needs identified in the community health assessment and community health improvement plan (Plan). CCOs must develop, implement and participate in activities supporting a continuum of care that integrates physical, behavioral, and oral health interventions in ways that are whole to the member and serve members in the most integrated setting appropriate to their needs:

(a) CCOs shall ensure the provision of care coordination, treatment engagement, preventive services, community based services, behavioral health services and follow up services for all members with behavioral health conditions;

(b) CCOs must enter into contracts with providers of residential chemical dependency treatment services not later than July 1, 2013 and must notify the Authority within 30 calendar days of executing the contract;

(c) By July 1, 2014, each CCO must have a contractual relationship with any dental care organization that serves members in the area where they reside;

(d) CCOs must have adequate, timely and appropriate access to hospital and specialty services. CCOs must establish hospital and specialty service agreements that include the role of patient-centered primary care homes and that specify processes for requesting hospital admission or specialty services, performance expectations for communication and medical records sharing for specialty treatments, at the time of hospital admission or discharge, for after-hospital follow up appointments;

(e) CCOs must demonstrate how hospitals and specialty services will be accountable to achieve successful transitions of care. CCOs shall ensure members are transitioned out of hospital settings into the most appropriate independent and integrated community settings. This includes transitional services and supports for children, adolescents, and adults with serious behavioral health conditions facing admission to or discharge from acute psychiatric care, residential treatment settings and the state hospital.

(2) CCOs shall develop evidence-based or innovative strategies for use within their delivery system networks to ensure access to integrated and coordinated care, especially for members with intensive care coordination needs. CCOs must:

(a) Demonstrate that each member has a primary care provider or primary care team that is responsible for coordination of care and transitions and that each member has the option to choose a primary care provider of any eligible CCO participating provider type.

(b) Ensure that members with high health needs, multiple chronic conditions, or behavioral health issues are involved in accessing and managing appropriate preventive, health, behavioral health, remedial and supportive care and services;

(c) Use and require its provider network to use individualized care plans to the extent feasible to address the supportive and therapeutic needs of each member, particularly those with intensive care coordination needs, including members with severe and persistent mental illness receiving home and community based services covered under the state's 1915(1) State Plan Amendment, and those receiving DHS Medicaid-funded long-term care services. Plans should reflect member family, or caregiver preferences and goals to ensure engagement and satisfaction;

(d) Implement systems to assure and monitor improved transitions in care so that members receive comprehensive transitional care, and improve members' experience of care and outcomes, particularly for transitions between hospitals and long-term care;

(e) Demonstrate that participating providers have the tools and skills necessary to communicate in a linguistically and culturally appropriate fashion with members and their families or caregivers and to facilitate information exchange between other providers and facilities (e.g., address-

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ing issues of health literacy, language interpretation, having electronic health record capabilities);

(f) Work across provider networks to develop partnerships necessary to allow for access to and coordination with social and support services, including crisis management and community prevention and self-managed programs;

(g) Communicate its integration and coordination policies and procedures to participating providers, regularly monitor providers' compliance and take any corrective action necessary to ensure compliance. CCOs shall document all monitoring and corrective action activities.

(3) CCO's must assess the needs of its membership and make available supported employment and assertive community treatment services available when medically appropriate and when an appropriate provider is available. Appropriate providers are those that meet the requirements in 309-016-0825. When no appropriate provider is available, the CCO must consult with AMH and develop an approved plan to make supported employment and assertive community treatment services available.

(4) CCOs must develop and use Patient Centered Primary Care Home (PCPCH) capacity by implementing a network of PCPCHs to the maximum extent feasible:

(a) PCPCHs should become the focal point of coordinated and integrated care, so that members have a consistent and stable relationship with a care team responsible for comprehensive care management;

(b) CCOs must develop mechanisms that encourage providers to communicate and coordinate care with the PCPCH in a timely manner, using electronic health information technology, where available;

(c) CCOs must engage other primary care provider (PCP) models to be the primary point of care and care management for members, where there is insufficient PCPCH capacity;

(d) CCOs must develop services and supports for primary care that are geographically located as close as possible to the member's residence and are, if available, offered in nontraditional settings that are accessible to families, diverse communities, and underserved populations. CCOs shall ensure that all other services and supports are provided as close to the member's residence as possible.

(5) If a CCO implements other models of patient-centered primary health care in addition to the use of PCPCH, the CCO must demonstrate that the other model of patient-centered primary health care shall assure member access to coordinated care services that provide effective wellness and prevention, coordination of care, active management and support of individuals with special health care needs, a patient and family-centered approach to all aspects of care, and an emphasis on whole-person care in order to address a patient's physical and behavioral health care needs.

(6) If the member is living in a DHS Medicaid funded long-term care (LTC) nursing facility or community based care facility, or other residential facility, the CCO must communicate with the member and the DHS Medicaid funded long-term care provider or facility about integrated and coordinated care services:

(a) The CCO shall establish procedures for coordinating member health services, and how it will work with long-term care providers or facilities to develop partnerships necessary to allow for access to and coordination of CCO services with long-term care services and crisis management services;

(b) CCOs shall coordinate transitions to DHS Medicaid-funded long-term care by communicating with local AAA/APD offices when members are being discharged from an inpatient hospital stay, or transferred between different LTC settings;

(c) CCOs shall develop a Memorandum of Understanding (MOU) or contract with the local type B Area Agency on Aging or the local office of the Department's APD, detailing their system coordination agreements regarding members' receiving Medicaid-funded LTC services.

(7) For members who are discharged to post hospital extended care, at the time of admission to a skilled nursing facility (SNF) the CCO shall notify the appropriate AAA/APD office and begin appropriate discharge planning. The CCO shall pay for the post hospital extended care benefit if the member was a member of the CCO during the hospitalization preceding the nursing facility placement. The CCO shall notify the SNF and the member no later than two working days before discharge from post hospital extended care. For members who are discharged to Medicare Skilled Care, the CCO shall notify the appropriate AAA/APD office when the CCO learns of the admission.

(8) When a member's care is being transferred from one CCO to another or for OHP clients transferring from fee-for-service or PHP to a CCO, the CCO shall make every reasonable effort within the laws govern-

ing confidentiality to coordinate, including but not limited to ORS 414.679 transfer of the OHP client into the care of a CCO participating provider.

(9) CCOs shall establish agreements with the Local Mental Health Authorities (LMHAs) and Community Mental Health Programs (CMHPs) operating in the service area, consistent with ORS 414.153, to maintain a comprehensive and coordinated behavioral health delivery system and to ensure member access to mental health services, some of which are not provided under the global budget.

(10) CCOs shall coordinate a member's care even when services or placements are outside the CCO service area. CCO assignment is based on the case member's residence, and referred to as county of origin or jurisdiction. Temporary placements by the Authority, Department or health services placements for services including residential placements may be located out of the service area, however, the CCO shall coordinate care while in placement and discharge planning for return to county of origin or jurisdiction. For out of area placements, an out of area exception must be made for the member to retain the CCO enrollment in the county of origin or jurisdiction, while the member's placement is a temporary residential placement elsewhere. For program placements in Child Welfare, BRS, OYA, and PTRS, refer to OAR 410-141-3050 for program specific rules.

(11) CCOs shall ensure that members receiving services from extended or long-term psychiatric care programs such as secure residential facilities, PASSAGES projects, or state hospital, shall receive follow-up services as medically appropriate to ensure discharge within five working days of receipt of notice of discharge readiness.

(12) CCOs shall coordinate with Community Emergency Service Agencies, including but not limited to police, courts, juvenile justice, corrections, LMHAs and CMHPs, to promote an appropriate response to members experiencing a behavioral health crisis and to prevent inappropriate use of the emergency department or jails.

(13) CCOs shall accept FFS authorized services, medical, and pharmacy prior authorizations, ongoing services where a FFS prior authorization is not required, and services authorized by the Division's Medical Management Review Committee for 90 days, or until the CCO can establish a relationship with the member and develop an evidence based, medically appropriate coordinated care plan, whichever is later, except where customized equipment, services, procedures, or treatment protocol require service continuation for no less than six months.

(14) Except as provided in OAR 410-141-3050, CCOs shall coordinate patient care, including care required by temporary residential placement outside the CCO service area, or out-of-state care in instances where medically necessary specialty care is not available in Oregon:

(a) CCO enrollment shall be maintained in the county of origin with the expectation of the CCO to coordinate care with the out of area placement and local providers;

(b) The CCO shall coordinate the discharge planning when the member returns to the county of origin.

(15) CCOs shall coordinate and authorize care, including instances where the member's medically appropriate care requires services and providers outside the CCO's contracted network, in another area, out-of-state, or a unique provider specialty not otherwise contracted. The CCO shall pay the services and treatment plan as a non-participating provider pursuant to OAR 410-120-1295.

Stat. Auth.: ORS 414.032, 414.615, 414.625, 414.635, 414.651

Stats. Implemented: ORS 414.610 – 685 OL 2011, Ch 602 Sec. 13, 14, 16, 17, 62, 64 (2), 65, HB 3650

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 62-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13

Rule Caption: Change in coverage to Part D Medicare for certain drugs

Adm. Order No.: DMAP 63-2012(Temp)

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13 thru 6-29-13

Notice Publication Date:

Rules Amended: 410-120-1210

Subject: The Division of Medical Assistance Programs(Division) General Rules, administrative rules govern payments for services provided to certain eligible clients. The Division temporarily amended OAR 410-120-1210 to implement changes made to the Centers for Medicare and Medicaid Services (CMS). January 1, 2013 Medicare Part D will start covering barbiturates "used in the treatment of epilepsy, cancer, or a chronic mental health disorder" and benzodiazepines. Currently, barbiturates and benzodiazepines are among the excluded drugs that the Division covers for its Medicaid

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beneficiaries. Since the coverage of barbiturates under Part D is limited to the treatment of epilepsy, cancer or a chronic mental health disorders, Division will continue to cover barbiturates to the extent it covers that drug for a condition other than the three covered by Part D.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-120-1210

Medical Assistance Benefit Packages and Delivery System

(1) The services clients are eligible to receive are based upon the benefit package for which they are eligible. Not all packages receive the same benefits.

(2) The Division of Medical Assistance Programs (Division) benefit package description, codes, eligibility criteria, coverage, limitations and exclusions are identified in these rules.

(3) The limitations and exclusions listed here are in addition to those described in OAR 410-120-1200 and in each of the Division chapter 410 OARs.

(4) Benefit package descriptions:

(a) Oregon Health Plan (OHP) Plus:

(A) Benefit package identifier: BMH

(B) Eligibility criteria: As defined in federal regulations and in the 1115 OHP waiver demonstration, a client is categorically eligible for medical assistance if he or she is eligible under a federally defined mandatory, selected, optional Medicaid program or the Children's Health Insurance Program (CHIP) and also meets Oregon Health Authority (Authority) adopted income and other eligibility criteria.

(C) Coverage includes:

(i) Services above the funding line on the Health Services Commission's (HSC) Prioritized List of Health Services, (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Chemical dependency services provided through local alcohol and drug treatment providers;

(iv) Mental health services based on the HSC Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post-hospital extended care benefit, up to a 20-day stay in a nursing facility for non-Medicare Division clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires prior authorization by pre-admission screening (OAR 411-070-0043), or by the Fully Capitated Health Plan (FCHP) for clients enrolled in an FCHP;

(vii) Cost sharing (e.g., copayments) may apply to some covered services;

(B) Limitations: The following services have limited coverage for non pregnant adults age 21 and older. (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410, division 123);

(ii) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(b) OHP Standard:

(A) Benefit Package identifier code: KIT;

(B) Eligibility criteria: Adults and childless couples who are eligible through the 1115 Medicaid expansion waiver and meet Authority-adopted income and other eligibility criteria; the Department identifies these clients through the program acronym, OHP-OPU;

(C) Coverage includes:

(i) Services above the funding line on the HSC Prioritized List, (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Outpatient chemical dependency services provided through local alcohol and drug treatment providers;

(iv) Outpatient mental health services based on the HSC Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post-hospital extended care benefit, up to a 20-day stay in a nursing facility for non-Medicare Division clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires prior authorization by pre-admission screening (OAR 411-070-0043) or by the Fully Capitated Health Plan (FCHP) for clients enrolled in an FCHP.

(B) Limitations: The following services have limited coverage (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410, division 123);

(ii) Selected durable medical equipment and medical supplies (OAR chapter 410, division 122 and 130);

(iii) Selected home enteral/parenteral services (OAR chapter 410, division 148);

(iv) Other limitations as identified in individual Division program administrative rules.

(C) Exclusions: The following services are not covered. Refer to the cited OAR chapters and divisions for details:

(i) Acupuncture services, except when provided for chemical dependency treatment (OAR chapter 410, division 130);

(ii) Chiropractic and osteopathic manipulation services (OAR chapter 410, division 130);

(iii) Hearing aids and related services (i.e., exams for the sole purpose of determining the need for or the type of hearing aid), (OAR chapter 410, division 129);

(iv) Home health services (OAR chapter 410, division 127), except when related to limited EPIV services (OAR chapter 410, division 148);

(v) Non-emergency medical transportation (OAR chapter 410, division 136);

(vi) Occupational therapy services (OAR chapter 410, division 131);

(vii) Physical therapy services (OAR chapter 410, division 131);

(viii) Private duty nursing services (OAR chapter 410, division 132), except when related to limited EPIV services;

(ix) Speech and language therapy services (OAR chapter 410, division 129);

(x) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(xi) Other limitations as identified in individual Division program administrative rules, chapter 410.

(c) OHP with Limited Drug:

(A) Benefit Package identifier: BMM, BMD;

(B) Eligibility criteria: Eligible clients are eligible for Medicare and Medicaid benefits;

(C) Coverage includes:

(i) Services covered by Medicare and OHP Plus as described in section (4) of these rules;

(D) Limitations:

(i) The same as OHP Plus, as described in section (4) of these rules;

(ii) Drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to applicable limitations for covered prescription drugs (Refer to OAR chapter 410, division 121 for specific limitations). These drugs include but are not limited to:

(I) Over-the-counter (OTC) drugs;

(II) Barbiturates (Except for dual eligible individuals when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications).

(E) Exclusions: Drugs or classes of drugs covered by Medicare Part D Prescription Drug.

(F) Payment for services is limited to the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible;

(G) Cost sharing may apply to some covered services, however, cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the benefit package;

(d) Qualified Medicare Beneficiary (QMB)-Only:

(A) Benefit Package identifier code MED;

(B) Eligibility criteria: Eligible clients are Medicare Part A and B beneficiaries who have limited income but do not meet the income standard for full medical assistance coverage.

(C) Coverage: Is limited to the co-insurance or deductible for the Medicare service. Payment is based on the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, but no more than the Medicare allowable;

(D) Providers may not bill QMB-only clients for the deductible and coinsurance amounts due for services that are covered by Medicare.

(e) Citizen/Alien-Waived Emergency Medical (CAWEM):

(A) Benefit Package identifier CWM;

(B) Eligibility criteria: Eligible clients are non-qualified aliens that are not eligible for other Medicaid programs pursuant to Oregon Administrative Rules (OAR) 461-135-1070;

(C) Coverage is limited to:

(i) Emergency medical services as defined by 42 CFR 440.255. Sudden onset of a medical condition manifesting itself by acute symptoms

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of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part (the "prudent layperson standard" does not apply to the CAWEM emergency definition);

(i) Labor and Delivery.

(D) Exclusions: The following services are not covered, even if they are sought as emergency services:

(i) Prenatal or postpartum care;

(ii) Sterilization;

(iii) Family Planning;

(iv) Preventive care;

(v) Organ transplants and transplant-related services;

(vi) Chemotherapy;

(vii) Hospice;

(viii) Home health;

(ix) Private duty nursing;

(x) Dialysis;

(xi) Dental services provided outside of an emergency department hospital setting;

(xii) Outpatient drugs or over-the-counter products;

(xiii) Non-emergency medical transportation;

(xiv) Therapy services;

(xv) Durable medical equipment and medical supplies;

(xvi) Rehabilitation services.

(f) CAWEM Plus-CHIP Prenatal coverage for CAWEM (benefit code CWX) - refer to OAR 410-120-0030 for coverage.

(4) Division clients are enrolled for covered health services to be delivered through one of the following means:

(a) Coordinated Care Organization (CCO):

(A) These clients are enrolled in a CCO that provides integrated and coordinated health care;

(B) CCO services are obtained from the CCO or by referral from the CCO that is responsible for the provision and reimbursement for physical health, chemical dependency, mental health services or dental care.

(b) Prepaid Health Plan (PHP):

(A) These clients are enrolled in a PHP for their medical, dental or mental health care;

(B) Most non-emergency services are obtained from the PHP or require a referral from the PHP that is responsible for the provision and reimbursement for the medical, dental or mental health service;

(c) Physician Care Organization (PCO):

(A) These clients are enrolled in a PCO for their medical care;

(B) Inpatient hospital services are not the responsibility of the PCO and are governed by the Fee-for-Service Hospital Services Program rule (OAR 410 Division 125).

(d) Primary Care Managers (PCM):

(A) These clients are enrolled with a PCM for their medical care;

(B) Most non-emergency services provided to clients enrolled with a PCM require referral from the PCM.

(c) Fee-for-service (FFS):

(A) These clients are not enrolled in a CCO, PHP, PCO or assigned to a PCM;

(B) Subject to limitations and restrictions in individual program rules, the client can receive health care from any Division-enrolled provider that accepts FFS clients. The provider will bill the Division directly for any covered service and will receive a fee for the service provided.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.065, 414.705, 414.706, 414.707, 414.708, 414.710
Hist.: OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 63-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13

Rule Caption: Change method of payment to FQHC and RHC Out Station Outreach Worker Activities.

Adm. Order No.: DMAP 64-2012(Temp)

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13 thru 6-29-13

Notice Publication Date:

Rules Amended: 410-147-0400

Subject: The Division needs to amend this rule to change the method of payment to Federally Qualified Health Clinics (FQHC) and Rural Health Clinics (RHC) for out stationed outreach worker activities.

These clinics have historically been reimbursed for out stationed outreach worker activities through a rate calculated from 100% of cost, which was then added to their base Prospective Payment System (PPS) all inclusive encounter rate. This amended rule will reimburse clinics 100% of their allowable costs for out stationed outreach worker activities and be paid in four equal installments at the beginning of each calendar quarter, January 1, April 1, July 1, and October 1.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-147-0400

Compensation for Outstationed Outreach Activities

(1) This rule sets forth the requirements, activities, and payment methodology for which the Division shall compensate eligible federally qualified health centers (FQHC) for outstation outreach activities directly related to the receipt and initial processing of applications for individuals who apply for Medicaid at outstation locations other than state offices.

(2) The Division shall compensate eligible FQHCs for the following out stationed outreach activities:

(3) Initial processing, which includes:

(a) Taking applications;

(b) Assisting applicants in completing the application;

(c) Obtaining required documentation to complete application processing;

(d) Ensuring that the information contained on the application form is complete; and

(e) Conducting any necessary interviews.

(4) Initial processing does not include evaluating the application information and supporting documentation or making an eligibility determination.

(5) The Division shall reimburse eligible FQHCs for outreach activities performed by out stationed outreach workers (OSOW) in an amount that is equal to 100% of direct costs.

(6) The following direct cost expenses are allowed for OSOW reimbursement:

(a) Travel expenses incurred by the FQHC for Division training on OSOW activities;

(b) Phone bills, if a dedicated line is used. Otherwise an estimate of telephone usage and resulting costs;

(c) OSOW personnel costs:

(A) Wages shall be the lesser of:

(i) Wages reported by the FQHC; or

(ii) Wages paid by the State of Oregon to an employee of the state providing enrollment assistance to individuals applying for OHP;

(iii) Wage reimbursement may not exceed the highest salary rate issued by the State of Oregon to a Human Services Specialist 2;

(B) Taxes;

(C) Fringe benefits provided to OSOW;

(D) Premiums paid by the FQHC for private health insurance.

(d) Reasonable costs for equipment necessary to perform outreach activities, which does include expenses for replacing equipment if the original equipment cost was reported on the cost statement when the clinic's initial PPS encounter rate was calculated;

(e) Rent or space costs only if 100% of facility costs were not reported on the cost statement when the clinic's initial PPS encounter rate was calculated;

(f) Reasonable office supplies necessary to perform outreach activities; and

(g) Postage.

(7) The Division may not include indirect costs in the OSOW reimbursement rate. Indirect costs include but are not limited to the following:

(a) Any costs included in the initial calculation of a clinic's PPS encounter rate;

(b) Contracted interpretation services;

(c) Administrative overhead costs;

(d) Supervision costs; and

(e) Operating expenses including utilities, building maintenance and repair, and janitorial services.

(8) Clinics must submit to the Division a cost statement for the preceding calendar year between October 1, and October 31, of each year for Division review and acceptance of the clinic's OSOW direct costs;

(9) If a clinic fails to submit the OSOW cost statement by October 31 of the required year, the clinic may not be eligible for reimbursement of OSOW costs as of January 1 for the following year.

(10) Any change to the OSOW costs, based on the October cost statement submission, shall be effective January 1 of the following year;

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(a) The Division shall make payment to the clinic for the reviewed and accepted OSOW costs in four equal installments at the beginning of each calendar quarter; January 1, April 1, July 1, and October 1.

(b) If the Division determines that the clinic's OSOW rate is inflated, the Division shall adjust the rate effective immediately.

(11) Clinic locations with limited operating hours, or that limit access to the general public during their regular operating hours must calculate the actual time an OSOW meets face-to-face with the general public for receipt and initial application processing. For example, if a clinic employs an OSOW at a satellite school-based health center (SBHC), and the SBHC may only be accessed by the general public outside of the school's normal hours of operation, the percentage of time an OSOW is available to meet face-to-face with applicants must be used when reporting OSOW compensation.

(a) Clinics must display a notice in a prominent place that advises potential applicants when an OSOW shall be available;

(b) The notice must include a telephone number that applicants may call for assistance.

(12) For staff employed by a clinic and performing outreach activities less than full time, the clinic must calculate the percentage of time spent performing OSOW activities and maintain adequate documentation to support the time claimed. The percentage must be used to calculate personnel expenses incurred by the clinic and that are directly attributed to outreach activities performed by the employee. Outreach activities:

(a) May include assisting individuals with completing applications for other Department of Human Services (Department) and Authority-administered programs where eligibility is determined by staff at local branch offices;

(b) Do not include assisting individuals with applying for non-Department and non-Authority-administered programs.

(13) A clinic may not claim reimbursement for costs associated with personnel positions where 100% of costs were included in the clinic's PPS encounter rate calculation;

(14) A Public Health Department designated as an FQHC or a School Based Health Center (SBHC) within the scope of an FQHC designation are not eligible for OSOW reimbursement.

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1993, f. & cert. ef. 7-1-93; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0330; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 47-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 8-2011, f. 6-6-11, cert. ef. 7-1-11; DMAP 64-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13

Rule Caption: Align with OAR chapter 461, division 155 medical eligibility rules

Adm. Order No.: DMAP 65-2012(Temp)

Filed with Sec. of State: 12-28-2012

Certified to be Effective: 1-1-13 thru 6-29-13

Notice Publication Date:

Rules Amended: 410-120-0006

Rules Suspended: 410-120-0006(T)

Subject: The General Rules Program administrative rules govern the Division's payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services' (Department) temporary revision of medical eligibility rules in chapter 461, the Division is temporarily 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. The Division intends to file this rule permanently on or before June 29, 2013.

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 January 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 1-1-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-1-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-1-12; 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

Rule Caption: Supported Employment Services Definitions and Provider Requirements and Fidelity Reviews

Adm. Order No.: DMAP 1-2013(Temp)

Filed with Sec. of State: 1-4-2013

Certified to be Effective: 1-4-13 thru 7-2-13

Notice Publication Date:

Rules Amended: 410-141-3160

Subject: Supported employment services are delivered to individuals with serious mental illness to enable them to obtain and maintain employment. The requirements for providers that will deliver these services are being added to this rule. The rule informs CCOs what criteria and requirements the providers must comply with to receive reimbursement from the Authority and that the criteria and requirements may be found in the Addictions and Mental Health Division rules in chapter 309 division 16.

The chapter 309 rules set forth the fidelity review requirements and provide information on how these requirements may be accessed electronically.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-141-3160

Enrollment Requirements in a CCO

(1) A client who is eligible for or receiving health services must enroll in a CCO as required by ORS 414.631, except as provided in 414.631(2), (3), (4), and (5) and 414.632(2) or exempted by this rule.

(2) If, upon application or redetermination, a client does not select a CCO, the Authority shall enroll the client and the client's household in a CCO that has adequate health care access and capacity.

(3) For existing members of a PHP that has transitioned to a CCO, the Authority shall enroll those members in the CCO when the Authority certifies and contracts with the CCO. The Authority shall provide notice to the enrollees 30 days before the effective date.

(4) Existing members of a PHP that is on the path to becoming a CCO shall retain those members. The Authority shall enroll those members in the CCO when certification and contracting are complete. The Authority shall provide notice to the clients 30 days before the effective date.

(5) Unless otherwise exempted by sections (17) and (18) of this rule, existing clients receiving their physical health care services on a fee-for-service basis shall enroll in a CCO serving their area that has adequate health care access and capacity. They must enroll by November 1, 2012.

ADMINISTRATIVE RULES

The Authority shall send a notice to the clients 30 days before the effective date.

(6) The following apply to clients receiving health care services on a fee-for-service basis but behavioral health services in a MHO:

(a) The Authority shall enroll the client in a CCO that is serving the client's area before November 1, 2012;

(b) The client shall receive their behavioral health care services from that CCO;

(c) The client shall continue to receive their physical health care services on a fee-for-service basis; and

(d) On or after November 1, 2012, the Authority shall enroll the client in a CCO for both physical health and behavioral health care services, unless otherwise exempted by sections (17) and (18) of this rule.

(7) The following apply to clients enrolled in Medicare:

(a) A client may enroll in a CCO regardless of whether they are enrolled in Medicare Advantage;

(b) A client enrolled in Medicare Advantage, whether or not they pay their own premium, may enroll in a CCO, even if the CCO does not have a corresponding Medicare Advantage plan.

(c) A client may enroll with a CCO, even if the client withdrew from that CCO's Medicare Advantage plan. The CCO shall accept the client's enrollment if the CCO has adequate health access and capacity;

(d) A client may enroll with a CCO, even if the client is enrolled in Medicare Advantage with another entity.

(8) From August 1, 2012, until November 1, 2012, enrollment is required in service areas with adequate health care access and capacity to provide health care services through a CCO or PHP. The following outlines the priority of enrollment during this period in service areas where enrollment is required:

(a) Priority 1: The client must enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client must enroll in a PHP if:

(A) A PHP serves an area that a CCO does not serve; or

(B) A PHP serves an area that a CCO serves, but the CCO has inadequate health care access and capacity to accept new members;

(c) Priority 3: The client shall receive services on a fee-for-service basis.

(9) From August 1, 2012, until November 1, 2012, enrollment is voluntary in service areas without adequate access and capacity to provide health care services through a CCO or PHP. If a client decides to enroll in a CCO or PHP, the priority of enrollment in section (8) applies.

(10) On or after November 1, 2012, CCO enrollment is required in all areas. The following outlines the priority of options to enroll in all service areas:

(a) Priority 1: The client must enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client must enroll in a PHP on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care services capacity to accept new members;

(c) Priority 3: The client must enroll in a PHP that is not on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care access or capacity to accept new members;

(d) Priority 4: The client shall receive services on a fee-for-service basis.

(11) A client must enroll in a dental care organization (DCO) in a service area where a DCO has adequate dental care access and capacity, and a DCO is open to enrollment.

(12) A client may enroll in a DCO in a service area where a DCO has inadequate dental care access and capacity. In these service areas, a client may:

(a) Select any DCO open for enrollment; or

(b) Obtain dental services on a FFS basis.

(13) If a client receives physical health care through a PHP, PCM or on a fee-for-service basis, under circumstances allowed by this rule, the client must enroll in a mental (behavioral) health organization (MHO) in a service area where MHO enrollment is required. The following determines if a service area requires MHO enrollment:

(a) The service area has adequate behavioral health care access and capacity;

(b) A CCO does not serve in the area; or

(c) A CCO serves the area, but the CCO has inadequate health care access and capacity to accept new members:

(14) From August 1, 2012, until November 1, 2012, if a service area changes from required enrollment to voluntary enrollment, the member shall remain with the PHP for the remainder of their eligibility period or until the Authority or Department redetermines eligibility, whichever comes sooner, unless otherwise eligible to disenroll pursuant to OAR 410-41-3080.

(15) At the time of application or recertification, the primary person in the household shall select the CCO on behalf of all household members on the same household case. If the client is not able to choose a CCO, the client's representative shall make the selection.

(16) The Department or OYA shall select the CCO for a child in the legal custody of the Department or OYA, except for children in subsidized adoptions.

(17) The following populations are exempt from CCO enrollment:

(a) Populations expressly exempted by ORS 414.631(2) (a), (b) and (c), which includes:

(A) Persons who are non-citizens who are eligible for labor and delivery services and emergency treatment services;

(B) Persons who are American Indian and Alaskan Native beneficiaries; and

(C) Persons who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly.

(b) Newly eligible clients are exempt from enrollment with a CCO if the client became eligible when admitted as an inpatient in a hospital. The client shall receive health care services on a fee-for-service basis only until the hospital discharges the client. The client is not exempt from enrollment in a DCO.

(c) Children in the legal custody of the Department or OYA where the child is expected to be in a substitute care placement for less than 30 calendar days, unless:

(A) Access to health care on a fee-for-service basis is not available; or

(B) Enrollment would preserve continuity of care.

(d) Clients with major medical health insurance coverage, also known as third party liability, except as provided in OAR 410-141-3050;

(e) Clients receiving prenatal services through the Citizen/Alien Waivered-Emergency Medical program; and

(f) Clients receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs.

(18) The following populations are exempt from CCO enrollment until specified below:

(a) From August 1, 2012, until November 1, 2012, children under 19 years of age who are medically fragile and who have special health care needs. Beginning November 1, 2012, the Authority may enroll these children in CCOs on a case-by-case basis;

(b) Eligible women in their third trimester of pregnancy are exempt for up to 60 days after their child's birth and until the time the Authority may establish that enrollment is required;

(c) From August 1, 2012 until November 1, 2012, clients receiving health care services through the Breast and Cervical Cancer Program are exempt. Beginning November 1, 2012, enrollment is required;

(d) Existing clients who had organ transplants are exempt until the Authority enrolls them in a CCO on a case-by-case basis; and

(e) From August 1, 2012, until November 1, 2012, clients with end-stage renal disease. Beginning November 1, 2012, enrollment is required.

(19) The following clients who are exempt from CCO enrollment and who receive services on a fee-for-service basis may enroll in a CCO:

(a) Clients who are eligible for both Medicare and Medicaid;

(b) Clients who are American Indian and Alaskan Native beneficiaries;

(20) The Authority may exempt clients or temporarily exempt clients for other just causes as determined by the Authority through medical review. The Authority may set an exemption period on a case-by-case basis. Other just causes include the considerations:

(a) Enrollment would pose a serious health risk; and

(b) The Authority finds no reasonable alternatives.

(21) The following pertains to the effective date of the enrollment. If the enrollment occurs:

(a) On or before Wednesday, the date of enrollment shall be the following Monday; or

(b) After Wednesday, the date of enrollment shall be one week from the following Monday.

ADMINISTRATIVE RULES

(22) Coordinated care services shall begin on the first day of enrollment with the CCO except for:

(a) A newborn's date of birth when the mother was a member of a CCO at the time of birth;

(b) For members who are re-enrolled within 30 calendar days of disenrollment, the date of enrollment shall be the date specified by the Authority that may be retroactive to the date of disenrollment;

(c) For adopted children or children placed in an adoptive placement, the date of enrollment shall be the date specified by the Authority.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.615, 414.635 & 414.651

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 1-2013(Temp), f. & cert. ef. 1-4-13 thru 7-2-13

Rule Caption: Align with OAR chapter 461, division 155 medical eligibility rules

Adm. Order No.: DMAP 2-2013(Temp)

Filed with Sec. of State: 1-8-2013

Certified to be Effective: 1-8-13 thru 6-29-13

Notice Publication Date:

Rules Amended: 410-120-0006

Rules Suspended: 410-120-0006(T)

Subject: The General Rules Program administrative rules govern the Division's payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services' (Department) temporary revision of medical eligibility rules in chapter 461, the Division is temporarily 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. The Division intends to file this rule permanently on or before June 29, 2013.

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 January 8, 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

Oregon Health Authority, Office of Private Health Partnerships Chapter 442

Rule Caption: Amended administrative rules for the Healthy KidsConnect Program.

Adm. Order No.: OPHP 2-2012

Filed with Sec. of State: 12-27-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Amended: 442-010-0010, 442-010-0020, 442-010-0030, 442-010-0040, 442-010-0050, 442-010-0055, 442-010-0060, 442-010-0070, 442-010-0075, 442-010-0080, 442-010-0085, 442-010-0090, 442-010-0100, 442-010-0120, 442-010-0140, 442-010-0150, 442-010-0160, 442-010-0170, 442-010-0180, 442-010-0190, 442-010-0210, 442-010-0215, 442-010-0220, 442-010-0230, 442-010-0240, 442-010-0260, 442-010-0270

Rules Repealed: 442-010-0110, 442-010-0280

Subject: The Office of Private Health Partnerships (OPHP) Healthy KidsConnect (HKC) Program permanently amends the Oregon Administrative Rules, making corrections and minor word changes, and modifying procedures to increase efficiency. As a continued effort to make the Oregon Administrative Rules more efficient, the Agency deleted OARs 442-010-0110 and 442-010-0280, removing unnecessary text and placing other text in more appropriate rules.

Rules Coordinator: Wanda Davis—(503) 378-5901

442-010-0010

Purpose

(1) These rules, OAR 442-010-0010 to 442-010-0270, are established within the Office of Private Health Partnerships (OPHP) the Healthy KidsConnect (HKC) private health options. HKC and Employer Sponsored Insurance (ESI) options are for children who are Oregon residents, U.S. citizens or qualified non-citizens, and whose families earn from zero up to and including 300 percent of the federal poverty level (FPL). Two subsidy program options are available:

(a) HKC is private health insurance for children in families who are over 200 up to and including 300 percent FPL.

(b) Healthy Kids Employer Sponsored Insurance (HK ESI) is for children in families who earn from zero up to and including 300 percent FPL.

(2) Children in families who are over 300 percent FPL may enroll in a HKC plan but must pay full cost. OPHP may not pay subsidies to families at this income level.

Stat. Auth.: ORS 414.231, 414.826 & 735.707

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0020

Definitions

(1) "Authority" means the Oregon Health Authority (OHA) or the Department of Human Services (DHS) and shall be construed to be references to either or both agencies.

(2) "Benchmark" means a specific minimum level of health insurance benefits. The benchmark is established by OPHP. The benchmark must meet the standard approved by the Centers for Medicare and Medicaid Services (CMS) for using federal funds for subsidies.

(3) "Carrier" means any person who provides health benefit plans in Oregon as defined in ORS 743.730(6).

(4) "Children's Health Insurance Program (CHIP)" is a program administered by the U.S. Department of Health and Human Services (HHS). The federal government provides Title XXI matching funds to states to cover uninsured children who are ineligible for Medicaid and meet CHIP eligibility requirements.

(5) "Concurrent enrollment" means simultaneous enrollment in HKC and one or more other health insurance plans for the same child.

ADMINISTRATIVE RULES

(6) “Contracted HKC carrier” means a carrier hired by OPHP (see OAR 442-010-0030) to provide health insurance for eligible children through the HKC program.

(7) “Department” means the Oregon Department of Human Services (DHS) or the Oregon Health Authority (OHA), and shall be construed to be references to either or both agencies.

(8) “Employer-Sponsored Insurance (ESI)” means a health insurance plan sponsored by an employer that provides medical care to two or more employees.

(9) “Federal poverty level (FPL)” means the poverty income guidelines as defined by the HSS. The Authority adopts these guidelines no later than May 1 each year.

(10) “Full-cost plan” means an HKC insurance plan for families whose annual income is over 300 percent FPL. Members enrolled in a full-cost plan do not receive subsidies and pay the full cost of the premium.

(11) “Healthy Kids (HK)” is also known as the Health Care for All Oregon Children program.

(12) “Healthy KidsConnect (HKC)” is part of the Oregon Healthy Kids program providing health care to Oregon children through the private insurance market. “HKC” also refers to the benefit plans offered through the private insurance option.

(13) “Member” means a child enrolled in HKC, child enrolled in a HK ESI plan, or the child’s parent or adult representative.

(14) “Member share” means the portion of the health insurance premium a family pays.

(15) “Office of Private Health Partnerships (OPHP)” is a division within the Oregon Health Authority (OHA). OPHP provides access to health insurance through programs for uninsured Oregonians, including HKC and HK ESI.

(16) “Oregon Health Authority (OHA)” is an Oregon state agency that includes most of the state’s health care programs including Public Health, the Oregon Health Plan, Healthy Kids, Family Health Insurance Assistance Program, Medical Assistance Programs, the Office of Client and Community Services and state and school employee benefit plans.

(17) “Oregon Health Plan (OHP)” means the Medicaid and CHIP Demonstration Project which expands Medicaid and CHIP eligibility to eligible OHP clients.

(18) “Overpayment” is a debt owed to the State of Oregon and may be subject to collection. Overpayment also refers to premiums paid by OPHP to the HKC carrier that must be refunded by the carrier if the member’s eligibility is terminated. (19) “Posting of Payments” means the Authority’s Fiscal Unit will enter member payments to their account after the payment has been received. Posting of the member’s payment may take up to three business days from the date the payment is received by the Authority. The payment is not credited to the member’s account until it is posted.

(20) “Premium” means the amount charged for health insurance.

(21) “Standard Health Statement” means the Oregon Standard Health Statement described in OAR 836-053-0510.

(22) “Subsidy” means the amount OPHP pays on behalf of the member to offset monthly premium costs. Subsidy is also known as “premium assistance.”

(a) HKC subsidies are paid directly to the HKC carriers; and

(b) HK ESI subsidies are paid by reimbursing the member’s portion of the premium.

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

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 8-2011(Temp), f. & cert. ef. 8-1-11 thru 1-26-12; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0030

HKC Carrier and Plan Selection

(1) OPHP selects health insurance carriers to offer HKC benefit plans through a competitive bid process. The process includes releasing a request for proposal (RFP) or Request for Application (RFA). Selection criteria may include, but is not limited to:

- (a) Administrative and online services;
- (b) Case, disease, utilization and pharmacy management;
- (c) Member access and provider network capacity;
- (d) Information services and reporting;
- (e) References; and
- (f) Premium rates.

(2) HKC health benefit plans for subsidized families (201-300 percent FPL):

- (a) Must be comparable to OHP Plus coverage;

(b) Family’s cost-sharing will not exceed five percent of the family’s annual income;

(c) Do not exclude coverage for pre-existing conditions; and

(d) Qualify for federal financial participation.

(3) HKC health benefit plans for full cost families (over 300 percent FPL):

(a) Are not required to be comparable to OHP Plus coverage;

(b) Do not limit the family’s cost sharing to five percent of the family’s annual income;

(c) Do not exclude coverage for preexisting conditions; and

(d) Do not qualify for federal financial participation.

(4) Services for HKC members must be provided within Oregon and in-network, unless approved in cases of emergency or insurance carrier prior authorization.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: IPGB 1-2005, f. & cert. ef. 3-1-05; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0040

Member Eligibility

(1) The Authority eligibility staff determine if applicants are eligible for HKC or HK ESI based on family size, income, Oregon residency, citizenship and other criteria established by rule (ref. OAR 410-120-0006, 461-135-1100 and 461-135-1101).

(2) HKC and HK ESI applicants must be uninsured for two months as described in the federal CHIP State Plan or in subsequent written directive by CMS. This requirement will be waived for the reasons outlined in the CHIP State Plan or OAR 461-135-1101(1).

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0050

HKC Premium Rates

(1) Families over 200 percent up to and including 300 percent FPL with more than one child pay family tier subsidized premium rates based on the number of eligible children in the family.

(2) Families over 300 percent FPL are not eligible for family tier rates and pay the full cost of the premium per child.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0055

Subsidy Levels

(1) Members receive HKC or HK ESI subsidies based on a sliding scale of household income and FPL for the following ranges:

(a) Zero up to and including 200 percent of the FPL will receive 100 percent subsidy for HK ESI. There is no HKC available below 200 percent FPL;

(b) Over 200 up to and including 250 percent of the FPL will receive about 90 percent subsidy for HKC or HK ESI;

(c) Over 250 up to and including 300 percent of the FPL will receive about 85 percent subsidy; and

(d) Over 300 percent of the FPL will not receive a subsidy.

(e) Eligible American Indian/Alaska Native (AI/AN) children over 200 percent FPL up to and including 300 percent FPL will receive 100 percent subsidy and do not pay any out of pocket costs. AI/AN families above 300 percent FPL are not eligible for a subsidy. AI/AN families above 300 percent FPL pay full premium per child, and pay any deductibles and out of pocket expenses as outlined in the insurance carrier Benefits Summary and Member Handbook.

(2) Subsidy levels must be reevaluated by the Authority at least once each year when the member applies for redetermination of eligibility. Subsidy levels may also be reviewed in one or more of the following circumstances:

(a) An administrative error is made.

(b) An audit identifies an error.

(c) Family circumstances change. If the family reports a change affecting eligibility, the member’s FPL may change based on the family circumstance changes.

(d) The annual FPL update by HHS is implemented.

ADMINISTRATIVE RULES

(3) If the new FPL results in a better subsidy or OHP eligibility, the change may be made effective no earlier than the first of the following month.

(4) If the new FPL results in reduced or no subsidy, no change may be made until the end of the 12-month eligibility period, unless the member requests that it be changed.

(5) If the HKC eligible child is not enrolled in an HKC plan, and found to be eligible for OHP, the eligible child will be enrolled in OHP. If the child is already enrolled in an HKC plan and found to be eligible for OHP, the change to OHP will be effective the first of the following month after the member is disenrolled from HKC and eligibility staff is notified.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0060

Enrollment In HKC

(1) HKC applicants approved for HKC must complete, sign and return all enrollment paperwork to OPHP within the program's time frames to enroll in HKC.

(a) Applicants eligible for subsidy have at least 45 days to choose a carrier. If the applicant does not choose a carrier within this time period, the Authority shall close the eligibility case file. OPHP may request an extension of the enrollment time frame. If the applicant does not complete the enrollment paperwork within the required time frame, the applicant must reapply for benefits.

(b) Applicants approved for HKC must return all required paperwork before 5:00 p.m. on the 23rd of the month or the last business day before the 23rd of the month for insurance to be effective the first of the following month.

(c) OPHP pays the first month's premium for subsidized children enrolling in HKC for the first time. The member's premium payment for the second month of coverage must be received and posted by the 23rd of the month or the last business day prior to the 23rd of the month prior to the first month of enrollment. It may take up to three business days to post a payment after it is received by the Authority's Fiscal Unit.

(2) A family may choose to enroll approved children into HKC or HK ESI. Families are not required to enroll all their children. Those who receive a subsidy must choose a plan within the same program (not split between HKC and HK ESI) for all enrolled children. Subsidized and non-subsidized families choosing HKC must choose the same insurance carrier for all eligible children.

(3) Newborn children born to a covered HKC member or a family in which there is a covered HKC sibling are covered on the date of birth if:

(a) The parent(s) applies for HK for the unborn child; and

(b) Returns all enrollment paperwork within 31 days of birth. If the request to enroll in HKC is received beyond 31 days of birth, the coverage effective date will be the first day of the month following the date of enrollment request.

(4) A family without an already covered HKC sibling or a non-member pregnant teen who wants their unborn child to be covered effective the date of birth must pre-enroll. To pre-enroll the family or parent must:

(a) Apply for HK at least 45 days before the scheduled delivery date;

(b) Be determined eligible for HKC coverage; and

(c) Complete, sign, and return all required enrollment paperwork to HKC by the 23rd or the last business day prior to the 23rd of the month prior to the delivery month. Coverage of the pre-enrolled newborn will be effective the first of the month following enrollment or the date of birth, whichever is later.

(5) If a newborn has been approved for HKC and is covered under their parent's ESI up to the first 31 days after birth, the newborn will not have to meet a two month period of uninsurance before enrolling in an HKC plan.

(6) Premiums will be paid to the carrier for the full birth month no matter what date the child was born. Premiums will not be prorated.

(7) OPHP will pay the first month's premium for each child in subsidized families on a one-time basis.

(8) HKC members may not be enrolled in or receiving benefits from other private, public, government sponsored health insurance such as CHAMPVA or TRI-CARE, individual, family, or qualified ESI plan while enrolled in HKC except:

(a) During brief times of transition (typically less than 30 days) when an HKC member is changing to or from another plan such as OHP, Oregon Medical Insurance Pool (OMIP) or the Family Health Insurance Assistance Program (FHIAP);

(b) If a child with end stage renal disease (ESRD) is in need of dialysis or a kidney transplant and is covered by other health coverage including Medicare, HKC is secondary in all cases; or

(c) When HKC is primary coverage for members enrolled in the Indian Health Service (IHS).

(9) If a carrier elects to discontinue participation in HKC, members served by that carrier must be notified that they have 60 days to select a new carrier and complete enrollment.

(a) HKC members electing coverage through a new carrier must select the carrier and complete, sign, and return all enrollment paperwork within program time frames to be covered the first of the following month. OPHP may extend the enrollment time frame for administrative issues.

(b) Carriers who elect to discontinue participation in HKC will not be responsible for any claims incurred after the HKC contract period ends.

(c) If a member does not timely enroll in a new plan, the member will be responsible to pay for services received.

(10) Members may only change HKC carriers in the following circumstances:

(a) At their next eligibility determination or annual renewal period;

(b) If they move out of the carrier's service area; or

(c) If the member's carrier terminates their contract with HKC.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 8-2011(Temp), f. & cert. ef. 8-1-11 thru 1-26-12; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0070

Annual Renewal

(1) Each year OPHP contacts enrolled subsidized members after the Authority determines the member's annual eligibility. Members, who live in areas with more than one HKC carrier option, will have 30 days from the date OPHP sends the renewal notice to request a change of carrier. Members who live in an area with only one carrier will be automatically renewed for another year with that carrier.

(a) If the member does not notify OPHP of a decision to change carriers and does not complete the required HKC enrollment paperwork within 30 days, OPHP must automatically reenroll the member with their current carrier. Members will not have the option to change carriers until the following year's annual renewal.

(b) Member requests for carrier changes and required enrollment paperwork received before the enrollment deadline of the 23rd of the month or the last business day before the 23rd will take effect the first of the following month.

(2) If a member's subsidy rate changes as a result of the annual redetermination, OPHP shall notify the member and the carrier of the change.

(3) If the redetermination by the Authority shows that the member is no longer eligible for a subsidy, the member may choose to enroll in a:

(a) Benefit plan available to HKC full-cost members;

(b) A portability plan;

(c) Any other health insurance; or

(d) Discontinue coverage with HKC.

(4) At annual renewal, full-cost members may:

(a) Continue with HKC on their current plan;

(b) Choose a different HKC carrier. If the full-cost member lives in an area with more than one HKC carrier choice, the member must submit a request for a change of carrier and all required enrollment paperwork within 30 days from the date on the OPHP renewal notice. Full-cost member requests for carrier changes and required enrollment paperwork must be received by OPHP before the enrollment deadline of the 23rd of the month or the last business day before the 23rd for the carrier change to take effect the first of the following month;

(c) Choose a portability plan through their current insurance carrier; or

(d) Discontinue coverage with HKC.

(5) If at any time a full-cost member's income level or situation has changed, the member may submit an application to the Authority to apply for a subsidy. If approved for a subsidy and the member lives in an area served by two or more carriers, the member has the option to change carriers. Members who choose to change carriers have 30 days from the renewal notice to submit the required enrollment paperwork. The enrollment paperwork must be received before the enrollment deadline of the 23rd of the month or the last business day before the 23rd for the carrier change to take effect the first of the following month.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

ADMINISTRATIVE RULES

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0075

Cost Sharing Out of Pocket Maximum

(1) Out of Pocket (OOP) expenses of subsidized HKC members include copayments and member premiums.

(2) Annual OOP expenses for subsidized HKC members are limited to five percent of the family's annual income.

(3) Accumulated OOP expenses are re-set to zero on January 1 each year for all HKC members, regardless of income level.

(4) When a member reapplies or at annual redetermination:

(a) If the member remains eligible at the same subsidy level and chooses to stay with the same carrier, OOP expenses will continue to accumulate until the end of the calendar year. The accumulated OOP expenses will reset in January of the next calendar year.

(b) If the member remains eligible but the subsidy level changes, OPHP shall notify the member and the carrier of the new OOP maximum to be used for the remainder of the calendar year. The accumulated OOP expenses will reset in January of the next calendar year.

(5) If a subsidized member chooses to change carriers at annual redetermination, the new carrier is not responsible for OOP costs incurred while covered with the former carrier. The member's accumulated OOP expenses do not reset until January of the next calendar year.

(a) The former carrier shall provide OPHP with an estimated year-to-date total of the member's OOP costs within 30 days of the member's coverage termination;

(b) The former carrier shall report a final corrected total within 90 days of the member's coverage termination.

(c) OPHP will calculate the amount remaining on the member's OOP limit and report that information to the new carrier.

(6) Accumulated OOP costs under a subsidized plan may not be applied to the full-cost plan's OOP maximum.

(7) When a full-cost member is determined eligible for subsidy, OPHP must calculate the five percent OOP maximum. OOP expenses accumulated for the calendar year when the member was enrolled in the full-cost plan (except premiums) must be applied toward the accumulated year to date OOP for the rest of that calendar year as a subsidized member.

(a) Premiums paid while the member was enrolled in the full-cost plan are excluded from expenses that apply to the family's new maximum OOP.

(b) Families shall continue to pay the member's share of the premium costs.

(c) If the member has exceeded the five percent OOP while covered under the full-cost plan, no additional coinsurance or copayments may be charged to the member if they change from full-cost to low-cost for the remainder of the calendar year.

(d) The member may not receive refunds of any amount exceeding the maximum OOP.

(8) Accumulated OOP expenses will be re-set to zero for accounts with any break in coverage or closed for non-payment of premium.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 8-2011(Temp), f. & cert. ef. 8-1-11 thru 1-26-12; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0080

Member Billing — HKC

(1) Subsidies are available for members who choose HKC and are over 200 percent up to and including 300 percent of the FPL. OPHP will bill members for their share of the monthly premium.

(2) OPHP pays the first full month's premium for subsidized new members on a one-time only basis.

(3) If a member terminates and then reapplies for coverage, the member shall pay two months of their share of the premium before re-enrollment. The member's premium payment must be received and posted by the Authority's Fiscal Unit by the 23rd of the month or the last business day prior to the 23rd of the month to be effective the first of the following month unless the member:

(a) Was enrolled in error; or

(b) Is eligible for 100 percent subsidy as an AI/AN member.

(4) OPHP does not pay the first full month's premium for full-cost new members. OPHP may only enroll the member and pay the carrier after the Authority's Fiscal Unit receives and posts the member's premium payment.

(5) Beginning the second month after initial enrollment, OPHP may only pay the carrier after the Authority's Fiscal Unit receives and posts the subsidized member's share of the premium.

(6) OPHP will bill members at least one month before the premium is due. Members are provided a premium grace period of at least 30 days from the payment due date.

(7) If payment is not received and posted by the Authority's Fiscal Unit by the deadline on the bill, OPHP will mail a 10-day final notice of cancellation to members with unpaid balances equal to or greater than \$5.00. The notice is mailed at least 10 days before the account is closed.

(8) OPHP will send a cancellation notice if the payment is not received and posted by the Authority's Fiscal Unit by the end of the month and the member account is closed.

(9) If a member's coverage is terminated for non-payment of premium, OPHP may grant the member a one-time exception to reinstate coverage if requested within five days of termination. If the one-time exception is approved, the carrier must reinstate the member's benefits with no break in coverage.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0085

Member Payments — HKC

(1) The Authority's Fiscal Unit shall notify members of payments returned by the bank for non-sufficient funds (NSF).

(2) The Authority shall process NSF checks the same as non-payment.

(3) Members must replace funds by the premium due date or within 10 calendar days of the NSF notification letter date if the account is past due.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0090

Carrier Payments — HKC

(1) OPHP shall only pay the carrier after the member's share of the premium is received and posted by the Authority's Fiscal Unit, except for the first month's premium for brand new subsidized accounts.

(2) OPHP may recover premium from the HKC carrier for members who were enrolled in error or who became ineligible for HKC at any time after enrollment.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0100

Member Refunds - HKC

(1) If the member has overpaid OPHP, OPHP will resolve premiums overpaid by the member by requesting a refund from the carrier when necessary.

(2) The Authority will not process refunds from member misrepresentation or NSF checks.

(3) For current members who have an open account, a refund will be issued or credit will be applied to the member's current account for future premiums.

(4) Terminated members will receive a refund for their share of the premiums if there is a credit on their account of \$1.00 or greater.

(5) Members may not receive a refund for the first month's premium if paid by OPHP. Stat. Auth.: ORS 414.231 & 414.826

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0120

Enrollment in Healthy Kids — ESI

(1) Subsidies are available to eligible members who choose to enroll in their Employer-Sponsored Insurance (ESI).

(2) Subsidies may only be paid for members enrolled in an ESI plan that meets the federal benchmark.

(3) Subsidized members have at least 45 days to enroll in their ESI plan.

ADMINISTRATIVE RULES

(a) If the applicant does not enroll in an approved plan within the established time frame, the Authority will close the eligibility case file.

(b) OPHP may request that the Authority extend the enrollment time frame. If the applicant does not complete the enrollment paperwork within the required time frame, the applicant must reapply to the Authority.

(4) If the referred member is unable to enroll in the ESI plan for a period of time, the member may enroll in a HKC plan while they wait for the ESI enrollment period. If the member later enrolls in their ESI plan, then loses coverage during the same eligibility period, the member must re-enroll with the same HKC carrier. The member may choose a new HKC carrier during their next eligibility period.

(5) The subsidy effective date will be determined based on the referral date and ESI enrollment date. If an approved member is able to enroll in the family's ESI plan the same month the case is referred to OPHP, the agency must begin paying subsidies for that month.

(6) Subsidies may not be paid until the employer plan has been benchmarked. If the benchmark process delays subsidy payment, OPHP must retroactively reimburse the member's portion of the premium back to the referral month as long as the plan meets the benchmark. If the plan does not meet the benchmark, OPHP may not subsidize the premiums.

(7) Subsidy reimbursement is based on the coverage month, not when the premium is paid. Examples:

(a) Insurance premium deductions are taken in advance for the coverage month (e.g. the member's portion of the premium is paid in October for November coverage. If the child is referred, enrolled, and covered by the ESI plan in that same month, OPHP will reimburse the October premium payment if it is for coverage in November).

(b) Insurance premium deductions are taken after the coverage month (e.g. the member's portion of the premium is paid in November for October coverage). OPHP will begin subsidy payments in December for the November coverage month.

(8) Subsidy must be paid for the full referral month no matter what day in the month the referral was made. Premiums and subsidies may not be prorated.

(9) OPHP must subsidize various coverage options referenced in OAR 442-010-0160 if:

- (a) A member loses ESI coverage due to loss of employment;
- (b) The employer discontinues the ESI plan; or
- (c) The member chooses to disenroll during an open enrollment period.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0140

Employer Verification — HK ESI

(1) Members must report employer plan changes to OPHP per OAR 442-010-0180.

(2) OPHP must request a new employer verification form if the payroll deduction amount changes. OPHP will continue to subsidize the member at the established rate until new rates are received. Adjustments will be made when changes are approved.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0150

Subsidy Payments — ESI

(1) OPHP will subsidize the member's monthly insurance premium minus any employer's contribution for ESI that meets the benchmark.

(2) OPHP will reimburse the eligible member's portion of the ESI premium using submitted payment verification. Verification may include, but is not limited to payroll records, paycheck stubs, employer letters, carrier invoices, receipts, and cancelled check copies.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0160

Continuing Coverage Options — HK ESI

(1) Eligible members who lose their insurance coverage may choose to enroll in HKC, COBRA, a prevailing portability plan, a state continuation plan, or OMIP portability.

(2) OPHP will subsidize premiums for any of these options if the member is determined eligible by the Authority. Options available to members are based on the member's individual circumstances.

(3) Eligible plans must meet the benchmark. Portability plans that do not meet benchmark are not eligible for a subsidy.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0170

Adding Family Members

(1) Subsidized families may add members to their HKC or HK ESI enrollment at any time throughout the 12-month eligibility period as long as the member applies through the Authority and is determined eligible.

(2) HKC premium rates and the member's portion of the premium may change as a result of adding new family members. The reimbursement amount may change for ESI members.

(3) HKC plan rates may change each year in January. Plan rate changes may result in member premium changes.

(4) The Authority will recalculate the member's FPL based on family circumstance changes. If the new FPL results in a higher subsidy or OHP full subsidy coverage, the change will be effective the first of the following month. If the new FPL results in a lower subsidy or no subsidy, no change will be made until the end of the 12-month eligibility period.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0180

Member Reporting

Members must report changes in circumstance within 10 calendar days as required by the Authority. The changes include the following:

- (1) Change of employer;
- (2) Change of home or mailing address, even if temporarily away (more than 30 days);
- (3) New or additional health insurance including ESI;
- (4) Loss of ESI;
- (5) Change in eligibility status for any family member;
- (6) Any family member who becomes ineligible for their health insurance;

(7) Change in persons authorized to receive information or perform any business action on a member's case; and

(8) Change in employer contribution amounts for members receiving a subsidy in ESI.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0190

HKC or HK ESI Member Termination

(1) OPHP will terminate HKC benefits due to non-payment of premium if payment is not received and posted by the Authority's Fiscal Unit by the due date;

(a) Once a member is terminated, they must reapply through the Authority to receive benefits.

(b) The member may reapply to the Authority promptly but must serve two months without insurance before re-enrolling and starting coverage in a HKC plan.

(c) The member must pay two months premium share in addition to any outstanding balance before re-enrollment.

(d) Terminated members with an outstanding balance must pay in full or establish a payment plan per OAR 442-010-0220 in order to re-enroll.

(e) For terminated members with an outstanding balance, OPHP will refer the account to the Authority's Fiscal Unit for collection. (ref. 442-010-0220)(2) A member will be terminated if the member is no longer a permanent Oregon resident.

(3) If a member loses their HK ESI and fails to notify OPHP, the member may be terminated per OARs 442-010-0180 and 461-135-1101.

(4) The member may be terminated if an HK ESI member fails to provide monthly verification of coverage, premiums, and employer contribution within 30 days from the date OPHP requests documentation.

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(5) The member will be terminated if the Authority determines the member to be ineligible at redetermination or any time during their period of eligibility.

(6) An HKC enrolled member will be terminated if the member is found to be currently enrolled in another private, public, government sponsored health insurance plan such as CHAMPVA or TRI-CARE, or qualified ESI plan. The HKC benefits will be terminated retroactively based on one of the following, whichever is earlier:

(a) The effective date of HKC coverage if the other health insurance started prior to the effective date of HKC enrollment; or

(b) The effective date of the other health insurance if the coverage started while the member was insured with HKC.

(7) A member will be terminated if the member fails to comply with a payment plan for an amount due as pursuant to OAR 442-010-0220.

(8) A member must be terminated when he or she turns 19 years old:

(a) The coverage is terminated at the end of the member's birthday month.

(b) The Authority must provide timely continuing benefit decision notice (OAR 461-175-0050) to the member prior to the change in their benefits.

(9) A member may be terminated if OPHP discovers that a public entity, employer, health care provider, or another entity has paid or is paying premiums for the member or reimburses the member for premium payments for the purpose of reducing its own financial loss or obligation. Termination may take effect the date the public entity, employer, health care provider, or any other entity began paying or reimbursing the member for the premium.

(10) HKC terminations resulting from an Authority referral administrative error will be effective the first of the month following when the paid coverage month ends.

(11) If the member requests disenrollment verbally or by e-mail, HKC staff will send a timely (10-day) notice (Department 456 form) at least 10 calendar days before the last day of the month. HKC benefits will be terminated on the last day of the month in which the timely notice was sent.

(12) If the member requests disenrollment in writing using a Department 457D form or a signed letter within the last 10 calendar days of the month, OPHP staff will terminate benefits the last day of the month in which the request was received. OPHP may terminate benefits retroactively.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0210 Overpayments

(1) Any overpayment amount is a debt owed to the State of Oregon and may be subject to collection.

(2) An overpayment to the carrier may occur when a member is enrolled in a HKC program and another private, public, government sponsored health insurance plan such as CHAMPVA or TRI-CARE, or qualified ESI plan at the same time. OPHP will notify the carrier if an overpayment was made and recover premium from the carrier.

(3) An overpayment to a member may occur when the member intentionally or unintentionally:

(a) Provided incorrect or incomplete information to OPHP or the Authority.

(b) Failed to report changes in circumstances within required timelines to OPHP or the Authority; or

(c) Claimed and was reimbursed premiums paid on their behalf by the employer for an ineligible subsidy period.

(4) OPHP shall provide written notice of member overpayments. This written notice must inform members of:

(a) The amount of and the reason for the overpayment; and

(b) Contested case hearing rights.

(5) OPHP will collect member overpayment amounts in one lump sum if the member is financially able to repay the overpayment amount in that manner. If the member is financially unable to pay the amount due in one lump sum, OPHP may accept regular installment payments as outlined in 442-010-0220.

(6) If OPHP is unable to recover the overpayment amount from the member, OPHP will refer the account to the Authority's Fiscal Unit for collection.

(7) If the member requests a contested case hearing, the Authority's Fiscal Unit will discontinue any attempts at collection until the conclusion of the hearing.

(8) If the hearing decision is in the member's favor, OPHP shall refund any money collected as overpayment recovery as outlined in OAR 442-010-0220 and 442-010-0230.

(9) In order to re-enroll, any former HKC or HK ESI member with an outstanding overpayment balance must agree to pay the overpayment amount using one of the following options:

(a) In one lump sum;

(b) A minimum of \$10 per month or the amount necessary to collect the balance due in one year, whichever is greater; or

(c) An approved payment plan as referenced in 442-010-0220.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0215

Member Refund Due To Concurrent Enrollment

(1) The HKC program is intended for uninsured children.

(2) If a member is enrolled in HKC and has other private, public, government sponsored health insurance coverage such as CHAMPVA or TRI-CARE, or qualified ESI plan, the Authority may terminate the member's eligibility and HKC benefits.

(a) HKC benefits may be terminated back to the effective date of coverage under the other insurance if the coverage started while the member was insured with HKC.

(b) If the other health insurance started prior to the effective date of HKC enrollment, HKC benefits will be terminated to the effective date of HKC coverage.

(c) The member will receive written notice of the termination of HKC eligibility and benefits, including the member's right to request a contested case hearing (ref. OAR 442-010-0260).

(3) OAR 442-010-0060 and the HKC carrier contracts prohibit concurrent HKC and private major medical health insurance with a few exceptions. Examples of concurrent enrollment situations:

(a) The HKC member had other insurance when they first applied for HKC, but failed to disclose it or failed to cancel the other insurance when enrolling into the HKC program.

(b) The HKC member acquired new health insurance after enrollment in HKC. Obtaining other health insurance coverage makes a member ineligible for the program.

(4) If a member is terminated due to concurrent enrollment and the Authority closes the case, HKC shall refund the members premium share that was paid during the concurrent enrollment time period. The member is not eligible for a refund for the first month's premium share if paid by OPHP (ref. OAR 442-010-0100).

(5) The member has 30 days from the date of the refund notice to request a hearing.

(6) Once a member's case is closed, the member must reapply if they want HKC benefits. Members who had prior subsidized HKC coverage are not eligible for the first month's premium to be paid by OPHP when they re-enroll.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0220

Payment Plans

Members may establish a payment plan to reimburse OPHP.

(1) Payment plans may be established for currently enrolled or terminated members. Members and former members will have an option to either repay the amount in full or through a payment plan.

(2) Once a payment plan is approved by HKC management, OPHP sends the member or former member a letter that outlines the agreed upon payment plan. The payment plan will include one of the following methods:

(a) Bill current HKC members for the overpayment amount in addition to the normal monthly billed amount;

(b) Bill former members for the overpayment amount; or

(c) Deduct the overpayment amount from subsidy payments made to HK ESI members.

(3) If the member does not follow the payment plan, OPHP may terminate the account for non-payment. OPHP will attempt to collect the amount due from the member. If the payments are not made, OPHP must notify the Authority's Fiscal Unit and send the account to them for collection (ref. OAR 442-010-0230).

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(4) Terminated members with an unpaid balance who re-qualify for the program must pay the outstanding past balance due or establish a payment plan before they are re-enrolled.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0230

HKC and HK ESI Collections

(1) If OPHP is unable to recover the overpayment amount from the member, OPHP will refer the account to the Authority's Fiscal Unit for collection.

(2) If an account is referred to an outside agency for collection, any expenses incurred for collection may be added to the member's balance due.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0240

Audits

(1) OPHP will conduct quality assurance audits monthly to verify that State and Federal laws, rules, policies and procedures are followed.

(2) As a result of an audit:

(a) A member may be found ineligible for a HKC or HK ESI subsidy.

(b) A member may be found ineligible for a prior subsidy period.

(c) OPHP may adjust the subsidy level for a current or previous subsidy period.

(3) If additional information is requested by OPHP during an audit, the member has 30 days from the date of the Request for Information letter to submit the information. If a member fails to cooperate with an OPHP audit, the member may be disenrolled.

(4) If an audit finding is different than the original eligibility determination, OPHP shall notify the Authority.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0260

Contested Case Hearings

(1) A member may request a hearing on a decision or action.

(2) A member must request a hearing in writing within 30 days from the notice date. The member or the member's representative must sign the request. The timeliness of a hearing request is based on the date the agency receives the request, not the date of the postmark on the request.

(3) Once a hearing is requested, the Authority's Fiscal Unit will not pursue collection of any past due balances on a member account. OPHP will not pursue the recovery of premium from a carrier until a Final Order is issued.

(4) A member whose benefits are due to end may request that their benefits continue during the hearing process. HKC must receive the request for continuing benefits by:

(a) The tenth day following the date of the termination notice; or

(b) The effective date of the action proposed in the notice, whichever is later.

(c) Members must continue to pay premium share during the hearing process in order for the health coverage to remain in effect.

(5) If the member loses the hearing, the member shall reimburse OPHP for the full cost of premiums paid during the period of continuing benefits. If the member wins the hearing, OPHP shall revise the account to reflect the Final Order of the hearing.

(6) If an account is closed and the hearing decision results in reinstatement of health coverage, the time frame for reinstatement of coverage will not exceed 60 calendar days prior to the date of the Administrative Law Judge's decision. Reinstated coverage will begin on the first of the month.

(7) Contested case hearings are conducted by the Office of Administrative Hearings (OAH) pursuant to ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for OAH (ref. OAR 137-003-0501 to 137-003-0700).

(8) With the Attorney General's approval, OPHP may use an employee to represent the agency in contested case hearings as provided in OAR 943-001-0009.

(9) The Agency will issue the Final Order, and each OAH Proposed Order must include a statement to that effect.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 10-2011, f. & cert. ef. 12-22-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

442-010-0270

Member/HKC Carrier — Grievances and Appeals

(1) Members who have questions about their insurance coverage may contact the HKC carrier with questions and concerns.

(2) A member appealing a HKC carrier decision or action will follow the Grievances and Appeal process outlined in the carrier contracts and member handbooks.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11; OPHP 12-2012, f. 12-27-12, cert. ef. 1-1-13

Rule Caption: Amend administrative rules for the Family Health Insurance Assistance Program.

Adm. Order No.: OPHP 3-2012

Filed with Sec. of State: 12-31-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 12-1-2012

Rules Adopted: 442-005-0235

Rules Amended: 442-005-0000, 442-005-0010, 442-005-0020, 442-005-0030, 442-005-0040, 442-005-0050, 442-005-0070, 442-005-0080, 442-005-0090, 442-005-0100, 442-005-0110, 442-005-0120, 442-005-0130, 442-005-0140, 442-005-0150, 442-005-0160, 442-005-0170, 442-005-0180, 442-005-0190, 442-005-0200, 442-005-0210, 442-005-0220, 442-005-0230, 442-005-0240, 442-005-0260, 442-005-0270, 442-005-0275, 442-005-0280, 442-005-0290, 442-005-0300, 442-005-0310, 442-005-0320, 442-005-0330, 442-005-0340

Rules Repealed: 442-005-0350

Subject: The Office of Private Health Partnerships (OPHP) Family Health Insurance Assistance Program (FHIAP) is amending the Oregon Administrative Rules to make corrections, modify procedures to increase efficiency, and make minor word changes. As a continued effort to clarify and make the Oregon Administrative Rules more efficient, the Office will repeal OAR 442-005-0350, removing unnecessary text and placing other text in more appropriate rules.

Rules Coordinator: Wanda Davis—(503) 378-5901

442-005-0000

Purpose and Statutory Authority

(1) OAR 442-005-0000 to 442-005-0340 are adopted to carry out the purpose of ORS 414.841 to 414.864, establishing within the Office of Private Health Partnerships a Family Health Insurance Assistance Program for Oregon residents who earn up through 200 percent of the federal poverty level.

(2) OAR 442-005-0000 to 442-005-0340 are adopted pursuant to the general authority of the Office of Private Health Partnerships under ORS 414.858 and the specific authority in ORS 414.841 to 414.864.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 6-2011, f. & cert. ef. 5-19-11; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0010

Definitions

(1) "Alien Status Requirement." A qualified non-citizen meets the alien status requirement for FHIAP if the individual is one of the following:

(a) A person who was admitted as a qualified non-citizen on or before August 22, 1996;

(b) A person who entered the U.S. on or after August 22, 1996 and it has been five years since he or she became a qualified non-citizen;

(c) A person who has obtained their qualified non-citizen status less than five years ago, but entered the U.S. prior to August 22, 1996. The non-citizen must show that he or she has been living in the U.S. continuously for five years from a date prior to August 22, 1996 to the date the non-citizen obtained their qualified status and did not leave during that five-year period. If the non-citizen cannot establish the five-year continuous residence before he or she obtained their qualified status, the person is not considered to have entered the U.S. prior to August 22, 1996;

(d) Regardless when they were admitted, a person with one of the following designated statuses:

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(A) A person who is admitted as a refugee under section 207 of the INA;

(B) A person who is granted asylum under section 208 of the INA;

(C) A person whose deportation is being withheld under section 243(h) of the INA;

(D) A Cuban or Haitian entrant who is either a public interest or humanitarian parolee;

(E) A person who was granted immigration status according to the Foreign Operations Export Financing and Related Program Appropriation Act of 1988;

(F) A person who is a victim of a severe form of trafficking.

(e) Regardless of when they were admitted, a qualified non-citizen who is:

(A) A veteran of the U.S. Armed Forces, who was honorably discharged not on account of alien status and who fulfills the minimum active-duty service requirement; or

(B) On active duty in the U.S. Armed Forces (other than active duty for training);

(C) The spouse or unmarried dependent child of the veteran or person on active duty described in (e)(A) and (B).

(f) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(g) A member of an Indian tribe (as described in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(h) Any legal non-citizen who was approved for a FHIAP subsidy prior to November 1, 2004.

(2) "Appeal" means an applicant's request for an administrative review of a FHIAP employee's decision or action.

(3) "Applicant" means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined to be eligible to receive such subsidy or continued subsidy. "Applicant" also includes dependents as defined in OAR 442-005-0010(8).

(4) "Benchmark" means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Office in consultation with the Health Insurance Reform Advisory Committee and is submitted to and approved by the federal government.

(5) "Carrier" means a health or dental insurance company or service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(6) "Certified carrier" means a carrier that has been certified by the Office to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) "Citizen" for the purposes of FHIAP means a native or naturalized member of the United States who can show proof of identity and citizenship as required in the Deficit Reduction Act (DRA) of 2005 (Pub. L. No. 109-171).

(8) "Dependent" means:

(a) An applicant's spouse;

(b) All of the applicant's and applicant's spouse's unmarried children, step children, legally adopted children or children placed under the legal guardianship of the applicant or applicant's spouse who are under the age of 23 and reside with the applicant, and all dependent children of a dependent child;

(c) An unborn child of any applicant or applicant's dependent as verified by written correspondence from a licensed medical practitioner; or

(d) An elderly relative or an adult disabled child, regardless of age, who lives in the home of the applicant, may be included as a dependent:

(A) For the purpose of FHIAP administration as it relates to ORS 414.841 dependent elderly relative means any person 55 and older.

(B) For the purpose of FHIAP administration as it relates to ORS 414.841 adult disabled child means:

(i) A child of the applicant or applicant's spouse who is unmarried, a step child, a legally adopted child, or a child placed under the legal guardianship of the applicant or applicant's spouse who is over the age of 18 and resides with the applicant; and

(ii) A child who is disabled with a physical or mental impairment that:

(I) Is likely to continue without substantial improvement for no less than 12 months or to result in death; and

(II) Prevents performance of substantially all the ordinary duties of occupations in which a person not having the physical or mental impair-

ment is capable of engaging, having due regard to the training, experience and circumstances of the individual with the physical or mental impairment.

(e) Dependent does not include a separated spouse as determined by FHIAP.

(9) "Federal poverty level" means the United States Department of Health and Human Services poverty income guidelines. FHIAP shall adopt guidelines no later than May 1 each year.

(10) "FHIAP" means the Family Health Insurance Assistance Program established by ORS 414.842.

(11) "Group" means insurance offered through an employer or an association.

(12) "Incarcerated" means a person living in a correctional facility, such as:

(a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center; or

(b) Individuals temporarily released from a correctional facility to perform court-imposed community service work; or

(c) Individuals on leave of less than 30 days from a correctional facility; or

(d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(13) "Income" includes, but is not limited to, earned and unearned gross income received by adults and unearned income received by children. Income includes bartering, or working in exchange for goods and services; sale of personal property; discounts on goods and services; working in exchange for rent; distributions from pensions, retirement and investment accounts; and payments made for personal expenses from business funds:

(a) For purposes of determining average monthly income, an applicant may deduct child or spousal support payments made by the applicant for a child or spouse that FHIAP does not consider a dependent. No deduction is allowed for support that is owed but not paid and collected through an offset against the applicant's state income tax refund;

(b) Income does not include educational grants or scholarships.

(c) "Medicaid," see OHP.

(14) "Medicare" means coverage under either parts A or B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et. seq., as amended.

(15) "Member" means a person approved for FHIAP and enrolled in a health insurance plan using the subsidy, or a Homecare Union Benefits Board (HUBB) applicant enrolled in a health benefit plan and approved for, but not yet enrolled in FHIAP.

(16) "Misrepresentation" means making an inaccurate or deliberately false statement of material fact, by word, action, or omission.

(17) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(18) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or paid on behalf of, that member, as well as any civil penalty assessed by the Office.

(19) "Qualified non-citizen" for the purposes of FHIAP. A person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq);

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year;

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(h) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service;

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(i) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply;

(j) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(k) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. 5303A(d);

(l) A member of the U.S. Armed Forces on active duty (other than active duty for training);

(m) The spouse or dependent child of a person described in either (k) or (l) above;

(n) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2004.

(21) "Redetermination" means the periodic review and determination of a member's continued eligibility or subsidy level.

(22) "Reservation list" means a waiting list of potential applicants for FHIAP.

(23) "Resident" means a citizen or qualified non-citizen who resides in Oregon or a full-time college student who is a citizen or qualified non-citizen with a parent who resides in Oregon.

(24) "Self-employment income" means gross receipts of a business owned, in whole or in part, by a FHIAP applicant or dependent if the gross receipts are reported on an Internal Revenue Service (IRS) Schedule C or 1099. Self-employment income also includes income received for providing adult foster care if the recipient of the care lives in the applicant's home and child care providers who are not employed by a childcare business. Self-employment does not include income received from a partnership, S-corporation, C-corporation, or adult foster care if the care is not provided in the caregiver's home. Self-employment does not include income received from a Limited Liability Company except in the following situations:

(a) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule C for said income, that income shall be treated as self-employment and subject to business deductions;

(b) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule F or J for said income, that income shall be treated as Farming, Fishing or Ranching and subject to business deductions.

(25) "Support" means any court-ordered monetary payment for a child or former spouse or domestic partner whom FHIAP does not count in the applicant's family.

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

Stat. Auth.: ORS 735.724, 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 2-2007, f. 6-18-07, cert. ef. 7-9-07; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPHP 3-2010, f. & cert. ef. 7-22-10; OPHP 3-2011, f. & cert. ef. 2-25-11; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0020

Reservation Lists

(1) To manage enrollment and ensure that funds are available to cover subsidy payments for those enrolled, FHIAP shall establish three reservation lists for prospective applicants. One reservation list for each of the following:

(a) Applicants who have or will have access to group coverage in the future;

(b) Applicants who do not have access to group coverage; and

(c) Applicants who are families with potentially eligible children.

(2) The Office shall establish procedures to manage the reservation lists with the goal of equal distribution of funds between the reservation lists. This may require FHIAP to release applications from one reservation list ahead of the other.

(3) An applicant may obtain an individual or group application by first getting on the reservation list; or may access a group application via FHIAP's website; or from an employer or insurance producer.

(4) Prospective applicants shall be added to the appropriate reservation list or assigned a reservation number in order of the date FHIAP receives a completed reservation request either in writing or over the telephone. A completed application form may be deemed a reservation request if no prior request was made.

(5) Each request shall be assigned a reservation number, which shall also function as confirmation of placement on the appropriate reservation list.

(6) Prospective applicants on the reservation list shall be notified of their right to apply for FHIAP, as program funds are available.

(7) When enrollment in FHIAP reaches the maximum that funding allows, additional enrollment may occur as current members terminate or if additional program funding becomes available.

(8) A prospective applicant has 75 calendar days from the date the Office mails the application form, or notifies the prospective applicant that they may apply for a FHIAP subsidy, to return a completed application form to the Office. If the Office does not receive a completed application form postmarked within 60 calendar days from the date it mails the application form, or notifies the applicant, the Office shall mail a notice to the prospective applicant reminding them to complete and submit the application form.

(9) If a prospective applicant does not return an application form within 75 calendar days from the original date of mailing or notification, the Office shall remove the prospective applicant's name from the reservation list.

(10) A prospective applicant may enroll in a health benefit plan while on the reservation list as long as they have met the six-month period of uninsurance requirement or exceptions to the period of uninsurance requirement prior to enrolling in the plan.

(11) FHIAP applicants may add new dependents to an existing insurance plan or their FHIAP application without adding them to the reservation list first.

(12) Members who have terminated from FHIAP cannot re-enroll in the program without first being placed on the appropriate reservation list unless they have a family member who is still enrolled in FHIAP.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 1-2012, f. & cert. ef. 1-13-12; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0030

Application Process

(1) FHIAP shall use an application and any documentation required on the application to determine eligibility and subsidy level.

(2) Applicants may only send in information providing program eligibility during the application process. FHIAP shall not accept information sent outside of the application timeframe to use in an audit, appeal or contested case hearing except as provided in OARs' 442-005-0310, 442-005-0320, 442-005-0330 and 442-005-0340.

(3) Program openings occur when funds are available.

(4) Applicants are mailed an application on a first come first serve basis, when there are program openings.

(5) FHIAP reviews applications in the order they are received.

Eligibility decisions include:

(a) Approval for immediate subsidy;

(b) Denial; or

(c) Request for more information.

(6) When there are no program openings, FHIAP may approve the application, but the applicant may not be eligible for a subsidy right away. These approved applications are held in a queue. Applicants are mailed a notice when they are able to enroll for subsidies.

(7) Documents that verify required information requested on the application must be provided with the application if FHIAP is not able to verify the information electronically. Required documentation includes but is not limited to:

(a) A copy of a current Oregon identification or other proof of Oregon residency for all adult applicants;

(b) For non-United States citizens, a copy of documentation from the Department of Homeland Security showing their status and when they arrived in the United States.

(c) Documents verifying all adult applicant's and spouse's earned and unearned income and children's unearned income for the one month prior to the month in which the application is signed. Documentation may include, but is not limited to, pay stubs, award letters, child support documentation and unemployment benefit stubs or printouts. If an applicant or spouse is employed by a business or partnership that is either partially or wholly owned by the applicant or spouse, business documentation as described in OAR 442-005-0070(2)(d) must also be submitted

(d) A completed Self-Employment Income Worksheet and documents verifying income from self-employment for the six months prior to the signature month on the application for those submitting an income attestation. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(e) A completed Farming and Ranching Income Worksheet and documents verifying income from farming, fishing and ranching for the 12 months prior to the signature month on the application for those submitting

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an income attestation Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(f) The most recently filed federal tax return and all schedules for applicants who have income from self-employment, fishing, farming, or ranching, rentals, royalties, interest and dividends.

(g) A copy of any group insurance handbook, summary, or contract that is available to any applicant.

(h) A completed Group Insurance Information (GII) form, if the applicant has group insurance available to them.

(i) For applicants with no income, the completed No Income form or other signed statement explaining how the applicant is meeting their basic needs, such as food, clothing and shelter.

(8) Additional verification must be provided when FHIAP requests it.

(9) FHIAP may verify any factors affecting eligibility, benefit levels or any information reported, such as:

(a) Data or other information received by FHIAP that is inconsistent with information on the FHIAP application.

(b) Information provided on the application is inconsistent;

(c) Information reported on previous applications that is inconsistent with a current FHIAP application.

(10) FHIAP may decide at any time during the application process that additional eligibility factors must be verified.

(11) FHIAP may deny an application or end ongoing subsidy when acceptable verification or required documentation is not provided.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 6-2010(Temp), f. & cert. ef. 10-11-10 thru 4-8-11; OPHP 1-2011(Temp), f. & cert. ef. 1-5-11 thru 4-8-11; Administrative correction 4-25-11; OPHP 5-2011, f. & cert. ef. 4-22-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 1-2012, f. & cert. ef. 1-13-12; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0040

Pending Applications

(1) Whenever additional information is requested by FHIAP during the application process the application shall be placed in a "pend" status.

(2) Whenever further information is requested by FHIAP during the application process, the applicant has 45 calendar days from the date on the request to provide the additional information. If the information requested by FHIAP is not received within 30 calendar days from the date on the request, the Office shall mail a notice to the applicant reminding them of the due date by which they must provide the additional information.

(3) If an applicant does not provide all requested information within 45 days of the initial request, the application shall be denied.

(4) Once an applicant has been denied because the applicant failed to respond to the request for further information, the applicant must make a new reservation request to FHIAP to be sent an application in the future. Their name may be placed on the reservation list in the manner prescribed in OAR 442-005-0020.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0050

Eligibility

In order for an applicant to qualify for a FHIAP subsidy, applicants must:

(1) Be a resident of Oregon or a full-time college student with a parent who is a resident of Oregon.

(2) Be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(3) Not be eligible for or receiving Medicare benefits.

(4) Have family income of zero through 200 percent of the Federal Poverty Level in effect at the time of eligibility determination. Income determination is outlined in OAR 442-005-0070.

(5) Meet one of the statutory definitions of family in ORS 414.841(3) at the time of eligibility determination. To be included in the family size for FHIAP eligibility determination, the applicant's family members must meet the definition of dependent under OAR 442-005-0010(8):

(a) A dependent may be counted in two separate households for the purposes of determining eligibility for FHIAP and any other state assistance program;

(b) A dependent may be counted in two separate households for the purpose of determining eligibility for both families in FHIAP;

(c) A dependent may not be enrolled in FHIAP and OHP (or any other state medical assistance program) at the same time;

(d) A dependent may be enrolled in FHIAP and any other state assistance program (except medical) at the same time;

(e) If a dependent is counted in two separate households for the purpose of determining eligibility in two different assistance programs, enrollment shall be determined by criteria established in procedure.

(6) Meet either a period of uninsurance requirement or exceptions listed in OAR 442-005-0060.

(7) Not be incarcerated for more than 30 days or be a ward of the State.

(8) Provide necessary materials by the dates specified in FHIAP correspondence in order to allow for eligibility determination. If information submitted is not submitted by the dates specified in FHIAP correspondence or the information is inconsistent or incomplete, the applicant may be denied.

(9) If applying for subsidy in the group market, must be able to enroll in a group insurance plan that meets the benchmark standard established by the Office within twelve months of eligibility determination. If an applicant to the group market does not have access to a group plan, the group plan they have access to does not meet the benchmark standard, or they cannot enroll into their group plan within twelve months of eligibility determination, the applicant shall be denied and placed on the reservation list for an individual subsidy using the same date they were placed on the group reservation list.

(10) If an application is sent from the child-only reservation list, subsidies shall only be approved for children. Adults are not eligible for subsidy on this type of application. If an application from the child-only list is denied, the family shall be placed at the end of the group or individual reservation list, depending on the available insurance market.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; IPGB 3-2006(Temp), f. & cert. ef. 11-27-06 thru 5-25-07; Administrative Correction, 6-16-07; OPHP 1-2007, f. & cert. ef. 6-18-07; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPHP 3-2010, f. & cert. ef. 7-22-10; OPHP 3-2011, f. & cert. ef. 2-25-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 1-2012, f. & cert. ef. 1-13-12; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0070

Income Determination

(1) In order to qualify for FHIAP, an applicant must have average monthly gross income, from all sources, through 200 percent of the federal poverty level in effect at the time of eligibility determination. Subsidies shall be approved on a sliding scale determined by income and family size. Income from more than one source shall be determined individually based on the criteria for each source and the results totaled for a final average monthly income amount. For the purposes of FHIAP, there are six primary categories of income; these categories are:

(a) Earned and unearned income from non-self-employment sources.

(b) Self-employment and fishing income.

(c) Farming and ranching income.

(d) Income to owners of corporations and/or partnerships.

(e) Rental and royalty income.

(f) Interest and dividend income.

(2) FHIAP shall determine into which category or categories an applicant's income falls and treat each type of income appropriately. FHIAP shall determine the applicant's income eligibility according to the following detail:

(a) For earned and unearned income from non-self-employment sources, gross monthly income shall be determined using income received in the one month prior to the month in which the application was signed.

(b) For self-employment and fishing, average income shall be determined using figures from the applicant's most recently filed Federal Schedule C or C-EZ. Non-allowable expenses as listed on the Self-Employment Income Worksheet shall be added to the business net profit or loss. Other non-allowable business expenses not listed on the worksheet are depletion, amortization, entertainment, gifts and charitable giving. These expenses shall also be added to the business net profit or loss.

(c) For farming and ranching, income shall be determined using figures from the applicant's most recently filed federal Schedule F. Non-allowable expenses as listed on the Self-Employment Income Worksheet shall be added to the business net profit or loss. Other non-allowable business expenses not listed on the worksheet are depletion, amortization, entertainment, gifts and charitable giving. These expenses shall also be added to the business net profit or loss.

(d) For owners of corporations and partnerships, income shall be determined using average monthly gross wages paid to the applicant(s) plus any payments made from business funds for personal expenses in the three-calendar months prior to the month in which the application was signed. The following documents are required for eligibility determination:

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(A) Owners of corporations must submit the corporation's most recently filed federal taxes with all schedules.

(B) Owners of partnerships must submit the partnership's most recently filed federal taxes with all schedules.

(C) Owners of either corporations or partnerships must submit three months of both personal and business bank statements.

(e) Income from rentals and royalties shall be determined using figures from the applicant's most recently filed federal Schedule E. If rental income has declined since the applicant's last filed taxes, the applicant may submit proof of rental income in the three months before the month the application was signed. An average of the three months of rental income shall be used in the financial eligibility calculation.

(f) Income from interest and dividends shall be determined using figures from the applicant's most recently filed federal Schedule B, C, D, 1099 Misc., or 1099 DIV.

(g) In no case shall a net loss from self-employment, farming, ranching, fishing or other business income be used to reduce or offset any other sources of income.

(3) In the event the taxes of an applicant with income in categories (1)(b) and (1)(c) do not reflect the applicant's current income, the applicant may submit an attestation of their income by submitting a Self-Employment Income Worksheet with documentation of their income for the six months before the month the application was signed for self-employed applicants, or by submitting a Farming, Fishing, and Ranching Income Worksheet with documentation of their income for the 12 months before the month the application was signed for applicants with farming, fishing and ranching income.

(a) Documentation includes but is not limited to business ledgers, profit and loss statements and bank statements.

(b) Average adjusted income shall be determined by either method described below as specified by the applicant on the Self-Employment or Farming, Ranching and Fishing Income Worksheet. Whichever method the applicant chooses to use shall be the method used throughout that year's eligibility determination, including appeal and contested case hearing processes.

(A) Income received from farming, fishing, ranching and self-employment shall be reduced by 50 percent for business expenses; or

(B) Income received from farming, fishing, ranching or self-employment shall be reduced by the actual allowable expenses incurred during the six or 12 months prior to the month in which the application was signed. Allowable expenses are listed on the Self-Employment or Farming, Ranching and Fishing Income Worksheets.

(c) Attestations are subject to future audit for accuracy. The file may be referred for collection if misrepresentation or overpayment are found.

(d) Self-employment, farming, fishing or ranching income shall be determined based on the documentation submitted with the application and any submitted in response to a request by FHIAP staff. After eligibility determination is completed, an applicant may not change from income determination under Section 2 of this rule to an attestation under Section 3 of this rule or vice versa. The method used for eligibility determination shall be used throughout that year's eligibility determination, including appeal and contested case hearing processes.

(4) Income is available immediately upon receipt, or when the applicant has a legal interest in the income and the legal ability to make the income available, except in the following situations when it is considered available as indicated:

(a) For earned and unearned income:

(A) Income available prior to any deductions such as garnishments, taxes, payroll deductions, or voluntary payroll deductions shall be considered as available; however, support payments as defined in OAR 442-005-0010(25) may be deducted from gross income if the applicant is able to prove the payments were made.

(B) Income usually paid monthly or on some other regular schedule, but paid early or late is treated as available on the regular payday.

(C) Payments made in a "lump sum" shall be divided out over the number of months the payment is for. "Lump sum" payments shall only be divided if the applicant can provide proof of the period for which the payment was made.

(b) Earned income is available as follows:

(A) Income withheld or diverted at the request of an employee is considered available in the month the wages would have been paid;

(B) An advance or draw that will be subtracted from later wages is available when received; and

(c) Payments that should legally be made directly to an applicant, but are paid to a third party on behalf of an applicant, are considered available the date that is on the check or stub.

(6) Income is not available if:

(a) The wages are withheld by an employer, with the exception of garnishment, even if in violation of the law;

(b) The income is paid jointly to the applicant and other individuals and the other individuals do not pay the applicant his/her share; and

(c) It is received by a separated spouse. FHIAP shall determine when an applicant's spouse is deemed separated for purposes of this subsection (5)(c).

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 5-2011, f. & cert. ef. 4-22-11; OPHP 7-2011(Temp), f. & cert. ef. 7-15-11 thru 1-10-12; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 9-2011, f. & cert. ef. 11-4-11; OPHP 1-2012, f. & cert. ef. 1-13-12; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0080

Additional Eligibility Requirements in the Group Market

(1) Applicants on the group reservation list shall be approved for a FHIAP subsidy only if a group plan that meets the benchmark standard is available to them or someone in their family at the time of application, even if enrollment in the plan is not immediate.

(2) If an applicant is sent an application based on availability of group insurance and does not have a group plan available to them or anyone in their family within 12 months of application, the application shall be denied. The applicant shall automatically be placed on the individual reservation list using the same date they were placed on the group reservation list.

(3) If an applicant on the group reservation list has access to a group insurance plan, but it does not meet the benchmark, the application shall be denied and the applicant shall be placed on the individual reservation list using the same date they were placed on the group reservation list.

(4) In the instance when FHIAP is not allowed as a qualifying event, the applicant must enroll during the employer's open enrollment period. The applicant shall remain eligible for subsidy through their group insurance for 12 months.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0090

Determination — Approvals and Denials

(1) If the applicant is denied subsidy during the application process, FHIAP shall send a letter advising the applicant of the decision. The letter shall include information regarding the applicant of the decision. The letter shall include information regarding the applicant's right to appeal or request a contested case hearing and the steps necessary to do so (ref. 442-005-0330). Applicants whose entire family are denied and wish to reapply must first get on the appropriate reservation list.

(2) If the applicant is approved for subsidy, FHIAP shall send a letter advising the applicant of the decision. The letter shall include information about who has been approved for subsidy and the level of subsidy to be paid.

(3) The subsidy eligibility period shall be based on the subsidy approval date, not the effective date of enrollment in the insurance plan.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0100

Subsidy Levels

(1) FHIAP children ages zero through 18 are subsidized at 100 percent of the child's monthly premium.

(2) When a family has average gross monthly income up to 125 percent of federal poverty level in effect at the time of determination, family members ages 19 and up shall receive a subsidy of:

(a) 95 percent of the member's monthly premium amount in the individual health benefit plan market; or

(b) 95 percent of the member's share of the monthly premium amount in the group health benefit plan market.

(3) When a family has average gross monthly income from 125 up to 150 percent of federal poverty level in effect at the time of determination, family members ages 19 and up shall receive a subsidy of:

(a) 90 percent of the member's monthly premium amount in the individual health benefit plan market; or

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(b) 90 percent of the member's share of the monthly premium amount in the group health benefit plan market.

(4) When a family has average gross monthly income from 150 up to 170 percent of federal poverty level in effect at the time of determination, family members ages 19 and up shall receive a subsidy of:

(a) 70 percent of the member's monthly premium amount in the individual health benefit plan market; or

(b) 70 percent of the member's share of the monthly premium amount in the group health benefit plan market.

(5) When a family has average gross monthly income from 170 through 200 percent of federal poverty level in effect at the time of determination, family members ages 19 and up shall receive a subsidy of:

(a) 50 percent of the member's monthly premium amount in the individual health benefit plan market; or

(b) 50 percent of the member's share of the monthly premium amount in the group health benefit plan market.

(6) The subsidy amounts for family members ages 19 and up shall never exceed 50 percent, 70 percent, 90 percent, or 95 percent of the total premium based on percentage of federal poverty level in effect at the time of eligibility determination.

(7) With the exception of administrative error or audit, subsidy percentage levels shall only be re-evaluated at reapplication. Subsidy dollar amounts may change, however, if the actual premium being subsidized changes.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPHP 3-2010, f. & cert. ef. 7-22-10; OPHP 3-2011, f. & cert. ef. 2-25-11; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0110

Applicant Referral to Health Insurance Producers

(1) FHIAP shall provide assistance to FHIAP applicants requesting help with health benefit plan decisions.

(2) Applicants who wish to purchase an individual health benefit plan shall be referred, upon their request, to participating producers.

(3) To qualify for referrals from FHIAP, health insurance producers must:

(a) Have a current Oregon resident health insurance, general lines producer license, or a nonresident health insurance or general lines producer license, if the nonresident licensee can service the member face to face;

(b) Complete training as required by FHIAP;

(c) Have Errors and Omissions Insurance, with limits of at least \$500,000 per occurrence and \$1,000,000 aggregate annually, in force during their participation in the Producer Referral Program and agree to notify FHIAP if Errors and Omissions coverage is no longer in force;

(d) Agree to provide the same level of client contact and service to customers receiving a FHIAP subsidy as is provided to other customers;

(e) Agree to help customers fill out an entire Oregon Medical Insurance Pool application if necessary;

(f) Agree to advise FHIAP when the sale of a health benefit plan to FHIAP applicants is completed, whether or not the coverage is a certified plan, or the prospective purchaser decides not to purchase any health benefit plan if requested by the Office; and

(g) Agree to inform customers if they or their dependents may be eligible for OHP.

(4) FHIAP reserves the right to remove any agent from the referral program at any time.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0120

Enrollment In Health Benefit Plans — Individual Market

(1) To remain eligible for subsidy assistance, an applicant must apply for coverage with an insurance plan within the timeframes outlined by FHIAP on the Certificate of Eligibility.

(2) Approved applicants shall no longer be eligible for a FHIAP subsidy if they fail to enroll into an insurance plan as outlined by FHIAP on the Certificate of Eligibility. Approved applicants who fail to enroll must get on a reservation list in order to receive an application to reapply for a FHIAP subsidy.

(3) Applicants approved for a subsidy in the individual market must use the subsidy to purchase a plan offered by a FHIAP-certified carrier that meets the benchmark standard.

(4) A family approved for a FHIAP subsidy may choose to enroll family members into different plans, including enrolling some family members

in a group plan, some family members in an individual plan and some family members in the OHP as long as no family member is enrolled in OHP and FHIAP at the same time.

(5) If a person is enrolled in two insurance plans, FHIAP shall subsidize only one plan.

(a) If one of the plans is a group plan that meets the benchmark, FHIAP shall subsidize the group plan. If both plans are group plans that meet the benchmark standard, FHIAP shall subsidize the plan that is most cost-effective to the Office.

(b) If both of the plans are individual, FHIAP shall subsidize only a plan offered by a FHIAP-certified carrier that meets the benchmark standard. If both plans meet the benchmark standard, FHIAP shall subsidize the plan that is most cost-effective to the Office.

(6) Any FHIAP applicant or member who is enrolled in an individual plan and being subsidized by FHIAP must enroll into a group plan if one becomes available to them, provided the group plan meets the benchmark standard. Members who fail to enroll into such a plan are no longer eligible for a FHIAP subsidy in the individual market.

(7) If the applicant is approved for individual insurance subsidy and has not yet enrolled in an individual insurance plan, FHIAP shall begin to subsidize premiums no earlier than the first of the month following the date of the approval letter.

(8) If the applicant is approved for individual insurance subsidy and is already enrolled in the insurance plan, FHIAP may begin subsidizing premiums from the first of the month in which they are approved for subsidy. The subsidy eligibility period shall be based on the subsidy approval date.

(9) If a carrier elects to discontinue participation in the program, members served by that carrier must reapply for insurance coverage with another FHIAP-certified carrier and maintain continuous coverage in order to remain eligible for the subsidy. For the purposes of this section, continuous coverage may include a 120 calendar-day break in coverage.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0130

Member Invoicing — Individual Market

(1) Except for the first billing period, FHIAP shall not pay the carrier until the member's portion of the premium has been received.

(2) Invoices are mailed to members one month in advance of the carrier due date to ensure timely payment to the carrier.

(3) Member payments are due to FHIAP by the date provided on the monthly invoice.

(4) Unpaid balances greater than \$3.00 are mailed a reminder and given an extension on the original due date.

(5) If the payment is not postmarked by the due date on the reminder, FHIAP subsidy may be cancelled.

(6) If FHIAP fails to send a reminder, the member shall be billed for two months during the next billing cycle. In these instances:

(a) FHIAP shall not pay the carrier until the amount due has been paid.

(b) FHIAP shall not be responsible for carrier non-payment terminations.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0140

Member Payments — Individual Market

(1) Member payments shall be processed no less than each business day.

(2) Members shall be notified of payments returned by the bank for Non-Sufficient Funds (NSF).

(a) A check that is returned for Non-Sufficient Funds is considered the same as non-payment.

(b) Replacement funds must be sent within 10 days of the date on the notification letter.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0150

Carrier Payments — Individual Market

(1) Member payments must be received before payment to the carrier is made except:

(a) For the first billing period.

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(b) When advance payment, for a timeframe not to exceed the current subsidy eligibility determination period, is required to meet federal contractual obligations.

(2) In the event the member does not pay their portion of the first months' premiums, FHIAP shall disenroll the member and apply normal overpayment collection practices for the member's portion only.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2007(Temp), f. & cert. ef. 10-29-07 thru 4-26-08; Administrative correction 5-20-08; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0160

Carrier Refunds — Individual Market

(1) FHIAP shall resolve member overpayments by requesting a refund from the carrier; except for overpayments older than three months and overpayments resulting from member misrepresentation.

(2) FHIAP shall seek carrier refunds within 30 days of overpayment determination.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0170

Member Refunds — Individual Market

(1) Member refunds shall be processed no less than weekly.

(2) Member refunds shall not be processed for amounts under \$25.00 unless it is the final payment on a termed account.

(3) Members shall receive refunds for their portion of any overpaid premium.

(4) Member refunds of premiums paid to a carrier shall be processed upon receipt of the refund from the carrier.

(5) Current members billed incorrectly may request a refund or take a credit on their active account for refunds over \$25.00.

(6) Member refunds for premium not yet sent to the carrier shall be paid weekly even if an additional refund is due from the carrier as long as both refunds are over \$25.00.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0180

Selection of Certified Carriers in the Individual Health Benefit Plan Market

Carriers may request to go through the certification process at any time. Selection criteria used to determine which carriers may be certified includes but is not limited to:

(1) Agree to a three-year commitment to be a FHIAP-certified carrier.

(2) Agree to electronic transferring of invoices and payments.

(3) Accept the Certificate of Eligibility in lieu of a first month's payment.

(4) Be an Oregon licensed health insurance company or health care service contractor holding a valid certificate of authority from the Department of Consumer and Business Services authorizing the transaction of health insurance.

(5) Be in the Oregon small employer-sponsored health benefit plan market (2-50 employees) and Oregon individual health benefit plan market.

(6) Have been in the individual or portability market for at least the last three consecutive years.

(7) Agree to accept FHIAP payment grace periods.

(8) The carrier shall remain responsible for notifying its FHIAP membership of premium rate increases.

(9) Offer one or more health benefit plans that meet FHIAP's benchmark requirements.

(10) Agree to give the Office of Private Health Partnerships a written 180-day notice of intent to withdraw from being a certified carrier.

(11) Agree that the Office of Private Health Partnerships may cancel partnership with cause by giving 180-day written notice.

(12) If the Office determines at any time that an insufficient number of individual health benefit plan options are available, it may request additional Individual Health Benefit Plan carriers to be certified.

(13) The carrier discontinuing participation must notify each insured FHIAP member 90 calendar days before their coverage is discontinued and inform each insured to contact FHIAP for assistance in obtaining new coverage.

(14) May give preference to carriers with statewide coverage.
Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0190

Enrollment in FHIAP — Group Market

(1) Any applicant approved for a subsidy in the group market must enroll in a group plan that meets the benchmark standard within 12 months of being approved for FHIAP. Applicants that do not enroll in a group plan within 12 months must get back on the reservation list in order to reapply for a subsidy.

(2) Any FHIAP applicant or member who is enrolled in an individual plan and being subsidized by FHIAP must enroll into a group plan if one becomes available to them, provided the group plan meets the benchmark standard. Members who fail to enroll into such a plan are no longer eligible for a FHIAP subsidy in the individual market.

(3) If the applicant is approved for a group insurance subsidy, FHIAP shall subsidize premiums that pay for the full approval month, no matter what day in the approval month the decision is made. The subsidy eligibility period shall be based on the subsidy approval date.

(4) Once enrolled, if a member loses their group coverage due to loss of employment, or the employer discontinues the group plan, FHIAP shall subsidize a COBRA, portability or individual plan. FHIAP shall also subsidize a COBRA, portability, or individual plan for approved HUBB applicants who have not yet enrolled in the program.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 2-2007, f. 6-18-07, cert. ef. 7-9-07; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0200

Vendor Set-up/State Accounting System — Group Market

Subsidy payments may be payable to:

(1) The member or member's employed spouse from whose pay check the premium is being deducted.

(2) Parents of member children.

(3) Carriers.

(a) Member payments must be received before payment to the carrier is made, except for the first billing period.

(b) In the event the member does not pay their portion of the first months' premiums, FHIAP shall disenroll the member and apply normal overpayment collection practices for the member's portion only.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0210

Employer Verification — Group Market

(1) Members must report changes in circumstances, such as a change in employer premium contributions, to FHIAP as provided in 442-005-0260.

(2) FHIAP shall request a new employer verification form if plan or rate changes become evident through payroll deduction changes, member notification, etc. FHIAP shall continue to subsidize the member at the documented rate until new rates are received. Underpayments shall be paid to members when new rates are documented.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0220

Subsidy Payments — Group Market

(1) The amount FHIAP shall subsidize is based on the monthly insurance premium less the employer's contribution.

(2) FHIAP shall reimburse the eligible members' portion of the premium in the group market using submitted payment verification. Verification may include, but is not limited to payroll records, paycheck stubs, employer letters, carrier invoices, receipts, and cancelled check copies.

(3) FHIAP subsidies for HUBB shall be paid in accordance with Individual Market OARs 442-005-0130, 442-005-0140, 442-005-0150, 442-005-0160, and 442-005-0170.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 2-2007, f. 6-18-07, cert. ef. 7-9-07; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0230

COBRA/Portability

(1) Potential applicants with a COBRA or Portability plan are placed on FHIAP's reservation list.

ADMINISTRATIVE RULES

(2) Members receiving group subsidy who lose their insurance coverage may opt for COBRA, Portability, or an Individual insurance plan and FHIAP shall continue to provide premium subsidy.

(3) Members approved for group subsidy who lose their insurance coverage prior to paying premiums are only eligible for COBRA or portability plan subsidy assistance.

(4) Members approved for group subsidy who lose their insurance coverage prior to using the FHIAP subsidy may opt to use their FHIAP subsidy toward COBRA, state continuation, or portability.

(5) HUBB applicants approved for group subsidy who lose their insurance may also use their FHIAP subsidy for an individual plan, in addition to COBRA, state continuation, or portability.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 2-2007, f. 6-18-07, cert. ef. 7-9-07; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0235

Dental Subsidy for Children and Adults

(1) Children, ages zero through 18 must be enrolled in a FHIAP-subsidized medical plan before they are eligible to receive a subsidy for a dental plan.

(2) Children ages zero through 18 must enroll in the dental plan that is provided by the same insurance company as their medical plan.

(a) If the medical insurance plan does not provide a dental plan, then the child(ren) ages zero through 18 may enroll in a "stand-alone" dental plan with another insurance company.

(3) Children ages zero through 18 may enroll in a dental plan at any time during their FHIAP eligibility.

(4) Family members age 19 or older may enroll in a dental plan only at initial enrollment or at a plan transfer.

(5) Family members age 19 or older are only eligible for:

(a) An individual market dental plan that is offered by the same medical insurance company as their FHIAP-subsidized medical plan; or;

(b) Through their employer if they are receiving their FHIAP-subsidized medical plan through their employer as well.

(6) Family members age 19 or older are ineligible to enroll in "stand-alone" dental plans.

(7) Once a child turns 19, they will remain eligible for FHIAP subsidized medical and dental plans, but their subsidy level will revert to the same subsidy level as the other family members age 19 or older.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0240

Redetermination for Health Insurance Subsidy

(1) Eligibility for subsidy lasts for a maximum of twelve months.

(2) Members must reapply for subsidy once every 12 months after receiving their initial approval.

(3) FHIAP shall send members an application at least 60 calendar days before their subsidy eligibility ends. The application shall be mailed to the last known address of the member. The information provided by the member on this application shall be used to determine the family's eligibility for the next 12 months.

(4) FHIAP shall review eligibility during the redetermination process using the same requirements as outlined in OAR 442-005-0030.

(5) The application is mailed with a letter, outlining the review process and the due date for return of the redetermination materials.

(6) The member shall have at least 45 calendar days from the date the application is mailed to return the redetermination materials. If the redetermination materials are not postmarked, hand or electronically delivered within 30 calendar days, FHIAP shall mail a notice to the member reminding them to submit their application by the due date.

(7) If the redetermination materials are not postmarked or delivered by hand or electronically by the due date, the application is denied and the applicant must make a new reservation in order to receive an application as space permits.

(8) Once the completed application materials are received FHIAP shall take action on it. The action may be approval, denial, or a request for further information from the applicant.

(a) Redetermination that requires more information to determine FHIAP eligibility shall be placed in a "pend" status.

(b) Whenever further information is requested by FHIAP during the redetermination process, the applicant has 45 calendar days following the date of the request to provide the additional information. If the information requested by FHIAP is not postmarked, hand or electronically delivered

within 30 calendar days from the date on the request, FHIAP shall mail a notice reminding the member of the due date.

(c) If a member does not provide all requested information within 45 calendar days of the initial request, the redetermination shall be denied.

(d) Once a member has been denied because they failed to respond to the request for further information, the member must make a new reservation request to FHIAP to be sent an application in the future. Their name may be placed on the reservation list in the manner prescribed in OAR 442-005-0020.

(9) If a member is denied continued eligibility during the redetermination process, FHIAP shall notify the member in writing of the reason for the denial, the effective date of the action, a phone number and resource for questions, and appeal and contested case hearing rights.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 5-2011, f. & cert. ef. 4-22-11; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0260

Member Reporting

(1) Members must report changes in circumstance to FHIAP within 30 calendar days of their occurrence by phone or in writing. These circumstances include the following:

(a) Change of Name;

(b) Change in Employers;

(c) Changes to family composition including death, divorce, any family member becoming a ward of the state or being incarcerated for more than 30 continuous days;

(d) Change of home or mailing address, even if temporarily away (more than 30 days);

(e) If any FHIAP member drops health benefit coverage;

(f) Obtaining different or additional health benefit coverage;

(g) Any family member becomes ineligible for health benefit plan;

(h) Change in employer contribution for FHIAP members receiving subsidy in the group market;

(i) If group insurance becomes available to a member enrolled in the individual market as stipulated in OAR 442-005-0190(2).

(2) Failure to report any of the above changes may result in termination from the program, subsidy suspension, loss of insurance coverage, an overpayment or an underpayment.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0270

Termination of Subsidy

Termination from the FHIAP program occurs when:

(1) Payment of the member's share of the insurance premium is not postmarked by the date stipulated in correspondence from FHIAP;

(a) This includes non-payment of the premium; meaning the member did not send the required payment to FHIAP.

(b) If a subsidy account is terminated due to non-payment of the member's portion of monthly premium, all family members enrolled on that FHIAP-subsidized plan become ineligible for further FHIAP subsidy under the current reservation number.

(2) The member is no longer a resident of Oregon;

(3) The member terminates or is terminated from the member's health benefit plan and fails to notify FHIAP;

(4) The insurance plan that covers an eligible child of any member terminates or is terminated, and the member does not replace the eligible child's health insurance within 120 calendar days from the date FHIAP notifies the member to replace the child's coverage.

(5) The member is determined to be ineligible at reapplication or any time during the subsidy year. Ineligibility results if:

(a) A member is eligible for or receiving Medicare on or before the date the application was signed. Subsidy may remain in force for the remainder of the applicant's 12-month eligibility period if the applicant became eligible for Medicare after signing the application.

(b) A member is incarcerated beyond 30 continuous calendar days.

(c) Any member is enrolled in OHP and FHIAP simultaneously and fails to timely terminate from one program after being notified by FHIAP that they must do so.

(d) Any information submitted is inconsistent and does not allow for eligibility determination.

(e) FHIAP staff makes an administrative error when determining eligibility and the applicant should have been denied and error is identified during an audit of the member's file.

ADMINISTRATIVE RULES

(f) An applicant or member in the individual market becomes eligible for a benchmark-approved group plan with an employer contribution and doesn't enroll within 30 days of the first opportunity of enrollment in the group plan.

(g) The member failed to submit required or requested information by the due date specified in correspondence from FHIAP, or the information was submitted by the due date but was inadequate or unclear such that FHIAP was unable to:

(A) Complete the processing of the member's application.

(B) Determine whether the group health insurance plan or plans available to the member meet the FHIAP benchmark.

(C) Process the member's premium subsidy payment.

(6) In the group market, the member fails to provide monthly verification of coverage, premiums, and employer contribution within 30 days from the date FHIAP requests such documentation.

(7) The member fails to pay an overpayment amount as per OAR 442-005-0280.

(8) The member fails to return their reapplication within 45 days from the date it was mailed to them.

(9) A member is found to have committed misrepresentation on the FHIAP application, billing or reimbursement verification, or any other documentation submitted to FHIAP that results in inappropriate approval for or receipt of health insurance premium subsidies for which the applicant or member is not eligible. If a civil penalty is imposed, the member is ineligible to enroll or re-enroll in FHIAP.

(10) Projected program costs exceed the funding available to cover subsidy payments for those enrolled.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 1-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; Administrative correction 10-21-08; OPHP 3-2008, f. 11-10-08, cert. ef. 11-11-08; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0275

Misrepresentation/Civil Penalty

(1) FHIAP may investigate any applicant, member or former member for misrepresentation in obtaining subsidy benefits. Such investigations may be through random file audits or by management request.

(2) FHIAP may ask appropriate legal authorities to initiate civil or criminal action under Oregon laws when, in FHIAP's judgment, available evidence warrants such action.

(3) FHIAP may issue an intent to take disciplinary action against a member by giving notice of the opportunity for a contested case hearing.

(4) When a finding is made that an applicant or member has committed misrepresentation:

(a) The member is terminated from FHIAP and ineligible to re-enroll in FHIAP;

(b) The member is liable for repayment to FHIAP the full amount of overpayment FHIAP has established, regardless of any restitution amount ordered by a court;

(c) The applicant or member is liable for any civil penalty set by FHIAP up to a statutory limit of \$1,000. The civil penalty amount shall be set by using a sliding scale based on the amount of subsidy paid on the member's behalf.

Stat. Auth.: ORS 735.734, 735.740, & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0280

Overpayments

(1) Any overpayment amount is a debt owed to the State of Oregon and may be subject to collection. An overpayment may result from administrative error, member error, misrepresentation, or civil penalty.

(2) An overpayment is considered to be member error if it is caused by the member's misunderstanding or error. Examples include, but are not limited to, instances where the member intentionally or unintentionally:

(a) Did not provide correct or complete information to FHIAP;

(b) Did not report changes in circumstances to FHIAP;

(c) Claimed and was reimbursed for an ineligible subsidy period.

(d) Failed to pay the member portion of monthly health insurance premium when FHIAP has prepaid the carrier.

(e) Failed to submit proof the member has paid their health insurance premiums for which FHIAP has prepaid the subsidy portion to the member.

(3) An administrative error overpayment may be caused by any of the following circumstances:

(a) FHIAP committed a calculation, procedural, or typing error that was no fault of the member;

(b) FHIAP failed to compute or process a subsidy payment correctly.

(4) A misrepresentation error includes but is not limited to the member giving an inaccurate or deliberately false statement of fact that results in an incorrect eligibility determination, an incorrect subsidy level calculation or incorrect receipt of subsidy after enrollment. Misrepresentation may result in a civil penalty.

(5) The FHIAP member is having the health insurance premium subsidized by another state government program, such as, but not limited to OHP, and such subsidy results in a double payment for the same health insurance premium.

(6) FHIAP shall mail notification of overpayments to the member. This written notice shall:

(a) Inform the member of the amount of and the reason for the overpayment;

(b) Inform members of their appeal and contested case hearing rights.

(7) FHIAP shall collect overpayment amounts in one lump sum if the member is currently enrolled and financially able to repay the overpayment amount in that manner.

(8) If the currently enrolled member is financially unable to pay the amount due in one lump sum, FHIAP will accept regular installment payments as outlined in 442-005-0290 - Payment Plans.

(9) If FHIAP is unable to recover the overpayment amount from the currently enrolled member within overpayment guidelines:

(a) FHIAP may renegotiate the payment plan agreement with the member.

(b) If FHIAP is unable to negotiate an acceptable payment plan, the member's FHIAP account shall be terminated and the outstanding balance due referred to the Oregon Health Authority (OHA) Fiscal Unit for collection after the member's appeal and hearing rights expire.

(10) If the member submits an appeal or contested case hearing request, FHIAP shall discontinue any attempts at collection until the conclusion of the appeal or hearing.

(11) If the appeal decision is in the member's favor, FHIAP shall refund any money collected as overpayment recovery.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0290

Payment Plans

Subsidy overpayments that are paid on the member's behalf or to the member are the member's responsibility. Currently enrolled members may be eligible to establish a payment plan to reimburse FHIAP.

(1) Payment plans for Individual members who are currently enrolled:

(a) Members who have been billed at an incorrect subsidy level or premium rate shall be responsible for repayment of their portion of the amount FHIAP overpaid the insurance carrier on their behalf.

(b) Members shall have an option to either repay the overpayment amount in full or establish a payment arrangement.

(c) Payments established under a payment arrangement shall consist of no less than the regular monthly member portion plus an amount sufficient to reduce the overpayment to zero within 120 days.

(d) If the overpayment cannot be paid within 120 days, special payment arrangements may be coordinated. Consideration for the payment plan shall be the time remaining before the next reapplication period. The overpayment must be paid in full to FHIAP within 12 months unless an exception is negotiated.

(e) Once a payment plan is approved FHIAP sends the member a letter that:

(A) Outlines the payment arrangement and informs members that they are responsible for making timely payments according to the established payment plan.

(B) Informs the member of what action FHIAP will take to collect the overpayment.

(f) If the member fails to follow the payment plan, the member may be terminated for non-payment. The unpaid balance shall then be transferred to the OHA Fiscal Unit collection after the member's appeal and hearing rights expire.

(2) Payment plans for group members who are currently enrolled:

(a) Members have an option to either repay the overpayment amount in full or establish a payment arrangement.

(b) Group member overpayments shall be collected by reducing subsidy reimbursements on active accounts until the full overpayment is repaid,

(c) Group overpayments must be repaid within 120 days unless alternate timeframes are negotiated.

ADMINISTRATIVE RULES

(d) Consideration for the payment plan shall be the time remaining before the next reapplication period.

(e) The overpayment must be repaid within 12 months unless an exception is negotiated.

(3) Payment plans for members whose accounts have been terminated: See Collections Section 442-005-0300.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0300

Collections

(1) FHIAP staff shall reconcile terminated accounts with unpaid balances.

(2) FHIAP staff shall notify the member whose account has been terminated in writing of the collection amount. The former member shall have 21 days to appeal before further collection action is taken, unless appeal rights were already extended in other FHIAP correspondence.

(3) FHIAP shall refer the overpayment to the OHA Fiscal Unit for collection after the former member's appeal and hearing rights expire.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0310

Audits

(1) Quality assurance audits shall be performed to verify:

(a) FHIAP statutes, rules, policies and procedures are followed correctly.

(b) FHIAP procedures are effective.

(c) Eligibility is determined correctly.

(2) Audits may be performed on a directed or random basis.

(3) As a result of an audit:

(a) A member or former member may be determined ineligible for a FHIAP subsidy.

(b) A member or former member may be determined ineligible retroactively for a prior subsidy eligibility period.

(c) A subsidy level adjustment may be necessary for a current or previous determination period.

(4) An audit determination could result in an overpayment or underpayment to a member or former member.

(5) The member or former member must submit additional verification when FHIAP requests it.

(a) FHIAP may verify any factors affecting eligibility, benefit levels or any reported information. Such information includes, but is not limited to:

(A) Any information submitted by the member that is inconsistent.

(B) Information provided on the application that is inconsistent.

(C) Other information that is used as verification but is inconsistent with the information on the application.

(D) Information reported on previous application that is inconsistent with the current FHIAP application.

(b) FHIAP may decide at any time that additional eligibility factors must be verified.

(c) FHIAP may deny an application or end ongoing subsidy when requested verification is not provided.

(6) Requested verification includes the same information as listed in OAR 442-005-0030 as well as any other information that verifies information already submitted.

(7) If additional information is requested during a directed or random audit, the member has 30 days from the date of the Request for Information letter to submit the information. FHIAP shall use the postmark date if mailed, the sent date if submitted electronically or the received date if hand-delivered to determine timeliness. If a FHIAP member fails to cooperate with a FHIAP audit, the member may be disenrolled.

(8) If a decision differs from the original eligibility determination, FHIAP shall notify the member in writing of the reason for the denial or change in determination, the effective date of the action, and the member's appeal and contested case hearing rights.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0320

Appeals

(1) All FHIAP correspondence that notifies applicants or members of decisions and determinations shall include appeal language and outline the steps necessary to file an appeal.

(2) An applicant or member may appeal any decision made or action taken by FHIAP.

(3) To appeal a decision or action, the applicant or member must advise FHIAP in writing of their desire to appeal. The written appeal request must be postmarked, hand or electronically delivered within 21 calendar days of the date on the notice or action.

(4) The appeal request must include the reasons for the appeal, which shall be limited to the issue(s) cited in the decision or determination.

(5) On its own or if asked by an applicant or member, FHIAP may consider additional information during the appeal process. If further information is requested by FHIAP, the applicant or member has 15 calendar days from the date on the request to provide the additional information. If the information requested by FHIAP is not postmarked or delivered within 15 calendar days from the date on the request, the original decision shall be upheld or amended if warranted.

(6) Once FHIAP has made a decision on appeal, the applicant or member shall be notified of the appeal decision.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0330

Contested Case Hearings

(1) An applicant or member may request a hearing on FHIAP's appeal decision.

(2) To receive a hearing, the hearing request must be in writing, signed by the applicant, member, or their attorney and be postmarked, hand or electronically delivered no later than 21 calendar days following the date of the appeal decision notice.

(3) The hearing request must include the reasons for the hearing, which shall be limited to the issue(s) cited in the appeal decision notice.

(4) FHIAP shall participate in a contested case hearing pursuant to ORS 183.413 to 183.470 and may use lay representation per OAR 943-001-0009.

(5) Once a hearing is requested, FHIAP shall not pursue collection of any alleged overpayment until FHIAP has issued a final order affirming the overpayment.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

442-005-0340

Extenuating Circumstances

The Agency Administrator or designee shall appoint a case management panel to review extenuating circumstance requests that may result in exceptions to application of the administrative rules. Requests relating to life circumstances beyond the applicant's control or verifiable third-party interference shall be considered.

(1) Exceptions shall not be granted for any eligibility requirements except the extension of timeframes associated with submitting information, including, but not limited to the application, income verification, appeal or hearing request and information specifically requested by FHIAP staff.

(2) Exceptions shall also be considered for non-payment of the member's portion of the insurance premium.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 3-2012, f. 12-31-12, cert. ef. 1-1-13

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**Oregon Health Authority,
Oregon Educators Benefit Board
Chapter 111**

Rule Caption: Revised to clarify and update language used by the Oregon Educators Benefit Board

Adm. Order No.: OEGB 13-2012

Filed with Sec. of State: 12-19-2012

Certified to be Effective: 12-19-12

Notice Publication Date: 11-1-2012

Rules Amended: 111-010-0015

Subject: Revised language in 111-010-0015 to clarify definitions and keep language used throughout the rules consistent.

Rules Coordinator: April Kelly — (503) 378-6588

111-010-0015

Definitions

Unless the context indicates otherwise, as used in OEGB administrative rules, the following definitions will apply:

ADMINISTRATIVE RULES

(1) "Actuarial value" means the expected financial value for the average member of a particular benefit plan.

(2) "Adverse Benefit Determination" means a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part), for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on but not limited to:

- (a) A determination of a member's eligibility to participate in the plan;
- (b) A determination that the benefit is not a covered benefit; or
- (c) A rescission of coverage, whether or not, in connection with rescission, there is an adverse effect on any particular benefit.

(3) "Affidavit of Domestic Partnership" means a document that attests the eligible employee and one other eligible individual meet the criteria in section (15)(b).

(4) "Benefit plan" includes, but is not limited to, insurance or other benefits including:

- (a) Medical;
- (b) Dental;
- (c) Vision;
- (d) Life, disability and accidental death;
- (e) Long term care;
- (f) Employee Assistance Program Plans;
- (g) Supplemental medical, dental and vision;
- (h) Any other remedial care recognized by state law, and related services and supplies;

(i) Comparable benefits for employees who rely on spiritual means of healing; and

(j) Self insurance programs managed by the Board.

(5) "Benefits" means goods and services provided under benefit plans.

(6) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(7) "Child" means and includes the following:

(a) An eligible employee's, spouse's, or domestic partner's biological son or daughter; adopted child; child placed for adoption; or legally placed child, who is 25 or younger on the first day of the month. An eligible employee must provide the required custody or legal documents to their Educational Entity showing proof of adoption, legal guardianship or other court order if enrolling a child for whom the employee, spouse, or domestic partner is not the biological parent. Grandchildren are only eligible when the eligible employee is the legal guardian or adoptive parent of the grandchild.

(b) A person who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. When the dependent child is 26 years of age or older all the following requirements must be met:

(A) The disability must have existed before attaining age 26.

(B) The employee must provide evidence to the Educational Entity or OEBB that (1) the person had health plan coverage, group or individual, prior to attaining age 26, and (2) health plan coverage continued without a gap until the OEBB health plan effective date.

(C) The person's attending physician must submit documentation of the disability to the eligible employee's OEBB health insurance plan for review and approval. If the person receives health plan approval, the health plan may review the person's health status at any time to determine continued OEBB coverage eligibility.

(D) The person must not have terminated from OEBB health plan coverage after attaining the age of 26.

(c) Eligibility for coverage under this rule includes people who may not be dependents under federal or state tax law and may require an Educational Entity to adjust an Eligible Employee's income based on the imputed value of the benefit.

(8) "Comparable cost (Medical, Dental and Vision)" means that the total cost to a district for enrollment in OEBB plans comparable in design to the district's plan(s) do not exceed the total cost to a district for enrollment in the district's plan(s) using the rate(s) in effect or proposed for the benefit plan year.

(9) "Comparable cost (Basic and Optional Life Insurance, Accidental Death & Dismemberment, and Short and Long Term Disability)" means that the premium rates of an OEBB plan design option do not exceed the average, aggregate premium rates of a district's pre-OEBB plan design in effect the year prior to implementation.

(10) "Comparable plan design (Medical, Dental and Vision)" means that the actuarial values of two plan designs are within 2.5 percent higher or lower of each other.

(11) "Comparable plan design (Basic and Optional Life Insurance and Accidental Death & Dismemberment)" means that 90 percent of district employees can obtain a maximum benefit through an OEBB plan design that is within \$2,500 of the maximum benefit obtained through a pre-OEBB plan design in effect the year prior to implementation.

(12) "Comparable plan design (Short and Long Term Disability)" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered compensation, coverage period duration, and maximum payment per benefit period through an OEBB plan design as through a pre-OEBB plan design in effect the year prior to implementation.

(13) "Dependent" means and includes the eligible employee's spouse or domestic partner, or child as defined by OAR 111-010-0010(7), unless otherwise defined in another OEBB rule.

(14) "Documented district policies" means Educational Entities' policies and practices that apply to an employee group and are submitted to the Oregon Educators Benefit Board during the plan selection process. Educational Entities' policies and practices must be identified and submitted with the applicable employee group plan selections.

(15) "Eligible Domestic partner," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or

(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:

(A) Both are at least 18 years of age;

(B) Are responsible for each other's welfare and are each other's sole domestic partners;

(C) Are not married to anyone and have not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;

(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(E) Have jointly shared the same regular and permanent residence for at least six months immediately preceding the date the Affidavit of Domestic Partnership is signed and submitted to the Educational Entity; and

(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.

(G) The eligible employee and domestic partner must jointly complete and submit to the Educational Entity an Affidavit of Domestic Partnership form, within five business days of the electronic enrollment date or the date the Educational Entity received the enrollment/change form. If the affidavit is not received, coverage will terminate for the domestic partner retroactive to the effective date.

(c) The Eligible Employee must notify the Educational Entity within 31 days of meeting all criteria as defined in 111-010-0015 (15)(b) or obtaining the "Declaration of Domestic Partnership" which is recognized under Oregon law.

(d) Educational Entities' must calculate and apply applicable imputed value tax for domestic partners covered under OEBB benefit plans.

(16) "Educational Entity" means public school districts (K-12), education service districts (ESDs), community colleges and public charter schools participating in OEBB.

(17) "Eligible employee" means and includes an employee of an Educational Entity who is actively working or on paid or unpaid leave that is recognized by federal or state law, and:

(a) Is employed in a half time or greater position or is in a job-sharing position; or

(b) Meets the definition of an eligible employee under a separate OEBB rule or under a collective bargaining agreement or documented district policy in effect on January 31, 2008; or

(c) Is an employee of a community college who is covered under a collectively bargained contract and has worked a class load of between 25 percent and 49 percent for a minimum period of two years and is expected to continue to work a class load of at least 25 percent. Coverage is limited to medical to include Kaiser Medical Plan 1A (where available), ODS Medical Plan 8 and ODS Medical Plan 9. The tiered rate structure will apply to all medical plans.

ADMINISTRATIVE RULES

(18) “Eligible Early Retiree” means and includes a previously Eligible Employee who is:

- (a) Not Medicare-eligible; or
- (b) Under 65 years old; and

(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;

(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.

(19) “Employee Group” means employees and early retirees of a similar employment type, for example administrative, represented classified, non-represented classified, confidential, represented licensed, or non-represented licensed, within an Educational Entity. If one or more collective bargaining unit exists within an employee group, each unit will be considered a separate employee group.

(20) “Flexible benefit plan” includes plans that allow contributions on a tax-favored basis including health savings accounts.

(21) “Members” means and includes the following:

- (a) “Eligible employee” as defined by OAR 111-010-0015(17).
- (b) “Child” as defined by OAR 111-010-0015(7).
- (c) “Domestic Partner” as defined by OAR 111-010-0015(15).
- (d) “Spouse” as defined by OAR 111-010-0015(27).

(22) “Non-subject District” means a community college not yet participating in benefit plans provided by the Oregon Educators Benefit Board, or a charter school whose employees are not considered employees of a school district.

(23) “Oregon Educators Benefit Board or OEBB” means the program created under chapter 00007, Oregon Laws 2007.

(24) “OEBB participating organization” means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEBB).

(25) “Provisional Non-subject District” means a common school district, a union high school district, or an education service district that:

- (a) Was self-insured on December 31, 2006;
- (b) Had an independent health insurance trust established and functioning on December 31, 2006; or
- (c) Can provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this Rule.

(26) “Qualified Status Change (QSC)” means a change in family or work status that allows limited mid-year changes to benefit plans consistent with the individual event.

(27) “Spouse” means a person of the opposite sex who is a husband or wife. Except as provided in Oregon Constitution Article XV, Section 5a, a relationship recognized as a marriage in another state will be recognized in Oregon even though such a relationship would not be a marriage if the same facts had been relied upon to create a marriage in Oregon. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

(28) “Subject District” means a common school district, a union high school district, or an education service district that:

- (a) Did not self-insure on January 1, 2007;
- (b) Did not have a health trust in effect on January 1, 2007; or
- (c) Does not provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this Rule.

Stat. Auth.: ORS 243.860 – 243.886
Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 2-2008, f. & cert. ef. 1-4-08; OEBB 10-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBB 1-2009, f. & cert. ef. 1-30-09; OEBB 5-2009(Temp), f. & cert. ef. 3-10-09 thru 9-4-09; OEBB 8-2009, f. & cert. ef. 5-1-09; OEBB 12-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 19-2009, f. & cert. ef. 12-17-09; OEBB 7-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 11-2010(Temp), f. & cert. ef. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 1-2011, f. & cert. ef. 2-11-11; OEBB 6-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 14-2011, f. & cert. ef. 8-2-11; OEBB 15-2011(Temp), f. & cert. ef. 8-2-11 thru 1-28-12; OEBB 16-2011(Temp), f. & cert. ef. 10-1-11 thru 1-28-12; OEBB 20-2011, f. & cert. ef. 10-13-11, cert. ef. 10-14-11; OEBB 22-2011, f. & cert. ef. 12-14-11; OEBB 13-2012, f. & cert. ef. 12-19-12

Rule Caption: Revised rule to keep language consistent with the OEBB definitions rule.

Adm. Order No.: OEBB 14-2012
Filed with Sec. of State: 12-19-2012
Certified to be Effective: 12-19-12
Notice Publication Date: 11-1-2012

Rules Amended: 111-015-0001

Subject: Revised language in 111-015-0001 to keep consistent with OEBB’s definitions division and other OEBB rules.

Rules Coordinator: April Kelly — (503) 378-6588

111-015-0001

Eligible Individuals

(1) Unless otherwise defined under a separate OEBB administrative rule or a collective bargaining agreement or documented district policy in effect on July 1, 2007, the following individuals are eligible to participate in OEBB-sponsored benefit plans:

(a) An eligible employee as defined in OAR 111-010-0015;

(b) A spouse or eligible domestic partner as defined by OAR 111-010-0015;

(c) A child as defined by OAR 111-010-0015.

(2) Collective bargaining agreements and documented district policies scheduled to become effective on or after February 1, 2008, with a definition different than OAR 111-010-0015 must receive written authorization from the OEBB Board prior to finalization.

Stat. Auth.: ORS 243.860 – 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 4-2008, f. & cert. ef. 2-19-08; OEBB 14-2012, f. & cert. ef. 12-19-12

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Oregon Farm Direct Nutrition Program.

Adm. Order No.: PH 15-2012

Filed with Sec. of State: 12-20-2012

Certified to be Effective: 12-20-12

Notice Publication Date: 11-1-2012

Rules Adopted: 333-052-0043, 333-052-0044

Rules Amended: 333-052-0030, 333-052-0040, 333-052-0050, 333-052-0060, 333-052-0065, 333-052-0070, 333-052-0080, 333-052-0090, 333-052-0100, 333-052-0120, 333-052-0130

Subject: The Oregon Health Authority, Public Health Division is permanently amending and adopting rules in OAR chapter 333, division 52 to incorporate the eligibility and benefit requirements of individuals participating in the Oregon Farm Direct Nutrition Program. The addition of these requirements limits potential program liability should an individual dispute benefit distribution.

Additionally, clarifications and adjustments to definitions, the program authorization, violations and sanctions have been made to reflect current program FDNP administrative practices.

Rules Coordinator: Brittany Sande — (971) 673-1291

333-052-0030

Program Overview

(1) The purpose of the Oregon Farm Direct Nutrition Program (Oregon FDNP or FDNP) is to:

(a) Provide locally grown, fresh, nutritious, unprepared fruits, vegetables, and cut culinary herbs to women, infants, and children, who participate in the special supplemental nutrition program for women, infants, and children (WIC) and to low income seniors; and

(b) Expand the awareness and use of farmers’ markets and farm stands where consumers can buy directly from the farmer.

(2) The Oregon FDNP is administered by the Oregon Health Authority (Authority) in partnership with the Oregon Department of Agriculture.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 8-2012, f. & cert. ef. 6-11-12; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0040

Definitions

(1) “Adequate Participant Access” means there are authorized farmers sufficient for participant need.

(2) “Agreement” means a written legal document binding the market or farmer and the Authority to designated terms and conditions.

ADMINISTRATIVE RULES

- (3) "AAA" means Area Agency on Aging.
- (4) "APD" means Department of Human Services, Aging and People with Disabilities.
- (5) "Authority" means the Oregon Health Authority.
- (6) "Authorized" or "authorization" means an eligible farmer or farmers' market has met the selection criteria and signed an agreement with the Authority allowing participation in FDNP, and is not currently disqualified.
- (7) "Check" means a negotiable financial instrument by which FDNP benefits are provided to participants.
- (8) "CMP" means a civil money penalty.
- (9) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.
- (10) "Disqualification" means the act of terminating the agreement of an authorized farmers' market, or farmer from the FDNP for noncompliance with program requirements.
- (11) "Eligible foods" means fresh, nutritious, unprepared, locally grown fruits and vegetables and culinary herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. For example, checks cannot be used for honey, maple syrup, cider, nuts, seeds, plants, eggs, meat, cheese and seafood.
- (12) "Farm Direct Nutrition Program" or "FDNP" means the Oregon Farm Direct Nutrition Program (Oregon FDNP), which is composed of the collective Senior Farm Direct Nutrition Program and WIC Farm Direct Nutrition Program, regulated by the United States Department of Agriculture, Food and Nutrition Services and administered by the State of Oregon.
- (13) "Farmer" means an individual who owns, leases, rents or share-crops land to grow, cultivate or harvest crops on that land.
- (14) "Farmers' Market" means a group of farmers who assemble over the course of a year at a defined location for the purpose of selling their produce directly to consumers.
- (15) "Farm Stand" means a location at which a farmer sells produce directly to consumers.
- (16) "FDNP Participant" or "participant" means a senior participant or a WIC participant receiving FDNP benefits.
- (17) "Fine" means a monetary penalty imposed against the farmer for non-compliance of FDNP rules.
- (18) "Locally grown" means grown in the state of Oregon or in the following counties of a contiguous state: California — Del Norte, Modoc, Siskiyou; Idaho — Adams, Canyon, Idaho, Owyhee, Payette, Washington; Nevada — Humboldt, Washoe; Washington — Asotin, Benton, Clark, Columbia, Cowlitz, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla Walla.
- (19) "Local WIC agency" means the agency or clinic where a WIC participant receives WIC services and benefits.
- (20) "Market" means a farmers' market that has a signed agreement with the Authority to participate in the FDNP.
- (21) "Market Coordinator" means an individual designated by the farmers' market manager (or market board members) responsible for overseeing the market's participation in the FDNP.
- (22) "Market Season" means the time period in which FDNP checks may be transacted as determined by the Authority.
- (23) "Senior Farm Direct Nutrition Program (SFDNP)" means the Senior Farmers' Market Nutrition Program funded by USDA that provides senior participants with checks that can be used to buy eligible foods from an authorized farmer.
- (24) "Senior Participant" means an individual who is over 60 years of age, meets all the eligibility components of the program and who receives FDNP checks.
- (25) "SNAP" means the Supplemental Nutrition Assistance Program of the Food and Nutrition Services of the United States Department of Agriculture. This program was formerly known as the Food Stamp Program or "FSP."
- (26) "Trafficking" means the buying or exchanging of FDNP checks for cash, drugs, firearms or alcohol.
- (27) "USDA" means the United States Department of Agriculture.
- (28) "Validating" means stamping the FDNP check in the designated box with the farmer identification number using the stamp provided by the Authority or a replacement stamp purchased by the farmer.
- (29) "Violation" means an activity that is prohibited by OAR 333-052-0030 through 333-052-0090 and classified in 333-052-0080 through 333-052-0130.

(30) "WIC" or "WIC program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

(31) "WIC Farm Direct Nutrition Program (WIC FDNP)" means the Farmers' Market Nutrition Program funded by USDA that provides WIC participants with checks that can be used to buy eligible foods from an authorized farmer.

(32) "WIC participant" means any pregnant, breastfeeding, or post-partum woman, infant, or child who meets all of the eligibility components of the WIC FDNP and receives WIC FDNP checks.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 8-2012, f. & cert. ef. 6-11-12; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0043

Senior Participant Eligibility and Benefits

(1) An individual is eligible for the Senior Farm Direct Nutrition Program (SFDNP) if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has countable income less than 135 percent of the Federal Poverty Level as listed in OAR 461-155-0295;

(b) Receives Medicaid or SNAP benefits;

(c) Is homeless or resides in their own home or rental property; and

(d) Is age 60 years or older.

(2) SFDNP benefits are limited and benefits will be distributed in an equitable manner but may not be distributed to all individuals who are eligible.

(3) The Authority shall inform eligible seniors each year of the available benefits and how the benefits will be distributed.

(4) SFDNP benefits are valid from June 1 through October 31 of the year in which benefits were issued.

(5) Lost or stolen SFDNP benefits will not be replaced.

(6) An individual who does not receive a benefit in any given year due to lack of sufficient funding to provide SFDNP benefits to all eligible seniors is not entitled to hearing rights.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 15-2012, f. & cert. ef. 12-20-12

333-052-0044

WIC Participant Eligibility and Benefits

(1) An individual is eligible for WIC Farm Direct Nutrition Program (WIC FDNP) if the individual meets all of the following eligibility criteria for the calendar year in which FDNP benefits are distributed:

(a) Is currently receiving benefits under the WIC Program;

(b) Belongs to any of the eligible WIC woman and child categories for the calendar year in which WIC FDNP benefits are distributed; and

(c) Was born before January 1 of the calendar year in which WIC FDNP benefits are distributed if the WIC participant is an infant.

(2) WIC FDNP benefits are limited and benefits will be distributed in an equitable manner within participating local agencies but may not be distributed to all individuals who are eligible.

(3) The Authority will determine a standard benefit package per eligible individual and per family each year.

(4) WIC FDNP benefits will only be issued to the participant/caretaker in a face-to-face contact at the local agency where WIC benefits are received, and the participant/caretaker must receive a FDNP orientation when receiving checks for the first time in the current year.

(5) WIC FDNP benefits are valid from June 1 through October 31 of the year in which benefits were issued.

(6) Lost or stolen WIC FDNP benefits will not be replaced.

(7) Individuals who are denied WIC FDNP benefits may appeal the denial, but shall not receive WIC FDNP benefits while awaiting the decision.

(8) WIC participants whose WIC FDNP benefits are terminated may appeal the termination of benefits and shall continue to receive WIC FDNP benefits until the hearing official reaches a decision or the expiration of the current FDNP season, whichever occurs first.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 15-2012, f. & cert. ef. 12-20-12

333-052-0050

Eligible Foods

(1) FDNP checks may be used to purchase only eligible foods.

ADMINISTRATIVE RULES

(2) Ineligible items include, but are not limited to:

(a) Baked goods, cheeses, cider, crafts, dairy products, dried fruits, dried herbs, dried vegetables, eggs, flowers, fruit juices, honey, jams, jellies, meats, nuts, plants of any kind, potted herbs, seafood, seeds, and syrups.

(b) Fresh fruits, vegetables, and cut culinary herbs that are not locally grown.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0060

Farmer Participation

(1) Only authorized farmers may accept FDNP checks from participants in exchange for eligible foods. Authorized farmers may not accept checks from unauthorized farmers.

(2) In order to be eligible for participation in the FDNP, a farmer applicant must:

(a) Own, lease, rent or sharecrop land to grow, cultivate, or harvest fruits, vegetables and cut herbs in Oregon or a bordering county in a contiguous state to sell fresh at a farmers' market or farm stand;

(b) Complete the farmer application and return it to the Oregon Department of Agriculture to verify eligibility; and

(c) Agree to follow the terms and conditions of the farmer agreement.

(3) Applications will be used to determine authorization for FDNP.

(4) The Authority and the FDNP are not required to authorize all applicants.

(5) Any individual who purchases all the produce they plan to sell is considered a distributor and is not allowed to participate in the FDNP.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0065

Farmer Agreements

(1) A farmer application/agreement must be signed by a representative who has legal authority to obligate the farmer.

(2) The farmer agreement must include a requirement that the farmer comply with OAR 333-052-0030 to 333-052-0130, as applicable to farmers.

(3) The farmer application/agreement will be valid for no more than three years.

(4) Neither the Authority nor the farmer is obligated to renew the agreement.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0070

Farmers' Market Participation

(1) In order to be eligible for participation in the FDNP a farmers' market applicant must:

(a) Designate an individual to be the FDNP market coordinator who will be on-site during operating hours;

(b) Have a minimum of five FDNP-eligible farmers participating in the market each year;

(c) Operate on a consistent basis over the course of the season; and

(d) Agree to comply with all terms and conditions specified in the FDNP agreement.

(2) The Authority and the FDNP are not required to authorize all applicants.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0080

Farmer Participation Requirements, Violations and Sanctions

(1) An authorized farmer must:

(a) Comply with FDNP requirements contained in 7 CFR 248 and 7 CFR 249 and the terms and conditions of the farmer application/agreement;

(b) Accept training on FDNP requirements and ensure that all individuals working in the farmer's stall(s) at the farmers' market(s) or farm stand(s) are trained;

(c) Accept FDNP checks:

(A) For eligible foods only; and

(B) Within the valid dates of the program.

(d) Prominently display the official FDNP sign provided by the Authority on each day of operation when at authorized farmers' markets or authorized farm stands;

(e) Provide FDNP clients with the full amount of product for the value of each FDNP check;

(f) Cooperate with staff from the Authority, the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the Oregon Department of Agriculture may require;

(g) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(h) Ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(i) Assure that all FDNP checks are stamped with the farmer's Authority-assigned identification number and properly endorsed before cashing or depositing at the farmer's financial institution;

(j) Deposit or cash FDNP checks at the authorized farmer's financial institution by the date determined by the Authority;

(k) Reimburse the Authority for FDNP checks that are improperly transacted;

(l) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority;

(m) Not provide credit in exchange for FDNP checks;

(n) Not charge sales tax on FDNP check purchases;

(o) Not seek restitution from FDNP participants for a check not paid by the Authority;

(p) Not give cash back for purchases that amount to less than the value of a check (providing change);

(q) Not use FDNP checks for any purpose other than deposit or cash at their financial institution; and

(r) Not accept FDNP checks from unauthorized farmers.

(2) A farmer is in violation of the FDNP if the farmer:

(a) Fails to:

(A) Comply with FDNP rules and the terms and conditions of the farmer application/agreement;

(B) Accept training on FDNP requirements and ensure that all individuals working in the farmer's stall(s) at the farmers' market(s) or farm stand(s) are trained;

(C) Prominently display the official FDNP sign provided by the Authority on each day of operation when at authorized farmers' markets or authorized farm stands;

(D) Provide FDNP clients with the full amount of product for the value of each FDNP check;

(E) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(F) Ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(G) Assure that all FDNP checks are stamped with the farmer's Authority-assigned identification number and properly endorsed before cashing or depositing at the farmer's financial institution;

(H) Deposit or cash FDNP checks at the authorized farmer's financial institution by the date determined by the Authority;

(I) Reimburse the Authority for FDNP checks that are improperly transacted;

(J) Cooperate with staff from the Authority, the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the Oregon Department of Agriculture may require;

(K) Respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority.

(b) Accepts FDNP checks:

(A) For ineligible foods;

(B) For invalid dates; or

(C) From an unauthorized farmer.

(c) Provides credit in exchange for FDNP checks;

(d) Charges sales tax on FDNP check purchases;

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(e) Seeks restitution from FDNP participants for a check not paid by the Authority;

(f) Gives cash back for purchases that amount to less than the value of a check (providing change);

(g) Uses FDNP checks for any purpose other than deposit or cash at their financial institution.

(3) Farmer sanctions:

(a) The Authority may issue a notification of non-compliance to an authorized farmer for an initial incident of:

(A) Accepting FDNP checks for ineligible foods;

(B) Failing to prominently display the official sign provided by the Authority, each market day when at authorized farmers' markets or authorized farm stands;

(C) Failing to provide FDNP clients with the full amount of product for the value of each FDNP check;

(D) Failing to ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(E) Failing to reimburse the Authority for FDNP checks that are improperly transacted;

(F) Charging sales tax on FDNP check purchases;

(G) Seeking restitution from FDNP participants for checks not paid by the Authority;

(H) Giving cash back for purchases less than the value of the checks (providing change);

(I) Accepting FDNP checks from an unauthorized farmer;

(J) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority;

(K) Using FDNP checks for any purpose other than deposit or cash at the authorized farmer's financial institution; and

(L) Failing to cooperate with staff from the Authority, the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and failing to provide information that the Authority or the Oregon Department of Agriculture may require.

(b) The Authority may disqualify a farmer for four season months, which may cross from the year during which the violation occurred into the following year for an initial incident of providing credit in exchange for FDNP checks.

(c) The Authority may disqualify a farmer for four season months, which may cross from the year during which the violation occurred into the following year, for second or subsequent incidents of:

(A) Accepting FDNP checks for ineligible foods;

(B) Failing to prominently display the official sign provided by the Authority, each market day when at authorized farmers' markets or authorized farm stands;

(C) Failing to provide FDNP clients with the full amount of product for the value of each FDNP check;

(D) Failing to ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(E) Charging sales tax on FDNP check purchases;

(F) Seeking restitution from FDNP participants for checks not paid by the Authority;

(G) Using FDNP checks for any purpose other than deposit or cash at the authorized farmer's financial institution;

(H) Charging FDNP participants higher prices than other customers;

(I) Giving cash back for purchases less than the value of the checks (providing change);

(J) Accepting FDNP checks from an unauthorized farmer; and

(K) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority.

(d) The Authority may not authorize farmers to accept FDNP checks the season following second or subsequent incidents of:

(A) Failing to reimburse the Authority for FDNP checks that are improperly transacted; or

(B) Failing to cooperate with staff from the Authority or the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and failing to provide information required to be submitted by the Authority or the Oregon Department of Agriculture.

(e) The Authority may immediately disqualify a farmer from the FDNP program for the remainder of the current season and the entire following season for an initial incident of:

(A) Trafficking in FDNP checks (exchanging checks for cash, controlled substances, tobacco products, firearms or alcohol) in any amount; or

(B) A USDA substantiated violation of laws regarding non-discrimination, and applicable USDA instructions.

(f) FDNP checks that are not stamped with the farmer's Authority-assigned identification number will be returned to the farmer without payment;

(g) FDNP checks redeemed outside the dates determined by the Authority will not be reimbursed; and

(h) FDNP checks redeemed by a farmer who has not been authorized will not be reimbursed.

(4) Farmers who do not comply with FDNP requirements are subject to sanctions, including fines, in addition to, or in lieu of, disqualification.

(a) Prior to disqualifying a farmer, the Authority may determine if disqualification of the farmer would result in inadequate participant access. If the Authority determines that disqualification of the farmer would result in inadequate participant access, the Authority may impose a CMP in lieu of disqualification in the amount of 5 percent of the farmer's previous season FDNP sales or \$250, whichever is greater.

(b) The Authority must give written notice to a farmer of an action proposed to be taken against a farmer, not less than 15 days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing.

(c) A farmer that has been disqualified from the FDNP may reapply at the end of the disqualification period.

(d) The Authority may accept a farmer's voluntary withdrawal from the program as an alternative to disqualification. If a farmer chooses to withdraw in lieu of disqualification, the farmer may not apply for participation until the following year.

(e) The Authority will not reimburse farmers who have been disqualified or have withdrawn in lieu of disqualification.

(f) Fines must be paid to the Authority within the time period specified in the Notice.

(5) A farmer who commits fraud or abuse of the FDNP is subject to prosecution under applicable federal, state or local laws.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0090

Market Participation Requirements, Violations and Sanctions

(1) An authorized market must:

(a) Comply with FDNP requirements contained in 7 CFR 248 and 7 CFR 249, FDNP rules, and the terms and conditions of the market application/agreement;

(b) Ensure that an authorized farmer is present at the market during all market hours of operation;

(c) Accept training on FDNP procedures and provide such training to market staff including volunteers and eligible farmers on behalf of the Authority;

(d) Cooperate in the Authority investigations of authorized farmers who:

(A) Redeem checks for ineligible foods;

(B) Charge FDNP customers higher prices than other customers;

(C) Accept checks outside the Authority determined market season;

(D) Give change for food purchased with FDNP checks (providing change);

(E) May not meet the definitions of "eligible farmer;" and

(F) Abuse any other program procedures.

(e) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(f) Cooperate with staff from the Authority or the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and provide information required to be submitted by the Authority or the Oregon Department of Agriculture may require; and

(g) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority.

(2) A market is in violation of the FDNP rules if the market fails to:

(a) Ensure that an authorized farmer is present at the market during all market hours of operation;

(b) Accept training on FDNP procedures and provide such training to market staff including volunteers and eligible farmers on behalf of the Authority;

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(c) Cooperate in the Authority investigations of authorized farmers;
(d) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(e) Cooperate with staff from the Authority or the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the Oregon Department of Agriculture may require;

(f) Notify the Authority when and if the market ceases operation prior to the end of the authorization period;

(g) Be accountable for the actions of market staff, including volunteers, in the provision of foods and related activities; and

(h) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority.

(3) Market sanctions:

(a) The Authority may issue a notice of non-compliance to an authorized market for an initial incident of failing to:

(A) Ensure that an authorized farmer is present at the market during all market hours of operations;

(B) Accept training on FDNP procedures and provide such training to market staff including volunteers and eligible farmers on behalf of the Authority;

(C) Cooperate in the Authority investigations of authorized farmers;

(D) Cooperate with staff from the Authority, the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the Oregon Department of Agriculture may require; and

(E) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority.

(b) A market may not be authorized the following year if, within the current season, there is a second or subsequent occurrence of failing to:

(A) Ensure that an authorized farmer is present at the market during all market hours of operations;

(B) Accept training on FDNP procedures and provide such training to market staff including volunteers and eligible farmers on behalf of the Authority;

(C) Cooperate in the Authority investigations of authorized farmers;

(D) Cooperate with staff from the Authority, the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and failing to provide information required to be submitted by the Authority or the Oregon Department of Agriculture; and

(E) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority.

(c) The Authority may immediately disqualify a market from the FDNP program for the remainder of the current season and the entire following season for an initial incident of a USDA substantiated violation of laws regarding non-discrimination, and applicable USDA instructions.

(4) Markets who do not comply with FDNP requirements are subject to sanctions.

(a) The Authority must give written notice to a market of an action proposed to be taken against a market, not less than 15 days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing;

(b) A market that has been disqualified from the FDNP may reapply at the end of the disqualification period; and

(c) The Authority may accept a market's voluntary withdrawal from the program as an alternative to disqualification. If a market chooses to withdraw in lieu of disqualification, the market may not apply for participation until the following year.

(5) A market that commits fraud or abuse of the FDNP is subject to prosecution under applicable federal, state or local laws.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0100

Oregon Health Authority Responsibilities

The Authority must:

(1) Administer the Oregon Farm Direct Nutrition Program in accordance with 7 CFR 248 (Farmers' Market Nutrition Program) and 7 CFR 249 (Senior Farmers' Market Nutrition Program);

(2) Distribute or facilitate distribution of FDNP checks to participants;

(3) Assure payment to farmers for properly redeemed FDNP checks;

(4) Assure that training is provided to new market managers and farmers who are new to the FDNP;

(5) Assure that "Oregon Farm Direct Nutrition Checks Welcome Here" signs are provided to all authorized farmers; and

(6) Monitor authorized farmers and markets for compliance with FDNP rules and agreements, and if necessary, impose sanctions.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 8-2012, f. & cert. ef. 6-11-12; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0120

Complaints

(1) Any farmer or market manager wishing to file a complaint against a FDNP participant, an authorized farmer, an authorized market, or the FDNP Program may do so in the following manner:

(a) Send a written comment to the WIC Compliance Coordinator at 800 NE Oregon St., Suite 865, Portland, Oregon, 97232; or

(b) Call the state WIC office.

(2) A local WIC clinic, APD office, AAA office or market manager may file a complaint on behalf of an individual who does not want to file a complaint independently.

(3) When the Authority receives a complaint alleging discrimination on the basis of race, color, national origin, age, sex or disability the Authority must automatically forward the complaint to USDA for investigation.

(4) Individuals alleging discrimination on the basis of race, color, national origin, age, sex or disability may also write directly to USDA, Director, Office of Civil Rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

(5) The Authority may refer complaints regarding farmers or markets to the Oregon Department of Agriculture for investigation.

(6) The identity of any individual filing a complaint will be kept confidential except to the extent necessary to conduct any investigation, hearing or judicial proceeding regarding the complaint.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12

333-052-0130

Appeals

(1) Markets and farmers are entitled to a hearing as provided by the Administrative Procedures Act (ORS chapter 183) for a denial of participation, imposition of a sanction, or disqualification.

(2) Markets and farmers may not be entitled to a hearing under the Administrative Procedures Act to challenge:

(a) The validity or appropriateness of the Authority's selection criteria for farmer or market participation;

(b) The validity or appropriateness of the Authority's participant access determinations;

(c) The duration or expiration of a farmer or market agreement; or

(d) An Authority decision regarding a check payment or claims.

(3) The Authority may, at its discretion, permit the market or farmer to continue participating in the program pending the outcome of an administrative hearing. The farmer may be required to repay funds for FDNP checks redeemed during the pendency of the hearing, depending on the hearing outcome.

(4) A request for a hearing must be in writing and must be received within 30 days from the date of the notice describing the proposed action.

(5) The request for hearing must include:

(a) The name and address of the farmer or market requesting the hearing;

(b) The name and address of the attorney representing the farmer or market, if any;

(c) The decision made or action taken by the Authority against the farmer or market;

(d) The reason the farmer or market disagrees with the decision or action;

(e) Any special needs or requirements, such as, an interpreter or other special accommodations; and

(f) An attached copy of the notice from the Authority.

ADMINISTRATIVE RULES

(6) If a hearing is requested under subsection (1) of this rule, a final written decision must be made within 60 days from the date the request for a hearing was received by the WIC Operations Manager. The time for issuing a decision may be extended upon agreement by the parties.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12

Rule Caption: Update definitions and references in the trauma rules and update exhibits 2 through 4

Adm. Order No.: PH 16-2012

Filed with Sec. of State: 12-20-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 10-1-2012

Rules Amended: 333-200-0010, 333-200-0020, 333-200-0080, 333-200-0090

Subject: The Oregon Health Authority, Public Health Division is permanently amending Exhibits 2, 3 and 4 of Oregon Administrative Rules relating to the Emergency Medical Services and Trauma Systems Program. These exhibits have been updated to align with the following:

- 2006 guidelines of the American College of Surgeons (ACS), Committee on Trauma – Resources for the Optimal Care of the Injured Patient; and

- 2011 guidelines for Field Triage of Injured Patients, Recommendations of the National Expert Panel on Field Triage, CDC, MMWR, January 13, 2012.

Applicable references have been updated in the OARs as well as the definitions.

The Public Health Division is responsible for the development of a comprehensive statewide trauma system, which includes the development of state trauma objectives and standards, hospital designation and the criteria and procedures utilized in designating hospitals. The 2006 ACS guidelines seek to improve the care of injured patients and define the resources needed at designated hospitals to provide optimal care. The 2011 guidelines for Field Triage of Injured Patients seek to ensure that injured persons are transported to the most appropriate trauma center or hospital that is best equipped to manage the injured person based on specific injuries.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-200-0010

Definitions

As used in OAR 333-200-0000 through 333-200-0090:

(1) “Area Trauma Advisory Board” (ATAB) means an advisory group appointed by the Division for each established trauma area to represent providers of trauma care and members of the public.

(2) “Categorization” means a process for determining the level of a hospital’s trauma care capability and commitment which allows any hospital which meets criteria to receive trauma patients.

(3) “Communications Coverage Area” means a geographic region representing a primary radio service area for emergency medical communications. When primary service areas substantially overlap they will be considered as one coverage area.

(4) “Designation” means a competitive process for identifying the level of a hospital’s trauma care capability and commitment which selects a limited number of hospitals which meet criteria to receive trauma patients.

(5) “Division” means the Public Health Division of the Oregon Health Authority.

(6) “Emergency Medical Condition” means a medical condition that manifests itself by symptoms of sufficient severity that a prudent layperson possessing an average knowledge of health and medicine would reasonably expect that failure to receive immediate medical attention would place the health of a person, or a fetus, in the case of a pregnant woman, in serious jeopardy.

(7) “Emergency Medical Services Agency” (EMS Agency) has the meaning given that term in OAR 333-265-0000(15).

(8) “Emergency Medical Technician” (EMT) means a person who is licensed by the Division as an Emergency Medical Technician.

(9) “First Responder” means a person who is licensed by the Division as an Emergency Medical Responder.

(10) “Glasgow Coma Scale” (GCS) means an internationally recognized scoring system for the assessment of head injury severity and degree of coma.

(11) “Hospital” has the meaning set forth in ORS 442.015(13).

(12) “Hospital Catchment Area” means a geographic region representing a primary service area for hospitals. When primary service areas substantially overlap they shall be considered as one catchment area.

(13) “Injury Severity Score” (ISS) means a method for quantifying the degree of anatomic injury. As described in Baker, S.P., O’Neill B., Hadden W. Jr., et al: The Injury Severity Score, Journal of Trauma, 1974, 14: 187-196.

(14) “Level I (Regional) Trauma Hospital” means a hospital which is categorized or designated by the Division as having met the hospital resource standards for a Level I hospital, as described in Exhibit 4. Level I hospitals manage severely injured patients, provide trauma related medical education and conduct research in trauma care.

(15) “Level II (Area) Trauma Hospital” means a hospital categorized or designated by the Division as having met the hospital resource standards for a Level II hospital, as described in Exhibit 4. Level II hospitals manage the severely injured patient.

(16) “Level III (Local) Trauma Hospital” means a hospital categorized or designated by the Division as having met the hospital resource standards for a Level III hospital, as described in Exhibit 4. Level III hospitals provide resuscitation, stabilization, and assessment of the severely injured patient and provide either treatment or transfer the patient to a higher level trauma system hospital as described in Exhibit 5.

(17) “Level IV (Community) Trauma Hospital” means a hospital categorized or designated by the Division as having met the hospital resource standards for a Level IV hospital, as described in Exhibit 4. Level IV hospitals provide resuscitation and stabilization of the severely injured patient prior to transferring the patient to a higher level trauma system hospital.

(18) “Managed Health Care System” means a business enterprise, e.g., health maintenance organization, which contracts with organizations, individuals, or government programs to provide for the delivery of an agreed upon set of medical or referral services for an enrolled group of individuals and families in a defined geographic area at a fixed periodic rate paid per enrolled individual or family.

(19) “Medical Control” means physician responsibility for the operation and evaluation of prehospital emergency medical care performed by emergency care providers.

(20) “Off-Line Medical Control” means the direction provided by a physician to prehospital emergency medical care providers through communications such as written protocols, standing orders, education and quality improvement reviews.

(21) “On-Line Medical Control” means the direction provided by a physician to prehospital emergency medical care providers through radio, telephone, or other real time communication.

(22) “Oregon Trauma Registry” means the data collection and analysis system operated by the Division.

(23) “Response Time” means the length of time between the notification of a provider and the arrival of that provider’s emergency medical service unit(s) at the incident scene.

(24) “Stabilization” means that, within reasonable medical probability, no material deterioration of an emergency medical condition is likely to occur.

(25) “State Trauma Advisory Board” (STAB) means an advisory group appointed by the Division to represent providers of trauma care.

(26) “Trauma Patient” means a person who at any time meets criteria for inclusion in the Oregon Trauma System, as described in Exhibit 2 of these rules.

(27) “Trauma System Hospital” means a hospital categorized or designated by the Division to receive and provide services to trauma patients.

(28) “Trauma System Plan” means a document which describes the policies, procedures and protocols for a comprehensive system of prevention and management of traumatic injuries.

(29) “Triage Criteria” means the parameters established to identify trauma patients for treatment in accordance with the trauma system plan. These criteria are set forth in Exhibit 2.

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

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

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.611

Hist.: HD 5-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; OHD 6-2001, f. & cert. ef. 4-24-01; PH 16-2012, f. 12-20-12, cert. ef. 1-1-13

ADMINISTRATIVE RULES

333-200-0020

Objectives of the Trauma System

The objective of the statewide trauma system is to reduce deaths and disabilities which result from traumatic injuries by:

(1) Identifying the causes of traumatic injuries and recommending, promoting, and coordinating prevention activities;

(2) Developing a statewide trauma system plan to assure timely, quality, definitive care through coordinated identification, transportation and treatment of trauma patients:

(a) The statewide trauma system plan shall be composed of seven area plans; and

(b) Each area trauma system plan shall consist of policies, procedures, and protocols which address each of the following trauma system components:

- (A) Communication and dispatch;
- (B) Responders and response times;
- (C) Medical control and treatment;
- (D) Triage and transportation;
- (E) Hospital resources;
- (F) Inter-hospital transfers;
- (G) Rehabilitation;
- (H) Quality improvement;
- (I) Education and research;
- (J) Prevention; and
- (K) Disaster management.

(3) Adopting the standards, policies and procedures necessary to unify area trauma system plans into a statewide trauma system; and

(4) Promoting quality treatment, education, research and prevention of traumatic injuries utilizing as a model **Resources for Optimal Care of the Injured Patient: Committee on Trauma, American College of Surgeons, 2006** and the **Guidelines for Field Triage of Injured Patients, Recommendations of the National Expert Panel on Field Triage, 2011; Centers for Disease Control and Prevention, MMWR, January 13, 2012, Vol 61, No. 1.**

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.609 & 431.611

Hist.: HD 17-1985(Temp), f. & ef. 9-20-85; HD 5-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; OHD 6-2001, f. & cert. ef. 4-24-01; PH 16-2012, f. 12-20-12, cert. ef. 1-1-13

333-200-0080

Standards for Area Trauma System Plans

Area trauma system plans shall describe how each of the following standards are met or exceeded. Interpretation and implementation of the standards as set forth in this rule shall be in general accordance with the guidelines of the **Resources for Optimal Care of the Injured Patient: Committee on Trauma, American College of Surgeons, 2006**. For the purposes of section (4) of this rule, interpretation and implementation of standards shall be in general accordance with the **Guidelines for Field Triage of Injured Patients, Recommendations of the National Expert Panel on Field Triage, 2011; Centers for Disease Control and Prevention, MMWR, January 13, 2012, Vol 61, No. 1:**

(1) Communications and Dispatch:

(a) System Access: Residents and visitors in a communications coverage area shall be able to access emergency medical services by calling 9-1-1 as set forth in ORS 401.720;

(b) Dispatch Response: Dispatchers for emergency medical care providers shall have protocols which include pre-arrival patient care instructions and which require the dispatch of the appropriate level of available responding units (Basic, Intermediate or Advanced Life Support) based on medical need;

(c) Special Resources: All emergency medical services dispatchers shall maintain an up-to-date list of available law enforcement agencies, fire departments, air and ground ambulance services, quick response units that respond to an ill or injured person to provide initial emergency medical care prior to transportation by an ambulance and special responders for extrication, water rescue, hazardous material incidents and protocols for their use;

(d) Prehospital/Hospital: Ambulances shall have either a UHF or VHF radio that will allow communications with the base hospital and their dispatch agency as set forth in OAR 333-255-0070(2)(q). If the information has to be relayed through the dispatching agency, that agency shall be responsible to relay patient information to the hospital; and

(e) Training: There shall be training and certification standards for all tele-communicators that process telephone requests for or dispatch emergency care providers. The authorization to establish these standards is found in ORS 401.735 and is the responsibility of the Department of Public Safety Standards and Training.

(2) Responders and Response Times:

(a) Ambulance Service Areas (ASAs): The existing ASAs shall be described as well as a summary of the ATAB's efforts to promote each county adopting an ASA plan in accordance with ORS 682.205;

(b) Response Times: Trauma system patients shall receive prehospital emergency medical care within the following response time parameters 90 percent of the time:

(A) Urban area, an incorporated community of 50,000 or more population — 8 minutes;

(B) Suburban area, an area which is not urban and which is contiguous to an urban community. It includes the area within a 10-mile radius of that community's center. It also includes areas beyond the 10-mile radius which are contiguous to the urban community and have a population density of 1,000 or more per square mile — 15 minutes;

(C) Rural area, a geographic area 10 or more miles from a population center of 50,000 or more, with a population density of greater than six persons per square mile — 45 minutes;

(D) Frontier area, the areas of the state with a population density of six or fewer persons per square mile and are accessible by paved roads — 2 hours; and

(E) Search and rescue area, the areas of the state that are primarily forest, recreational or wilderness lands that are not accessible by paved roads or not inhabited by six or more persons on a year round basis. — No established response time.

(c) Field Command: A uniform policy shall assign responsibility for directing the care of the trauma patient in the prehospital setting in cases of response by multiple providers to assure scene control by the most qualified responder;

(d) Utilization of Air Ambulance: Protocols for the medical control, activation and utilization of air ambulance service(s) shall be established;

(e) Prehospital Care Report Form: All prehospital emergency care providers shall use a patient care report form in accordance with the policy regarding prehospital forms as set forth in OAR 333-255-0070(2)(r); and

(f) Utilization of Oregon Trauma System Identification Bracelet: All prehospital emergency medical care providers shall use the official Public Health Division numbered Trauma System Identification Bracelet when the patient meets trauma system entry criteria or is entered into the Trauma System, and that number shall be recorded on the patient's prehospital care report.

(3) Medical Control and Treatment:

(a) Protocols, Policies and Procedures: Providers in each trauma system area shall function under one set of off-line prehospital trauma protocols and one set of on-line medical control trauma policies and procedures which address basic, intermediate and advanced levels of care. Off-line treatment protocols shall clearly describe all treatment and transportation procedures and identify those procedures which require on-line medical authorization. Medical control policies and procedures must assure consistent area-wide coordination, data collection and area-wide quality improvement responsibility;

(b) Hospital Status: In the event that on-line medical control serves two or more categorized or designated hospitals, there shall be a system for medical control to continuously determine the current status of hospital trauma care capabilities; and

(c) Physician Qualifications: On-line medical control physicians must be qualified for this role by virtue of training, experience and interest in prehospital trauma care as demonstrated through emergency medicine and Advanced Trauma Life Support training in accordance with the American College of Surgeons curriculum.

(4) Triage and Transportation: Triage and transportation protocols shall be written which assure that patients who at any time meet triage criteria as set forth in these rules in Exhibit 2 will be transported directly to a Level I or Level II trauma hospital as described under OAR 333-200-0090(1) unless otherwise advised by on-line medical control or under the following circumstances:

(a) If unable to establish and maintain an adequate airway, the patient shall be taken to the nearest hospital to obtain definitive airway control. Upon establishing and maintaining airway control, the patient shall be immediately transferred to a Level I or Level II trauma hospital;

(b) If the scene time plus transport time to a Level I or Level II trauma hospital is significantly greater than the scene time plus transport time to a closer Level III or Level IV trauma hospital;

(c) If the hospital is unable to meet hospital resource standards as defined in Exhibit 4, when there are multiple patients involved, or the patient needs specialty care;

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(d) If on-line medical control overrides these standards for patients with special circumstances, such as membership in a health maintenance organization, and if the patient's condition permits; and

(e) Application of subsections (b), (c), and (d) of this section must not delay definitive medical or surgical treatment.

(5) Hospital Resources:

(a) Trauma System Hospital Identification: Either the categorization or designation method of identifying trauma system hospitals as described under OAR 333-200-0090(1) through (3) shall be recommended to the Division; and

(b) Resource Criteria: Trauma system hospitals shall meet or exceed the standards for hospital resources as set forth in Exhibit 4 and hospital response criteria as set forth in Exhibit 3. Area criteria that exceed the criteria set forth in Exhibit 4 shall be accompanied by an informational statement of the additional costs that a hospital will incur to meet these standards.

(6) Inter-hospital Transfers:

(a) Identification of Patients: ATAB-wide criteria which meet or exceed any of the criteria set forth in Exhibit 5 of these rules shall be established to identify patients who should be transferred to a Level I or II trauma system hospital or specialty care center.

(b) When it is determined that a patient transfer is warranted:

(A) The transfer shall take place after the stabilization of the patient's emergency medical condition has been provided within the capabilities of the local hospital, which may include operative intervention; and

(B) The transfer to a Level I or II trauma hospital shall not be delayed for diagnostic procedures that have no impact on the transfer process or the immediate need for resuscitation.

(c) In all situations regarding an inter-hospital transfer, the decision to retain or transfer the patient shall be based on medical knowledge, experience and resources available to the patient.

(d) The hospital's trauma performance improvement process shall monitor all cases meeting inter-hospital transfer criteria. The Division through annual reports and site surveys shall monitor this performance category.

(7) Inter-hospital Transfers with Health Maintenance Organizations:

(a) Trauma system hospitals shall facilitate the transfer of a member of a health maintenance organization or other managed health care organization when the emergency medical condition of the member permits and no deterioration of that condition is likely to result from or occur during the transfer of the patient. Trauma system hospitals shall transfer a patient in accordance with the provisions of ORS 431.611(2)(a) and (b) and any other applicable laws or regulations.

(b) A patient will be deemed stabilized, if the treating physician attending to the patient in the trauma hospital has determined, within reasonable clinical confidence, that the emergency medical condition has been resolved.

(c) Hospitals or health maintenance organizations may not attempt to influence patients and families, prior to the patient's stabilization, into making decisions affecting their trauma treatment by informing them of financial obligations if they remain in the trauma facility.

(d) Health maintenance organizations and non-designated trauma facilities shall report follow-up information to the transferring trauma system hospital and all required data as set forth in the Oregon Trauma Registry Abstract Manual; and

(e) Hospitals or health maintenance organizations that receive or transfer trauma patients shall participate in regional quality improvement activities.

(8) Rehabilitation Resources:

(a) Capabilities for trauma rehabilitation in each trauma system area and transfer procedures to other rehabilitation facilities shall be described; and

(b) Rehabilitation resources for burns, pediatrics, neuro-trauma and extended care shall be included.

(9) Quality improvement:

(a) Provisions shall be made for at least quarterly review of medical control, prehospital emergency medical care and hospital care of trauma cases:

(A) Area-wide criteria for identifying trauma cases for audit shall be described and shall include all trauma related deaths;

(B) Responsibility for identifying and reviewing all trauma cases meeting audit criteria shall be assigned; and

(C) Quarterly reports shall be submitted to the Division by the ATAB or its representative on confidential forms.

(b) The ATAB, STAB, all Area and State Quality Improvement Committee(s) and the Division shall meet in executive session as set forth in ORS 192.660 when discussing individual patient cases; and

(c) No member of any ATAB, the STAB, or any committee, subcommittee or task force thereof, shall disclose information or records protected by ORS 431.627 or 41.675 to unauthorized persons. Any person violating these rules shall be forthwith removed by the Division from membership on any trauma system committee, subcommittee or task force thereof.

(10) Education and Research:

(a) Trauma Training: Trauma system hospitals shall provide or assist in the provision of prehospital trauma management courses to all First Responders and EMTs involved in the prehospital emergency medical care of severely injured patients; and

(b) Research: In areas with Level I hospitals, clinical and basic research in trauma and publication of results involving surgical and non-surgical specialists, nurses, and allied health professionals engaged in trauma care, shall be promoted.

(11) Prevention:

(a) Public Education: Public education and awareness activities shall be developed by trauma system hospitals to increase understanding of the trauma system and injury prevention. These activities shall be appropriate to the size and resources of the area; and

(b) Development and Evaluation: Trauma prevention activities to identify and address area problems shall be supported.

(12) Disaster Management:

(a) Integration: All counties in a trauma system area shall have a medical component in their disaster plan, which shall include any non-trauma system hospitals and appropriate mutual aid agreements; and

(b) Review: There shall be a mechanism in place for ongoing review of the medical component of the county disaster plan.

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

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

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.609 & 431.611

Hist.: HD 5-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; HD 5-1997, f. & cert. ef. 3-12-97; OHD 6-2000, f. & cert. ef. 5-4-00; OHD 6-2001, f. & cert. ef. 4-24-01; PH 16-2012, f. 12-20-12, cert. ef. 1-1-13

333-200-0090

Trauma Hospitals

(1) The Division shall accredit trauma system hospitals by levels of care capability as defined by the criteria contained in Exhibit 4 and by any criteria contained in the approved area plan. Accreditation will be renewed every three years if the hospital submits an application for reaccreditation, and if the Division's review finds that the hospital continues to meet the prescribed standards in Exhibit 4.

(a) The application process shall provide for at least 60 days in which to complete and submit proposals to the Division with all supporting information and documents;

(b) The Division's evaluation of hospital applications:

(A) Shall include a review of the hospital's proposal by the Division or on-site survey team;

(B) Shall include a survey of the hospital by an on-site survey team. This team shall be composed of persons selected by the Division; and

(C) The on-site survey teams shall evaluate the quality of each hospital's compliance with the standards in Exhibit 4 by:

(i) Evaluating medical records, staff rosters and schedules, quality improvement committee minutes and other documents relevant to trauma care;

(ii) Evaluating equipment and premises;

(iii) Conducting informal interviews with hospital personnel; and

(iv) Reporting the findings and interpretations of the survey to the Division.

(c) The Division may grant exemptions from one or more standards that are established in OAR 333-200-0080 if the applicant can prove, or the Division finds that compliance with such standards is inappropriate because of special circumstances which would render compliance unreasonable, burdensome or impractical. Such exemptions or variances may be limited in time or may be conditioned as the Division considers necessary to protect the public welfare;

(d) When selecting on-site survey team members the Division shall consider concerns for conflict of interest when the applicant can demonstrate a clear and convincing basis for concern. These concerns include but are not limited to past or potential financial or personal gain, past or potential employment, or gain from the use of confidential information. Concerns accompanied by the proof upon which the applicant relies shall

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be submitted to the Division, in writing, within 10-working days of the Division's announcement of proposed on-site survey team members;

(e) The applicant's administration, faculty, medical staff, employees and representatives are prohibited from having any contact with any on-site survey team member, except as directed by the Division. A violation of this provision may be grounds for excluding that applicant;

(f) Information gathered by the on-site survey team, their oral and written reports and deliberations shall be held confidential by the Division;

(g) The Division will provide a written report of its on-site survey results to the applicant hospital only. Hospital survey reports shall be held confidential by the Division;

(h) Each hospital application shall become the property of the Division and shall become public record at the end of the accreditation process, subject to the laws and rules applicable to public records; and

(i) The applicant shall have the right to withdraw its application at any time prior to dispositive action by the Division.

(2) For area trauma system plans prescribing categorization of hospitals, the Division shall accredit all hospitals which meet the standards of the area trauma system plan.

(3) For area trauma system plans prescribing designation of hospitals, the Division shall accredit selected hospitals which meet the standards of the area trauma system plan. The Division shall select hospitals based on the assessment that the best interests of the patients of the area are served by the particular applicant and expected patient volume. Competing applicants shall be judged on the on-site survey assessments of which hospital(s) provides the highest quality of compliance with the standards in Exhibit 4.

(4) The notification of trauma system hospital accreditation shall be made by certified letter from the Division. An applicant has 30 days from the receipt of the announcement of non-accreditation to file a request with the Division for reconsideration.

(5) A trauma system hospital shall:

(a) Be responsible for all expenses incurred by the hospital in planning, developing and participating in the trauma system, including attorney fees and costs;

(b) Be responsible for all expenses incurred when a re-survey of the hospital is conducted by the Division or its designee(s);

(c) Comply in all material respect with these rules, all current state and area trauma system standards, and all policies, protocols and procedures as set forth in the approved area trauma system plan;

(d) Provide the resources, personnel, equipment and response required by these rules;

(e) Provide care to trauma system patients which is consistent with the standards advocated by the Advanced Trauma Life Support Course, American College of Surgeons, Committee on Trauma; 1999.

(f) Report to the Oregon Trauma Registry all required data as set forth in the Oregon Trauma Registry Abstract Manual for each and every trauma patient as defined in these rules, within 90 days of death or discharge of that patient. Data shall be submitted in electronic media using a format prescribed by the Division. The Division may, at its sole discretion, permit data submission by alternative means where use of the Division's prescribed format would impose a severe hardship on the reporting institution;

(g) Participate in evaluation and research studies as prescribed by the Division; and

(h) Record patient resuscitation data on the official state trauma resuscitation flow sheet. If using a form other than the official form, that form must contain at least the same information.

(6) The Division shall provide statistical reports in formats prescribed by the Division in consultation with the STAB, to the STAB and ATAB Quality Improvement Committees within 90 days of the close of the calendar quarter following receipt of the data submitted pursuant to subsection (5)(f) of this rule.

(7) Accreditation under sections (4) and (5) of this rule may be transferable to a successor operator if the successor provides a written acknowledgment that the successor will comply with all of the responsibilities and obligations imposed upon the transferor under these rules including terms of probationary status, and that successor agrees to be substituted in pending proceedings regarding the accreditation status. The Division may decline, at its discretion, to transfer accreditation if it reasonably believes the successor cannot meet the standards, rules, policies or protocols set forth in the approved area plan.

(8) No person, emergency medical service, medical clinic, or hospital shall by any means advertise, assert, represent, offer, provide or imply that such person, service, clinic or hospital is a trauma system hospital or has the capabilities for providing treatment to trauma patients beyond the status for which the accreditation has been granted.

(9) No trauma system hospital shall in any manner advertise or publicly assert that its trauma categorization or designation affects the hospital's care capabilities for non-trauma system patients, nor that the categorization or designation should influence the referral of non-trauma system patients.

(10) The Division may review, inspect, evaluate, and audit patient trauma discharge summaries, trauma patient care logs, and trauma patient care records, trauma quality improvement committee minutes and other documents relevant to trauma care of any hospital at any time to verify compliance with trauma system standards as set forth in these rules. The confidentiality of such records shall be maintained by the Division in accordance with state law.

(11) The Division may re-survey a trauma system hospital, to immediately revoke or suspend a trauma system hospital accreditation or to place a hospital on probation under any of the following circumstances:

(a) Substantial failure, for any reason, of a hospital to comply with these rules, all current state and area trauma system standards, and all policies, protocols and procedures as set forth in the approved area trauma system plan;

(b) Submission of reports to the Division that are incorrect or incomplete in any material aspect;

(c) Except as set forth in sections (12) and (13) of this rule, occasional failure of a trauma system hospital to meet its obligations will not be grounds for revocation, suspension, or probation by the Division if the circumstances under which the failure occurred:

(A) Do not reflect an overall deterioration in quality of and commitment to trauma care; and

(B) Are corrected immediately by the hospital.

(d) Failure of a trauma system hospital to timely and accurately report to the Division all data required by rule or statute is grounds for suspension or revocation as a trauma hospital.

(12) Where a hospital is greater than three months in arrears in reporting required trauma patient data, the Division may contract with an independent data collection and abstraction service to perform the data collection. The Division shall assess the trauma system hospital for all costs associated with such collection of required data.

(13) A hospital which is dissatisfied with the decision of the Division regarding revocation, suspension, or probation in section (10) of this rule may request a contested case hearing pursuant to ORS 183.310 to 183.550.

(14) A trauma system hospital may without cause terminate its trauma system hospital status upon 90-days written notice to the Division and the ATAB's list of interested parties.

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

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.609, 431.611 & 431.627

Hist.: HD 5-1987, f. & ef. 6-26-87; HD 16-1987, f. & ef. 10-9-87; HD 9-1990, f. & cert. ef. 4-25-90; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; HD 5-1997, f. & cert. ef. 3-12-97; OHD 6-2000, f. & cert. ef. 5-4-00; PH 16-2012, f. 12-20-12, cert. ef. 1-1-13

Rule Caption: Changes to hospital rules in response to state and federal regulation changes and housekeeping changes

Adm. Order No.: PH 17-2012

Filed with Sec. of State: 12-20-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Amended: 333-500-0005, 333-500-0010, 333-500-0031, 333-500-0032, 333-500-0038, 333-505-0001, 333-505-0005, 333-505-0007, 333-505-0010, 333-505-0030, 333-505-0033, 333-505-0050, 333-505-0060, 333-505-0080, 333-510-0020, 333-510-0040, 333-520-0035, 333-520-0050, 333-520-0060, 333-520-0070

Rules Repealed: 333-525-0010

Subject: The Oregon Health Authority, Public Health Division is permanently amending and repealing Oregon Administrative Rules relating to hospitals in response to recent changes in state and federal regulations, as well as minor housekeeping changes. The rule amendments also respond to stakeholder requests to reduce regulatory burden in order to create a more efficient hospital system and increase the ability to devote resources to providing high quality patient care. The rule amendments address updating definitions, fees for complaint investigations, classification, governing body and administrator responsibilities, credentialing application requirements,

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policies, compliance issues, and quality assessment and performance improvement.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-500-0005

Applicability

Unless a specific rule provides otherwise, OAR chapter 333, divisions 500 through 535 apply to a hospital classified as general, low occupancy acute care, or psychiatric or mental and do not apply to a hospital classified as a special inpatient care facility.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-500-0010

Definitions

As used in OAR chapter 333, divisions 500 through 535, unless the context requires otherwise, the following definitions apply:

- (1) "Assessment" means a complete nursing assessment, including:
 - (a) The systematic and ongoing collection of information to determine an individual's health status and need for intervention;
 - (b) A comparison with past information; and
 - (c) Judgment, evaluation, or a conclusion that occurs as a result of subsections (a) and (b) of this definition.
- (2) "Authentication" means verification that an entry in the patient medical record is genuine.
- (3) "Authority" means the Oregon Health Authority.
- (4) "Certified Nursing Assistant" (CNA) means a person who is certified by the Oregon State Board of Nursing (OSBN) to assist licensed nursing personnel in the provision of nursing care.
- (5) "Chiropractor" means a person licensed under ORS chapter 684 to practice chiropractic.
- (6) "Conditions of Participation" mean the applicable federal regulations that hospitals are required to comply with in order to participate in the federal Medicare and Medicaid programs.
- (7) "Deemed" means a health care facility that has been inspected by an approved accrediting organization and has been approved by the Centers for Medicare and Medicaid Services (CMS) as meeting CMS Conditions of Participation.
- (8) "Discharge" means the release of a person who was an inpatient of a hospital and includes:
 - (a) The release and transfer of a newborn to another facility, but not a transfer between acute care departments of the same facility;
 - (b) The release of a person from an acute care section of a hospital for admission to a long-term care section of a facility;
 - (c) Release from a long-term care section of a facility for admission to an acute care section of a facility;
 - (d) A patient who has died; and
 - (e) An inpatient who leaves a hospital for purposes of utilizing non-hospital owned or operated diagnostic or treatment equipment, if the person does not return as an inpatient of the same health care facility within a 24-hour period.
- (9) "Direct ownership" has the meaning given the term 'ownership interest' in 42 CFR 420.201.
- (10) "Division" means the Public Health Division within the Authority.
- (11) "Emergency Medical Services" means medical services that are usually and customarily available at the respective hospital and that must be provided immediately to sustain a person's life, to prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or to provide care to a woman in labor where delivery is imminent if the hospital is so equipped and, if the hospital is not equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.
- (12) "Financial interest" means a five percent or greater direct or indirect ownership interest.
- (13) "Full compliance survey" means a survey conducted by the Division following a complaint investigation to determine a hospital's compliance with the CMS Conditions of Participation.
- (14) "Governing body" means the body or person legally responsible for the direction and control of the operation of the hospital.
- (15) "Governmental unit" has the meaning given that term in ORS 442.015.
- (16) "Health care facility" (HCF) has the meaning given the term in ORS 442.015.

(17) "Health Care Facility Licensing Laws" means ORS 441.005 through 441.990 and its implementing rules.

(18) "Hospital" has the meaning given that term in ORS 442.015.

(19) "Indirect ownership" has the meaning given the term 'indirect ownership interest' in 42 CFR 420.201.

(20) "Licensed" means that the person to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a hospital means that the facility is currently licensed by the Authority.

(21) "Licensed nurse" means a nurse licensed under ORS Chapter 678 to practice registered or practical nursing.

(22) "Licensed Practical Nurse" means a nurse licensed under ORS chapter 678 to practice practical nursing.

(23) "Major alteration" means any structural change to the foundation, roof, floor, or exterior or load bearing walls of a building, or the extension of an existing building to increase its floor area. Major alteration also means the extensive alteration of an existing building such as to change its function and purpose, even if the alteration does not include any structural change to the building.

(24) "Manager" means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174(2).

(25) "Minor alteration" means cosmetic upgrades to the interior or exterior of an existing building, such as but not limited to wall finishes, floor coverings and casework.

(26) "Mobile satellite" means a MRI, CAT Scan, Lithotripsy Unit, Cath Lab, or other such modular outpatient treatment or diagnostic unit that is capable of being moved, is housed in a vehicle with a vehicle identification number (VIN), and does not remain on a hospital campus for more than 180 days in any calendar year.

(27) "NFPA" means National Fire Protection Association.

(28) "Nurse Midwife/Nurse Practitioner" means a registered nurse certified by the OSBN as a nurse midwife/nurse practitioner.

(29) "Nurse Practitioner" has the meaning given that term in ORS 678.010.

(30) "Nursing staff" means a registered nurse, a licensed practical nurse, or other assistive nursing personnel.

(31) "OB Unit" means a dedicated obstetrical unit that meets the requirements of OAR 333-535-0120.

(32) "On-call" means a scheduled state of availability to return to duty, work-ready, within a specified period of time.

(33) "Oregon Sanitary Code" means the Food Sanitation Rules in OAR 333-150-0000.

(34) "Patient audit" means review of the medical record or physical inspection or interview of a patient.

(35) "Person" has the meaning given that term in ORS 442.015.

(36) "Physician" means a person licensed as a doctor of medicine or osteopathy under ORS Chapter 677.

(37) "Physician Assistant" has the meaning given that term in ORS 677.495.

(38) "Plan of correction" means a document executed by a hospital in response to a statement of deficiency issued by the Division that describes with specificity how and when deficiencies of health care licensing laws or conditions of participation shall be corrected.

(39) "Podiatrist" has the same meaning as "podiatric physician and surgeon" in ORS 677.010.

(40) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a licensed hospital or in a licensed ambulatory surgical center and is under the supervision of or in collaboration with a physician. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the foot.

(41) "Public body" has the meaning given that term in ORS 30.260.

(42) "Registered Nurse" means a person licensed under ORS chapter 678 to practice registered nursing.

(43) "Respite care" means care provided in a temporary, supervised living arrangement for individuals who need a protected environment, but who do not require acute nursing care or acute medical supervision.

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(44) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff person directly employed by the hospital, or other adverse action taken against a nursing staff person directly employed by the hospital in the terms or conditions of employment of the nursing staff person, as a result of filing a complaint.

(45) "Satellite" means a building or part of a building owned or leased by a hospital, and operated by a hospital, through which the hospital provides outpatient diagnostic, therapeutic, or rehabilitative services in a geographically separate location from the hospital, with a separate physical address from the hospital, but that is within 35 miles from the hospital.

(46) "Special Inpatient Care Facility" means a facility with inpatient beds and any other facility designed and utilized for special health care purposes that may include but is not limited to a rehabilitation center, a facility for the treatment of alcoholism or drug abuse, a freestanding hospice facility, or an inpatient facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Division, after determination of the need for such classification and the level and kind of health care appropriate for such classification.

(47) "Stable newborn" means a newborn who is four or more hours postdelivery and who is free from abnormal vital signs, color, activity, muscle tone, neurological status, weight, and maternal-child interaction.

(48) "Stable postpartum patient" means a postpartum mother who is four hours or more postpartum and who is free from any abnormal fluctuations in vital signs, has vaginal flow within normal limits, and who can ambulate, be independent in self care, and provide care to her newborn infant, if one is present.

(49) "Statement of deficiencies" means a document issued by the Division that describes a hospital's deficiencies in complying with health care facility licensing laws or conditions of participation.

(50) "Survey" means an inspection of a hospital to determine the extent to which a hospital is in compliance with health facility licensing laws and conditions of participation.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80, HD 8-1985, f. & ef. 5-17-85; Renumbered from 333-023-0114; HD 13-1987, f. 9-1-87, ef. 9-15-87; HD 23-1987(Temp), f. 11-27-87, ef. 10-15-87 through 4-15-88; HD 10-1988, f. & cert. ef. 5-27-88; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0000; HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-500-0031

Fees for Complaint Investigations and Compliance Surveys

(1) In addition to an annual fee, the Division may charge a hospital a fee for:

- (a) A complaint investigation, in an amount not to exceed \$850;
- (b) A full compliance survey, in an amount not to exceed \$7,520;
- (c) An on-site follow-up survey to verify compliance with a plan of correction, in an amount not to exceed \$225; and
- (d) An off-site follow-up survey to verify compliance with a plan of correction, in an amount not to exceed \$85.

(2) During one calendar year, the Division may charge to all hospitals a total amount not to exceed:

- (a) \$91,000 for complaint investigations;
- (b) \$15,000 for full compliance surveys; and
- (c) \$6,700 for follow-up surveys.

(3)(a) The Division shall apportion the total amount charged under section (2) of this rule among hospitals at the end of each calendar year based on the number of complaint investigations, full compliance surveys and follow-up surveys performed at each hospital during the calendar year.

(b) The Division may not include investigations of employee complaints in a hospital's total number of complaint investigations.

(c) A hospital may not be charged fees in any calendar year under section (2) of this rule for more complaint investigations than the greater of:

- (A) The rolling average for the hospital for the previous three years;

or

(B) Two complaint investigations for a small hospital and five complaint investigations for a large hospital.

(d) Notwithstanding subsection (3)(c) of this rule, the Division may not charge a hospital for a number of complaint investigations that exceeds the number of complaint investigations actually conducted at the hospital during the calendar year.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.021

Hist.: PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-500-0032

Classification

(1) A hospital shall be classified as one of the following:

- (a) General Hospital;
- (b) Low Occupancy Acute Care Hospital; or
- (c) Mental or Psychiatric Hospital.

(2) A hospital's classification shall be determined by the type of services it provides, as described in OAR chapter 333, divisions 520 and 525, and the staffing requirements related to the provision of those services.

(a) A hospital classified as a general hospital shall:

- (A) Provide at least general medical, maternity and surgical services;
- (B) Have an emergency department;
- (C) Have available on-site or through contract, dietary, laboratory, and radiology services;
- (D) Have an on-site pharmacy;
- (E) Have a pharmacist on call 24 hours a day, 7 days a week (24/7) to staff the pharmacy; and
- (F) Have on-site or in-house 24/7 staffing for its laboratory and radiology services.

(b) A low occupancy acute care hospital shall:

- (A) Have 25 or fewer inpatient beds;
- (B) Provide at least general medical services;
- (C) Have an emergency department;
- (D) Have available on-site or through contract, dietary, laboratory, and radiology services;
- (E) Have an on-site pharmacy or a drug room; and
- (F) Have appropriately trained laboratory, radiology, and pharmacy staff on-site or on-call 24/7.

(c) A mental or psychiatric hospital shall:

(A) Be devoted primarily to the care of people suffering from mental illness;

(B) Have available on-site or through contract, dietary, laboratory, and radiology services;

(C) Have an on-site pharmacy or a drug room;

(D) Have appropriately trained laboratory, radiology, and pharmacy staff on-site or on-call 24/7; and

(E) Comply with the requirements in OAR 333-525-0000.

(3) The classification of each hospital shall be included on the license.

(4) A hospital licensed by the Division may not assume a descriptive title or hold itself out under a descriptive title other than the classification title established by the Division and under which the hospital is licensed. This rule applies to the name on the hospital and any stationery, advertising, media, or other representations made by the hospital. A general hospital and a low occupancy acute care hospital may be described as a "hospital" without any modifications. A mental or psychiatric hospital shall use a descriptive title that describes or is reflective of the specialty services it offers.

(5) A hospital may not change its license classification unless it reapplies for licensure on a form prescribed by the Division and submits a fee as required by ORS 441.020. The Division shall conduct an on-site survey prior to granting a hospital a new classification to determine compliance with this rule.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-500-0038

Denial of License Application

If the Division intends to deny a license application, it shall issue a Notice of Proposed Denial of License Application in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.037

Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0001

Applicability

These rules apply to all hospitals, regardless of classification.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0005

Governing Body Responsibility

(1) In a multi-hospital system, one governing body may oversee multiple hospitals.

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(2) The governing body of a hospital shall be responsible for the operation of the hospital, the selection of the medical staff and the quality of care rendered in the hospital. The governing body shall ensure that:

(a) All health care personnel for whom a state license or registration is required are currently licensed or registered;

(b) Qualified individuals allowed to practice in the hospital are credentialed and granted privileges consistent with their individual training, experience and other qualifications;

(c) Procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to assure their conformity to applicable law;

(d) It has an organized medical staff responsible for reviewing the professional practices of the hospital for the purpose of reducing morbidity and mortality and for the improvement of patient care;

(e) A physician is not denied medical staff privileges at the facility solely on the basis that the physician holds medical staff membership or privileges at another health care facility;

(f) Licensed podiatric physicians and surgeons are permitted to use the hospital in accordance with ORS 441.063;

(g) All hospital employees and health care practitioners granted hospital privileges have been tested for tuberculosis in compliance with OAR 333-505-0080; and

(h) A notice, in a form specified by the Division, summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, 441.192 is posted in a place where notices to employees and applicants are customarily displayed.

(3) A hospital may grant privileges to nurse practitioners in accordance with ORS 441.064 and subject to hospital rules governing admissions and staff privileges. The hospital may refuse to grant privileges to nurse practitioners only upon the same basis that privileges are refused to other licensed health care practitioners.

(4) A hospital shall require that every patient admitted shall be and remain under the care of a member of the medical staff as specified under the medical staff by-laws.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.055

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0125; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-070-0050; HD 21-1993, f. & cert. ef. 10-28-93; Renumbered from 333-505-0000; HD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0007

Physician Credentialing, Hospitals, Health Care Service Contractors

Each hospital and health care service contractor shall use the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application adopted pursuant to ORS 442.805 and in accordance with OAR 409-045-0000.

Stat. Auth.: ORS 442.807

Stats. Implemented: ORS 442.805

Hist.: OHD 5-2002, f. & cert. ef. 3-4-02; PH 4-2004, f. & cert. ef. 2-6-04; PH 3-2005, f. & cert. ef. 2-4-05; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0010

Administrator

(1) Each hospital shall employ or contract with a chief executive officer (CEO) or administrator who is responsible for the operation of the hospital and hospital based services in a manner commensurate with the authority conferred by the governing body, supports the delivery of high quality hospital care and services and ensures compliance with all hospital policies and applicable state and federal laws and regulations. In determining the appropriate number of facilities for which a CEO or administrator is responsible, the governing body of the hospital or health system should consider distance between hospitals and the size and complexity of each facility.

(2) For hospitals with attached long-term care facilities, the CEO may function as administrator of both the hospital and the long-term care facility.

(3) The hospital shall notify the Division, in writing, of the voluntary or involuntary termination of the CEO or administrator as well as the appointment of a new CEO or administrator.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.055

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0030

Organization, Hospital Policies

(1) A hospital's internal organization shall be structured to include appropriate departments and services consistent with the needs of its defined community.

(2) A hospital shall adopt and maintain clearly written definitions of its organization, authority, responsibility and relationships.

(3) A hospital shall adopt, maintain and follow written patient care policies that include but are not limited to:

(a) Admission, transfer and discharge policies that address:

(A) Types of clinical conditions not acceptable for admission;

(B) Constraints imposed by limitations of services, physical facilities or staff coverage;

(C) Emergency admissions;

(D) Requirements for informed consent signed by the patient or legal representative of the patient for diagnostic and treatment procedures; such policies and procedures shall address informed consent of minors in accordance with provisions in ORS 109.610, 109.640, 109.670, and 109.675;

(E) Requirements for identifying persons responsible for obtaining informed consent and other appropriate disclosures and ensuring that the information provided is accurate and documented appropriately in accordance with these rules and ORS 441.098;

(F) A process for the internal transfer of patients from one level or type of care to another;

(G) Discharge and termination of services; and

(H) Planning for continuity of patient care following discharge.

(b) Patient rights;

(c) Housekeeping;

(d) All patient care services provided by the hospital;

(e) Maintenance of the hospital's physical plant, equipment used in patient care and patient environment; and

(f) Treatment or referral of acute sexual assault patients in accordance with ORS 147.403.

(4) In addition to the policies described in section (3) of this rule, a hospital shall, in accordance with the Patient Self-Determination Act, 42 CFR 489.102, adopt policies and procedures that require (applicable to all capable individuals 18 years of age or older who are receiving health care in the hospital):

(a) Providing to each adult patient, including emancipated minors, not later than five days after an individual is admitted as an inpatient, but in any event before discharge, the following in written form, without recommendation:

(A) Information on the rights of the individual under Oregon law to make health care decisions, including the right to accept or refuse medical or surgical treatment and the right to execute directives and powers of attorney for health care;

(B) Information on the policies of the hospital with respect to the implementation of the rights of the individual under Oregon law to make health care decisions;

(C) A copy of the directive form set forth in ORS 127.531, along with a disclaimer attached to each form in at least 16-point bold type stating "You do not have to fill out and sign this form."; and

(D) The name of a person who can provide additional information concerning the forms for directives.

(b) Documenting in a prominent place in the individual's medical record whether the individual has executed a directive.

(c) Compliance with Oregon law relating to directives for health care.

(d) Educating the staff and the community on issues relating to directives.

(5) A hospital's transfer agreements or contracts shall clearly delineate the responsibilities of parties involved.

(6) Patient care policies shall be evaluated triennially and rewritten as needed, and presented to the governing body or a designated administrative body for approval triennially. Documentation of the evaluation is required.

(7) A hospital shall have a system, described in writing, for the periodic evaluation of programs and services, including contracted services.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 147.025 & 441.025

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0033

Patient Rights

A hospital shall comply with the requirements for patients rights as set forth in 42 CFR 482.13.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

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Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0050

Medical Records

(1) A medical record shall be maintained for every patient admitted for care in a hospital.

(2) A legible reproducible medical record shall include, but is not limited to (as applicable):

(a) Admitting identification data including date of admission.

(b) Chief complaint.

(c) Pertinent family and personal history.

(d) Medical history, physical examination report and provisional diagnosis as required by OAR 333-510-0010.

(e) Admission notes outlining information crucial to patient care.

(f) All patient admission, treatment, and discharge orders.

(A) All patient orders shall be initiated, dated, timed and authenticated by a licensed health care practitioner in accordance with section (7) of this rule.

(B) Documentation of verbal orders shall include:

(i) The date and time the order was received;

(ii) The name and title of the health care practitioner who gave the order; and

(iii) Authentication by the authorized individual who accepted the order, including the individual's title.

(C) Verbal orders shall be dated, timed, and authenticated promptly by the ordering health care practitioner or another health care practitioner who is responsible for the care of the patient.

(D) For purposes of this rule, a verbal order includes but is not limited to an order given over the telephone.

(g) Clinical laboratory reports as well as reports on any special examinations. (The original report shall be recorded in the patient's medical record.)

(h) X-ray reports bearing the identification of the originator of the interpretation.

(i) Consultation reports when such services have been obtained.

(j) Records of assessment and intervention, including graphic charts and medication records and appropriate personnel notes.

(k) Discharge summary including final diagnosis.

(l) Discharge order.

(m) Autopsy report if applicable.

(n) Such signed documents as may be required by law.

(o) Informed consent forms that document:

(A) The name of the hospital where the procedure or treatment was undertaken;

(B) The specific procedure or treatment for which consent was given;

(C) The name of the health care practitioner performing the procedure or administering the treatment;

(D) That the procedure or treatment, including the anticipated benefits, material risks, and alternatives was explained to the patient or the patient's representative or why it would have been materially detrimental to the patient to do so, giving due consideration to the appropriate standards of practice of reasonable health care practitioners in the same or a similar community under the same or similar circumstances;

(E) The manner in which care will be provided in the event that complications occur that require health services beyond what the hospital has the capability to provide;

(F) The signature of the patient or the patient's legal representative; and

(G) The date and time the informed consent was signed by the patient or the patient's legal representative.

(p) Documentation of the disclosures required in ORS 441.098.

(3) A medical record of a surgical patient shall include, in addition to other record requirements, but is not limited to:

(a) Preoperative history, physical examination and diagnosis documented prior to operation.

(b) Anesthesia record including preanesthesia assessment and plan for anesthesia, records of anesthesia, analgesia and medications given in the course of the operation and postanesthetic condition.

(c) A record of operation dictated or written immediately following surgery and including a complete description of the operation procedures and findings, postoperative diagnostic impression, and a description of the tissues and appliances, if any, removed. When the dictated operative report is not placed in the medical record immediately after surgery, an operative progress note shall be entered in the medical record after surgery to provide

pertinent information for any individual required to provide care to the patient.

(d) Postanesthesia recovery progress notes.

(e) Pathology report on tissues and appliances, if any, removed at the operation.

(4) An obstetrical record for a patient, in addition to the requirements for medical records, shall include but is not limited to:

(a) The prenatal care record containing at least a serologic test result for syphilis, Rh factor determination, and past obstetrical history and physical examination.

(b) The labor and delivery record, including reasons for induction and operative procedures, if any.

(c) Records of anesthesia, analgesia, and medications given in the course of delivery.

(5) A medical record of a newborn or stillborn infant, in addition to the requirement for medical records, shall include but is not limited to:

(a) Date and hour of birth; birth weight and length; period of gestation; sex; and condition of infant on delivery (Apgar rating is recommended).

(b) Mother's name and hospital number.

(c) Record of ophthalmic prophylaxis or refusal of same.

(d) Physical examination at birth and at discharge.

(e) Progress and nurse's notes including temperature; weight and feeding data; number, consistency and color of stools; urinary output; condition of eyes and umbilical cord; condition and color of skin; and motor behavior.

(f) Type of identification placed on infant in delivery room;

(g) Newborn hearing screening tests in accordance with OAR 333-020-0130.

(6) A patient's emergency room, outpatient and clinic records, in addition to the requirements for medical records, shall be maintained and available to the other professional services of the hospital and shall include but are not limited to:

(a) Patient identification.

(b) Admitting diagnosis, chief complaint and brief history of the disease or injury.

(c) Physical findings.

(d) Laboratory and X-ray reports (if performed), as well as reports on any special examinations. The original report shall be authenticated and recorded in the patient's medical record.

(e) Diagnosis.

(f) Record of treatment, including medications.

(g) Disposition of case with instructions to the patient.

(h) Signature or authentication of attending physician.

(i) A record of the pre-hospital report form (when patient is brought in by ambulance) shall be attached to the emergency room record.

(7) All entries in a patient's medical record shall be dated, timed and authenticated.

(a) Authentication of an entry requires the use of a unique identifier, including but not limited to a written signature or initials, code, password, or by other computer or electronic means that allows identification of the individual responsible for the entry.

(b) Systems for authentication of dictated, computer, or electronically generated documents must ensure that the author of the entry has verified the accuracy of the document after it has been transcribed or generated.

(8) The following records shall be maintained and kept permanently in written or computerized form:

(a) Patient's register, containing admissions and discharges;

(b) Patient's master index;

(c) Register of all deliveries, including live births and stillbirths;

(d) Register of all deaths;

(e) Register of operations;

(f) Register of outpatients (seven years);

(g) Emergency room register (seven years); and

(h) Blood banking register (20 years).

(9) The completion of the medical record shall be the responsibility of the attending qualified member of the medical staff. Any licensed health care practitioner responsible for providing or evaluating the service provided shall complete and authenticate those portions of the record that pertain to their portion of the patient's care. The appropriate individual shall authenticate the history and physical examination, operative report, progress notes, orders and the summary. In a hospital using interns, such orders must be according to policies and protocols established and approved by the medical staff. An authentication of a licensed health care

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practitioner on the face sheet of the medical record does not suffice to cover the entire content of the record:

(a) Medical records shall be completed by a licensed health care practitioner and closed within four weeks following the patient's discharge.

(b) If a patient is transferred to another health care facility, transfer information shall accompany the patient. Transfer information shall include but is not limited to:

- (A) The name of the hospital from which they were transferred;
- (B) The name of physician or other health care practitioner to assume care at the receiving facility;
- (C) The date and time of discharge;
- (D) The current medical findings;
- (E) The current nursing assessment;
- (F) Current medical history and physical information;
- (G) Current diagnosis;
- (H) Orders from a physician or other licensed health care practitioner

for immediate care of the patient;

- (I) Operative report, if applicable;
- (J) TB test, if applicable; and
- (K) Other information germane to patient's condition.

(c) If the discharge summary is not available at time of transfer, it shall be transmitted to the new facility as soon as it is available.

(10) Diagnoses and operations shall be expressed in standard terminology. Only abbreviations approved by the medical staff may be used in the medical records.

(11) Medical records shall be filed and indexed. Filing shall consist of an alphabetical master file with a number cross-file. Indexing is to be done according to diagnosis, operation, and qualified member of the medical staff, using a system such as the International or Standard nomenclature systems.

(12) Medical records are the property of the hospital. The medical record, either in original, electronic or microfilm form, shall not be removed from the hospital except where necessary for a judicial or administrative proceeding. Treating and attending physicians shall have access to medical records. When a hospital uses off-site storage for medical records, arrangements must be made for delivery of these records to the hospital when needed for patient care or other hospital activities. Precautions must be taken to protect patient confidentiality.

(13) Authorized personnel of the Division shall be permitted to review medical records and patient registers as necessary to determine compliance with health care facility licensing laws.

(14) Medical records shall be kept for a period of at least 10 years after the date of last discharge. Original medical records may be retained on paper, microfilm, electronic or other media.

(15) Medical records shall be protected against unauthorized access, fire, water and theft.

(16) If a hospital changes ownership, all medical records in original, electronic or microfilm form shall remain in the hospital and it shall be the responsibility of the new owner to protect and maintain these records.

(17) If a hospital closes, its medical records and the registers required under section (8) of this rule may be delivered and turned over to any other hospital in the vicinity willing to accept and retain the same as provided in section (12) of this rule. A hospital which closes permanently shall follow the procedure for Division and public notice regarding disposal of medical records under OAR 333-500-0060.

(18) All original clinical records or photographic or electronic facsimile thereof, not otherwise incorporated in the medical record, such as X-rays, electrocardiograms, electroencephalograms, and radiological isotope scans shall be retained for seven years after a patient's last discharge if professional interpretations of such graphics are included in the medical records.

(19) If a qualified medical record practitioner, RHIT (Registered Health Information Technician) or RHIA (Registered Health Information Administrator) is not the Director of the Medical Records Department, periodic and at least annual consultation must be provided by a qualified medical records consultant, RHIT/RHIA. The visits of the medical records consultant shall be of sufficient duration and frequency to review medical record systems and assure quality records of the patients. The contract for such services shall be made available to the Division.

(20) A current written policy on the release of medical record information including a patient's access to his or her medical record shall be maintained in the medical records department.

(21) A hospital is not required to keep a medical record in accordance with this rule for a person referred to a hospital ancillary department for a diagnostic procedure or health screening by a private physician, dentist, or

other licensed health care practitioner acting within his or her scope of practice.

(22) Pursuant to ORS 441.059, the rules of a hospital that govern patient access to previously performed X-rays or diagnostic laboratory reports shall not discriminate between patients of chiropractic physicians and patients of other licensed health care practitioners permitted access to such X-rays and diagnostic laboratory reports.

(23) Nothing in this rule is meant to prohibit or discourage a hospital from maintaining its records in electronic form.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: HB 183, f. & ef. 5-26-66; HB 235, f. 2-5-70, ef. 2-25-70; HB 253, f. 7-22-70, ef. 8-25-70; HB 255, f. 9-15-70, ef. 10-11-70; HD 11-1980, f. & ef. 9-10-80; HD 8-1984, f. & ef. 5-7-84; Renumbered from 333-023-0190; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0055; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0060

Quality Assessment and Performance Improvement

(1) The governing body of a hospital must ensure that there is an effective, written, facility-wide quality assessment and performance improvement program to evaluate and monitor the quality and appropriateness of patient care.

(2) All organized services related to patient care, including services furnished by a contractor, must be evaluated.

(3) Written documentation of quality assessment and performance improvement activities shall be recorded at least quarterly.

(4) Healthcare associated infections, adverse drug reactions, errors in administration of drugs, and blood and blood product transfusions must be evaluated.

(5) All medical and surgical services performed in the hospital must be evaluated as they relate to appropriateness of diagnosis and treatment.

(6) The hospital must have an ongoing plan, consistent with available community and hospital resources, to provide and make available social work, psychological, and educational services to meet the medically-related needs of its patients.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.025

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-505-0080

Tuberculosis Control

(1) As used in this rule, "person" means any:

- (a) Hospital employee;
- (b) Hospital contractor;
- (c) Health care practitioner granted privileges by the hospital; or
- (d) Hospital volunteer or student.

(2) A hospital shall comply with the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Settings, 2005, published in the Morbidity and Mortality Weekly Report by the Centers for Disease Control and Prevention (CDC), December 30, 2005, and incorporated by reference.

(3) A hospital shall obtain documentation that tuberculosis (TB) testing has been conducted in a manner consistent with the CDC guidelines for any person who enters a hospital and who has contact with patients, enters rooms that patients may enter, or who handles clinical specimens or other material from patients or their rooms.

(4) A hospital shall require documentation of baseline TB screening conducted in accordance with the CDC Guidelines, within six weeks of the date of hire, date of executed contract or date of being granted hospital credentials.

(5) A hospital that is classified as "potential ongoing transmission" under CDC Guidelines shall consult with the Oregon TB control program within the Division, for guidance on the extent of TB testing required.

(6) If a hospital learns that a person or a patient at the hospital is diagnosed with communicable TB, the hospital shall notify the local public health authority and conduct an investigation to identify contacts. If the Division or local public health authority conducts its own investigation, a hospital shall cooperate with that investigation and provide the Division or local public health authority with any information necessary for it to conduct its investigation.

(7) A hospital shall notify the local public health administrator of its intent to discharge a patient known to have active TB disease.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

ADMINISTRATIVE RULES

333-510-0020

Nursing Care Management

(1) The nursing care of each patient, including patients admitted for observation status, in a hospital shall be the responsibility of a registered nurse (RN).

(2) The RN will only provide services to the patients for which the RN is educationally and experientially prepared and for which competency has been maintained.

(3) The RN shall be responsible and accountable for managing the nursing care of the RN's assigned patients. The RN shall only assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available. The responsible RN shall ensure that the following activities are completed:

(a) Document the admission assessment of the patient within four hours following admission and initiate a written plan of care. This shall be reviewed and updated whenever the patient's status changes.

(b) Develop and document within eight hours following admission a plan of care for nursing services for the patient, based on the patient assessment and realistic, understandable, achievable patient goals consistent with the applicable rules in OAR chapter 851, division 045.

(c) Observe and report to the nurse manager and the patient's physician or other responsible health care provider authorized by law, when appropriate, any significant changes in the patient's condition that warrant interventions that have not been previously prescribed or planned for:

(A) When the RN questions the efficacy, need or safety of continuation of medications being administered to a patient, the RN shall report that question to the physician or other responsible health care provider authorized by law authorizing the medication and shall seek further instructions concerning the continuation of the medication.

(4)(a) A hospital shall maintain documentation of certification of certified nursing assistants (CNAs), which shall be available on request to Division personnel.

(b) A nursing assistant who works in a hospital must be certified prior to assuming nursing assistant duties in accordance with OAR chapter 851, division 062.

(c) A hospital shall maintain documentation that CNAs whose functions include administration of non-injectable medications, are qualified. This documentation shall be available on request to Division personnel.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; HD 5-1981, f. & ef. 3-30-81; Renumbered from 333-023-0172; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0015(7); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-510-0040

Nurse Executive

(1) The nurse executive position shall be full-time (40 hours per week). Time spent in professional association workshops, seminars and continuing education may be counted as duties in considering whether or not the nurse executive is full-time. If the nurse executive has responsibility for direct patient care activities, sufficient time must be available to devote to administrative duties. For hospitals with attached long-term care facilities, the nurse executive may function as the nurse executive for both the hospital and the long-term care facility.

(2) The nurse executive shall have had progressive responsibility in managing in a health care setting. The nurse executive shall be a registered nurse licensed in Oregon. In addition, the nurse executive must have a baccalaureate degree, other advanced degree, or appropriate equivalent experience, with emphasis in management preferred.

(3) The nurse executive shall have written administrative authority, responsibility, and accountability for assuring functions and activities of the nursing services department and shall participate in the development of any policies that affect the nursing services department. This includes budget formation, implementation and evaluation. The nurse executive shall ensure the:

(a) Development and maintenance of a nursing service philosophy, objective, standards of practice, policy and procedure manuals, and job descriptions for each level of nursing service personnel;

(b) Development and maintenance of personnel policies of recruitment, orientation, in-service education, supervision, evaluation, and termination of nursing service staff or ensure it is done by another department;

(c) Development and maintenance of policies and procedures for determination of nursing staff's capacity for providing nursing care for any patient seeking admission to the facility;

(d) Development and maintenance of a quality assessment and performance improvement program for nursing service;

(e) Coordination of nursing service departmental function and activities with the function and activities of other departments; and

(f) Ensure participation with the administrator and other department directors in development and maintenance of practices and procedures that promote infection control, fire safety, and hazard reduction.

(4) Whenever the nurse executive is not available in person or by phone, the nurse executive shall designate in writing a specific registered nurse or nurses, licensed to practice in Oregon, to be available in person or by phone to direct the functions and activities of the nursing services department.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-520-0035

Pharmacy Services

(1) A general hospital is required to have an on site pharmacy and a pharmacist on call 24/7 to staff the pharmacy.

(2) Low occupancy acute care hospitals and mental or psychiatric hospitals may have an on-site pharmacy or a drug room.

(3) Low occupancy acute care hospitals and mental or psychiatric hospitals shall have appropriately trained pharmacy staff on-site or on-call 24/7.

(4) A pharmacy in a hospital shall comply with the applicable requirements in ORS Chapter 689 and OAR chapter 855, including 855-041-0120 through 855-041-0132.

(5) A drug room in a hospital shall comply with the applicable requirements in ORS Chapter 689 and OAR 855-041-0135 through 855-041-0140.

(6) All hospitals, regardless of classification shall dispose of old medications, including special prescriptions for patients who have left the hospital, by incineration or another equally effective method, except narcotics and other drugs under the drug abuse law, which shall be handled in the manner prescribed by the Drug Enforcement Administration of the U.S. Department of Justice.

Stat. Auth.: ORS 441.055

Stats Implemented: ORS 441.055 & 442.015

Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-520-0050

Surgery Services

(1) General hospitals are required to comply with this rule. A low occupancy acute care or mental or psychiatric hospital shall comply with this rule if it offers surgery services.

(2) A hospital that provides surgical services shall have operating rooms that conform to the applicable requirements in OAR chapter 333, division 535.

(3) A hospital's operating rooms must be supervised by an experienced registered nurse or doctor of medicine or osteopathy.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(10) & (11); HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-520-0060

Maternity Services

(1) General hospitals are required to comply with this rule. A low occupancy acute care hospital shall comply with this rule if it offers maternity services.

(2) A hospital that provides maternity services shall have separate maternity facilities and a maternity care department that:

(a) Has labor, delivery, recovery, postpartum, and nursery rooms that conform to the applicable requirements of OAR chapter 333, division 535;

(b) Requires every person in the delivery room during a delivery to be appropriately attired according to the hospital's Infection Control Policy;

(c) Has appropriate resuscitation equipment immediately available to rooms where deliveries are planned and where newborn infants are kept;

(d) Has a warmed blanket or incubator for newborns to prevent thermal loss;

(e) Has incubators for premature infants equipped with a governor to control the flow of oxygen at 40 percent or under, and an oxygen analyzer;

(f) Has an accurate scale for weighing of infants; and

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(g) Includes a nursery and a separate bassinet for each infant with a clean mattress covered with suitable sheeting, washable pads, and bed linen that is kept clean at all times.

(3) A health care practitioner attending the birth of a newborn shall evaluate and treat a newborn at risk for chlamydial or gonococcal ophthalmia neonatorum in accordance with OAR 333-019-0036.

(4) A parent or legal representative that refuses to allow prophylaxis for an infant shall be informed by the attending health care practitioner of the risks of the refusal and must sign a witnessed affidavit that attests they have been so informed and nonetheless refuse to allow prophylaxis.

(5) A hospital shall ensure that all newborns are given Vitamin K at birth as required by ORS 433.303 through 433.314.

(a) A physician or midwife attending the mother at the birth of the child shall be responsible for ensuring that the newborn infant receives Vitamin K within 24 hours of birth to protect the infant against hemorrhagic disease of the newborn.

(b) The Vitamin K forms suitable for use are:

(A) Vitamin K 1 (Phytonadione) for oral or injectable use;

(B) Mephyton for oral use; or

(C) Aquamephyton or konaktion for injectable use.

(c) A parent may, after being provided a full and clear explanation, decline to permit the administration of Vitamin K based on religious tenets and practices. If a parent or legal representative declines Vitamin K, the parent shall sign a form acknowledging his or her understanding of the reason for administration of Vitamin K and possible adverse consequences in the presence of a person who witnessed the instruction of the parent, who shall also sign the form. The form shall become a part of the medical record of the newborn infant.

(6) A hospital shall ensure that every newborn infant born in the hospital is tested for Metabolic Diseases as required by OAR 333-024-0210 through 333-024-0235 and instructions to the parents or legal representative regarding the testing that be documented in the medical record.

(7) A hospital shall ensure that every newborn infant born in the hospital receives a Newborn Hearing Screening Test as required by ORS 433.321 and OAR chapter 333, division 020.

(8) Every infant born in a hospital shall be marked for identification before the infant is removed from the place of delivery and such identification shall not be removed from the infant until the infant is discharged.

(9) A hospital shall not admit visitors to a delivery room, maternity rooms, wards, units, or the nursery except in accordance with the hospital's visiting policy.

(10) A hospital shall ensure that persons entering the nursery are attired according to the hospital infection control policy and that hands are washed before touching an infant.

(11) A hospital shall follow its infection control policy when handling and storing linens.

(12) Formula feedings and any other feedings shall be given only as prescribed in writing by the physician or certified nurse midwife.

(13) A hospital shall maintain and preserve a log of births giving date of birth, name of newborn, and mother's name and chart number, in addition to complying with the requirements of the Authority's Center for Health Statistics.

(14) A hospital may use a part of the maternity department for selected, non-communicable non-obstetrical patients as defined by hospital policy and approved by the hospital's infection control program under the following conditions:

(a) Patients admitted or transferred to the maternity department shall be instructed by appropriate maternity service personnel as to their responsibilities regarding use of the facility.

(b) Patients admitted to the maternity department shall be limited to obstetrical patients admitted for delivery, patients with obstetric complications, and selected non-communicable, non-obstetrical patients.

(c) Obstetrical patients and medical/surgical patients shall not occupy the same room.

(d) If necessary, one or more medical/surgical patients shall be transferred to another service in order to admit obstetrical patients.

(15) A hospital shall adhere strictly to the guidelines for standard precautions developed by the Hospital Infection Control Practices Advisory Committee (HICPAC) when caring for obstetrical patients with infectious conditions. Patients with infectious conditions requiring strict isolation according to the above guidelines shall be transferred out of the maternity department following delivery, and given care in an area of the hospital where that isolation can be provided. If a maternity patient is found to have an infectious condition during surgery or delivery, the patient shall be

returned to the maternity department and isolated according to hospital infection control policy.

(16) A delivery room suite may be used for surgical procedures on non-obstetrical patients if approved by the Chief of Obstetrics in accordance with medical staff rules and regulations.

(17) A hospital with maternity services may place stable postpartum patients and stable newborns, as those terms are defined in OAR 333-500-0010, on another acute care unit on a periodic basis under the following conditions:

(a) When a postpartum patient or newborn to be transferred out of the OB unit meet the hospital's criteria for care on another unit as described in this rule;

(b) Where the decision to place a postpartum patient or newborn on another unit is based on currently accepted postpartum and newborn care standards and the ability of that unit to meet the needs of the patient; and

(c) When nursing staff on the non-OB unit have received training required by this rule and have demonstrated continuing competence.

(18) A hospital that provides care to postpartum patients and newborns on non-OB units shall:

(a) Develop and implement policies and procedures that include but are not limited to:

(A) The transfer of postpartum patients and newborns to non-OB units including a delineation of the authority for medical, clinical and administrative nursing staff, and, when applicable, nurse practitioner staff to make the decision;

(B) Staffing guidelines for the nursing care of postpartum patients and newborns on the non-OB unit;

(C) Provision of information to maternity patients of possible or intended placement on a non-OB unit;

(D) Provision of consumer information related to the availability and location of specialty maternity services;

(E) Infection control practices including the use of standard precautions;

(F) Procedures for patient placement, privacy, and safety that prohibit postpartum patients and newborns from occupying the same room as non-obstetrical patients;

(G) Protocols for the placement of newborns without mothers;

(H) Procedures to assure the inclusion of the care of postpartum patients and newborns on non-OB units in the hospital's quality assurance program; and

(I) Delineation of hospital protocols for the return of postpartum patients and newborns to the OB unit, including addressing situations when safe care can no longer be provided on the non-OB unit.

(b) Develop and implement staff training, continuing education, and continuing competency program that includes but is not limited to:

(A) Postpartum nursing care;

(B) Nursing care of the newborn;

(C) Newborn resuscitation;

(D) Newborn feeding;

(E) Maternal and family education;

(F) Infection control practices including the use of standard precautions; and

(G) Maternity services policies and procedures including those required in subsection (18)(a) of this rule.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(12), (13), & (14); HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; HD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

333-520-0070

Emergency Department and Emergency Services

(1) Hospitals classified as general and low occupancy acute care shall have an emergency department that provides emergency services.

(2) A hospital with an emergency department shall:

(a) Provide emergency services 24 hours a day including providing immediate life saving intervention, resuscitation, and stabilization;

(b) Have a licensed health care practitioner with admitting privileges on-call, 24 hours a day;

(c) Have at least one registered nurse, appropriately trained to provide emergency care within the emergency service area;

(d) Have adequate medical staff and other ancillary personnel necessary to provide emergency care either present in the emergency service area or available 24 hours a day in adequate numbers to respond promptly;

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(e) Ensure that when surgical, laboratory, and X-ray procedures are indicated and ordered, due regard is given to promptness in carrying them out;

(f) Ensure that it has items for resuscitation, stabilization, and basic emergency medical care, including airway equipment and cardiac resuscitation medications and supplies for adults, children and infants;

(g) Have a communication system and personnel available 24 hours a day to ensure rapid communication with ambulances and departments of the hospital including, but not limited to, X-ray, laboratory, and surgery;

(h) Have a plan for emergency care based on community needs and on hospital capabilities which sets forth policies, procedures and protocols for prompt assessment, treatment and transfer of ill or injured persons, including specifying the response time permissible for medical staff and other ancillary personnel;

(i) Provide for the prompt transfer of patients, as necessary, to an appropriate facility in accordance with transfer agreements, approved trauma system plans, consideration of patient choice, and consent of the receiving facility;

(j) Have written transfer agreements for the care of injured or ill persons if the hospital does not provide the type of care needed;

(k) Ensure that personnel are able to provide prompt and appropriate instruction to ambulance personnel regarding triage, treatment and transportation;

(l) Develop, maintain, and implement current written policies and procedure that include clearly-defined roles, responsibilities, and reporting lines for emergency service personnel;

(m) Maintain emergency records in accordance with OAR 333-505-0050;

(n) Establish a committee of the emergency department staff who shall at least quarterly, review emergency services by evaluating the quality of emergency medical care given, and engage in ongoing development, implementation, and follow-up on corrective action plans; and

(o) Ensure it provides appropriate training programs for hospital emergency service personnel.

(3) If a hospital is also designated or categorized as a trauma hospital under ORS 431.607 through 431.671, the hospital shall:

(a) Comply with the applicable provisions in OAR chapter 333, division 200 through 205;

(b) Report trauma data to the State Trauma Registry in accordance with the requirements of the Division; and

(c) Fully cooperate with the approved area trauma system plan.

(4) An officer or employee of a general or low occupancy acute care hospital licensed by the Division may not deny a person an appropriate medical screening examination needed to determine whether the person is in need of emergency medical services if the screening is within the capability of the hospital, including ancillary services routinely available to the emergency department.

(5) An officer or employee of any hospital licensed by the Division may not deny services to a person diagnosed by a physician as being in need of emergency medical services because the person is unable to establish the ability to pay for the services if those emergency medical services are customarily provided at the hospital.

(6) A mental or psychiatric hospital shall assess and provide initial treatment to a person that presents to the hospital with an emergency medical condition, as that term is defined in 42 CFR 489.24. The hospital shall admit the person if the emergency medical condition falls within the specialty services provided by the hospital under OAR chapter 333, division 525.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(15) & (16); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13

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Rule Caption: Amendments pertaining to the petition process to add qualifying conditions under the OMMA.

Adm. Order No.: PH 18-2012

Filed with Sec. of State: 12-26-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Amended: 333-008-0090

Subject: The Oregon Health Authority (OHA), Public Health Division, Oregon Medical Marijuana Program is permanently amending

OAR 333-008-0090 regarding the process for petitioning to add qualifying diseases or conditions as debilitating medical conditions under the Oregon Medical Marijuana Act. Under current rule, when a petition is received by OHA requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions, OHA appoints an expert panel of five to seven individuals to review the petition (assuming it is not denied as frivolous by the State Public Health Officer (SPHO) or designee) and to provide recommendations to the SPHO. This process is too time consuming and costly and provides no standards by which the SPHO should make a decision. OHA is removing the expert panel and allowing the SPHO to undertake an investigation and make a decision on the petition. An investigation may include consulting with experts in cannabis therapeutics and experts on the disease or condition proposed to be added as a debilitating medical condition and a review of scientific literature and other information related to the therapeutic use of marijuana and the disease or condition proposed to be added. A decision on a petition will consider whether there is scientific evidence that marijuana is beneficial for the disease or condition proposed to be added and that any benefits are not outweighed by the harms.

After the last expert panel met to hear and consider evidence relating to the addition of several conditions to the list (all of which were denied), it became clear that the method being used (appointing an expert panel) was too time consuming and expensive.

Streamlining business processes and promoting transparency were key in suggesting these rule changes. Because the expert panel did not have any authority to add conditions, only to make recommendations to the State Health Officer, it was an extra step. The State Public Health Officer (SPHO) has been and will remain the person making the decision about whether or not to add a condition.

The rule changes will streamline the current process, developing a clear standard to evaluate petitions.

The amended rule will further improve transparency: making it clear what the process is for adding a condition and who makes the decision.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-008-0090

Addition of Qualifying Diseases or Medical Conditions

(1) For the purposes of this rule, the following definitions apply:

(a) DSM means the latest published edition of Diagnostic and Statistical Manual of Mental Disorders.

(b) ICD means the most recent revision of the International Classification of Diseases published by the United Nations-sponsored World Health Organization that provides codes, up to six characters long, to classify diseases and a variety of signs, symptoms, abnormal findings, complaints, social circumstances, and external causes of injury or disease.

(c) Peer-reviewed published scientific study means that a study has been cited by the Cochrane Review, the Institute of Medicine, or PubMed Central?

(d) Petitioner means an individual who has filed a petition in accordance with ORS 475.334 and this rule.

(e) State Public Health Officer (SPHO) means the individual appointed by the Director of the Authority in accordance with ORS 431.045, or his or her designee.

(2) The Authority shall accept a written petition from any person requesting that a particular disease or condition be included among the diseases and conditions that qualify as a debilitating medical condition under ORS 475.302.

(a) A petition may only request a single disease or condition be added as a debilitating medical condition. A separate petition must be submitted for each disease or condition proposed to be added as a debilitating medical condition.

(b) A petition must be submitted by mail using a form prescribed by the Authority and must include, along with the form, the following in an electronic format (e.g. compact disc (CD) or thumb drive):

(A) A specific description of the disease or condition proposed to be added and its characteristics, including the applicable ICD code or the specific diagnosis as described in the DSM;

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(B) A general explanation of how or why the petitioner believes marijuana would mitigate the symptoms or effects of the disease or condition that is the subject of the petition; and

(C) At least one peer-reviewed published scientific study showing the efficacy in humans for use of medical marijuana for the disease or condition that is the subject of the petition.

(c) A petitioner may also include with the information required to be submitted in subsection (2)(b) of this rule letters of support from physicians or other licensed health care professionals knowledgeable about the disease or condition proposed to be added, and any other information the petitioner believes the SPHO should review in considering the petition.

(d) If a petitioner submits a petition to add the same or a substantially equivalent disease or condition that was the subject of a petition that was denied by the SPHO within the last five years from the date a new petition is submitted, a petitioner must submit at least one peer-reviewed published scientific study that was published since the date the SPHO denied the previous petition for the same or substantially equivalent disease or condition.

(e) A petition may not contain individually identifiable health information as that is defined in ORS 433.443 unless any individual identified in relation to health information submits an Authorization for Use and Disclosure of Information on a form prescribed by the Authority. A petition that contains individually identifiable health information that is submitted without the required authorization must be returned to the petitioner as incomplete.

(f) A petition that does not contain all the information required by section (2) of this rule shall be returned to the petitioner as incomplete. A petition returned as incomplete is not considered a denial for purposes of subsection (2)(d) of this rule.

(3) If the petitioner has submitted a petition with all the information required in section (2) of this rule, the SPHO must:

(a) Assign a petition number to the petition;

(b) Notify the petitioner by certified mail that the petition has been accepted;

(c) Post a notice, a copy of the petition and materials submitted by the petitioner on the Authority's website announcing that the petition has been accepted and is under consideration, and solicit information from individuals or organizations concerning experts in cannabis therapeutics and scientific studies, including but not limited to peer-reviewed published scientific studies;

(d) Notify the Advisory Committee on Medical Marijuana (ACMM) by electronic mail that the petition is under consideration, and request from the ACMM recommendations regarding relevant experts and information pertinent to the petition;

(e) Conduct an investigation that may, as the SPHO determines necessary, include:

(A) Consulting with one or more experts in cannabis therapeutics and one or more experts on the disease or condition that is the subject of the petition;

(B) Requesting a literature review and a summary of peer-reviewed published scientific studies related to the use of marijuana for the disease or condition that is the subject of the petition, from neutral persons knowledgeable about conducting such reviews; and

(C) Gathering any other information the SPHO believes relevant to making a decision on the petition.

(f) Hold a public hearing at a time and place determined by the SPHO. At the public hearing the petitioner shall have the opportunity to address the SPHO in person or by telephone. Written comments shall be accepted by the SPHO for one week following the close of the public hearing.

(4) Following the investigation identified in subsection (3)(e) of this rule and the close of the public comment period specified in subsection (3)(f) of this rule, the SPHO must issue a Notice of Intent to either approve or deny the petition.

(a) The SPHO must issue a Notice of Intent to Approve the petition if, based on the evidence presented to and considered by the SPHO, the SPHO finds that:

(A) Marijuana is efficacious for the disease or condition that is the subject of the petition or marijuana may mitigate the symptoms or effects of the disease or condition that is the subject of the petition; and

(B) Any risk of physical or mental harm from using marijuana for the disease or condition that is the subject of the petition is outweighed by the physical or mental benefit of using marijuana for that disease or condition.

(b) The SPHO must issue a Notice of Intent to Deny the petition if the SPHO determines that the evidence presented to and considered by the SPHO does not meet the standards established in subsection (4)(a) of this rule.

(c) The Notice of Intent must be in writing and must describe all evidence and information upon which the decision of the SPHO is based, including the identity and credentials of all experts relied upon.

(d) If the Authority issues a Notice of Intent to Deny the petitioner is entitled to a contested case hearing as provided under ORS chapter 183. The petitioner has 30 days to request a hearing.

(5) At a contested case hearing, the petitioner has the burden of proving the decision of the SPHO was without a reasonable basis in fact.

(6) The SPHO must issue a final order within 180 days of receipt of a complete petition.

(7) A petitioner may withdraw his or her petition without prejudice at any time prior to the public hearing specified in subsection (3)(f) of this rule. A petition withdrawn after the public hearing specified in subsection (3)(f) of this rule shall be deemed denied for purposes of this rule.

Stat. Auth.: ORS 475.334 & 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 18-2012, f. 12-26-12, cert. ef. 1-1-13

Rule Caption: OregonContraceptiveCare (CCare).

Adm. Order No.: PH 19-2012

Filed with Sec. of State: 12-26-2012

Certified to be Effective: 12-26-12

Notice Publication Date: 11-1-2012

Rules Adopted: 333-004-0200, 333-004-0210, 333-004-0220, 333-004-0230

Rules Amended: 333-004-0000, 333-004-0010, 333-004-0020, 333-004-0030, 333-004-0040, 333-004-0050, 333-004-0060, 333-004-0070, 333-004-0080, 333-004-0100, 333-004-0110, 333-004-0120, 333-004-0130, 333-004-0140, 333-004-0150, 333-004-0160

Rules Repealed: 333-004-0170, 333-004-0180, 333-004-0190

Subject: The Oregon Health Authority, Public Health Division is permanently adopting, amending, and repealing Oregon Administrative Rules related to the OregonContraceptiveCare Program (CCare), previously known as the Family Planning Expansion Project (FPEP). CCare is a Medicaid waiver demonstration project approved by the Centers for Medicare and Medicaid Services (CMS). The program is amending rules to reflect current program requirements and to update organizational name changes. Revisions include an expansion of the definitions section; a description of the client eligibility verification process; the addition of non-School-Based Health Center site enrollment rules; and further clarification regarding agency billing procedures regarding third party billing.

Additional revisions include: 1) an increase in the income eligibility of applicants with incomes at or below 250% of the Federal Poverty Level, per CMS approval; 2) the modification, also in accordance with CMS approval, to permit enrollment of individuals into CCare with private health insurance coverage; and 3) an expansion of the description of agency sanctions and appeals processes.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-004-0000

Description of OregonContraceptiveCare

OregonContraceptiveCare (CCare) is a Medicaid waiver demonstration project approved by the Centers for Medicare and Medicaid Services (CMS) to provide comprehensive contraceptive management services to eligible low-income Oregon residents statewide. OregonContraceptiveCare extends Medicaid coverage for contraceptive management services to Oregon residents with family incomes at or below 250 percent of the Federal Poverty Level (FPL) through a contract network of qualified agencies. The administrative rules set forth for this project apply only to agencies with an approved medical services agreement (MSA) to provide contraceptive management services through this project. Other reproductive health services and reimbursement covered by Medicaid are governed by the Oregon Health Authority, Division of Medical Assistance Program's administrative rules and federal guidelines.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 19-2012, f. & cert. ef. 12-26-12

ADMINISTRATIVE RULES

333-004-0010

Definitions

(1) "Acquisition cost" means the net amount paid per invoice line item to a pharmaceutical manufacturer, supplier or distributor for a contraceptive supply, plus any shipping and handling that is supported by the invoice.

(2) "Agency" means an entity enrolled by the Reproductive Health Program (RH) to provide CCare covered services at clinic site(s) to clients.

(3) "Authority" means the Oregon Health Authority.

(4) "CCare Eligibility Database" means the web-based database designed and managed by the Center for Prevention and Health Promotion (Center) for the statewide collection, tracking and storage of CCare client eligibility information.

(5) "Center" means the Center for Prevention and Health Promotion, within the Public Health Division of the Oregon Health Authority.

(6) "Citizenship verification" means confirming a client's claim of U.S. citizenship through documentation of a certified birth record, passport or other document(s) deemed acceptable proof of U.S. citizenship verification by the federal government.

(7) "CLIA" means the Clinical Laboratory Improvement Amendments of 1988, which establishes quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results, and allows for certification of clinical laboratories operating in accordance with these federal amendments.

(8) "Client" means a person of any age or gender who is enrolled in and receives contraceptive management services from CCare.

(9) "Clinic" means a site within an agency that provides CCare billable services to eligible clients.

(10) "Clinic Visit Record" or "CVR" means the form or set of information that is completed for each client visit, and that is used as a data collection instrument and a billing claim form for CCare.

(11) "CMS" means the Centers for Medicare and Medicaid Services, located within the federal Department of Health and Human Services.

(12) "Contraceptive management" means a limited scope of reproductive health services as described in OAR 333-004-0040.

(13) "Established client," for the purpose of mail ordered supplies, means a person who has been obtaining contraceptive services/supplies from the prescribing clinic for a minimum of three consecutive months.

(14) "FPL" means the federal poverty level guidelines established each year by the Department of Health and Human Services, used to determine eligibility for CCare other federally funded programs.

(15) "Individual" means a person who has applied for CCare, but has not yet been verified as eligible for services.

(16) "Lawful Permanent Resident" or "LPR" means a person who, notwithstanding other eligibility requirements, is a qualified non-citizen as described in OAR 461-120-0125(14).

(17) "Medical Services Agreement" or "MSA" means an agreement that sets forth the relationship between the Center and the enrolling agency regarding payment by the Center for contraceptive management services, supplies, or devices.

(18) "Nationally-recognized standard of care" means a diagnostic, screening, or treatment process recognized by a national organization, including but not limited to the American Cancer Society (ACS), American College of Obstetrics and Gynecologists (ACOG), U.S. Preventative Services Task Force (USPSTF), or the U.S. Medical Eligibility Criteria (USMEC).

(19) "OregonContraceptiveCare" or "CCare" means the Medicaid waiver program that provides statewide reproductive health services to eligible clients that is administered by the Reproductive Health Program within the Authority.

(20) "Project number" means the administrative number assigned by the RH to an agency.

(21) "Provider" means a licensed health care professional operating within a scope of practice, who works for an agency that is authorized by the Authority to bill for contraceptive management services for eligible CCare clients.

(22) "Refugee/Asylee" means a person admitted to the United States because of a well-founded fear of persecution in their homeland due to race, religion or political opinion, as determined by the United States Citizenship and Immigration Services.

(23) "Reproductive Health Program" or "RH" means the program within the Center for Prevention and Health Promotion that administers CCare.

(24) "Reproductive health services" means comprehensive family planning and related preventive health services provided to clients, including but not limited to:

(a) Patient education and counseling;

(b) Breast and pelvic examinations;

(c) Breast and cervical cancer screening;

(d) Sexually transmitted disease (STD) prevention education, counseling, testing and referral; and

(e) Pregnancy diagnosis and counseling.

(25) "RH program manual" means the reference guide provided by RH to agencies, outlining the scope and policies of the CCare program. This manual is available online by selecting "Program Manuals" at www.healthoregon.org/rhmaterials.

(26) "School-Based Health Center" means a health center certified by the School-Based Health Center Program located within the Center for Prevention and Health Promotion.

(27) "Site number" means the administrative number assigned by RH to each clinic within a participating CCare agency.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0020

Client Eligibility

(1) In order to be eligible for CCare, an individual must:

(a) Have a household income and size at or below 250 percent of the FPL;

(b) Reside in Oregon;

(c) Not be sterile, have an unconfirmed sterilization status, or have been sterilized less than six months prior to eligibility determination;

(d) If female, be less than 60 years of age;

(e) Provide a valid Social Security Number (SSN) as required by 42 USC 1320b-7; and

(f) Be a citizen of the United States, with acceptable proof of citizenship verification and identity; or

(g) Meet the definition of Lawful Permanent Resident as described in OAR 333-004-0010; or

(h) Meet the definition of refugee/asylee as described in OAR 333-004-0010 and provide acceptable proof of refugee/asylee status.

(2) An individual who is in the custody of a law enforcement agency or is an inmate of a public institution, including a juvenile detention facility, is not eligible for CCare.

(3) An individual who receives or who is eligible for the Citizen/Alien-Waived Emergency Medical benefit package under Title XIX is not eligible for CCare.

(4) An individual enrolled in another Medicaid program that provides family planning benefits is not eligible for CCare.

(5) Eligibility for CCare does not constitute eligibility for any other medical assistance program. Eligibility for reproductive health services, including contraceptive management, as part of any other medical program is determined by the eligibility requirements for that specific program.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0030

Client Enrollment

(1) An individual is considered eligible for CCare upon submission of the following items to the CCare agency:

(a) A signed, completed, and dated CCare enrollment form that includes SSN and appropriate residency and income information; applicants under age 20 can be enrolled based on their own income, whether living at home or on their own; and

(b) If the individual claims U.S. citizenship, acceptable proof of U.S. citizenship verification and identity.

(2) All CCare client eligibility information must be recorded in the CCare Eligibility Database by the enrolling CCare agency.

(3) Final determination of eligibility and enrollment into CCare is made by RH based on the information recorded in the CCare Eligibility Database.

(a) An individual's enrollment in CCare shall be suspended by RH if it determines that the individual's SSN is invalid or income is above the eligibility threshold.

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(b) An individual shall have 45 days to submit a valid SSN and income information to the CCare agency or the individual's enrollment in CCare shall be terminated by RH.

(4) An enrolling CCare agency must retain a current, signed enrollment form and a copy of any citizenship and identity documents provided by the client as described in OAR 333-004-0120(3).

(5) If a CCare agency enrolls an individual who is deemed ineligible by RH, the individual's eligibility shall be terminated by RH.

(6) A client's eligibility is effective for one year from the date of enrollment. The date of enrollment must be on or before the first date of service.

(7) CCare enrollment forms may not be backdated. An individual or enrolling agency that backdates a form shall be considered by RH to have committed fraud.

(8) An individual who meets all eligibility criteria apart from acceptable proof of U.S. citizenship verification may be granted by RH a reasonable opportunity period (ROP) of 45 days during which time the individual may receive services. An individual must have U.S. citizenship verified before he or she can be enrolled in CCare.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0040

Covered Services

(1) CCare covers contraceptive management services that are a limited scope of reproductive health services directly related to initiating or obtaining a contraceptive method and maintaining effective use of that method. CCare agencies shall only be reimbursed for visits at which the primary service is contraceptive initiation or management, and not for excluded services described in OAR 333-004-0050.

(2) Contraceptive management services based on a nationally-recognized standard of care include:

(a) An annual exam payable once each year;

(b) Clinically indicated follow-up visits to evaluate effectiveness of a contraceptive method;

(c) Management of side effects related to a contraceptive method;

(d) Changing a contraceptive method if medically necessary or requested by the client;

(e) Reproductive health counseling and education; and

(f) Laboratory tests, medical procedures (including vasectomy), and pharmaceutical supplies and devices directly related to contraceptive management as documented in clinic protocol.

(3) Each client may receive up to a one-year supply of contraceptives from the CCare agency.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0050

Excluded Services

(1) Services and laboratory tests not described in OAR 333-004-0040 are not covered by CCare for any eligible client. If a client accepts financial responsibility for a non-covered service that is received during a visit, payment arrangements are between the agency and the client.

(2) RH shall not pay for any expense incurred for any of the following services or items:

(a) Sterilizations for female clients;

(b) Treatment for infections;

(c) Prenatal care, including pregnancy confirmations;

(d) Repeat pap smears not associated with contraceptive management services;

(e) Hysterectomies or abortions;

(f) Transportation to or from a clinic appointment;

(g) Procedures performed for medical reasons, whether or not the procedure results in preventing or delaying pregnancy or restoring fertility;

(h) Any other medical service or laboratory test that is not described in OAR 333-004-0060(6) and whose primary purpose is other than contraceptive management; and

(i) A clinic visit that has the purpose of ensuring or reinforcing the client's effective use of a contraceptive method and where no medical decision-making is required (behavior modification visit).

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0060

Standards of Care for Contraceptive Management Services

Participating CCare agencies shall provide contraceptive management services according to the following standards.

(1) Informed Consent. The client's decision to participate in and consent to receive contraceptive management services must be voluntary and without bias or coercion.

(a) The informed consent process, provided verbally and supplemented with written materials, must be presented in a language the client understands.

(b) A signed consent must be obtained from the client receiving contraceptive management services.

(c) A separate, signed contraceptive method-specific consent must be obtained from the client for each prescription contraceptive method received.

(2) Confidentiality. Services must be provided in a manner that respects the client's privacy and dignity in accordance with OAR 333-004-0060(7)(b).

(a) Clients must be assured of the confidentiality of services and of their medical and legal records.

(b) Records cannot be released without written client consent, except as may be required by law, or otherwise permitted by the Health Insurance Portability and Accountability Act (HIPAA).

(3) Availability of Contraceptive Services. A broad range of Federal Drug Administration (FDA)-approved contraceptive methods and their applications, consistent with recognized medical practice standards, as well as fertility awareness methods must be available on-site at the clinic for dispensing to the client at the time of the visit.

(a) If the agency's clinical staff lack the specialized skills to provide vasectomies, intra-uterine devices (IUDs) or subdermal contraceptives, or if there is insufficient volume to ensure and maintain high skill level for these procedures, clients must be referred to another qualified provider for these procedures.

(b) Clients shall be able to get their first choice of contraceptive method during their visits unless there are specific contraindications.

(c) Contraceptive methods, including emergency contraception, must be available at the clinic site and available to the client at the time of service, except as provided in OAR 333-004-0060(8)(a).

(4) Linguistic and Cultural Competence. All services, support and other assistance must be provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of the client receiving services, and in a manner that has the greatest likelihood of ensuring maximum program participation.

(a) The agency shall employ bilingual or bicultural staff, personnel or volunteers skilled or certified in the provision of medical and clinical interpretation during all clinic encounters for clients with limited English proficiency or who otherwise need this level of assistance. All persons providing interpretation services must adhere to confidentiality guidelines.

(b) The agency must assure the competency of language assistance provided to limited English proficiency clients by interpreters and bilingual staff. Family and friends shall not be used to provide interpretation services, unless requested by the client.

(c) The agency must make interpretation services available to all clients needing or requesting such assistance at no cost to the client. The agency must notify clients in need of interpretation services of the availability of such services in accordance with the Civil Rights Act of 1964.

(d) The agency shall make easily understandable print materials available to clients and post signage in the languages of groups represented or commonly encountered in the service area.

(e) All print, electronic and audiovisual materials shall be appropriate in terms of the client's language and literacy level. A client's need for alternate formats must be accommodated.

(5) Access to Care. Services covered by CCare must be provided without cost to eligible clients. Clients must be informed of the scope of services available through the program.

(a) Appointments for established clients shall be available within a reasonable time period, generally less than two weeks. New clients who cannot be seen within this time period shall be referred to other qualified provider agencies in the area.

(b) Clinics with the appropriate license from the Oregon Board of Pharmacy may offer established clients the option of receiving their contraceptive methods by mail.

(A) Use of this option is at the discretion of the client; it cannot be offered as the only way in which to receive contraceptive methods.

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(B) Contraceptive methods that require a written prescription may only be mailed to established clients who have been using the method(s) for at least three months, with no problems or contraindications.

(C) Non-prescription methods may be mailed to any established client, regardless of the client's previous use of the method(s).

(D) Clients must not incur any cost for the option of receiving contraceptive methods through the mail.

(E) Clinics must package and mail supplies in a manner that ensures the integrity of contraceptive packaging and effectiveness of the method upon delivery.

(c) Although not covered by CCare, treatment and supplies for sexually transmitted infections must be available at the clinic site, or by referral.

(d) Clients in need of additional medical or psychosocial services beyond the scope of the agency must be provided with information about available local resources, including domestic violence and substance abuse related services. Clients must also be given a brochure listing locations of free or low-cost primary care services in the area.

(e) All services must be provided to eligible clients without regard to age, marital status, race, parity, disability, gender identity, or sexual orientation.

(f) All counseling and referral-to-care options appropriate to a positive or negative pregnancy test result during authorized contraceptive services must be provided in an unbiased manner, allowing the client full freedom of choice between prenatal care, adoption counseling or pregnancy termination services.

(6) Clinical and Preventive Services.

(a) The scope of contraceptive management services offered to women and female-bodied clients at each CCare clinic site must include:

(A) A comprehensive health history, including health risk behaviors and a complete obstetrical, gynecological, contraceptive, personal and family medical history; and a sexual health history, in conjunction with contraceptive counseling;

(B) An initial physical examination including cervical cancer screening as indicated, that follows a nationally-recognized standard of care.

(C) Routine laboratory tests related to the decision-making process for contraceptive choices;

(D) Provision of a broad range of FDA-approved contraceptive methods, devices, supplies, and procedures, including emergency contraception;

(E) Follow-up care for maintenance of a client's contraceptive method or for change of method;

(F) Information about providers available for meeting primary care needs and direct referral for needed medical services not covered by CCare, including management of high-risk conditions and specialty consultation if needed; and

(G) Preventive and control services for communicable diseases, provided within the context of a contraceptive management visit, including:

(i) Testing and diagnosis for sexually transmitted infections (STIs) as indicated; and

(ii) Reporting of STIs, as required, to appropriate public health agencies for contact management, prevention, and control.

(b) The scope of contraceptive management and clinical preventative services offered to men and male-bodied clients must include:

(A) A health history, including health risk behaviors and a sexual health history, in conjunction with contraceptive counseling and provision of contraceptive barrier methods;

(B) Vasectomy or referral for vasectomy, as appropriate;

(C) Vasectomy counseling, including a comprehensive health history that includes health risk behaviors and a complete contraceptive, personal and family medical history; and a sexual health history;

(D) Physical examination if indicated within the context of a contraceptive management visit;

(E) Information about providers available for meeting primary care needs and direct referral for needed medical services not covered by CCare, including management of high-risk conditions and specialty consultation if needed; and

(F) Preventive and control services for communicable diseases, provided within the context of a contraceptive management visit, including:

(i) Testing and diagnosis for sexually transmitted infections (STIs) as indicated; and

(ii) Reporting of sexually transmitted infections (STI), as required, to appropriate public health agencies for contact management, prevention, and control.

(c) All services must be documented in the client's medical record.

(7) Education and Counseling Services. The following elements comprise the required education and counseling services that must be provided to all contraceptive management clients:

(a) Initial clinical assessment and re-assessment as needed, of the client's contraceptive management educational needs and knowledge about reproductive health, including:

(A) Counseling and education about a broad range of FDA-approved contraceptive methods, devices, supplies, and procedures, including emergency contraception;

(B) A description of services and clinic procedures;

(C) Relevant reproductive anatomy and physiology;

(D) Preventive health care, nutrition, preconception health maintenance, pregnancy plans, and STI and Human Immunodeficiency Virus (HIV) prevention;

(E) Psychosocial issues, such as partner relationship and communication, risk-taking, and decision-making; and

(F) An explanation of how to locate and access primary care services not covered by CCare.

(b) Initial and all subsequent education and counseling sessions must be provided in a way that is understandable to the client and conducted in a manner that respects the dignity and privacy of the client and facilitates the client's ability to make informed decisions about reproductive health behaviors and goals, and must include:

(A) An explanation of the results of the physical examination and the laboratory tests;

(B) Information on where to obtain 24-hour emergency care services;

(C) The option of including a client's partner in the education/counseling session, and other services at the client's discretion; and

(D) Effective educational information that takes into account diverse cultural and socioeconomic factors of the client and the psychosocial aspects of reproductive health.

(c) Each client must be provided with adequate information to make an informed choice about contraceptive management methods, including:

(A) A general verbal or written review of all FDA-approved contraceptive methods, including sterilizations and emergency contraception, along with the opportunity for the client to ask questions. Documentation of this method education must be maintained in the client record;

(B) A description of the implications and consequences of sterilization procedures, if provided;

(C) Specific instructions for care, use, and possible danger signs for the selected method. Documentation of method-specific information must be maintained in the client record;

(D) The opportunity for questions concerning procedures or methods; and

(E) Written information about how to obtain services for contraceptive management related complications or emergencies.

(d) Clinicians and other agency staff persons providing education and counseling must be knowledgeable about the psychosocial and medical aspects of reproductive health, and trained in client-centered counseling techniques. Agency staff must make referrals for more intensive counseling as indicated.

(8) Exceptions:

(a) School-Based Health Centers are exempt from the requirement to make contraceptive methods available for on-site dispensing described in section (3) and subsection (5)(b) of this rule. Because some school boards prohibit dispensing contraceptives on school grounds, School-Based Health Centers may offer contraceptive methods to clients either on-site or by referral. When offered by referral, School-Based Health Centers must have an established referral agreement in place, preferably with another CCare clinic. RH must be notified of the parties involved in order to ensure proper billing and audit practices. When the referral clinic participates in CCare, that clinic may submit claims directly to CCare for reimbursement of the dispensed supplies. When referral clinics do not participate in CCare, payment arrangements must be made between the referring and receiving clinics. Dispensing by any provider must not result in a charge to the client.

(b) Non-School-Based Health Center sites:

(A) Agencies may bill CCare for client counseling and education services conducted at a school site, grade 12 and under, if the site meets the following criteria:

(i) The school site must have no established School-Based Health Center;

(ii) The school site must be within a RH-approved distance from the enrolled CCare agency to ensure adequate access to client contraceptive method of choice; and

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(iii) The school site must have a dedicated, private room(s) for services to be conducted.

(B) Agencies that wish to bill CCare for client counseling and education services conducted at secondary school sites must adhere to the following standards:

(i) The agency must notify RH of the school site to be enrolled and must request from RH a unique site number for the school site;

(ii) The agency must receive written approval from the school site to conduct services;

(iii) For newly enrolling clients, the agency must ensure that clients meet all eligibility criteria described in OAR 333-004-0020 and are enrolled according to 333-004-0030 at the school site;

(iv) For clients already enrolled in CCare, the agency must ensure that clients have active eligibility;

(v) The agency must follow all standards of care for contraceptive management services described in OAR 333-004-0060 with the exception of 333-004-0060(3) (supplies dispensed on-site) and 333-004-0060(6) (clinical and preventive services);

(vi) The agency must offer clients a written referral to the enrolled CCare clinic for supply pick-up and full array of clinical services; and

(vii) The agency must submit claims for services conducted at the school site using the assigned project and site number of the school site.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0070

Provider Enrollment

(1) An agency and its providers must meet applicable licensing or regulatory requirements set forth by federal and state statutes, regulations, and rules to be enrolled and to bill as an agency. In addition, all agencies and its providers within the state of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(2) Signing a MSA constitutes agreement by agencies to comply with all applicable rules of RH, the Division of Medical Assistance Programs, and federal and state laws and regulations.

(3) Signing a MSA constitutes agreement by agencies to serve both CCare and Oregon Health Plan covered clients.

(4) An agency or any of its providers that are currently subject to sanctions by the Authority or the federal government is not eligible for enrollment as a CCare agency.

(5) A CCare project number and site number shall be issued to an agency and any applicable clinics upon:

(a) Completion of the MSA and submission of the required documents;

(b) The signing of the MSA and related forms by the person authorized by the agency to bind the agency and its providers to compliance with these rules;

(c) Verification of licensing or certification; and

(d) Approval of the application by RH and the Division of Medical Assistance Programs.

(6) An agency must notify RH within 30 days of a change in address, business affiliation, licensure, ownership, certification, billing agents or Federal Tax Identification Number (TIN). Failure to notify RH of a change of Federal Tax Identification Number may result in a sanction. Changes in business affiliation, ownership, and Federal Tax Identification Number may require the submission of a new application. In the event of bankruptcy proceedings, the agency must immediately notify RH in writing. RH may recover payments made to agencies who have not notified RH of changes as required by this section.

(7) Agencies outside the state of Oregon may be enrolled under the following conditions:

(a) The agency is appropriately licensed or certified and meets standards established within the provider's state for participation in Medicaid; and

(b) The agency is located in a state contiguous to Oregon, and is within 75 miles of the Oregon border.

(8) Agency termination:

(a) An agency may terminate enrollment at any time. The notice must be made to RH in writing, via certified mail, return-receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of agency enrollment does not terminate any obligations of the agency for dates of services during which the enrollment was in effect.

(b) RH may terminate CCare agency enrollment due to inactivity. After 12 months of no claims activity, agencies may be contacted by RH with a written notice by certified mail, return-receipt requested, regarding inactivity and pending termination of agency enrollment. The notice shall specify the effective date of termination unless the agency notifies RH within 30 days upon receipt of notice of intention to resume claims activity.

(9) Agency responsibilities:

(a) An agency performs all services, or provides all items, as an independent contractor. The agency is not an officer, employee, or agent of RH.

(b) The agency is responsible for its employees, and for providing employment-related benefits and deductions that are required by law. The agency is solely responsible for its acts or omissions, including the acts or omissions of its own officers, employees or agents. RH's responsibility is limited to its authorization and payment obligations for covered services or items provided in accordance with OAR 333-004-0000 through 333-004-0230.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0080

Billing and Claims

(1) Only clinics providing contraceptive management services pursuant to an approved MSA, and who have been assigned a project number and site number may submit claims for CCare services.

(2) An agency may bill for contraceptive management services by submitting CVR data or by submitting the CVR form to RH. A claim is considered valid only if all required data are submitted.

(3) An agency may bill RH for supplies through the CVR at actual acquisition cost; that is, the amount or unit cost of the contraceptive supply the agency actually pays to the pharmaceutical manufacturer, supplier or distributor for the contraceptive supplies, after applying any discounts, promotions or other reductions. Shipping and handling may be included in the acquisition cost only if supported by an invoice.

(4) An agency shall include a primary diagnosis code on all claims. All billings must be coded with the most recent and appropriate International Classification of Diseases. All billings must be coded with the diagnosis codes in the V25 Contraceptive Management series to the highest level of specificity. No other primary diagnosis code can be billed.

(5) An agency may bill RH for laboratory services related to contraceptive management through a fixed rate that includes clinical and laboratory services. The exception to this is the combined gonorrhea/Chlamydia (GC/CT) test occurring in the context of a CCare contraceptive initiation management visit. The combined GC/CT test shall be reimbursed separately from the fixed rate only if the appropriate medical service is indicated on the CVR.

(6) Birth control supplies billable to CCare must be approved by the Authority, be FDA approved, and may include intrauterine devices, cervical caps, oral contraceptives, subdermal implants, condoms, diaphragms, spermicides, patches, rings, injectibles, and emergency contraception.

(7) An agency must ensure that all laboratory tests done at the clinic site or by an outside clinic are conducted by CLIA certified laboratories.

(8) An agency enrolled with CCare must not seek payment from an eligible client, or from a financially responsible relative or representative of that client, for any services covered by CCare. The agency shall accept RH reimbursement for any CCare-covered services, pharmaceuticals, devices, or supplies as payment in full.

(a) If an agency has misrepresented client eligibility for services, the agency must assume responsibility for the full cost of services provided.

(b) A client may be billed for services that are not covered by CCare as outlined in the CCare enrollment form.

(9) Upon submission of a claim to RH for payment, the agency attests that it has complied with all rules of CCare.

(a) Except for services performed by a CLIA certified laboratory outside of the clinic, all billings must be for services provided within the agency and its provider's licensure or certification.

(b) It is the responsibility of an agency to submit true and accurate information when billing CCare.

(c) A claim may not be submitted prior to providing services.

(10) No agency shall submit to RH:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service that has already been paid; or

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(c) Any claim upon which payment has been made by another source unless the amount paid is clearly entered on the claim form.

(11) An agency is required to correct the billing error or to refund the amount of the overpayment, on any claim where the agency identifies an overpayment made by RH.

(12) An agency that, after having been previously warned in writing by the Authority or the Department of Justice regarding findings of improper billing practices as described in OAR 333-004-0140, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to RH for up to triple the amount of the established overpayment received as a result of such violation.

(13) Third Party Resources. The following subsections apply only to clients with private insurance coverage.

(a) Federal law requires that all reasonable efforts be taken to ensure that CCare is the payor of last resort, unless a client requests special confidentiality which must be documented on the CCare enrollment form. A client's request for special confidentiality ensures that the agency must not bill third party resources, but instead must bill CCare directly.

(b) An agency must make reasonable efforts to obtain payment from other resources before billing CCare. For the purposes of this rule "reasonable efforts" include:

(A) Determining the existence of insurance or other resource by asking the client.

(B) When third party coverage is known to the agency, prior to billing CCare:

(i) The agency must bill the third party resource; and

(ii) Resubmit a denied claim when the service is payable in whole or in part by an insurer.

(c) If the client has private insurance that has been billed for CCare services and the reimbursement from the insurance does not cover the entire cost of the services, the balance may be billed to CCare.

(d) An agency must report the reimbursement received from insurance, including both services and supplies, on box 17A, 2 of the CVR. The exact amount received from the insurance company must be reported in total.

(e) The CCare payment to the agency after the agency has received third party payment may not exceed the total of what CCare would pay for both services and supplies. The total amount of service and supply minus the amount paid by the primary insurance is the amount the agency shall be reimbursed.

(f) If third-party payment is received after CCare has been billed, agencies are required to submit a billing correction showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit a billing correction within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery or sanction.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0100

Timely Submission of Claims

(1) CCare claims are processed once a month, on or near the 15th of the month. To be included in a given month's processing, an agency must submit a claim to RH and RH must receive the claim by the Thursday before the 15th of each month.

(2) RH shall pay CCare claims within 12 months of the date of service. Claims submitted more than 12 months after the date of service shall be rejected.

(3) Errors causing rejection of any claim must be resolved by the agency within 12 months of the date of service. Claims older than 12 months submitted by the agency to RH shall not be paid, except when RH has made an error that caused the agency not to be able to bill within 12 months of the date of service. The error must be confirmed by RH before the claim shall be paid.

(4) Client data not related to payment of the claim may be corrected by the agency at any time after the date of service.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0110

Payment

(1) RH shall make payment only to an enrolled agency that actually performs the services for eligible clients.

(2) The reimbursement rates for CCare visits are set by RH and are available online at www.healthoregon.org/rhmaterials by selecting "Program Manuals," and then selecting "Section C, Exhibit 8." Claims are reimbursed at the rates in effect on the date of service.

(3) Contraceptive pharmaceuticals, devices and supplies are separately reimbursed at acquisition cost as described in OAR 333-004-0080(3), up to a set maximum amount, and are available online at www.healthoregon.org/rhmaterials by selecting "Program Manuals," and then selecting "Section C, Exhibit 8."

(4) The combined gonorrhea/Chlamydia test is reimbursed separately from the visit.

(5) RH may not make payment on claims that have been assigned, sold, or otherwise transferred, or on which an agency of billing services receives a percentage of the amount billed or payment authorized. This includes, but is not limited to, transfer to a collection agency or party who advances money to an agency for accounts receivable.

(6) RH shall only pay for services that are adequately documented and for contraceptive supply costs that are supported by invoice.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0120

Requirements for Financial, Clinical and Other Records

(1) RH is responsible for analyzing and monitoring the operation of CCare and for auditing and verifying the accuracy and appropriateness of payment, utilization of services, the quality of care, and access to care. An agency shall:

(a) Develop and maintain adequate financial and clinical records and other documentation that supports the services for which payment has been requested.

(b) Document the service provided, primary diagnosis code for the services, the date on which the service was provided, and the agency staff who provided the services in every medical record. Client account and financial records must also include documentation of charges, identification of other payment resources pursued, the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. The records must be accurate and in sufficient detail to substantiate the data reported.

(c) Sufficiently document that the client's purpose of visit was primarily for contraceptive management services. The client's record must be annotated each time a service is provided and signed or initialed by the agency staff that provided the service or must clearly indicate the agency staff that provided the service. Information contained in the record must meet the standards of care for contraceptive management services as described in OAR 333-004-0060, and must be appropriate in quality and quantity to meet the professional standards applicable to the provider and any additional standards for documentation found in this rule.

(2) An agency must have policies and procedures to ensure the maintenance of the confidentiality of medical record information. These procedures must ensure that the agency may release such information in accordance with federal and state statutes, including but not limited to ORS 179.505 through 179.507, 413.175, 42 CFR part 2, if applicable, 42 CFR part F, and ORS 433.045 with respect to HIV test information.

(3) An agency must retain clinical records for seven years and financial and other records described in this rule for at least five years from the date of service. Original enrollment records must be retained for seven years.

(4) Upon written request from RH, the Division of Medical Assistance Programs, the Authority, the Oregon Department of Justice Medicaid Fraud Unit, the Oregon Secretary of State or their authorized representatives (requestor), an agency must furnish requested documentation, without charge, immediately or within the time-frame specified in the written request.

(5) If an agency fails to comply with requests for records within the specified timeframes it may result in the Authority deeming those records not to exist for purposes of verifying appropriateness of payment, medical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and accordingly subjects the agency to possible denial or recovery of payments made by the Authority, or to sanctions.

ADMINISTRATIVE RULES

(6) The agency, and any officers, employees, agents, and subcontractors of the agency shall comply with the following requirements for the CCare Eligibility Database:

(a) Implement security measures that reasonably and appropriately provide administrative, physical and technical safeguards that protect the confidentiality, integrity and availability of the CCare Eligibility Database. The agency's security measures must be documented in writing and be available for review by RH upon request. RH review of the reasonableness of security measures, as well as the agency's compliance with RH assigned access control or security requirements, shall take into account the agency's physical, administrative, and technical capabilities related to security measures and the potential risk of unauthorized use or disclosure of the CCare Eligibility Database by the agency, its officers, employees, agents or subcontractors;

(b) Prevent any unauthorized access to or disclosure of information from the CCare Eligibility Database;

(c) Take necessary actions to comply with RH determinations of the level of access that may be granted, as well as changes in level of access, or suspension or termination of access as determined by RH;

(d) Keep any RH-assigned access control requirements such as identification of authorized user(s) and access-control information in a secure location until access is terminated; monitor and securely maintain access by the agency and its agents or subcontractors in accordance with security requirements or access controls assigned by RH; and make available to RH upon request all information about the agency's use or application of the CCare Eligibility Database.

(e) Report any privacy or security incidents by the agency, its officers, employees, agents or subcontractors that compromise, damage, or cause a loss of protection to the CCare Eligibility Database, as follows:

(A) Report to RH in writing within five business days of the date on which the agency becomes aware of such incident; and

(B) Provide RH the results of the incident assessment findings and resolution strategies.

(7) The agency must comply with RH requests for corrective action concerning a privacy or security incident, and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

(8) If RH determines that the agency's security measures or actions required under section (7) of this rule are inadequate to address the security requirements, RH shall notify the agency. RH and the agency may meet to discuss appropriate security measures or action. If security measures or corrective actions acceptable to RH cannot be agreed upon, RH reserves the right to take such actions as it determines appropriate under the circumstances. Actions may include, but are not limited to, restricting access, or amending or terminating the agency agreement.

(9) RH reserves the right to request additional information from the agency related to security measures, and to change, suspend or terminate access to or use of the CCare Eligibility Database by the agency, its officers, employees, agents or subcontractors.

(10) Wrongful use or disclosure of the CCare Eligibility Database by the agency, officers, its employees, agents or its subcontractors may cause the immediate suspension or revocation of any access granted, in the sole discretion of RH. RH may also pursue any other legal remedies provided under the law.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0130

Compliance with Federal and State Statutes

(1) Submission of a claim for medical services or supplies provided to a CCare client shall be deemed a representation by the agency to RH of the agency's compliance with the applicable sections of the federal and state statutes referenced in this rule:

(a) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) Title II and Title III of the Americans with Disabilities Act of 1991;

(c) Title VI of the Civil Rights Act of 1964; and

(d) 42 CFR Part 493 Laboratory Requirements and ORS Chapter 438 (Clinical Laboratories).

(2) Agencies are required to comply with the "Health Insurance Portability and Accountability Act" (HIPAA) regarding the confidentiality of client records.

(3) Providers described in ORS Chapter 419B are required to report suspected child abuse to their local child welfare office of the Department of Human Services or police, in the manner described in ORS Chapter 419B.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests on, "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain federal requirements. If an entity performs tests for these purposes, it is considered under CLIA to be a laboratory.

(5) Clinics that dispense contraceptive methods on-site must be licensed by the Oregon Board of Pharmacy as described in OAR 855-043-0001 through 855-043-0310.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0140

Review or Audit of Claims

(1) RH staff, contractor or auditor may review a claim for assurance that the specific medical service or contraceptive device or supply was provided by an agency in accordance with OAR 333-004-0000 through 333-004-0230 and the Standards of Care for Contraceptive Management Services set forth in 333-004-0060.

(2) To determine the number of inappropriate claims, and subsequently the overpayment amount, RH may review a statistically valid random sample of claims with sufficient sample size for a confidence interval of 95 percent.

(3) RH may deny payment or seek recovery or payment if a review or audit determines the service does not meet RH rules or the Standards of Care for Contraceptive Management Services set forth in OAR 333-004-0060.

(4) RH shall notify the agency, in writing, of the improper billing findings and subsequent actions to be taken by the agency to correct the identified findings and any sanctions that may be imposed by RH.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0150

Recovery of Overpayments to Agencies Resulting from Review or Audit

(1) When RH determines that an overpayment has been made to an agency, the amount of overpayment is subject to recovery.

(a) If RH determines an overpayment amount by the random sampling method set forth in OAR 333-004-0140(2), an agency may request a 100 percent audit of all billings submitted to CCare for contraceptive management services provided during the period in question.

(b) If an agency requests a 100 percent audit:

(A) The agency is responsible for payment and arrangement; and

(B) The audit must be conducted by a certified public accountant who is knowledgeable with the Oregon Administrative Rules covering the payments in question, and must be conducted within 120 calendar days of the request to use such audit in lieu of RH's random sample.

(2) The amount of the review or audit overpayment to be recovered:

(a) Is the entire amount determined by RH or the amount agreed to by RH and the agency;

(b) Is not limited to amounts determined by criminal or civil proceedings; and

(c) Includes interest charged at allowable state rates.

(3) RH shall deliver to an agency by registered or certified mail or in person a request for repayment of the overpayment and the documentation to support the overpayment amount.

(4) The overpayment is due and payable 30 calendar days from the date of the decision by RH:

(a) An agency may request an additional 30-day grace period from RH.

(b) A request for a hearing does not change the date the repayment of the overpayment is due.

(5) RH may extend the reimbursement period for an agency or accept an offer of repayment terms from an agency. Any change in reimbursement period or terms must be made in writing by the RH.

(6) If the agency refuses to reimburse the overpayment or does not adhere to an agreed upon payment schedule, RH may:

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- (a) Recoup future agency payments up to the amount of the overpayment;
- (b) Suspend or terminate the agency's enrollment in CCare; or
- (c) Pursue civil action to recover the overpayment.

(7) RH may, at any time, change the amount of the overpayment upon receipt of additional information. RH shall notify an agency in writing of any changes. Any monies paid to RH by an agency that exceed an overpayment shall be refunded to the agency.

(8) If an agency is terminated or sanctioned for any reason, RH may pursue civil action to recover any amounts due and payable to CCare.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0160

Provider Sanctions

The following are conditions that may result in the imposition of a sanction on an agency.

(1) Basis for sanction:

(a) Conviction of a provider of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws (or entered a plea of nolo contendere);

(b) Conviction of fraud related to any federal, state, or locally financed health care program or commission of an act that is subject to criminal or civil penalties under Medicaid statutes;

(c) Conviction of interference with the investigation of health care fraud;

(d) Conviction of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(e) Failure to comply with the state and federal statutory requirements set forth in OAR 333-004-0130;

(f) An action by a state licensing authority relating to a provider's professional competence, professional conduct, or financial integrity, that results in the provider either:

(A) Having his or her license suspended or revoked; or

(B) Surrendering the license while a formal disciplinary proceeding was pending before a licensing authority.

(g) Suspension or exclusion from participation in a federal or state-administered health care program for reasons related to professional competence, professional performance, or other reason;

(h) Improper billing practices, including billing for excessive charges or visits, furnishing items or services substantially in excess of the patient's contraceptive management needs, or of a quality that fails to meet professionally recognized standards;

(i) Failure to furnish services as required by law or contract with the RH;

(j) Failure to supply requested information on subcontractors and suppliers of goods or services;

(k) Failure to supply requested payment information;

(l) Failure to grant access or to furnish as requested, records, or to grant access to facilities upon request of RH or a designated requestor;

(m) Receiving payments for services provided to persons who were not eligible;

(n) Establishing multiple claims using procedure codes that overstate or misrepresent the level, amount or type of health care provided;

(o) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate clinical or other records that document the medical appropriateness, nature, and extent of the health care provided;

(p) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate financial records that document charges incurred by a client and payments received from any source;

(q) Failure to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rule, or regulation;

(r) Submission of claims or written orders contrary to generally accepted standards of medical practice;

(s) Submission of claims for services that exceed that requested or agreed to by the client or the responsible relative or guardian or requested by another medical practitioner;

(t) Breach of the terms of the medical services agreement;

(u) Failure to correct deficiencies in operations after receiving written notice of the deficiencies from RH;

(v) Submission of any claim for payment for which payment has already been made by RH;

(w) Provision of or billing for services provided by ineligible or unsupervised staff; or

(x) Alteration of clinical or billing records that have been requested by RH or a designated requestor.

(2) An agency or any of its providers who have been suspended, terminated, or excluded from participation in a federal or state-administered medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, shall not submit claims for payment, either personally or through claims submitted by any billing agency or other agency, for any services or supplies provided under CCare, except those services or supplies provided prior to the date of suspension or termination.

(3) No agency shall submit claims for payment to RH for any services or supplies provided by a person or agency that has been suspended or terminated from participation in a federal or state-administered medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, except for those services or supplies provided prior to the date of suspension or termination.

(4) When the provisions of sections (2) or (3) of this rule are violated, RH may suspend or terminate the agency who is responsible for the violation.

(5) Agency sanctions shall be imposed at the discretion of RH or the director of the office whose budget includes payment for the services involved. RH shall notify an agency in writing of any sanction proposed to be imposed that shall explain the agency's appeal rights in accordance with OAR 333-004-0200 through 333-004-0230.

(6) RH shall consider the following factors in determining the sanction(s) to be imposed (this list includes but is not limited to these factors):

(a) Seriousness of the offenses(s);

(b) Extent of violations by the agency;

(c) History of prior violations by the agency;

(d) Prior imposition of sanctions;

(e) Prior agency education; and

(f) Agency willingness to comply with RH rules.

(7) The Division of Medical Assistance Programs shall be notified whenever a sanction is imposed on an agency.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.032

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 19-2012, f. & cert. ef. 12-26-12

333-004-0200

Agency Appeals

(1) An agency may appeal a RH decision in which the agency is directly adversely affected such as the following:

(a) A denial or limitation of payment allowed for services or items provided;

(b) A denial of an application for new or continued participation in CCare;

(c) Sanctions imposed, or intended to be imposed, by RH on an agency; or

(d) RH overpayment determinations made under OAR 333-004-0150.

(2) An agency appeal is initiated by filing a timely request in writing for review with RH.

(a) An agency appeal request is not required to follow a specific format as long as it provides a clear written expression from an agency expressing disagreement with a RH decision.

(b) The request must identify the decision made by RH that is being appealed and the reason the agency disagrees with that decision.

(c) An agency appeal request is timely if it is received by RH within 60 calendar days of the date of RH's decision.

(3) Types and methods for agency appeals are as follows:

(a) A RH denial of or limitation of payment allowed, RH claim decision, or RH overpayment determination for services or items provided to a client must be appealed as claim re-determinations under OAR 333-004-0210.

(b) A notice of sanctions imposed, or intended to be imposed, the effect of the notice of sanction is, or will be, to deny, suspend or revoke an agency's project number necessary to participate in CCare is entitled to appeal under OAR 333-004-0230. An agency that is entitled to appeal a notice of sanction as a contested case may request administrative review instead of a contested case hearing if the agency submits a written request for administrative review of the notice of sanction and agrees in writing to waive the right to a contested case hearing, and RH agrees to review the appeal of the notice of sanction as an administrative review.

ADMINISTRATIVE RULES

(c) All agency appeals of RH decisions not described in subsections (3)(a) or (b) of this rule are handled as administrative reviews in accordance with OAR 333-004-0220 unless RH issues an order granting a contested case hearing.

(4) In the event an agency's request for appeal is not timely, RH shall determine whether the failure to file the request was caused by circumstances beyond the control of the agency. In determining whether to accept a late request for review, RH requires the request to be supported by a written statement that explains why the request for review is late. RH may conduct such further inquiry as RH deems appropriate. In determining timeliness of filing a request for review, the amount of time RH determines accounts for circumstances beyond the control of the provider is not counted.

(5) The burden of presenting evidence to support an agency appeal is on the agency.

(a) Consistent with OAR 333-004-0110, payment on a claim shall only be made for services that are adequately documented and billed in accordance with 333-004-0080 and all applicable administrative rules related to covered services for clients and establishing the conditions under which services, supplies or items are covered.

(b) Eligibility for enrollment and for continued enrollment is based on compliance with applicable rules, the information submitted or required to be submitted with the application for enrollment and the enrollment agreement, and the documentation required to be produced or maintained in accordance with OAR 333-004-0120.

(6) Agency appeal proceedings, if any, shall be held in Portland, unless otherwise stipulated to by all parties and agreed to by RH.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.032
Hist.: PH 19-2012, f. & cert. ef. 12-26-12

333-004-0210

Claim Re-Determination

(1) If an agency disagrees with an initial claim determination, it may request a review for re-determination of the denied claim payment. The request to open an initial claim determination for a re-determination review must be made through RH in writing, within 60 days from the date of the RH original claim adjudication date.

(2) All requests must contain a detailed letter of explanation identifying the specific re-determination denial issue and alleged error. This information must be submitted to RH at the time of the request.

(3) At the time the request for re-determination is made an agency is responsible for providing the information needed to adjudicate its claim, including relevant medical records and evidence-based practice data to support the position being asserted on review. RH may request additional information that it finds relevant to the review. An agency requesting a re-determination review must include the following:

(a) The specific service, supply or item being denied, and include all relevant codes and a detailed justification for the re-determination of the denied service;

(b) A copy of the original claim and a copy of the original denial notice or remittance advice that describes the basis for the claim denial under re-determination; and

(c) Any information or medical documentation pertinent to support the request and to obtain a resolution of the re-determination review dispute.

(4) A re-determination review is based on RH review of documentation and applicable law. RH does not provide a face-to-face meeting with an agency as part of the re-determination process.

(a) The agency is responsible for the timely submission of review request and all information pertinent to conducting the review and consistent with the requirements of this rule.

(b) RH shall notify an agency requesting review that the re-determination request has been denied if:

(A) The agency did not submit a timely request;

(B) The required information is not provided at the same time the request is submitted; or

(C) The agency fails to submit any additional requested information within 14 business days of request.

(5) RH's final decision under this rule is the final decision on appeal. Under ORS 183.484, this decision is an order in other than a contested case. ORS 183.484 and the procedures in OAR 137-004-0080 through 137-004-0092 apply to RH's final decision under this rule.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.032
Hist.: PH 19-2012, f. & cert. ef. 12-26-12

333-004-0220

Agency Appeals — Administrative Review

(1) An administrative review is an agency appeal process that allows an opportunity for the Center administrator or designee to review a RH decision affecting the agency, where administrative review is appropriate and consistent with OAR 333-004-0200, Agency Appeals.

(2) Administrative review is an appeal process under OAR 333-004-0200 that addresses primarily legal or policy issues that may arise in the context of a RH decision that adversely affects the agency and that is not otherwise reviewed as a claim re-determination, a contested case, or client appeal.

(a) If RH finds that the appeal shall be handled as a different form of agency appeal the Center administrator or designee shall notify the agency of this determination.

(b) Within the time limits established by RH in the administrative review, the agency must provide RH with a copy of all relevant records, the RH decision, and other materials relevant to the appeal.

(3) If the Center administrator or designee decides that a meeting between the agency and RH staff shall assist the review, the Center administrator or designee shall notify the agency requesting the review of the date, time, and place the meeting is scheduled.

(4) The review meeting shall be conducted in the following manner:

(a) It shall be conducted by the Center administrator or designee;

(b) No minutes or transcript of the review shall be made;

(c) The agency requesting the review does not have to be represented by counsel during an administrative review meeting and shall be given ample opportunity to present relevant information;

(d) RH staff shall not be available for cross-examination but RH staff may attend and participate in the review meeting;

(e) Failure to appear without good cause constitutes acceptance of RH's determination;

(f) The Center administrator may combine similar administrative review proceedings, including the meeting, if the Center administrator determines that joint proceedings may facilitate the review; and

(g) The Center administrator or designee may request the agency making the appeal to submit, in writing, new information that has been presented orally. In such an instance, a specific date for receiving such information shall be established.

(5) The results of the administrative review shall be sent to the agency, in writing, within 30 calendar days of the conclusion of the administrative review proceeding, or such time as may be agreed to by the agency and RH.

(6) RH's final decision on administrative review is the final decision on appeal and binding on the parties. Under ORS 183.484, this decision is an order in other than a contested case. ORS 183.484 and the procedures in OAR 137-004-0080 through 137-004-0092 apply to the Authority's final decision on administrative review.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.032
Hist.: PH 19-2012, f. & cert. ef. 12-26-12

333-004-0230

Agency Appeals — Contested Case Hearings

(1) A contested case procedure is a hearing that is conducted by the Office of Administrative Hearings where a contested case is appropriate and consistent with OAR 333-004-0200, Agency Appeals. If the request for contested case hearing was timely filed but should have been filed as a claim re-determination, administrative review, or client appeal, RH shall refer the request to the proper appeal procedure and notify the agency.

(2) Contested case hearings are conducted in accordance with the Attorney General's Model Rules, OAR 137-003-0501 through 137-003-0700.

(3) The party to an agency contested case hearing is the agency who requested the appeal. An agency that is a corporation may be represented by any of the persons identified in ORS 413.041.

(4) Informal conference. RH may notify the agency of the time and place of an informal conference, without the presence of the Administrative Law Judge (ALJ). The purposes of the informal conference are:

(a) To provide an opportunity to settle the matter;

(b) To make sure the agency and RH understand the specific reason for the action of the hearing request;

(c) To give the agency and RH an opportunity to review the information that is the basis for action; and

(d) To give the agency and RH the chance to correct any misunderstanding of the facts.

ADMINISTRATIVE RULES

(5) The agency may, at any time prior to the hearing date, request an additional informal conference with RH that may be granted if RH finds, at its sole discretion, the additional informal conference shall facilitate the contested case hearing process or resolution of disputed issues.

(6) Contested case hearing. The ALJ shall conduct the contested case hearing using the Attorney General's Model Rules, OAR 137-003-0501 through 137-003-0700.

(a) The burden of presenting evidence to support an agency appeal is on the agency that requested the appeal. Consistent with OAR 333-004-0110, payment on a claim shall only be made for services that are adequately documented and billed in accordance with OAR 333-004-0080 and all applicable administrative rules related to covered services for the client.

(b) Subject to RH approval under OAR 137-003-0525, the ALJ shall determine the location of the contested case hearings.

(7) Proposed and final orders. The ALJ is authorized to serve a proposed order on all parties and the RH unless, prior to the hearing, RH notifies the ALJ that a final order may be served by the ALJ.

(a) If the ALJ issues a proposed order, and the proposed order is adverse to a party, the party may file written exceptions to the proposed order to be considered by RH, or the ALJ when the ALJ is authorized to issue the final order. The exceptions must be in writing and received by RH or the ALJ, when the ALJ is authorized to issue the final order, not later than 10 calendar days after the date the proposed order is issued by the ALJ. No additional evidence may be submitted without prior approval of RH.

(b) The proposed order issued by the ALJ shall become a final order if no exceptions are filed within the time specified in subsection (a) of this section, unless RH notifies the parties and the ALJ that RH shall issue the final order. After receiving the exceptions or argument, if any, RH may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, RH may issue an amended proposed order.

(c) Procedures applicable to default orders for withdrawal of a hearing request, failure to timely request a hearing, failure to appear at a hearing, or other default, are governed by the Attorney General's Model Rules, OAR 137-003-0670 through 137-003-0672.

(d) The final order is effective immediately upon being signed or as otherwise provided in the order.

(8) All contested case hearing decisions are subject to the procedures established in OAR 137-003-0675 through 137-003-0700 and to judicial review under ORS 183.482 in the Court of Appeals.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.032
Hist.: PH 19-2012, f. & cert. ef. 12-26-12

Oregon Housing and Community Services Department Chapter 813

Rule Caption: Establishes procedures for criminal record checks for applicants, employees, volunteers and contractors

Adm. Order No.: OHCS 1-2013

Filed with Sec. of State: 1-4-2013

Certified to be Effective: 1-4-13

Notice Publication Date: 12-1-2012

Rules Adopted: 813-004-0200, 813-004-0210, 813-004-0220, 813-004-0230, 813-004-0240, 813-004-0250, 813-004-0260, 813-004-0270, 813-004-0280, 813-004-0290, 813-004-0300, 813-004-0310

Subject: The adoption of these rules will provide for the reasonable screening of subject individuals to determine if they have a history of criminal behavior such that they are not fit to work or volunteer in positions covered within OAR 813-004-0220.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-004-0200

Purpose

The purpose of these rules is to provide for the reasonable screening of subject individuals to determine if they have a history of criminal behavior such that they are not fit to work or volunteer in positions covered in OAR 813-004-0220. The fact that the Agency determines that a subject individual is fit does not guarantee the individual a position as an Agency employee, volunteer, contractor or vendor or that the individual will be hired by the Agency.

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0210

Definitions

As used in OAR chapter 813, division 4, unless the context of the rule requires otherwise, the following definitions apply:

(1) Agency: Oregon Housing and Community Services.

(2) Conviction: A final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) or any determination of guilt entered by a court of law against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(3) Fitness determination: A determination made by the Agency, pursuant to the process established under OAR 813-004-0230, that a subject individual is fit or not fit to be an Agency employee, volunteer, contractor or vendor in a position covered by OAR 813-004-0220.

(4) Criminal offender information: Records and related data concerning physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police to identify criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(5) Criminal records check: One or more of the following three processes undertaken by the Agency to check the criminal history of a subject individual:

(a) A name-based check of criminal offender information conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police;

(b) A check of Oregon criminal offender information, through fingerprint identification and other means, conducted by the Oregon Department of State Police at the Agency's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, through fingerprint identification and other means, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Agency's request (Nationwide Criminal Records Check).

(6) Criminal records request form: An Agency-approved form, completed by a subject individual, requesting the Agency to conduct a criminal records check.

(7) False statement: In association with an activity governed by these rules, a subject individual either:

(a) Provided the Agency with false information about the subject individual's criminal history, including but not limited to false information about the individual's identity or conviction record; or

(b) Failed to provide the Agency information material to determining the individual's criminal history.

(8) Subject Individual: An individual identified in OAR 813-004-0220 as someone from whom the Agency may require a criminal records check.

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0220

Subject Individual

The Agency may require a subject individual to complete a criminal records check pursuant to these rules because the person:

(1)(a) Is employed by or applying for employment with the Agency; or

(b) Provides services or seeks to provide services to the Agency as a volunteer, contractor, or vendor; and

(2) Is, or will be, working or providing services in a position:

(a) In which the subject individual is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) In which the subject individual has access to information that state or federal laws, rules or regulations prohibit disclosing or define as confidential;

(c) That has payroll functions;

(d) In which the subject individual has responsibility for receiving, receipting or depositing money or negotiable instruments;

(e) In which the subject individual has responsibility for billing, collections or other financial transactions;

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(f) In which the subject individual has responsibility for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(g) That has mailroom duties as the primary duty or job function;

(h) That has personnel or human resources functions as one of the position's primary responsibilities;

(i) In which the subject individual has access to Social Security numbers, dates of birth or criminal background information of employees or members of the public;

(j) In which the individual has access to tax or financial information about individuals or business entities.

Stat. Auth.: ORS 181.534 & 456.135

Stats. Implemented: ORS 181.534 & 456.569

Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0230

Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual must complete and sign the Agency criminal records request and a fingerprint card.

(b) A subject individual must complete and submit to the Agency the Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. The Agency may extend the deadline for good cause. The Agency's criminal records request form will require the following information: name, birth date, social security number, physical characteristics, driver's license or identification card number and current address, prior residences in other states and any other identifying information deemed necessary by the Agency.

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

(d) The Agency shall not request a fingerprint card from a subject individual under the age of 18 years unless the subject individual is emancipated pursuant to ORS 419B.550 et seq, or unless the Agency also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 813-004-0250(3).

(2) When a Criminal Records Check is Required. The Agency may conduct, or request the Oregon State Police to conduct, a criminal records check when:

(a) An individual meets the definition of a subject individual; or

(b) Required by federal law or regulation, by state or administrative rule, or by contract or written agreement with the Agency.

(3) Which Criminal Records Check is Conducted. When the Agency determines under section (2) of this rule that a criminal records check will be done, the Agency may request or conduct a LEADS Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof.

Stat. Auth.: ORS 181.534 & 456.135

Stats. Implemented: ORS 181.534 & 456.569

Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0240

Hiring or Appointing on a Preliminary Basis

(1) If the Agency elects to conduct a criminal records check pursuant to these rules, the Agency, in its sole discretion, may hire or appoint the subject individual on a preliminary basis pending completion of a criminal records check when:

(a) The subject individual has provided all information (including a fingerprint card, if requested) as required by the Agency pursuant to OAR 813-004-0230; and

(b) The Agency, in its sole discretion, determines that preliminary hiring is in the Agency's best interests.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, and work activities as assigned by the Agency.

(3) Nothing in this rule shall be construed as requiring the Agency to hire on a preliminary basis.

(4) A subject individual hired on a preliminary basis is deemed to be on trial service.

Stat. Auth.: ORS 181.534 & 456.135

Stats. Implemented: ORS 181.534 & 456.569

Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0250

Final Fitness Determination

(1) If the Agency elects to conduct a criminal records check, the Agency shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 813-004-0230, the criminal records check(s) conducted, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, the Agency will also consider the factors in subsections (a) through (f) below in relation to information provided by the subject individual under OAR 813-004-0230(1), any LEADS report or criminal offender information obtained through a criminal records check, and other information known by the Agency. To assist in considering these factors, the Agency may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, the Agency may request to meet with the subject individual, and may request to receive written materials or authorization to obtain other relevant information, from him or her. The subject individual shall meet with the Agency if requested and provide additional information or authorization within a reasonable period of time, as established by the Agency. The Agency will use all collected information in considering:

(a) Whether the subject individual has been convicted, found guilty except for insanity (or a comparable disposition), or has a pending indictment for a crime listed in OAR 813-004-0260;

(b) The nature of any crime identified under section (2)(a) of this rule;

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) Any facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under section (2)(a) of this rule or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 813-004-0260;

(E) Whether a conviction identified under section (2)(a) of this rule has been set aside, and the legal effect of setting aside the conviction;

(F) A recommendation of an employer;

(G) The disposition of a pending indictment identified under section (2)(a) of this rule;

(H) Whether the subject individual has been arrested for or charged with a crime listed under OAR 813-004-0260;

(I) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 813-004-0260;

(J) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 813-004-0260;

(K) Whether the subject individual has a deferred sentence or conditional discharge in connection with a crime listed under OAR 813-004-0260;

(L) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 813-004-0260 if committed by an adult;

(M) Periods of incarceration of the subject individual;

(N) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(3) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the Agency will deny the employment of the subject individual or deny any applicable position or authority to provide services. A person may not appeal any determination made based on a refusal to consent.

(4) If a subject individual is determined to be not fit, the subject individual may not be employed by or provide services as a volunteer, contrac-

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tor or vendor to the Agency in a position described in OAR 813-004-0220(2).

(5) Final Order. A completed final fitness determination is a final order of the Agency unless the affected subject individual appeals the determination by requesting a contested case hearing as provided by OAR 813-004-0290(2) or an alternative appeals process as provided by OAR 813-004-0290(6).

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0260

Potentially Disqualifying Crimes

(1) Crimes Relevant to A Fitness Determination:

- (a) All felonies;
- (b) All misdemeanors;
- (c) Any United States Military crime or international crime;

(2) Evaluation of Crimes. The Agency shall evaluate a crime on the basis of the law of the jurisdiction in which the crime or offense occurred, as those laws are in effect at the time of the fitness determination.

(3) Expunged Juvenile Record. Under no circumstances shall a subject individual be determined to be not fit under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0270

Incomplete Fitness Determination

(1) The Agency will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 813-004-0220.

(b) The subject individual does not submit materials or information within the time required under OAR 813-004-0230(1);

(c) The Agency cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with the Agency's attempts to acquire other criminal records information under OAR 813-004-0260(2); or

(e) The Agency determines that the subject individual is not eligible or not qualified for the position (of employee, contractor, vendor or volunteer) for a reason unrelated to the fitness determination process.

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 813-004-0290(2) or a right to an alternative appeals process as provided by OAR 813-004-0290(6) to challenge the closing of a fitness determination as incomplete.

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0280

Notice to Subject Individual of Fitness Determination

The Agency shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via personal service, or registered or certified mail to the most current address provided by the subject individual, of such disqualification.

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0290

Appealing a Fitness Determination

(1) Purpose. Sections (2) to (5) of this rule set forth the contested case hearing process a subject individual must use to appeal a completed final fitness determination made under OAR 813-004-0250 that the individual is not fit to hold a position with, or provide services to the Agency as an employee, volunteer, contractor, or vendor. Section (6) of this rule identifies an alternative appeal process available only to current Agency employees.

(2) Appeal process.

(a) To request a contested case hearing, the subject individual or the subject individual's legal representative must submit a written request for a contested case hearing to the address specified in the notice provided under OAR 813-004-0280. To be timely, the request must be received by the Agency at the specified address within 14 calendar days of the date stated on the notice. The Agency shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Agency under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Agency or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided under OAR 137-003-0566.

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge will issue a proposed order.

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent.

(c) Default. A completed final fitness determination made under OAR 813-004-0250 becomes final: (A) unless the subject individual makes a timely request for a hearing; or (B) when a party withdraws a hearing request, notifies the Agency or the ALJ that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by the Agency may choose to appeal a fitness determination either under the process made available by this rule or through a process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit or not fit. Under no circumstances shall the Agency be required to place a subject individual in any position, nor shall the Agency be required to accept services or enter into a contractual agreement with a subject individual.

(8) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section of the rule, a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Agency conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 813-004-0250 by submitting a new Agency criminal records request. This provision only applies if the position for which the original criminal history check was conducted is vacant and available.

(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (8)(b) of this rule, will not delay or postpone the Agency's hiring process or employment decisions.

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

813-004-0300

Recordkeeping and Confidentiality

Any information obtained in the criminal records check is confidential. The Agency must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the Agency, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

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813-004-0310

Fees

(1) The Agency may charge a fee for acquiring criminal offender information for use in making a fitness determination that will not exceed the fee charged the Agency by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain such information.

(2) The Agency may charge the fee to the subject individual on whom criminal offender information is sought or, if the subject individual is an employee of an Agency contractor or vendor and is undergoing a fitness determination in that capacity, the Agency may charge the fee to the subject individual's employer.

Stat. Auth.: ORS 181.534 & 456.135
Stats. Implemented: ORS 181.534 & 456.569
Hist.: OHCS 1-2013, f. & cert. ef. 1-4-13

Oregon Liquor Control Commission Chapter 845

Rule Caption: Remove outdated language and clarify accepted payment processes at retail liquor stores.

Adm. Order No.: OLCC 10-2012

Filed with Sec. of State: 12-18-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 10-1-2012

Rules Amended: 845-015-0170

Subject: This rule describes the accepted processes by which retail sales agents may receive payment for distilled spirits and related items. Staff recommends deletion of outdated language regarding the use of check guarantee cards in what will now be subsection (2)(d). With the shift to debit and credit cards as the prevalent form of payment by consumers, check guarantee cards are no longer in use. Also related to personal checks, staff recommends the deletion of section (6) and replacing it instead with additional language in section (5) to both make it clear that the option to not accept personal checks applies to non-licensees, and to clarify the Commission's current practice of collecting payment from retail sales agents for any uncollected checks from a non-licensee. While rulemaking is open on this matter, staff also recommends deletion of outdated language regarding the acceptance of Canadian currency in subsection (2)(c), as well as amending what will now be subsection (2)(e) to better reflect the Commission's existing policy on the acceptance of debit and credit cards from non-licensees – that it is only optional for non-exclusive retail sales agents.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-015-0170

Payment for Distilled Spirits

(1) Timing of Payment for Distilled Spirits Purchases. Payment for distilled spirits must be made at the time of purchase. If the purchaser is a Full On-Premises Sales licensee, and the distilled spirits being purchased are to be delivered, payment must be received at the liquor store not later than the store's close of business on the same day that the product was delivered to the licensee.

(2) A retail sales agent accepts these forms of payment:

(a) United States currency or a United States traveler's check;

(b) A cashier's check or money order;

(c) A licensee's business check for the amount of the purchase only, properly dated, personalized and free of alterations;

(d) A personal check from a non-licensee with either a valid driver's license with photo or valid DMV Identification card with photo, name, date of birth and physical description. The check must be under \$200, payable to the OLCC, for the amount of purchase only, properly dated, personalized and free of alterations; and

(e) Exclusive retail sales agents shall accept debit and credit cards from non-licensees using equipment that meets or exceeds Commission approved standards as set forth in the Retail Operations Manual. At a non-exclusive retail sales agent's option, they may also accept these same debit and credit card transactions.

(3) A retail sales agent must not accept a check for purchases by a licensee who has given the Commission two checks or other instruments that could not be paid upon presentation.

(4) Despite section (2) of this rule, a retail sales agent is not required to accept payment if a sale is contrary to law, if a customer lacks necessary

age identification or if there is a reasonable basis to believe a customer is not lawfully presenting payment.

(5) A retail sales agent may elect to not take personal checks from non-licensees only if the retail sales agent accepts debit and credit cards using equipment that meets or exceeds Commission approved standards as set forth in the Retail Operations Manual. A retail sales agent must pay the Commission for any uncollected check from a non-licensee.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.740 & 471.750(1)
Hist.: LCC 32-1986, f. 12-4-86, ef. 4-1-87; OLCC 10-1989, f. 10-2-89, cert. ef. 10-1-89; OLCC 2-1993(Temp), f. 6-25-93, cert. ef. 7-1-93; OLCC 4-1995, f. 5-2-95, cert. ef. 6-1-95; OLCC 16-2000, f. 11-9-00, cert. ef. 12-1-00; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03. Renumbered from 845-015-0075; OLCC 5-2005, f. 8-16-05, cert. ef. 9-1-05; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06; OLCC 10-2012, f. 12-18-12, cert. ef. 1-1-13

Oregon Medical Board Chapter 847

Rule Caption: Clarify definition of legal name and documentation required for licensure

Adm. Order No.: OMB 1-2013

Filed with Sec. of State: 1-11-2013

Certified to be Effective: 1-11-13

Notice Publication Date: 12-1-2012

Rules Amended: 847-008-0065

Subject: Rule amendment clarifies the definition of legal name and the documentation required to prove legal name for licensure.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-008-0065

Use of Name

(1) Each licensee of the Board must be licensed under licensee's legal name and must practice under that legal name.

(a) "Legal name" means the first name, middle name and last or surname, without the use of initials or nicknames and is the name given at birth or subsequently acquired through marriage, court order, adoption or naturalization.

(b) Evidence of legal name must be in the form of official records such as a birth certificate, marriage certificate or a court order/deed.

(2) When a name is changed, all of the following must be submitted to the Board within 30 days of the name change:

(a) A signed change of name notification affidavit provided by this Board;

(b) A copy of the legal document showing the name change; and

(c) The returned original Oregon license and license card, or engrossed certificate, whichever is applicable.

(3) 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 677.265
Hist.: ME 5-1990, f. & cert. ef. 4-25-90; BME 24-2007, f. & cert. ef. 10-24-07; OMB 23-2011, f. & cert. ef. 10-18-11; OMB 1-2013, f. & cert. ef. 1-11-13

Rule Caption: Supervising physician of a physician assistant must be approved prior to supervising

Adm. Order No.: OMB 2-2013

Filed with Sec. of State: 1-11-2013

Certified to be Effective: 1-11-13

Notice Publication Date: 12-1-2012

Rules Amended: 847-050-0027

Subject: Rule amendment adds a fine for failure to apply and be approved as a supervising physician by the Board prior to using the services of a physician assistant under a practice agreement.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-050-0027

Approval of Supervising Physician

(1) Prior to using the services of a physician assistant under a practice agreement, a supervising physician or primary supervising physician of a supervising physician organization must be approved as a supervising physician by the Board.

(2) The primary supervising physician of a supervising physician organization must apply as a supervising physician with the Board and must attest that each supervising physician in the supervising physician organization has reviewed statutes and rules relating to the practice of physician assistants and the role of a supervising physician.

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(3) Physicians applying to be a supervising physician or the primary supervising physician of a supervising physician organization must:

(a) Submit a supervising physician application; and

(b) Take an online course and pass an open-book exam on the supervising physician requirements and responsibilities given by the Board. A passing score on the exam is 75%. If the supervising physician applicant fails the exam three times, the physician's application will be reviewed by the Board. A supervising physician applicant who has failed the exam three times must also attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the exam, before being given a fourth and final attempt to pass the examination. If the applicant does not pass the exam on the fourth attempt, the physician's application may be denied.

(4) The physician may be subject to Board investigation prior to approval or may be limited or denied approval as a supervising physician for the following:

(a) There are restrictions upon or actions against the physician's license;

(b) Fraud or misrepresentation in applying to use the services of a physician assistant.

(5) The Board may defer taking action upon a request for approval as a supervising physician pending the outcome of the investigation of the physician for violations of ORS 677.010–677.990.

(6) Failure to apply and be approved as a supervising physician by the Board prior to using the services of a physician assistant under a practice agreement is a violation of ORS 677.510 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 677.205 & 677.510

Hist.: ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 5-1984, f. & ef. 1-20-84; ME 8-1985, f. & ef. 8-5-85; ME 5-1986, f. & ef. 4-23-86; ME 21-1989, f. & cert. ef. 10-20-89; ME 2-1990, f. & cert. ef. 1-29-90; ME 5-1994, f. & cert. ef. 1-24-94; ME 9-1995, f. & cert. ef. 7-28-95; BME 13-2003, f. & cert. ef. 7-15-03; OMB 2-2011, f. & cert. ef. 2-11-11; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12; OMB 11-2012(Temp), f. & cert. ef. 3-2-12 thru 8-29-12; OMB 26-2012, f. & cert. ef. 8-3-12; OMB 2-2013, f. & cert. ef. 1-11-13

Rule Caption: Implements 2012 Senate Bill 1565 related to physician assistant dispensing

Adm. Order No.: OMB 3-2013

Filed with Sec. of State: 1-11-2013

Certified to be Effective: 1-11-13

Notice Publication Date: 12-1-2012

Rules Amended: 847-050-0041, 847-050-0065

Rules Repealed: 847-050-0041(T), 847-050-0065(T)

Subject: Rule amendments implement 2012 Senate Bill 1565 related to physician assistant dispensing, correct the reference to oral issuance of Schedule II drugs, and contain general language and grammar housekeeping. Senate Bill 1565 extends the ability to apply for dispensing authority to all practicing physician assistants in the state, not just those who serve areas or populations designated as underserved or medically disadvantaged. Effective June 1, 2012, supervising physicians or supervising physician organizations may apply to the Board for general dispensing authority for physician assistants. A physician assistant with general dispensing authority may not dispense Schedule II-IV controlled substances. Dispensing authority for those physician assistants in underserved or disadvantaged areas or populations is unaffected by the 2012 legislation.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-050-0041

Prescribing and Dispensing Privileges

(1) An Oregon grandfathered physician assistant may issue written, electronic or oral prescriptions for Schedule III-V medications, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice agreement or Board-approved practice description, if the physician assistant has passed a specialty examination approved by the Board prior to July 12, 1984, and the following conditions are met:

(a) The Oregon grandfathered physician assistant has passed the Physician Assistant National Certifying Examination (PANCE); and

(b) The Oregon grandfathered physician assistant has documented adequate education or experience in pharmacology commensurate with the practice agreement or Board-approved practice description.

(2) A physician assistant may issue written, electronic or oral prescriptions for Schedule III-V medications, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice agreement or Board-approved practice description, if the physician assistant has met the requirements of OAR 847-050-0020(1).

(3) A physician assistant may issue written or electronic prescriptions or emergency oral prescriptions followed by a written authorization for Schedule II medications if the requirements in (1) or (2) are fulfilled and if the following conditions are met:

(a) A statement regarding Schedule II controlled substances prescription privileges is included in the practice agreement or Board-approved practice description. The Schedule II controlled substances prescription privileges of a physician assistant are limited by the practice agreement or Board-approved practice description and may be restricted further by the supervising physician at any time.

(b) The physician assistant is currently certified by the National Commission for the Certification of Physician Assistants (NCCPA) and must complete all required continuing medical education coursework.

(4) All prescriptions given whether written, electronic, or oral must include the name, office address, and telephone number of the supervising physician and the name of the physician assistant. The prescription must also bear the name of the patient and the date on which the prescription was written. The physician assistant must sign the prescription and the signature must be followed by the letters "P.A." Also the physician assistant's Federal Drug Enforcement Administration number must be shown on prescriptions for controlled substances.

(5) A supervising physician or primary supervising physician of a supervising physician organization may apply to the Board for a physician assistant to dispense drugs specified by the supervising physician or supervising physician organization.

(a) The physician assistant must have prescribing privileges and be in good standing with the Board and the NCCPA to qualify for dispensing authority. The physician assistant may dispense Schedule II medications only if the physician assistant has been delegated Schedule II prescription privileges by the supervising physician.

(b) If the facility where the physician assistant will dispense medications serves population groups federally designated as underserved, geographic areas federally designated as health professional shortage areas or medically underserved areas, or areas designated as medically disadvantaged and in need of primary health care providers as designated by the State, the application must include:

(A) Location of the practice site;

(B) Accessibility to the nearest pharmacy; and

(C) Medical necessity for dispensing.

(c) If the facility where the physician assistant will be dispensing medications is not in one of the designated areas or populations described in subsection (5)(b) of this rule:

(A) The physician assistant may not dispense Schedule I through IV controlled substances;

(B) The physician assistant must complete a drug dispensing training program jointly developed by the Oregon Medical Board and the State Board of Pharmacy; and

(C) The supervising physician or primary supervising physician of a supervising physician organization must submit to the Board:

(i) A plan for drug delivery and control;

(ii) An annual report on the physician assistant's use of dispensing authority;

(iii) A list of the drugs or classes of drugs the physician assistant will dispense; and

(iv) A list of all facilities where the physician assistant will dispense and documentation that each of these facilities has been registered with the State Board of Pharmacy as a supervising physician dispensing outlet.

(6) A physician assistant with dispensing authority must:

(a) Dispense medications personally;

(b) Dispense only medications that are pre-packaged by a licensed pharmacist, manufacturing drug outlet or wholesale drug outlet authorized to do so under ORS 689, and the physician assistant must maintain records of receipt and dispensing; and

(c) Register with the Drug Enforcement Administration and maintain a controlled substances log as required in OAR 847-015-0015.

(7) Distribution of samples, without charge, is not dispensing under this rule. Administering drugs in the facility is not dispensing under this

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rule. Distribution of samples and administration of drugs must be documented in the patient record. Documentation must include the name of the drug, the dose, the quantity distributed or administered, and the directions for use if applicable.

(8) A supervising physician or primary supervising physician of a supervising physician organization for a physician assistant who is applying for dispensing authority must be registered with the Oregon Medical Board as a dispensing physician.

(9) Failure to comply with any subsection of this rule is a violation of the ORS Chapter 677 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 677.190, 677.205, 677.470, 677.515 & 677.545

Hist.: ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 6-1982, f. & ef. 10-27-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 16-1987, f. & ef. 8-3-87; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1994, f. & cert. ef. 1-24-94; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2003, f. & cert. ef. 7-15-03; BME 8-2004, f. & cert. ef. 4-22-04; BME 3-2005, f. & cert. ef. 1-27-05; BME 6-2006, f. & cert. ef. 2-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12; OMB 16-2012(Temp), f. 5-8-12, cert. ef. 6-1-12 thru 11-28-12; OMB 34-2012(Temp), f. 11-8-12, cert. e. 11-28-12 thru 5-27-13; OMB 3-2013, f. & cert. ef. 1-11-13

847-050-0065

Duties of the Committee

(1) The Physician Assistant Committee must:

(a) Review physician assistants' applications for licensure and renewal of licensure.

(b) Recommend approval or disapproval of physician assistants' applications for licensure and renewal of licensure.

(c) Review requests to use the services of physician assistants.

(d) Review the criteria for prescriptive privileges for physician assistants.

(e) Review any other matters related to physician assistant practice in Oregon.

(2) All actions of the physician assistant committee are subject to review and approval by the Board.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.540

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 15-1999, f. & cert. ef. 10-28-99; BME 6-2006, f. & cert. ef. 2-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12; OMB 16-2012(Temp), f. 5-8-12, cert. ef. 6-1-12 thru 11-28-12; OMB 34-2012(Temp), f. 11-8-12, cert. e. 11-28-12 thru 5-27-13; OMB 3-2013, f. & cert. ef. 1-11-13

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Rule Caption: License renewal registration certificates may be provided electronically

Adm. Order No.: OMB 4-2013(Temp)

Filed with Sec. of State: 1-11-2013

Certified to be Effective: 1-11-13 thru 7-10-13

Notice Publication Date:

Rules Amended: 847-008-0040

Subject: The temporary 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 proposed 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

Oregon State Lottery Chapter 177

Rule Caption: Adopts application waiting period; authorizes selection process.

Adm. Order No.: LOTT 9-2012

Filed with Sec. of State: 12-18-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 10-1-2012

Rules Amended: 177-040-0017

Subject: The Oregon State Lottery has adopted a requirement that an applicant for a Video Lottery retailer contract establish the viability of the business by continuously operating for 90 days prior to submitting an application for a Video Lottery retailer contract. Lottery also authorized a selection process if more than one applicant applies for a Video Lottery retailer contract and this would create a concentration of Video lottery retailers at that location.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0017

Additional Video LotterySM Retailer Business Operation Criteria and Application Requirements

(1) **General:** It is the policy of the Oregon State Lottery to place Video LotterySM game terminals in retail businesses which are viable businesses on their own without benefit of selling Video LotterySM.

(2) **90 Day Requirement:** A person shall be considered for a Video LotterySM contract for a specified premises only if the business at that premises has been operating continuously for at least 90 days prior to the date the application is accepted by the Lottery. Operating continuously means a business is open to the public and makes available for sale all products or services the applicant sells. For purposes of this definition, opening for brief periods of time and/or offering limited products and/or services will be considered an attempt to circumvent the intent of this section and will not be considered as operating continuously.

(a) **Interruptions:** The continuous 90-day period of operation shall not be considered interrupted if any suspension of operations was for two days or less. The intent of this subsection is that there will not be a significant interruption of the business during the continuous 90-day period of operation so that the Lottery may reasonably rely on sales information and business history which remains relevant to the application. The Director may find that the continuous 90-day period of operation was not interrupted when the suspension of operation is for an aggregate of more than two business days upon a showing by the applicant that the sales information and business history remains relevant.

(b) **Purchase:** If the substantial assets of a business or premises were purchased by the person applying for a Video LotterySM retailer contract within 90 days prior to the date of the application, the period of operations under the prior owner shall be considered in determining the period of operations, provided that the new business is being operated as the same or similar type of business and the primary business of the prior owner was the offering of meals for on-premise consumption or alcoholic beverages for on-premise consumption. The intent of this rule section is to prevent evasion of the rule's requirement by means of superficial transactions such as the mere purchase of a business trade name rather than a bonafide acquisition of the substantial operating assets.

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(c) **Move:** If a business moves to a different location within 90 days prior to the date of the application, the period of operations at the old location shall be considered if:

(A) The new location is in essentially the same community as the old location and serves essentially the same customer base; and

(B) The business conducted at the new premises is a continuation of the business conducted at the old premises rather than the establishment of an additional location.

(C) The burden of proof for establishing subsections (A) and (B) of this subsection is on the applicant.

(3) **Selection Process Where Concentration of Video LotterySM Retailers:** If Lottery receives two or more applications for a Video LotterySM retailer contract for premises at a location that would create a concentration of Video LotterySM retailers at the location, as defined in OAR 177-045-0000(1), and more than one applicant were to qualify for a Video LotterySM retailer contract:

(a) Lottery will first consider the application received first in time by date. If the applicant whose application is first in time does not ultimately qualify for a Video LotterySM retailer contract, Lottery will consider the application that was next received in time and will continue this process until an applicant qualifies for a Video LotterySM retailer contract at the location. Regardless of the number of Video LotterySM retailer applications submitted, Lottery will not enter into a Video LotterySM retailer contract if doing so would create a concentration of Video LotterySM retailers.

(b) If two or more applications are received on the same date, the Lottery Director will use a random selection process to choose which application Lottery will consider first. If the applicant chosen first in the random selection does not ultimately qualify for a Video LotterySM retailer contract, the Lottery shall consider the application of the next applicant chosen during the random selection process. This process will continue until an applicant qualifies for a Video LotterySM retailer contract at the location. Regardless of the number of Video LotterySM retailer applications submitted, Lottery will not enter into a Video LotterySM retailer contract if doing so would create a concentration of Video LotterySM retailers.

(c) For purposes of subsection (5) of OAR 177-045-0030, if there is a location of existing Video LotterySM retailers that creates a concentration of Video LotterySM retailers, the existing retailers at that location may submit an application to the Lottery, in a manner and by a date determined by the Lottery Director, for a Video LotterySM retailer contract at the location. No other applicants for a Video LotterySM retailer contract may apply for that location under this subsection. If the number of existing Video LotterySM retailer contract applicants for that location will create a concentration of Video LotterySM retailers beginning June 28, 2015, the Director will select by random selection, those existing retailers who will be considered for a Video LotterySM retailer contract at the location beginning June 28, 2015. If any existing Video LotterySM retailer contract applicant chosen by random selection does not qualify for or does not enter into a Video LotterySM retailer contract at that location, the Director will consider the application of the next existing Video LotterySM retailer contract applicant chosen during the random selection process. Regardless of the number of Video LotterySM retailer contract applications submitted by existing Video LotterySM retailers, Lottery will not enter into a Video LotterySM retailer contract if doing so would create a concentration of Video LotterySM retailers at the location beginning June 28, 2015.

(d) The Director shall determine the procedures for the random selection process authorized by this section. The Director may conduct a manual or electronic drawing, or may use any other selection procedure as determined by the Director that ensures a random selection. The Assistant Director of Security shall be responsible for ensuring that any random selection process is conducted using appropriate standards to ensure the fairness and integrity of the process. Upon recommendation of the Assistant Director of Security, the Director may disregard the results of a random selection if it appears inconsistent with the purposes of this rule or is inconsistent with the fairness, integrity, security, or honesty of the Lottery. Any decision of the Director under this section is final.

Stat. Auth.: ORS 461

Stats. Implemented: ORS 461.215 & 461.217

Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 9-2005(Temp), f. & cert. ef. 9-7-05 thru 3-5-06; LOTT 20-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 1-2007, f. 1-21-07, cert. ef. 2-1-07; LOTT 6-2008(Temp), f. 10-29-08, cert. ef. 11-1-08 thru 4-28-09; LOTT 1-2009, f. 1-30-09, cert. ef. 2-1-09; LOTT 9-2012, f. 12-18-12, cert. ef. 1-1-13

Oregon University System, Eastern Oregon University Chapter 579

Rule Caption: To modify parking and Vehicular Traffic Regulations at Eastern Oregon University.

Adm. Order No.: EOU 8-2012

Filed with Sec. of State: 12-20-2012

Certified to be Effective: 12-20-12

Notice Publication Date: 9-1-2012

Rules Amended: 579-070-0005

Subject: Parking and Vehicular Traffic Regulations

Rules Coordinator: Teresa Carson-Mastrude—(541) 962-3773

579-070-0005

Purpose

(1) Campus parking and vehicular traffic regulations are designed to minimize congestion, maintain safety, enhance security, and maximize the use of existing parking facilities.

(2) "The Board of Higher Education is empowered under ORS 352.360 and 351.070 to enact such regulations as it shall deem convenient or necessary to provide for the policing, control, and regulation of traffic and parking of vehicles on the property of any institution under the jurisdiction of the Board," and to "prescribe and collect charges for services rendered to any person or entity." The fees and charges are set at levels sufficient to support fully annual operating expenses of maintaining parking facilities and to meet obligations for bonded indebtedness incurred for the acquisition of property and/or the construction of parking facilities.

(3) These regulations and fees will be reviewed annually by the Vice President of Finance and Administration, and Facilities and the Parking Advisory Committee

(4) Oregon State Police, the Union County Sheriff, and the La Grande City Police are authorized to issue citations for violations of vehicular traffic regulations occurring anywhere within approved campus boundaries. If a citation is issued by one of these enforcement agencies, the person cited should post bail or appear at the time and place stated on the citation. The university exercises no authority or responsibility over these actions.

(5) All signs and curb markings will meet established EOU standards. Curb Colors: Yellow — No parking; Handicapped — Blue; Green — 30 minute parking; Red—Fire zone.

(6) A vehicle is any conveyance requiring a state or city license to operate in any public area. This includes motorcycles and mopeds.

(7) The University assumes no responsibility for damage to or loss of vehicles or their contents when parking within the campus boundaries.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 352.360

Hist.: EOSC 11, f. & ef. 11-17-77; EOSC 3-1979, f. & ef. 6-27-79; EOSC 1-1982, f. & ef. 6-11-82; EOSC 4-1984, f. & ef. 10-25-84; EOSC 2-1986, f. & ef. 7-28-86; EOSC 4-1992, f. & cert. ef. 8-24-92; EOSC 2-1994, f. & cert. ef. 3-7-94; EOSC 5-1994, f. & cert. ef. 9-6-94; EOU 5-2005, f. & cert. ef. 9-2-05; EOU 3-2007, f. & cert. ef. 8-15-07; EOU 8-2012, f. & cert. ef. 12-20-12

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Oregon University System, Oregon State University Chapter 576

Rule Caption: Sets fees/charges at Oregon State University for the balance of fiscal year 2012–2013.

Adm. Order No.: OSU 7-2012

Filed with Sec. of State: 12-24-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Amended: 576-010-0000

Subject: The rule updates fees and charges for designated services at Oregon State University for January 1, 2013 through June 30, 2013. The rule states: "The University hereby adopts by reference a list of fees and charges for January 1, 2012–June 30, 2013. This list of Fees and Charges is available at the Oregon State University Valley Library, and is hereby incorporated by reference in the rule."

Rules Coordinator: Beth Giddens—(541) 737-2449

576-010-0000

Fees and Charges

The University hereby adopts by reference a list of fees and charges for January 1, 2013–June 30, 2013. This List of Fees and Charges is avail-

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able at the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 351.070, 352.360 & OAR 580-040-0010
Stats. Implemented: ORS 351.070 & 352.360
Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 1-2005, f. 6-13-05, cert. ef. 7-1-05; OSU 1-2006, f. 6-23-06, cert. ef. 7-1-06; OSU 1-2007, f. 6-18-07, cert. ef. 7-1-07; OSU 3-2008, f. 6-27-08, cert. ef. 7-1-08; OSU 2-2009, f. 6-16-09, cert. ef. 7-1-09; OSU 1-2010, f. 6-30-10, cert. ef. 7-1-10; OSU 1-2011, f. 6-13-11, cert. ef. 7-1-11; OSU 8-2011, f. & cert. ef. 12-27-11; OSU 3-2012, f. 6-6-12, cert. ef. 7-1-12; OSU 7-2012, f. 12-24-12, cert. ef. 1-1-13

Rule Caption: Ensuring all members of the faculty are eligible to act as Faculty Mediator.

Adm. Order No.: OSU 8-2012

Filed with Sec. of State: 12-24-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Amended: 576-050-0015

Subject: "Faculty Mediator" has been defined as an academic employee with faculty rank who is chosen by the Faculty Senate Executive Committee to hear faculty grievances. This rule change makes nonacademic employees of faculty rank eligible to act as a Faculty Mediator under the division 50 rules.

Rules Coordinator: Beth Giddens—(541) 737-2449

576-050-0015

Definitions and Mail Requirement

(1) "Days" as used in this rule shall mean calendar days.

(2) "Presentation of the Grievance" as used in OAR 580-021-0050 means receipt of the grievance by the dean, director or unit executive officer as specified in 576-050-0025.

(3) "Faculty Mediator" is an employee with faculty rank chosen by the Faculty Senate Executive Committee. Emeritus faculty shall be eligible to serve as the Faculty Mediator.

(4) "Faculty Grievance Committee" is a committee of five academic employees with faculty rank chosen by the Faculty Senate Executive Committee and charged with the responsibility for hearing faculty grievances in accordance with these procedures. Any person with faculty rank may submit nominations to the Executive Committee for consideration. The Executive Committee shall choose at least one female and one minority member. Three members shall constitute a quorum. The Executive Committee of the Senate shall select a Chair.

(5) "Faculty Rank" means faculty ranks as defined in the rules of the State Board of Higher Education and includes faculty without rank but with professional title.

(6) All appeals, decisions, or recommendations referred to in this rule shall be sent by U.S. Mail or University campus mail.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88; OSU 1-1989(Temp), f. 2-9-89, cert. ef. 2-10-89; OSU 2-1989, f. & cert. ef. 5-30-89; OSU 5-1991, f. & cert. ef. 3-6-91; OSU 11-1996, f. & cert. ef. 8-23-96; OSU 8-2012, f. 12-24-12, cert. ef. 1-1-13

Rule Caption: Repeals Article 576 division 26, Measles Immunization Policy.

Adm. Order No.: OSU 9-2012

Filed with Sec. of State: 12-24-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Repealed: 576-026-0005, 576-026-0010

Subject: Oregon law now includes the requirements set for in division 26, along with other requirements. Division 26 is no longer needed as OSU follows the broader state law on immunization requirements, Repealing the rule does not change any policy or procedure.

Rules Coordinator: Beth Giddens—(541) 737-2449

Rule Caption: Motor vehicle history checks for employment and service.

Adm. Order No.: OSU 10-2012

Filed with Sec. of State: 12-24-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-2012

Rules Adopted: 576-056-0000, 576-056-0010, 576-056-0020, 576-056-0030, 576-056-0040, 576-056-0050, 576-056-0060, 576-056-0070, 576-056-0080, 576-056-0090, 576-056-0100, 576-056-0110, 576-056-0120, 576-056-0130

Subject: Oregon State University is committed to protecting the security, safety, and health of faculty, staff, students and others, as well as safeguarding the assets and resources of the University. To meet these objectives, the University may require a motor vehicle history check as a condition prior to any applicant, employee, or volunteer providing services in a critical or security-sensitive position.

Rules Coordinator: Beth Giddens—(541) 737-2449

576-056-0000

Purpose and Applicability

(1) Oregon State University is committed to protecting the security, safety, and health of faculty, staff, students and others, as well as safeguarding the assets and resources of the University. To meet these objectives, the University may require a motor vehicle history records check as a condition prior to an employee or volunteer providing services in a position that requires operation of a motor vehicle as an essential function. All categories of unclassified employees, classified employees, graduate assistants, student employees, volunteers, and job applicants may be subject to this check if their position requires operation of a motor vehicle. Hiring practices associated with motor vehicle history checks are to be conducted in a manner that supports the University's commitment to non-discrimination in hiring practices.

(2) A motor vehicle history check may be required of a person currently serving as an employee or volunteer if he or she seeks appointment to a position that requires operation of a motor vehicle as an essential function, or if OAR 576-055-0130 applies.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0010

Definitions

(1) "Motor vehicle history check" is the review of any and all records containing any information collected and stored in a state or county repository as identified in OAR 576-035-0020 or applicable state rules or laws if records are collected or stored outside the State of Oregon.

(2) "Subject individual" means a person from whom the University may require motor vehicle history records as a condition to provide service as an employee or volunteer. Subject individuals may include persons currently serving as an employee or volunteer, or persons who seek appointment as an employee or volunteer, to a position that is designated as requiring driving as an essential function of the position.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0020

Designation of Positions Requiring a Motor Vehicle History Check

The President or his/her designee will designate positions, in consultation with the hiring supervisor, that require driving as an essential function in the position description and, therefore, require a motor vehicle history check using the criteria described in OAR 576-035-0020. The designation will be applied based on a review of specific motor vehicle-related job duties and requirements.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0030

Notice to Subject Individuals

All solicitations, application forms, and announcements for positions designated as requiring a motor vehicle records check will include a statement notifying potential applicants of the intent to request consent to conduct a motor vehicle history check and the fact that such consent will be required for employment or service consideration.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

ADMINISTRATIVE RULES

576-056-0040

Motor Vehicle History Check Process

(1) Oregon State University may request that an applicant, employee or volunteer provide a current motor vehicle history when:

- (a) The individual meets the definition of "subject individual"; or
- (b) Required by federal law or regulation, by state law or administrative rules, or by contract or written agreement.

(2) Oregon State University may require the subject individual to provide personally identifiable information such as names, current and former addresses, date of birth, and driver's license number.

Stat. Auth: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0050

Determination of Fitness to Hold Position Based on Motor Vehicle History Check

(1) A motor vehicle history check is intended to verify that the subject individual meets minimum driver requirements and voluntary and compulsory driver standards as identified in OAR 576-035-0020 and has not forfeited bail or been convicted for any of the following, or reasonably similar, unacceptable driving violations, as certified by the motor vehicle history check. The listed periods begin at the later date of violation, forfeiture, or conviction.

(a) A major traffic offense in the last 24 months. This includes reckless driving, driving under the influence of intoxicants, failing to perform the duties of a driver, criminal driving while suspended or revoked, fleeing or attempting to elude a police officer, and others;

(b) Felony revocation of driving privileges or felony or misdemeanor driver license suspension within the last 24 months;

(c) More than three moving traffic violations in the last 12 months;

(d) A careless driving conviction in the last 12 months; or

(e) A Class A moving traffic infraction in the last 12 months.

(2) The President or his/her designee will review the motor vehicle history check information in determining if the subject individual is fit to hold the position.

(3) A determination of fitness is considered a minimum qualification of a position requiring a motor vehicle history check. However, a positive determination on the basis of a motor vehicle history check does not guarantee the individual a position as an employee or volunteer.

(4) A subject individual who misrepresents or provides misleading or false information, or withholds information as part of the motor vehicle history check process, will be disqualified from further consideration. If misleading or false information is discovered after an individual has been appointed, the individual may be disciplined, up to and including termination of employment or service appointment, or rescinding of tenure appointment, pursuant to University policy and governing rules.

(5) An open motor vehicle offense or charge may preclude a final candidate from eligibility for employment or service depending on the relevancy of the charges(s) to the job responsibilities. The President or his/her designee is responsible for determining relevance in these situations, in consultation with University General Counsel.

Stat. Auth: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0060

Refusal to Consent to a Motor Vehicle History Check

Refusal to consent shall cause the University to deny the subject individual employment or service as a volunteer. A subject individual may not appeal a termination of candidacy due to refusal to consent to a motor vehicle history check.

Stat. Auth: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0070

Incomplete Fitness Determination

The University will close a fitness determination as incomplete when:

(1) The person no longer meets the definition of a "subject individual";

(2) The subject individual does not provide information or materials under OAR 576-056-0050;

(3) The University cannot locate or contact the subject individual;

(4) The University determines that the individual is not eligible or qualified for the position of employee or volunteer for a reason unrelated to the fitness determination process; or

(5) The position is no longer open.

Stat. Auth: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0080

Offer of Employment or Service

Appointment of an applicant, current employee or volunteer to a position requiring a motor vehicle records check is contingent on the University's determination of fitness based on the motor vehicle history check. No subject individual for a position designated as requiring a motor vehicle history check may commence employment or service until the motor vehicle history check process has been completed and a satisfactory determination of fitness to hold the position has been made unless an exception has been approved by the President, in consultation with the University General Counsel and the Assistant Vice President for Human Resources.

Stat. Auth: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0090

Notice of Adverse Fitness Determination

A subject individual who has been determined not to be fit based at least in part on information contained in a motor vehicle history check will be notified by the University either by electronic or certified mail to the address provided by the subject individual.

Stat. Auth: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0100

Appeal Process for Motor Vehicle History Check

(1) A subject individual who is currently employed by the University and who is determined not to be fit for a position on the basis of information contained in the motor vehicle history records check report provided by the subject individual to the University may appeal the determination through applicable personnel rules, policies and collective bargaining provisions.

(2) A subject individual who is not currently employed by the University and who is determined not to be fit for a position on the basis of information obtained in the motor vehicle history records check report provided by the subject individual to the University may appeal the determination by writing a letter within five (5) days to the Assistant Vice President for Human Resources stating the reasons for appeal.

(3) The subject individual may not use the appeal process to challenge the accuracy, completeness or lawfulness of the information the subject individual provided to the University.

(4) The only remedy available to the subject individual under the appeal process is a determination that the applicant is fit. Under no circumstances will the University be required to place a subject individual in any position or be required to accept the individual's services in any capacity.

(5) Appealing a fitness determination or challenging motor vehicle history information with the agency from which the subject individual obtained the report will not cause delay or postponement of the University's hiring process or decisions regarding employment or service to the institution.

Stat. Auth: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0110

Restricted Access to and Maintenance of Motor Vehicle History Check Records

(1) Access to information obtained in the motor vehicle records check process is restricted. The University restricts access to and dissemination of that information to only those persons with a demonstrated and legitimate need to know the information. Motor vehicle history record files will be maintained in the Office of Human Resources and the Department of Public Safety.

(2) Supervisors and other University employees will generally not be provided information regarding a subject individual's motor vehicle history and will be informed that the subject individual either has a satisfactory or unsatisfactory fitness determination. Motor vehicle history information will only be disclosed to a hiring supervisor or other University employees where the President or his/her designee believes that employee has a demonstrated and legitimate need to know the information and specifically approves the disclosure.

ADMINISTRATIVE RULES

(3) Motor vehicle history check records will be retained in accordance with OAR 166-475-0095(17).

Stat. Auth: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0120

Fees Associated with Obtaining a Motor Vehicle History Check

The subject individual is responsible for fees associated with providing his or her motor vehicle history to the University.

Stat. Auth: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

576-056-0130

Required Employee and Volunteer Notification to the University

(1) A motor vehicle history check and determination of fitness will not be required of a current employee or volunteer in his or her unless required by law, rule, regulation, ordinance, binding legal opinion, or grant, or as required in writing by a funding or regulatory agency or as set forth in (2). Fitness determinations and employment or volunteer service decisions based thereon will be made consistent with this Division and any other applicable University rules, policies or collective bargaining agreements.

(2) All employees and volunteers whose position descriptions have been designated as requiring the operation of a motor vehicle as an essential function are required to notify the Director or Associate Director of the Office of Human Resources if they are convicted of a motor vehicle crime or offense as identified in OAR 125-155-200 while serving in the position. If the President or his/her designee determine that the conviction is pertinent to the employee or volunteer's fitness to carry out the duties or functions of his or her position, the University may require the employee to consent to a motor vehicle history check. The results of this check will be handled pursuant to the remaining sections of this Division and other applicable University rules and policies. If the University makes an adverse fitness determination based on the check, the employee or volunteer will be removed from his or her position where consistent with other University rules, policies or collective bargaining agreements.

(3) Failure to report relevant crimes or offenses pursuant to this Section may result in disciplinary action, up to and including termination. The Director or Associate Director of Human Resources will take all such matters under advisement with University General Counsel.

Stat. Auth: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 10-2012, f. 12-24-12, cert. ef. 1-1-13

Parks and Recreation Department Chapter 736

Rule Caption: Adopt changes to OAR 736-021 as noted below.

Adm. Order No.: PRD 1-2013

Filed with Sec. of State: 1-15-2013

Certified to be Effective: 2-1-13

Notice Publication Date: 1-1-2012

Rules Adopted: 736-021-0065

Rules Amended: 736-021-0010, 736-021-0020, 736-021-0030, 736-021-0040, 736-021-0050, 736-021-0060, 736-021-0070, 736-021-0080, 736-021-0090, 736-021-0100, 736-021-0120, 736-021-0130, 736-021-0140, 736-021-0150, 736-021-0160

Rules Repealed: 736-021-0110

Subject: Oregon Revised Statutes Chapter 736, Division 21 rules govern the use of the ocean shore recreation area. The most recently approved changes accomplish the following: allow certain department officials and peace officers the authority to order rule violators to leave or to exclude them from the ocean shore area for a period of time; align motor vehicle rules for the ocean shore with other pertinent rules; introduce regulations for non-motorized vehicle use; require domestic animal handlers to maintain control and be responsible for animal behavior; establish specific standards for natural product removal for personal use; prohibit seasonal collection and prospecting in western snowy plover areas; prohibit altering the natural environment or disturbing natural resources; prohibit or regulate certain activities to ensure safety, preservation and access for all; and clarify rules for items of value found on the ocean shore.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-021-0010

Scope of Rules

This division governs the use of the ocean shore state recreation area, which consists of the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. This division does not govern activities or uses in the sub-tidal zone, which extends below extreme low tide, or in an estuary as defined in ORS 196.800.

Stat. Auth.: ORS 390.660
Stats. Implemented: ORS 390.660
Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0020

Statutory Authority

This division is adopted pursuant to:

(1) ORS 390.050, which authorizes the director and the director's designees to enforce park and ocean shore state recreation area rules by citation authority; and

(2) ORS 390.635 and 390.660, which grant the Oregon State Parks and Recreation Commission the following:

(a) Complete jurisdiction and authority to administer as state recreation areas, all ocean shore areas owned by the state and all other public easements or other rights of access that the state holds on the ocean shore;

(b) Authority to protect and maintain such areas in a manner that will contribute to the general welfare of the public and the natural and cultural resources thereon; and

(c) Authority to make regulations and provisions as it deems necessary for the use and administration of such areas.

Stat. Auth.: ORS 390.660
Stats. Implemented: ORS 390.124, 390.635 & 390.660
Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0030

Definitions

For purposes of this division, the definitions in ORS 358.905 and ORS 390.605 shall apply. In addition, the following definitions apply, unless the context requires otherwise:

(1) "ATV" means All-Terrain Vehicle as described and defined in OAR 736-004-0015. ATV may also be referred to interchangeably as Off-Highway Vehicle (OHV).

(2) "Cobble" means a rock fragment between about 2.5 inches and 10.2 inches wide, especially one that has been naturally rounded.

(3) "Commission" means the Oregon Parks and Recreation Commission.

(4) "Department" means the Oregon Parks and Recreation Department.

(5) "Director" means the director of the Oregon Parks and Recreation Department.

(6) "Domestic animal" means those animals whose food and shelter are provided by a human custodian.

(7) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations and to issue oral or written warnings or citations to enforce the ocean shore state recreation area rules.

(8) "Habitat Conservation Plan for Western (Coastal) Snowy Plovers" is a multi-agency, multi-jurisdictional recovery effort for the Western Snowy Plover. The full text of the "Habitat Conservation Plan for Western (Coastal) Snowy Plovers" is available from the State Parks and Recreation Department.

(9) "Handler" means a person who brings a domestic animal onto the ocean shore state recreation area.

(10) "Holdfast" means the part of a seaweed by which it fastens to the surface on which it grows.

(11) "Marine Protected Area" means any area of the marine environment within Oregon's Territorial Sea that has been reserved by the state to provide lasting protection for part or all of the natural and cultural resources in it. A marine protected area is an area established by the State Land Board and identified in OAR chapter 141, division 142.

(12) "Marine Reserve" is an area within Oregon's Territorial Sea or adjacent rocky intertidal area that is protected from all extractive activities, including the removal or disturbance of living and non-living marine resources, except as necessary for monitoring or research to evaluate reserve condition, effectiveness, or impact of stressors. A marine reserve is an area established by the State Land Board and identified in OAR chapter 141, division 142.

ADMINISTRATIVE RULES

(13) "Motorized vehicle or device" means any self-propelled means moving on wheels, runners, tracks or the like by which a person could travel or carry something, whether or not designed exclusively to transport or typically used on roads. This definition includes but is not limited to a motor vehicle as defined in ORS 825.005(6), motorized bicycles, motor scooters, ATVs, OHVs, recreational vehicles, trailers and other mobile equipment.

(14) "Natural Product" means living and non-living natural products on the ocean shore, including but not limited to marine plants, minerals, shells, rocks, and sand.

(15) "Non-Traditional Park Use" means any organized activity, gathering or use conducted in whole or in part within the boundaries of the ocean shore state recreational area, that is not a recreational use allowed by the posted park regulations or permitted under the provisions of this rule or divisions 10, 15 and 20 and which requires a special use permit under division 16.

(16) "Occupied site" means a department-owned or leased area, a privately or locally-owned area or an area adjacent to federal lands that has at least one nest or nesting attempt as identified by the department at the beginning of each western snowy plover nesting season in accordance with the Habitat Conservation Plan for Western (Coastal) Snowy Plover.

(17) "Ocean shore state recreation area" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line or the line of established upland vegetation, whichever is farther inland, under the jurisdiction of the department that is used by the public for recreational purposes per ORS 390.605 (2) and (3).

(18) "Ocean shore resources" means any natural or human-made property, material, product, feature or structure in the ocean shore state recreation area.

(19) "OHV" means Off Highway Vehicle, also called ATV, see definition (1).

(20) "Park Employee" means an employee of the department.

(21) "Park Manager" means the supervisor or designated employee in charge of an ocean shore state recreation area.

(22) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(23) "Person" includes an individual, a public or private corporation, an unincorporated association, a partnership, a government or a governmental unit, or a non-profit entity.

(24) "Personal Use" means use that is directly by the individual for purposes other than monetary reward and not involving sale, barter, resale, or exchange of money.

(25) "Territorial Sea" as defined in ORS 196.405(5) means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.

(26) "Unoccupied sites" means actively managed department-owned or leased areas, privately or locally-owned areas or areas adjacent to federal lands that have been identified as potential nesting sites for western snowy plovers in concurrence with the Habitat Conservation Plan for Western (Coastal) Snowy Plover.

(27) "Upland" means the land lying shoreward or generally easterly of the ocean shore state recreation area.

(28) "Violate" includes failure to comply.

(29) "Wet sand" means the area seaward of symbolic fencing (roping), signs, or both that are placed on the dry sand area.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0040

General Regulations

(1) The director, by written agreement, may cooperatively exercise jurisdiction and authority over the ocean shore state recreation area with a county, city, or political subdivision thereof for the purposes of enforcing this division and applicable state, county or city laws. Local government regulations pertaining to the ocean shore state recreation area are provided in division 30.

(2) A park employee may seek compliance from the public with any ocean shore state recreation area rules. (A person may not obstruct, harass or interfere with a park employee's official duties, including enforcing ocean shore state recreation area rules.

(3) A park manager or designated park employee may order any person who violates any ocean shore state recreation area rule to leave an ocean shore area.

(4) A park manager or an enforcement officer may exclude a person who violates any ocean shore state recreation area rule from the ocean shore area for a specified period of time.

(5) A peace officer, pursuant to a written agreement with the department, may seek compliance from the public with any ocean shore state recreation area rule and may order a person who violates one or more rules to leave the ocean shore area.

(6) A peace officer, pursuant to a written agreement with the department, may exclude a person who violates one or more of the following from an ocean shore state recreation area for a specified period of time:

(a) Ocean shore state recreation area rule;

(b) Federal, state, county, or city law; or

(c) Court order.

(7) The department may take action to protect ocean shore resources, to protect public health and safety, to provide security, to avoid user conflicts, or for other reasons deemed necessary. These actions include but are not limited to the following:

(a) Allowing by permit or limiting specific activities or uses in designated portions of the ocean shore state recreation area;

(b) Designating locations within the ocean shore state recreation area for specific uses, to avoid conflicts between users;

(c) Restricting access to or closing all or a portion of the ocean shore state recreation area; or

(d) Temporarily excluding a person from a portion or all ocean shore state recreation area.

(8) A person excluded from the ocean shore state recreation area under sections (4), (6) or (7) may contest the exclusion notice by filing a written appeal within seven business days of the exclusion date. The person excluded must submit the appeal to the department district manager responsible for the ocean shore state recreation area where the notice of exclusion was issued.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0050

Fines

(1) A person that violates any ocean shore state recreation area rule commits a Class A B, C or D violation punishable, upon conviction, by a fine as provided in ORS chapter 153.

(2) Each occurrence of an ocean shore state recreation area rule violation is considered a separate offense.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.050 & 390.124

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0060

Motor Vehicles and Other Motorized Devices

General Provision:

(1) A person operating a motorized vehicle or device on the ocean shore state recreation area must"

(a) Observe all posted signs, including signs that prohibit the operation of motorized vehicles or devices; and

(b) Restrict speed and manner of operation to reasonable and prudent practice, considering the terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other ocean shore state recreation area users, natural resources, and wildlife.

(2) A person operating a motorized vehicle or device on the ocean shore state recreation area may not:

(a) Disturb or harass wildlife or other natural resources, or

(b) Block access, use, or the safe and uninterrupted passage of others on the ocean shore state recreation area.

Motor Vehicle Provisions:

(3) A person may not use a motor vehicle as defined in ORS 825.005(6) on any area of the ocean shore state recreation area unless the department had posted the area as open. A person may use a motor vehicle on a closed area only pursuant to a permit issued by the department.

(4) On an area of the ocean shore state recreation area that the department has posted as open to motor vehicle use, a person may only operate a motor vehicle that is registered to operate on public highways and roads.

(5) On the ocean shore state recreation area fronting the Oregon Dunes National Recreation Area and Sand Lake Recreation Area, a person may use an ATV or OHV provided that the vehicles is equipped with at least the minimum safety equipment as specified in OAR 735-116-0000.

(6) A person may not operate a Class I ATV on the ocean shore state recreation area, except:

ADMINISTRATIVE RULES

(a) If the person obtains an Ocean Shores ATV Operating Permit from the department as provided in OAR 736-004-0062.

(b) On the ocean shore state recreation area fronting the Oregon Dunes National Recreation Area and Sand Lake Recreation Area. A person may operate a Class I ATV registered in a state other than Oregon under this subsection.

(7) Unless otherwise posted, a person may not operate motorized vehicles or devices within the ocean shore state recreation area at speeds in excess of 25 mph in open sections and 10 mph in closed sections.

(8) A person operating a motorized vehicle or device must comply with regulatory signs in the ocean shore state recreation area. All provisions of motor vehicle laws of the State of Oregon are applicable and enforceable.

(9) The department may have a motorized vehicle or device towed at the owner's expense if left unattended for more than 24 hours or immediately if it meets one or more of the following criteria:

(a) Blocks or restricts a beach access,

(b) Is owned by a person who has been excluded or who is in violation of criminal trespass, or

(c) Poses harm to the beach environment or ocean shore resources, creates a hazard to humans or wildlife, is a nuisance or may become a navigational hazard if washed out to sea.

(10) Vehicle operators must have a valid driver's license in their possession, except at ocean shore state recreation area adjacent to Oregon Dunes National Recreation Area and Sand Lake Recreation Area that are open to ATV use.

(11) A person whose driving privilege has been suspended or revoked may not operate any vehicle on the ocean shore recreation area, including at ocean shore state recreation areas adjacent to the Oregon Dunes National Recreation Area and at Sand Lake Recreation Area.

(12) A person may not use any vehicle in western snowy plover-management areas as provided in OAR 736-021-0090.

ATV-Specific Provisions:

(13) A person operating an ATV on designated portions of the ocean shore state recreation area under this rule must comply with the following equipment requirements:

(a) Flag: All vehicles must display a highly visible red or orange flag when on the sand.

(A) The flag must be displayed vertically and be at least nine feet from the ground level when the vehicle is under power; and

(B) The flag dimensions must be at minimum 8 inches wide and 12 inches long.

(b) Helmet: Operators and passengers younger than 18-years-old in a Class I, III or IV ATV must wear a Department of Transportation-approved helmet with the chin strap fastened while operating an ATV. In addition, operators and passengers younger than 18 years of age must also wear a Department of Transportation-approved helmet with the chin strap fastened while operating a Class II nonregistered vehicle.

(c) Fuel tank: All fuel tanks must meet the following requirements:

(A) Must be securely mounted;

(B) Must be properly constructed of industrial material for carrying fuel;

(C) All connections must be secure and tight; and

(D) All mechanical fluids and fuel must be securely contained to ensure no leakages that may affect the ocean shore state recreation area.

(d) Muffler: All vehicles must be equipped with a muffler that conforms to the current noise level and defect standards of the Department of Environmental Quality for vehicles operated off road.

(14) A person operating an ATV on designated portions of the ocean shore state recreation area is subject to the following conditions:

(a) ATV Operator Permit: Operators of Class I, III and IV ATVs must obtain an ATV Safety Education Card, also known as an ATV operator permit, according to OAR 736-004-0085 and comply with all the provisions in OAR 736-004-0085.

(A) The department shall honor an ATV permit issued by another state, as detailed in OAR 736-004-0070.

(B) A temporary ATV Safety Education Card is valid for operation on the ocean shore state recreation area if the operator meets the provisions of OAR 736-004-0095.

(C) These rules apply to all ATV operators, regardless of state of residence.

(D) Only persons with disabilities and park employees, emergency personnel or natural resources workers on official duty that have obtained an Ocean Shores ATV Operating Permit from the department may operate a Class I ATV on the ocean shore state recreation area.

(b) Placement of ATV Permit: A person must display his or her ATV operating permits as provided in OAR 736-004-0065.

(c) Rider Fit: ATV operators younger than 16 years of age must meet the rider-fit criteria established in OAR 736-004-0115

Other Vehicle Provisions:

(15) A person may take off or land on the ocean shore in a powered aircraft, airborne vehicle or other aircraft:

(a) In an emergency, or

(b) As authorized in a special-use permit from the department as provided in OAR 736-016.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.668 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PR 12-1996, f. 12-23-96, cert. ef. 12-26-96;

PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0065

Non-Motorized Vehicles, Cycles, Unpowered Aircraft, Sails and Other Similar Devices

(1) A person may operate a bicycle, skateboard, scooter, rollerblades or inline skate, or other wheeled, operator-propelled equipment that transports the operator on land, as provided in section (3).

(2) A person may operate a wind-powered aircraft or vehicle, such as a land sail, kite-buggy or other similar items on the ocean shore state recreation area as provided in section (3).

(3) A person operating any vehicle described in sections (1) or (2) on the ocean shore state recreation area must:

(a) Observe all posted signs, including the signs that restrict the operation of such vehicles, aircrafts and devices, and

(b) Restrict speed and manner of operation to reasonable and prudent practice considering the terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other ocean shore state recreation area users, natural resources, and wildlife.

(4) A person operating any vehicle described in sections (1) or (2) on the ocean shore state recreation area may not:

(a) Disturb or harass wildlife or other natural resources as provided in OAR 736-021-0090; or

(b) Block access, use, or the safe and uninterrupted passage of others on the ocean shore state recreation area.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390

Hist.: PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0070

Pets and Other Animals

(1) Domestic animals, including saddle or pack animals, are allowed in the ocean shore state recreation area except as provided in OAR 736-021-0090, 736-030-0005, 736-030-0010, and as otherwise posted by the department.

(2) The handler of any domestic animal must be responsible for the animal's behavior and must exercise direct control over the animal while in the ocean shore state recreation area.

(a) "Direct control" means that the animal is within the unobstructed sight of the handler and responds to voice commands or other methods of control.

(b) Domestic animal handlers must carry a leash or restraining device at all times while in the ocean shore state recreation area.

(c) Domestic animal handlers must promptly leash animals at the request or order of a park employee.

(d) Handlers must prevent their animals from harassing people, wildlife and other domestic animals.

(e) Animals may not be hitched or confined in a manner that may cause damage to any natural resources on the ocean shore.

(f) Handlers are responsible for the removal of the animal's waste while in the ocean shore state recreation area.

(3) A park manager, ocean shore natural resource specialist or designated park employee may take any necessary measures to protect ocean shore resources and prevent an animal from interfering with the safety, comfort and well-being of visitors. Such measures may include removing the animal from the area.

(4) The department may seize any animal running at large in the ocean shore state recreation area and relinquish the animal to an animal control officer or shelter.

(5) A person may bring animals native to the ocean shore state recreation area for release as part of wildlife rehabilitation efforts pursuant to a valid Wildlife Rehabilitation Permit under ORS 635-044-0200 to 635-044-0310.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

ADMINISTRATIVE RULES

736-021-0080

Livestock and Farming

(1) A person may not harass livestock or interfere with lawfully permitted farming activities or facilities, including fencing.

(2) A person may not conduct non-permitted farming activities on the ocean shore state recreation area.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0090

Cultural, Historic, Natural and Wildlife Resources

(1) A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on the ocean shore state recreation area, unless the department has authorized that activity by a permit issued under ORS 390.235 and OAR 736-051-0060 to 736-051-0080.

(2) Except with the written permission of the department or as allowed by sections (3) or (4) of this rule, a person may not:

(a) Pick, cut, mutilate, trim, uproot, or remove any living vegetation;

(b) Dig up or remove any sand, soil, rock, historical or fossil materials; or

(c) Place, remove, roll, move any stones, logs or other objects to gain access to the ocean shore state recreation area.

(3) A persons who is an enrolled member of an Indian Tribe as defined in ORS 97.740 may collect natural products as part of their traditional cultural heritage, in accordance with procedures established by the department and in state rules. Upon request by a park employee, a person collecting natural products under this section must present tribal enrollment identification or a department-issued Special Tribal Use Permit.

Removal for Personal Use:

(4) A person may remove small quantities of natural products from the ocean shore state recreation area for personal use without a permit as provided in subsections (a) and (b). However, the department may restrict removal of natural products to specific areas of the ocean shore state recreation area, by quantities of material, and by time of year.

(a) **Souvenirs** that may serve as a reminder of a person's ocean shore visit and may include a small quantity of agates and other rocks, driftwood, and similar non-living items collected for non-commercial, personal use in accordance with ORS 390.705 and 390.725. For items such as agates, sand and cobble, each person collecting must use an individual container and may not combine collections in the same container with another person. Unless otherwise restricted by the department, a person may remove:

(A) Agates and other non-living items such as shells, stones, and fossils loose on the ground, in small quantities, defined as no more than a one-gallon volume container per person per day; up to three gallons per person per calendar year.

(B) Sand: no more than a five-gallon volume container per person per day; up to 20 gallons per person per calendar year.

(C) Cobble: no more than a five-gallon volume container per person per day; up to 10 gallons per person per calendar year.

(D) Driftwood, for non-commercial purposes, as follows:

(i) No more than one cubic yard (3 ft X 3 ft X 3 ft) per person per day; up to three cords per person per calendar year.

(ii) Driftwood removal is restricted to wood that can be loaded by hand only. A person may not use mechanized loading or removal equipment. The department must approve chainsaw use.

(iii) A person may not remove wood embedded in the beach or in dune banks from the ocean shore state recreation area.

(iv) A person may not disturb, cut, mutilate or remove ancient tree stumps, including but not limited to those found on the ocean shore state recreation area at the Neskowin "ghost forest."

(b) **Living or non-living seaweed and marine plant** harvesting or collecting for non-commercial, personal consumption is allowed as provided in paragraphs (A) through (H) of this subsection. The department may restrict removal of aquatic vegetation to certain species, areas of the ocean shore state recreation area, quantities, and time of year.

(A) A person may harvest living seaweed and marine plants annually beginning March 1 and ending June 15.

(B) A person may harvest non-living seaweed and marine plants all year. However, in any western snowy plover-managed area, a person may not harvest non-living seaweed and marine plants during seasonal closures beginning March 15 and ending September 15.

(C) A person may not cut or disturb eel grass (*Zostera* spp.), surf grass (*Phyllospadix* spp.) or sea palm (*Postelia* sp.) in any area.

(D) A person may not harvest or collect any species listed on the "Rare, Threatened and Endangered Species of Oregon" published by the Oregon Biodiversity Information Center.

(E) A person may harvest no more than a one-gallon volume container per day; up to three gallons per calendar year.

(F) Each person collecting must use an individual container and may not combine collections in the same container with another person.

(G) A person may harvest only by hand using a knife or similar instrument. A person may only harvest live vegetation by cutting or picking; tearing or using tined instruments, such as rakes or forks, is prohibited. A person may remove loose or drift plants. A person may not remove or disturb a holdfast.

(H) A person may not pick, cut, mutilate, trim, uproot, remove or attempt to take or possess any living or non-living plants in marine reserves, marine protected areas, marine gardens, intertidal research reserves, and wildlife or habitat refuges.

(5) For any area of the ocean shore state recreation area that is also either a marine reserve or marine protected area, regulations pertaining to collection or removal of natural products are provided in division 29, OAR chapter 635, division 12, and OAR chapter 141, division 142.

(6) In order to remove or collect quantities of natural products greater than the limits listed in this rule, a person must obtain a special-use permit from the department.

Removal for Commercial Use:

(7) In order to remove or collect natural products for commercial use, a person must obtain a permit as provided in OAR chapter 736, division 20.

Other Collecting Activities:

(8) **Fishing**, shellfishing, and collecting of other marine invertebrates for personal or commercial use are regulated by the Oregon Department of Fish and Wildlife (ODFW) under rules in OAR chapter 635.

(9) A person may engage in **recreational prospecting** as provided in this section. However, the department may restrict disturbance or removal to specific areas of the ocean shore state recreation area, by quantities of material, and by time of year.

(a) A person may remove sand from the ocean shore state recreation area for personal prospecting use. A person may remove a maximum of one five-gallon volume container per day; for up to 20 gallons per person per calendar year.

(b) Equipment is limited to hand-operated instruments;

(c) A person may not use motorized equipment, including solar, battery operated pumps, or other similar motorized devices;

(d) A person may not use chemicals, heavy metals or other aids to separate metals;

(e) A person may not prospect in waters of the state without written permission from ODFW regarding in-stream work periods. A person may not interrupt or divert water flow or in any way restrict the movement of fish or wildlife;

(f) A person may not disturb, take, or move wildlife, vegetation or other natural resources in the prospecting process;

(g) If a person moves rocks in the prospecting process, the person must return the prospecting area to original condition before leaving the ocean shore state recreation area;

(h) A person may not prospect in any western snowy plover-managed area, during seasonal closures beginning March 15 and ending September 15;

(i) A person may not disturb more than one cubic yard of materials at any individual site, or more than a total of five cubic yards within a one-quarter mile radius; and

(j) A person may not stake or file a mining claim or leasehold location.

(10) **Scientific research:** A person may only engage in scientific research, including product removal for research, pursuant to a written permit from the department's Salem headquarters and any other required state or federal permits. For example, a person who wishes to capture or handle marine and freshwater fish and shellfish and other marine invertebrates for scientific or educational purposes from the waters of Oregon, including the ocean shore state recreation area, must obtain a valid scientific taking permit from the Oregon Department of Fish and Wildlife, as provided in OAR chapter 635, divisions 7 and 43.

(11) **Metal detecting:** A person may use a metal detector or similar device on the ocean shore state recreation area without a written permit from the department in the areas noted in the "Detecting Allowed" list, published on the OPRD website.

ADMINISTRATIVE RULES

Additional Rules for Natural Resource Protection:

(12) A person may not place items such as logs, rocks, ropes, structural members or other objects; remove, bury, roll stones or other objects; carve, dig caves or sculpt in sand dunes or sea cliffs, in a way that endangers visitors or damages ocean shore resources.

(13) A person may not do any of the following within the ocean shore recreation area:

(a) Hunt, collect, pursue, trap, kill, injure, harass or molest any wildlife, disturb or damage their habitat, disturb tidal pools, gather eggs or other live material, except as allowed in this rule. However, a person may detain or remove injured wildlife for rehabilitation efforts. A person must release injured or orphaned wildlife to a licensed wildlife rehabilitator as soon as feasible and in accordance with OAR chapter 635, divisions 44 and 56.

(b) Feed, give or offer food to wildlife;

(c) Discharge any firearm, pellet gun, bow and arrow, slingshot, paintball gun, or other weapon or device capable of injuring any person or wildlife, except as allowed by section (14).

(14) The director may authorize the use of firearm and other predator control methods by designated individuals for natural resource management purposes.

Rules for Western Snowy Plover Management Areas:

(15) In the western snowy plover management areas the following additional rules apply, which are adopted based on the department's Habitat Conservation Plan for Western (Coastal) Snowy Plover:

(a) **Occupied Sites:** In areas the department designated as occupied sites for western snowy plovers, the following apply:

(A) All recreation is restricted within dry sand demarked areas beginning March 15 and ending September 15. The department may declare restrictions ended on July 15 due to a discontinuation of nesting. The boundaries of "dry sand" areas may be identified with symbolic fencing (roping), signs, or both.

(B) A person may not operate a motorized or non-motorized vehicle or flying apparatus, including but not limited to kites, gliders and air balloons on the wet sand adjacent to demarked dry sand areas, except persons the department has approved to perform administrative, enforcement or scientific duties.

(C) Dogs are prohibited on the wet sand adjacent to demarked dry sand areas.

(D) Other recreational activities, such as camping and recreational fires, that could not typically occur on wet sand due to waves are also prohibited.

(E) Walking and any other passive activity not otherwise mentioned here are allowed on the wet sand.

(F) Horseback riding on the wet sand of beaches with occupied sites is allowed, unless horseback riding is otherwise restricted by special rules that pertain to areas adjacent to coastal cities and detailed in division 30.

(b) **Unoccupied Sites:** In areas the department has designated as unoccupied sites for western snowy plovers:

(A) A handler must leash dogs with a leash length of six feet or less and keep the dog under physical control at all times.

(B) Motorized and non-motorized vehicles are prohibited beginning March 15 and ending September 15. The department may declare the restrictions to end on July 15 due to a lack of nesting. The department may allow a person performing administrative, enforcement or scientific duties to use motorized or non-motorized vehicles when on official duty.

(C) The department will use signs placed at approaches to an unoccupied, actively managed area to convey restricted portions and duration to visitors.

(c) To manage the restoration efforts for the western snowy plover, the department will:

(A) Implement the Habitat Conservation Plan for Western (Coastal) Snowy Plover;

(B) Implement specific site plans designed for each area identified in the Habitat Conservation Plan for Western (Coastal) Snowy Plover;

(C) Implement the rules in this section, which apply to department-owned, leased or managed properties, as well as areas owned privately or by local governments that have been identified in the conservation plan or the site plans, and areas adjacent to occupied or unoccupied federal land; and

(D) Take any other action deemed necessary to the restoration effort.

Stat. Auth.: ORS 390.124, 390.660 & 390.725

Stats. Implemented: ORS 164.775, 358.920, 390.635 & 390.660 & 390.725

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0100

Visitor Conduct

(1) A person may not mutilate, deface, damage, or remove any property, structure or facility of any kind in the ocean shore state recreation area, except as provided in OAR 736-021-0090.

(2) A person may not leave any material not found naturally on the ocean shore, including garbage, recyclables, sewage, or waste, on the ocean shore state recreation area.

(3) A person may not engage in the following activities on the ocean shore state recreation area:

(a) Possessing or using alcoholic beverage(s) if the person is under 21 years of age;

(b) Fighting or promoting, instigating or encouraging fighting or similar violent conduct that would threaten the physical well-being of any person;

(c) Activities or conduct that constitutes a public nuisance or hazard; or

(d) Public indecency as defined in ORS 163.465;

(4) A person may only engage in the following activities on the ocean shore state recreation area as authorized in a special use permit that they obtain from the department pursuant to OAR chapter 736, division 16 or written permission from the park manager:

(a) Use or operation of any noise or light-producing machine, vehicle, device or instrument in a manner that may disturb persons or wildlife;

(b) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, or fireworks or other substances;

(c) Using a metal detector or similar device in any property not listed on the "Detecting Allowed" list, published on the department website;

(d) Blocking, obstructing or interfering with pedestrian or vehicular traffic;

(e) Descending, scaling or technical rock climbing on rock formations and cliffs;

(f) Entering or occupying any portion of the ocean shore state recreation area that has been closed to public access, including fenced areas; and

(g) Constructing a structure or sign.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635, 390.655 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0120

Fires

(1) A person may have a recreational beach fire in the ocean shore state recreation area under the following conditions:

(a) Fires are no larger than three feet by three feet by three feet in dimension. A person may apply for a special use permit under division 16 for larger fires.

(b) Fires must be located as follows:

(A) In the open sand area;

(B) Downwind of any shoreline vegetation and small wood debris or log accumulations;

(C) Never in dunes, small wood debris or beach log accumulations; and

(D) A minimum of 25 feet away from beach access points, shoreline vegetation, log accumulations and seawalls constructed of wood or other combustible material.

(c) Fires must not be left unattended;

(d) Fires must not cause damage to facilities or natural resources;

(e) Fires may not be covered with sand; and

(f) Fires must be extinguished completely with water and be broken apart before its users leave the area.

(2) A person may only burn paper products and untreated natural wood free of attached metal, nails, glass or plastic objects. A person may not use gasoline, diesel or any other petroleum-based products to start a fire.

(3) Notwithstanding section (1), the department may restrict fires to individual beach areas, or temporarily prohibit fires due to high fire hazard conditions.

(4) Beach fires are prohibited in western snowy plover-management areas as provided in OAR 736-021-0090.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PR 3-1997, f. 11-5-97, cert. ef. 11-10-97; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

ADMINISTRATIVE RULES

736-021-0130

Commercial Activities and Non-Traditional Activities

(1) A person may only engage in a commercial activity or non-traditional park use on the ocean shore state recreation area as authorized in a special use permit that they obtain from the department pursuant to OAR chapter 736, division 16.

(2) A person must obtain a special use permit from the department for any activity or use as described in OAR 736-016-0005(1), including but not limited to an activity or use within the ocean shore state recreation area that:

(a) Is an organized group activity or event attended by over 50 persons;

(b) Uses a portion of the ocean shore state recreation area to the exclusion of other persons or the department;

(c) Modifies or embellishes the natural ocean shore state recreation area, or places structures, such as tents, chairs, arches, etc. on the ocean shore state recreation area in a manner outside of normal recreational use, as determined by the department;

(d) Uses public-address, amplification or lighting systems, other than those designed for personal use;

(e) Charges money for participation or admission, or they sell products or services;

(f) Could disturb the natural, cultural, scenic and recreational resources in the ocean shore state recreation area or adjacent areas;

(g) Could pose a safety or access concern for other ocean shore state recreation area users or for those involved in the event or activity.

(3) A person who obtains a special use permit under OAR 736, division 16 must comply with all the provisions of division 16, special use permit conditions, and with instructions from the department.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; Renumbered from 736-020-0033; PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; Renumbered from 736-021-0000; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0140

Signs and Promotional Materials

Unless the department authorizes a person to do so within the ocean shore state recreation area under a special use permit as provided in OAR chapter 736, division 16, a person may not place or distribute:

(1) Any sign, marker, advertisement, or inscription with the sole purpose of advertising a business or soliciting customers;

(2) Any circulars, notices, leaflets, pamphlets, written or printed information, promotional materials, products or other similar items of any kind.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0150

Lost Articles

(1) Under ORS 164.065 and 98.005, a person who finds money or goods with a perceived value of \$100 or more at the ocean shore state recreation area must try to find the property's rightful owner in one of the following ways:

(a) By directly following the provisions established in ORS 98.005; or

(b) By giving the found property to the department within 10 days of finding it, along with the details of the time and place the property was found.

(2) A person who finds money or goods valued at less than \$100 in the ocean shore recreation may give the property to the department.

(3) Sections (1) and (2) apply to items found by using metal detectors but not to minerals discovered through recreational prospecting.

(4) The department may dispose of unclaimed items in the department's custody in as early as 90 days.

(5) The department must have and follow a property disposition process that complies with applicable state laws and ethics standards.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0160

Additional Rules

Additional administrative rules may apply to the ocean shore state recreation area, including but not limited to OAR chapter 736, divisions 4, 20, 22, 30 and 80.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

Public Utility Commission Chapter 860

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

Adm. Order No.: PUC 7-2012

Filed with Sec. of State: 12-17-2012

Certified to be Effective: 12-17-12

Notice Publication Date: 8-1-2012

Rules Amended: 860-032-0007

Subject: These changes address the call completion and related problems of intrastate telecommunications services experienced especially in remote and sparsely populated areas of the state. The changes prohibit certain activities that result in call termination failure and address liability of certificate holders with respect to actions of an underlying carrier.

Rules Coordinator: Diane Davis—(503) 378-4372

860-032-0007

Conditions of Certificates of Authority

A certificate to provide telecommunications service is subject to the following conditions:

(1) The certificate holder must provide only the telecommunications service authorized in the certificate.

(2) A telecommunications utility may not abandon service except as authorized under the Commission's rules.

(3) For telecommunications utilities, the records and books of the certificate holder are open to inspection by the Commission, and must be maintained according to the Commission's rules.

(4) For competitive providers and cooperatives, the books and records of the certificate holder must be open to inspection by the Commission to the extent necessary to verify information required of the certificate holder. The books and records must be maintained according to the applicable rules of the Commission.

(5) The certificate holder must pay all access charges and subsidies imposed pursuant to the Commission's rules, orders, tariffs, or price lists.

(6) The certificate holder involved in the provision of an operator service must:

(a) Notify all callers at the beginning of each call of the telecommunications provider's name; however, a telecommunications provider furnishing operator service for another telecommunications provider may brand the call by identifying the other provider;

(b) Disclose rate and service information to the caller when requested;

(c) Maintain a current list of emergency numbers for each service territory it serves;

(d) Transfer an emergency call to the appropriate emergency number when requested, free of charge;

(e) Transfer a call to, or instruct the caller how to reach, the originating telecommunications utility's operator service upon request of the caller, free of charge;

(f) Not transfer a call to another operator service provider without the caller's notification and consent;

(g) Not bill or collect for calls not completed to the caller's destination telephone number; and

(h) Not screen calls and prevent or block the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its call aggregator clients, prohibit the blocking of a caller's access to his or her operator service company of choice. A certificate holder may apply for a waiver from this requirement if necessary to prevent fraudulent use of its services.

(7) Telecommunications providers who enter into operator service contracts or arrangements with call aggregators must include in those contracts or arrangements provisions for public notification as follows:

(a) A sticker or name plate identifying the name of the certificate holder must be attached to each telephone available to the public; and

(b) A brochure, pamphlet, or other notice must be available in the immediate vicinity of the telephone giving the name of the operator service provider, stating that rate quotes are available upon request, listing a toll-free telephone number for customer inquiry, and giving instructions on how the caller may access other operator service providers.

ADMINISTRATIVE RULES

(8) Competitive providers may contract with telecommunications utilities, other competitive providers, or other persons for customer billing and collection under the following conditions:

(a) The telecommunications utility, other competitive provider, or other person, in billing for the competitive provider, must include on the bill the name of a company with the information and authority to provide information and resolve disputes about billing entries, a toll-free number to reach that company, and details of the services and charges billed;

(b) The telecommunications utility may not deny telecommunications service to customers for failure to pay charges for competitive provider services or unregulated utility services.

(9) The certificate holder must comply with Commission rules and orders applicable to the certificate holder.

(10) The certificate holder may not take any action that impairs the ability of other certified telecommunications providers to meet service standards specified by the Commission;

(11) The certificate holder must respond in a timely manner to Commission inquiries.

(12) The certificate holder must submit required reports in a timely manner.

(13) The certificate holder must notify the Commission of changes to the certificate holder's name, address, or telephone numbers within ten days of such change.

(14) Telecommunications providers must meet service standards set forth in applicable Commission's rules, including OAR 860-032-0012.

(15) The certificate holder must timely pay all Commission taxes, fees, or assessments adopted pursuant to Oregon law or Commission rules, orders, tariffs or price lists.

(16) Except as otherwise allowed under state or federal law, the certificate holder must not block, choke, reduce or restrict intrastate traffic in any way.

(17) The certificate holder must take reasonable steps to ensure that it does not adopt or perpetuate routing practices that, except as otherwise allowed under state or federal law, result in lower quality service to an exchange with higher terminating access rates than like service to an exchange with lower terminating access rates.

(a) Reasonable steps include:

(A) Not engaging in deceptive or misleading practices including but not limited to informing a caller that a number is not reachable or is out of service when the number is in fact reachable and in service.

(B) Ensuring that the actions of any underlying carrier, if that underlying carrier is an agent, contractor or subcontractor of or employed by the certificate holder and acting within the scope of the person's employment, used to deliver traffic on behalf of the certificate holder would not put the certificate holder in violation of any Commission rule.

(b) The certificate holder is liable for the actions of an underlying carrier used to deliver traffic on behalf of the certificate holder, if that underlying carrier is an agent, contractor or subcontractor of or employed by the certificate holder and acting within the scope of the person's employment and the certificate holder knew or should have known of the underlying carrier's actions and engages in acts or omissions that effectively allow those actions to persist.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.036, 759.050, 759.225, 759.450 & 759.690
Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989(Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & cert. ef. 7-16-91 (Order No. 91-854); PUC 2-1998, f. & cert. ef. 2-24-98; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2000, f. & cert. ef. 2-9-00, Renumbered from 860-032-0005(9); PUC 6-2011, f. & cert. ef. 9-14-11; PUC 7-2012, f. & cert. ef. 12-17-12

Racing Commission Chapter 462

Rule Caption: Rulemaking will edit OARs with detailed direction to licensees and updates rule terminology.

Adm. Order No.: RC 5-2012

Filed with Sec. of State: 12-31-2012

Certified to be Effective: 12-31-12

Notice Publication Date: 4-1-2012

Rules Amended: 462-130-0010

Subject: AMENDED FILING

Amendment: 462-130-0010 (Prohibited Conduct; Investigations; Discipline): Adds a section to the rule that describes authority

needed to enter locations such as stalls, shed row, tack rooms and feed sheds.

Rules Coordinator: Nancy A. Artmann—(971) 673-0211

462-130-0010

Prohibited Conduct; Investigations; Discipline

(1) No person (including licensees) shall:

(a) Incite, encourage, instruct, assist, or cause or attempt to cause another person to engage in any violation of ORS Chapter 462 or any rule of the commission, or to commit any prohibited act in relation to racing in another racing jurisdiction.

(b) Offer or accept any form of compensation for cashing a pari-mutuel ticket for another.

(c) Direct any personally offensive language, inappropriate gesture or sign, profanity, obscenity, or abusive epithets toward any racing official or employee of the commission at any place under the jurisdiction of the racing commission.

(d) Take any action upon a racecourse that creates or causes a clear and present danger of violence.

(e) Initiate any physical altercation with another person on a racecourse.

(f) Threaten another person with physical harm or probable physical harm.

(g) Refuse to obey reasonable orders or directions of a racing official, security personnel of the race meet licensee or Oregon Racing Commission employees.

(h) Sell or offer to sell tip sheets or any other written, electronic or oral predictions as to the outcome of races at any place under the jurisdiction of the commission unless licensed to do so by the commission.

(i) Gamble, bet, or wager on a racecourse except as authorized by the State of Oregon.

(j) Except for the race meet licensee, solicit any wagers from the public.

(k) Give or offer to give any bribe directly or indirectly, to any licensee, racing official, commission member or employee, or any other person having official duties in relation to any race, racecourse, or racing animal.

(l) Tamper or attempt to tamper with an animal, or apply or aid in applying to an animal or possess on a racecourse any electrical or mechanical device or prohibited medication intended to affect the performance of an animal.

(m) Possess a hypodermic needle or usable injectable syringe on which a needle may be attached on a racecourse, except veterinarians or veterinarian assistants licensed by the Oregon Racing Commission. On a racecourse, veterinarians may use only one-time disposable needles, and shall dispose of them appropriately, according to Oregon Veterinary Medical Examining Board standards. If a person has a medical condition which makes it necessary to have a syringe on the racecourse, that person must request permission of the stewards in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to have a syringe on the racecourse, and must comply with any conditions and restrictions set by the stewards.

(n) Administer, offer to administer, or allow to be administered to any racing animal any prohibited drug or medication, or an unauthorized quantity of an approved drug or medication.

(o) Alter or forge a prescription for medication for a racing animal, or any legal document including but not limited to: a bill of sale, a claim blank, a license application, a treatment form, a registration certificate, ownership registration certificate, lease certificate, a check, or a license application.

(p) Impersonate any racing official, commission member or employee, or any other person having official duties in relation to any race, racecourse, or animal in any manner including forging any of these individuals' names or initials on any document.

(q) Submit or knowingly allow to be submitted to the commission, commission personnel, racing secretary or any racing animal registry, any report or document or application which contains false or misleading information.

(r) Mar or alter any identification mark on a racing animal.

(s) With the exception of commission staff and racing officials in the conduct of official business, use cell phones in the paddock, jockeys' room, test barn enclosure/area and on the racing surface when the area is actively in use.

(t) Smoke inside the test barn/storage area, under the covered portion of the stables, including stalls, tack rooms, shedrow, or in designated "No Smoking" areas.

ADMINISTRATIVE RULES

(u) Use any tobacco products or have food or beverages in the designated testing areas.

(v) Test barn commission staff is permitted to have food or beverages in specified areas only under the following conditions:

(A) Test barn staff is to be free of food residues on their person and to wash their hands prior to testing horses or handling samples.

(B) Food or beverage items that contain prohibited substances are not permitted in the test barn enclosure.

(w) Possess on a racecourse any deadly weapon or firearm, a BB gun, blow gun, pellet gun or similar device, except law enforcement officers, commission officials and security personnel.

(x) While employed by the race meet licensee, racing commission or acting as a racing official, wager at the racecourse where employed or working, while on duty, or ask any other person to place a bet on their behalf. This includes individuals working under contract with the race meet licensee during the racing program and the employees of contractors of the race meet licensee who are working during the racing program.

(y) Allow any person under the age of eighteen (18) years to place or collect a wager. Race meet licensee shall turn over to the proper civil authorities any person who violates this rule, to be punished upon conviction of any such violation, according to law. This rule shall be posted conspicuously at entrance gates and throughout wagering areas. The license of any employee participating in any transaction relative to wagering with persons under the age of eighteen (18) years may be summarily, suspended or revoked.

(z) Move, nominate or enter to race a racing animal on a racecourse except with express permission of the trainer, racing secretary, owner, stall superintendent or the stewards.

(aa) Submit any animal in their charge to cruel or inhumane treatment. Cruel or inhumane treatment includes, but is not limited to:

(A) Inadequate food, shelter and water as defined by typical industry standards for those animals kept in similar climates and conditions;

(B) Neglect in any manner, including adequate veterinary care and attention when necessary;

(C) Conditions which cause the animal unnecessary physical pain or suffering;

(D) Prohibited conduct described in ORS 167.310 to 167.388 in the form the statute provided on the effective date of this rule.

(bb) Commit theft or buy, sell or possess any stolen property, or buy, sell or possess any illegal contraband.

(cc) Illegally influence or conspire, or attempt to influence or conspire, to affect the result of any race or manipulate the odds in which an animal participates.

(dd) Violate any written agreement entered into with the Oregon Racing Commission, the board of stewards or any other commission employee as a result of an order of the commission or stewards.

(ee) Engage in any lewd, obscene, indecent, or inappropriate conduct

(2) No licensee shall:

(a) Enter for official racing, official schooling, start, cause or allow to be entered or start, a racing animal that the licensee knows or should know does not meet all entry requirements.

(b) Come onto a racecourse or participate in a race meet while suspended, excluded or ruled off by the official body of any racing jurisdiction unless otherwise ordered by the board of stewards or the Oregon Racing Commission.

(c) Knowingly harbor or otherwise enable the unlawful presence of any individual who is suspended or revoked by the official body of any racing jurisdiction or excluded by the race meet licensee.

(d) Fail to immediately notify the racing secretary when the licensee discovers that any entry or starting requirement for a racing animal under the licensee's control is not met or is no longer being met.

(e) Allow or cause a scratch to become necessary, which could have been avoided by the exercise of reasonable care.

(f) Fail to request a scratch immediately upon learning that a scratch is necessary.

(g) Solicit, offer or accept any bribe in any form, directly or indirectly, to or from any person, in connection with any race meet in any racing jurisdiction which is a member of Association of Racing Commissioners International (ARCI). A conviction is not required in order to prove a violation of this rule.

(h) Commit any corrupt, fraudulent, or unlawful act on any racecourse or in connection with any race meet in any racing jurisdiction which is a member of ARCI.

(i) Fail to cooperate with commission personnel, officials or security personnel when requested to comply with these statutes and rules relating to racing.

(j) Fail to report to the stewards' office promptly upon request.

(k) Be intoxicated or under the influence of controlled substances in a restricted area or on duty.

(l) Lodge a frivolous complaint.

(m) Knowingly allow an unlicensed person to participate in a race meet if the licensee knows or should know that the person is required to be licensed.

(n) Fail to properly escort unlicensed individuals after registering them with security personnel as guests.

(o) Fail to immediately report to the commission the unlicensed participation in a race meet of any person who the licensee knows or should know is required to be licensed.

(p) Fail to report promptly to a commission representative any possession or use of a prohibited drug, prohibited medication or prohibited paraphernalia.

(q) Fail to notify the commission in writing of a change of officer, director, stockholder (except for publicly traded corporations), or partner, within 30 days, if the change occurred during a race meet, or prior to the next race meet, if the change occurred after a race meet.

(r) Ride a horse on the racecourse without properly wearing an approved helmet and vest.

(s) Retain any prize or purse money which the person has reason to know was paid in error or lost because of disqualification or commission action as a result of an appeal.

(t) If an owner, assistant trainer, groom or other person having charge, custody or care of a racing animal, fail to protect the racing animal and guard it against the administration of unauthorized drugs or any other illegal conduct.

(u) Direct, by use of language, gesture or sign, any profanity, obscenity or abusive epithets toward the public at a racecourse.

(v) Direct any personally offensive language, inappropriate gesture or sign, profanity, obscenity, or abusive epithets toward any person while in view of the public.

(w) Allow anyone other than participating jockey, authorized racing officials, representatives of the commission, licensed valets and authorized licensed vendors in the jockey room between two hours before post time for the first race of the day and one hour after the last race without consent of the stewards for each time of entry.

(x) Other than a licensed jockey agent, make engagements for a jockey. A jockey may make his/her own engagements if not represented by a jockey agent.

(y) Engage in any dishonest conduct on a racecourse.

(z) Engage in any unprofessional conduct on a racecourse.

(aa) Willfully and deliberately fail or refuse to pay any monies when due for any service, supplies or fees connected with their operations as a licensee; nor shall a licensee falsely deny any such amount due or the validity of the complaint thereof with the purpose of hindering or delaying the payment of the debt or defrauding the person to whom the indebtedness is due.

(bb) Write, issue, make or present any check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies when such licensee knows or should reasonably know that the said check will be refused for payment by the bank upon which it is written, or that the account upon which the check is written does not contain sufficient funds for payment of the said check, or that the check is a stop payment check or is written on a closed account or a non-existent account. The fact that such a check is returned to the payee by the bank as refused, constitutes a rebuttable presumption for a finding of financial irresponsibility.

(cc) Except in cases deemed appropriate by the board of stewards, no person shall enter the stalls, shed row, tack rooms, feed sheds or the immediate adjacent area of the locations, unless the person has prior approval of the trainer to whom the locations are assigned by the association. This rule does not apply to racing officials, investigators of the commission, security officers, employees or agents of the association who are on duty, law enforcement or fire protection officers, or employees, agents or representatives of the trainer to whom the locations are assigned.

(3) Substance Abuse:

(a) Alcohol Consumption: No licensee may have present within his/her system an amount of alcohol which would constitute being intoxicated, defined as .08% blood alcohol content or greater, while in a restricted area. No jockey, apprentice jockey, valet, assistant starter, pony person, exercise person, or racing official may have present within his/her system

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an amount of alcohol which would constitute being impaired, defined as .02% or greater blood alcohol content, while responsible for performing their official duties.

(A) Any licensee may be required to take a breath alcohol test prior to their participation in racing events.

(B) Acting with reasonable suspicion, the stewards, or a designated Racing Commission representative, may direct any licensee to submit to a breathalyzer test to determine blood alcohol content.

(C) Refusal to take a breath test will be considered as positive evidence of a violation of subsection (3)(a).

(D) Sanctions for Alcohol Violations

(i) Penalties for a first offense may result in a fine and/or a suspension up to 15 days. The licensee may be required to present an evaluation by a certified rehabilitation program approved in advance by the commission. If the evaluation determines treatment is needed, the licensee shall provide documented proof of completion or current enrollment in an appropriate certified rehabilitation program prior to reinstatement.

(ii) Penalties for a second offense may result in a fine and suspension up to 30 days. The licensee may be required to present an evaluation by a certified rehabilitation program approved in advance by the commission. If the evaluation determines treatment is needed, the licensee shall provide documented proof of completion or current enrollment in an appropriate certified rehabilitation program prior to reinstatement.

(iii) Penalties for third and subsequent offenses shall result in a fine and suspension for no less than 90 days. The licensee shall be required to present an evaluation by a certified rehabilitation program approved in advance by the commission. If the evaluation determines treatment is needed, the licensee shall provide documented proof of completion or current enrollment in an appropriate certified rehabilitation program prior to reinstatement.

(iv) A history of substance abuse violations other than alcohol may be considered as aggravating circumstances when considering penalties for alcohol abuse, and may result in penalties greater than those listed in these rules.

(b) **Drugs/Controlled Substances:** No licensee within any place under the jurisdiction of the racing commission shall have in the licensee's body any controlled substance or drug listed in Schedules I through V of 21 USC Section 812 except for a drug which was obtained or taken pursuant to a valid legal written prescription or order from a licensed physician acting in the course of the physician's professional conduct and which is produced by the licensee upon request.

(A) Acting with reasonable suspicion, the stewards, or a designated racing commission representative, may direct any licensee observed in a restricted area or any racing official acting in their capacity to submit to drug testing for analysis. When so directed, said licensee shall submit to such examination. If the result of the test indicates the presence of a controlled substance as delineated above, or if the person refuses to be tested, either for reasonable suspicion or under random testing criteria, or if the specimen was adulterated as reported by the official testing laboratory, the person may be fined and/or suspended as described in this rule. If the laboratory determines that the sample is dilute, the licensee being tested shall be required to submit another urine sample. To ensure the sample will not be dilute, the licensee will be required to report for testing at a specified time and remain until the sample is acquired.

(B) **Controlled Substance Testing Expense:** Except for split samples, laboratory analysis will be performed at the racing commission's expense, unless pursuant to a prior order of the stewards or commission reinstating the licensee, or the person produced an adulterated specimen, in which case retesting may be performed only after the person pays the cost of the first test to the commission.

(C) Sanctions for Controlled Substance Violations

(i) A licensee's first violation may result in a fine and/or suspension. If suspended, reinstatement shall not occur until the licensee has been evaluated by, and a current written report is received from, a drug counselor certified by the State of Oregon and who is approved in advance by the commission or stewards. If the report states that treatment is required, reinstatement shall not occur until the licensee presents documented proof of current enrollment in or completion of an appropriate certified rehabilitation program approved in advance by the commission. Reinstatement is also subject to licensee producing at licensee's expense, a negative test from a laboratory approved in advance by the commission, and the licensee agreeing in writing to submit urine specimens at the request of the stewards, or designated racing commission representative, for not less than five years, or until no longer licensed. Any failure to comply with the certified counselor's and/or stewards' instructions may result in immediate suspension.

(ii) A licensee's second violation within five years of the first violation shall result in an indefinite suspension and reinstatement shall not occur until the licensee completes all of the contingencies listed above in subsection (i).

(iii) A licensee's third violation within seven years of the second violation shall result in a suspension of up to 365 days and may include referral to the commission for consideration of exclusion and/or revocation of the license.

(iv) A history of alcohol abuse violations may be considered as aggravating circumstances when considering penalties for drug abuse violations and may result in penalties greater than those listed in these rules.

(D) Prescription Medication:

(i) Any licensee who has obtained a medical prescription for any drug listed in Schedules I through V of 21 USC Section 812 may be required to furnish the Commission or the stewards written documentation from the issuing physician that the use of the prescribed drug will not impede the licensee from performing the duties for which they are licensed or threaten the safety or welfare of others or a racing animal.

(ii) If, in the opinion of the board of stewards, the use of any lawful prescribed drug listed in Schedules I through V of 21 USC Section 812 would or could pose a threat to the health, safety or welfare of the licensee, others or a racing animal, the board of stewards, after having an appropriate hearing, can bar the licensee from entering a restricted area of any racecourse or their handling of any race animal subject to appeal.

(E) Knowledge of a person's voluntary and active participation in an approved rehabilitation program will not constitute grounds for "reasonable suspicion" under this rule.

(4) Any licensee who violates any provision of ORS Chapter 462 or any rule adopted there under is subject to further discipline by the board of stewards, up to the limits imposed by law, and also is subject to further discipline by the racing commission, including suspension, revocation, civil penalties, exclusion, probation, and such other discipline as may be appropriate in the case. Whenever a licensee is suspended, the stewards have the commission's authority to also exclude him or her. Any non-licensee who, in the opinion of the stewards, acts in a manner detrimental to racing may be subject to exclusion.

(5) When grounds exist for suspension of a license, the stewards or commission may also impose other appropriate sanctions including, but not limited to, forfeiture of purse, return of prizes, ruling off, or forbidding entry of racing animals.

(6) When a license is suspended, it may be suspended for all categories licensed, including reciprocity suspensions.

(7) **Ejection.** The race meet licensee may eject any person from the race course for any reasons and in any manner that is not contrary to law. The race meet licensee shall notify the commission within 24 hours of any ejection or arrest occurring on the racecourse, including the details thereof.

(8) All licensees shall report any known irregularities or wrong doings by any person immediately to a commission employee and cooperate in subsequent investigations.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03; RC 2-2008, f. & cert. ef. 9-30-08; RC 2-2009, f. 8-24-09, cert. ef. 10-1-09; RC 1-2010, f. 9-23-10, cert. ef. 10-1-10; RC 2-2011, f. 9-23-11, cert. ef. 10-1-11; RC 2-2012, f. 5-29-12, cert. ef. 6-1-12; RC 5-2012, f. & cert. ef. 12-31-12

Real Estate Agency Chapter 863

Rule Caption: Amendments to pre-license and continuing education rules to comply with statutory changes

Adm. Order No.: REA 1-2013

Filed with Sec. of State: 1-14-2013

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Rules Adopted: 863-022-0022, 863-022-0052

Rules Amended: 863-020-0000, 863-020-0005, 863-020-0007, 863-020-0010, 863-020-0015, 863-020-0020, 863-020-0025, 863-020-0030, 863-020-0035, 863-020-0040, 863-020-0045, 863-020-0050, 863-020-0055, 863-020-0060, 863-020-0065, 863-022-0000, 863-022-0005, 863-022-0010, 863-022-0015, 863-022-0020, 863-022-0025, 863-022-0030, 863-022-0035, 863-022-0045, 863-022-0050, 863-022-0055, 863-022-0060

Rules Repealed: 863-020-0008, 863-022-0040

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Subject: These amendments to Division 20, the continuing education rules, and Division 22, the license applicant course requirements and course approval rules, are needed to update the rules based on the extensive job analysis for all licensees and the subsequent updates to the examinations for license applicants. In addition, a new property manager advanced practices course will be required of all property manager licensees who are renewing their license for the first time. The rule adoptions and amendments to these rules were filed as temporary rules on August 15, 2012.

Rules Coordinator: Laurie Skillman—(503) 378-4630

863-020-0000

Applicability and Purpose

(1) This division applies to licensed real estate brokers, principal real estate brokers, real estate property managers, continuing education providers, and instructors who teach courses for continuing education providers.

(2) For all real estate licensees, the purpose of this division is to set forth continuing education requirements for licensee renewals, including:

(a) Courses eligible for continuing education credit completed before January 1, 2011, and

(b) Courses eligible for continuing education credit completed on or after January 1, 2011 taken from continuing education course providers, including:

(A) Courses that meet the requirements for course topics and learning objectives in this division 20,

(B) A Board-approved three-hour law and rule required course on recent changes in rule and law, described in OAR 863-022-0055, required for all licensees,

(C) A 27-hour advanced course in real estate practices, described in OAR 863-022-0020, required for real estate brokers before the first active renewal of the broker's license or before the first license reactivation following an inactive first renewal,

(D) A 27-hour property manager advanced practices course described in OAR 863-022-0022, required for licensed real estate property managers before the first active renewal of the property manager's license or before the first license reactivation following an inactive first renewal,

(E) The 40-hour brokerage administration and sales supervision course, described in OAR 863-022-0025, for an initial principal real estate broker license application, and

(F) Continuing education record-keeping requirements for all licensees.

(3) For continuing education providers, the purpose of this division is to set forth:

(a) The application requirements for certification as a real estate continuing education course provider, and

(b) The responsibilities of continuing education course providers, including:

(A) Ensuring that courses offered by the provider meet the eligible course topics, learning objectives, and length of course requirements,

(B) Maintaining required records,

(C) Providing real estate licensees with certificates of completion for each course that meet the requirements for certificates of completion, and

(D) Ensuring that each instructor who will teach a course offered by a provider meets instructor qualifications and completes a continuing education instructor form.

(4) For instructors who teach courses for continuing education providers, the purpose of this division is to set forth the instructor qualifications, set out on the instructor form that is completed by the instructor and given to the continuing education provider.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, 696.184 & 696.186

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0005

Definitions

As used in this division, unless the context requires otherwise:

(1) "Agency" means the Oregon Real Estate Agency.

(2) "Applicant" means either an individual as defined in section (7) of this rule, or a person as defined in section (10) of this rule.

(3) "Board" means the Oregon Real Estate Board.

(4) "Commissioner" means the Real Estate Commissioner.

(5) "Continuing education provider" means a person certified by the Agency under OAR 863-020-0030 to offer real estate continuing education

courses that are eligible for credit. The continuing education courses are taught by an instructor.

(6) "Course identification number" means a unique four-digit identifying course number assigned by a continuing education provider.

(7) "Individual" means a human being, not a legal entity.

(8) "Instructor" means an individual who teaches, for a continuing education provider, a real estate continuing education course that is eligible for credit. An instructor must meet the qualifications in ORS 696.186 and OAR 863-020-0060. The Agency does not certify instructors.

(9) "Licensed real estate property manager" is defined in ORS 696.010.

(10) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than a government agency.

(11) "Principal real estate broker" is defined in ORS 696.010.

(12) "Provider number" means a unique identifying number assigned by the Agency to a certified continuing education provider under OAR 863-020-0030.

(13) "Real estate broker" is defined in ORS 696.010.

(14) "Real estate licensee" is defined in ORS 696.010 and includes a real estate broker, principal real estate broker, and a real estate property manager.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.186

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0007

Length of Continuing Education Courses

(1) This rule applies to courses offered by certified continuing education providers.

(2) The minimum length of each continuing education course offered by a continuing education provider is one hour.

(3) A continuing education provider or course instructor may allow a break of no more than 10 minutes as part of each hour of instruction.

(4) A provider may offer a course that is longer than one hour, in additional half hour increments.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0010

License Renewal Continuing Education Requirements Effective January 1, 2011

(1) This rule applies to all real estate licensees.

(2) To renew an active license, a real estate licensee must truthfully certify on an Agency-approved form under OAR 863-014-0050 (for real estate brokers and principal brokers) or 863-024-0050 (for licensed real estate property managers) that the licensee:

(a) Has completed at least 27 hours of real estate continuing education that are eligible for credit under OAR 863-020-0035 and 863-020-0040 during the two years preceding renewal and,

(b) Has completed the Board-approved three-hour law and rule required course on recent changes in real estate rule and law described in OAR 863-022-0055.

(3) To renew an active license for the first time or before the first license reactivation following an inactive first renewal, a real estate broker and a licensed real estate property manager must comply with the following:

(a) A real estate broker must complete the 27-hour advanced course in real estate practices described in OAR 863-022-0020. A real estate broker must also take the three-hour law and rule required course described in 863-022-0055.

(b) Effective January 1, 2013, a licensed real estate property manager must complete the 27-hour property manager advanced practices course described in OAR 863-022-0022. A licensed real estate property manager must also take the three-hour law and rule required course described in 863-022-0055.

(4) A real estate licensee will not be given credit for repeating a continuing education course with the same content during a two-year renewal period.

(5) A licensee who falsely certifies that the licensee has completed the required continuing education violates section (2) of this rule and subject to discipline under ORS 696.301.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.022, 696.174 & 696.301

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Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0015

Licensee Records

(1) Effective January 1, 2011, a real estate licensee must maintain the licensee's own continuing education records described in sections (3) and (4) of this rule for three years after the renewal date for which the continuing education credit applies.

(2) Beginning January 1, 2011, a principal broker is not required to maintain the continuing education records of a real estate broker or a property manager associated with the principal broker. However, the principal broker must maintain the continuing education records that pre-date January 1, 2011 as required by OAR 863-015-0260 and produce a copy of such records if the associated licensee or the Agency so requests.

(3) A real estate licensee must complete and maintain an Agency-approved form that contains the following information, taken from the certificate of completion provided by the continuing education provider:

- (a) The licensee's name and license number;
- (b) The name of the course;
- (c) The name of the certified course provider and the provider number;

(d) The course identification number assigned by the course provider;

(e) The course eligibility for continuing education credit as one of the following:

(A) The specific course topic(s) that is eligible under OAR 863-020-0035,

(B) The course is the three-hour law and rule required course under OAR-863-022-0055,

(C) The course is the advanced course in real estate practices under OAR-863-022-0020,

(D) The course is the property manager advanced practices course under OAR 863-022-0022, or

(E) The course is the brokerage administration and sales supervision course under OAR-863-022-0025;

- (f) The date and location of the course;
- (g) The length of time of the course; and
- (h) The name of the instructor who taught the course.

(4) A licensee must maintain all certificates of completion the licensee received from continuing education providers.

(5) Upon request by the Agency, a licensee must produce a copy of the records required under this rule.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0020

Continuing Education Provider Qualifications

(1) An applicant for certification as a continuing education provider must be one of the following:

(a) A main or branch office with a registered business name registered with the Agency under ORS 696.026 and OAR 863-014-0095 or 863-024-0095;

(b) A licensed title or escrow company conducting business in this state;

(c) A real estate trade association as defined in section (2) of this rule or a trade association in a related field as defined in section (3) of this rule, but not the individual members of those associations;

(d) A real estate multiple listing service;

(e) An attorney admitted to practice in this state

(f) A private career school approved by the Agency to teach continuing education courses as defined in section (4) of this rule;

(g) An accredited community college, an accredited public university listed in ORS 352.002, or a private and independent institution of higher education as defined in 352.720

(h) A distance learning provider approved by the Agency as defined in section (5) of this rule; or

(i) A person who does not meet the requirements of section (1)(a) through (h) of this rule but whose qualifications have been approved by the Real Estate Board under OAR 863-020-0025.

(2) "Real estate trade association," as used in section (1) of this rule, means a local, state, regional, or national organization with members that include real estate licensees, licensed escrow agents, or licensed title companies.

(3) "Trade association in a related field," as used in section (1) of this rule, means a local, state, regional, or national organization with members that include licensed, certified, or registered:

- (a) Appraisers,
- (b) Architects,
- (c) Attorneys,
- (d) Contractors,
- (e) Home inspectors,
- (f) Mortgage bankers,
- (g) Mortgage brokers,
- (h) Professional engineers,
- (i) Securities broker-dealers or salespersons,
- (j) Surveyors, or
- (k) Tax professionals.

(4) "Private career school approved by the Agency to teach continuing education courses," as used in section (1) of this rule, means a private career school licensed by the Department of Education and approved by the Agency to provide the basic real estate broker or property manager educational courses required under ORS 696.022.

(5) "Distance learning provider approved by the Agency," as used in section (1) of this rule, means a person whose course has been certified by the Association of Real Estate License Law Officials.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0025

Board Approval of Continuing Education Provider Qualification

(1) A person not otherwise qualified under OAR 863-020-0020(1)(a) through (h) seeking the Board's approval as an applicant for certification must petition the Board under this rule.

(2) The person must submit a petition for approval to the Agency on an Agency-approved form at least 21 days before the scheduled Board meeting at which the applicant wishes the Board to act. The petition must include the following:

(a) The petitioner's name, address, and phone number.

(b) Sufficient information about the petitioner named in the application to allow the Board to determine whether the petitioner qualifies for certification, including specifics about one or both of the following:

(A) Petitioner's demonstrated expertise and experience in providing educational courses to real estate licensees;

(B) Petitioner's demonstrated experience and expertise in at least two course topics eligible for continuing education credit under OAR 863-020-0035(4)(a)-(gg).

(c) Attestation by the petitioner that the petitioner knows and understands:

(A) The responsibilities of a continuing education provider under OAR 863-020-0050;

(B) The requirements of an instructor under ORS 696.186 and the information required on a continuing education instructor form under OAR 863-020-0060.

(3) The Agency will mail a letter to the petitioner stating the Board's determination. If the Board approves the petition, the petitioner may apply for certification as a course provider under OAR 863-020-0030.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2011(Temp), f. 2-3-11, cert. ef. 2-4-11 thru 8-3-11; REA 2-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 5-2011, f. 8-15-11, cert. ef. 9-1-11; REA 9-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0030

Application for Continuing Education Provider Certification and Renewal

(1) An applicant for certification as a continuing education provider must submit to the Agency an application on an Agency-approved form containing the following information. No application fee is required.

(a) The applicant's name, mailing address, physical address, and phone number;

(b) The date of the application;

(c) The applicable qualification listed in OAR 863-020-0020(1) and, if the Real Estate Board approved the applicant's qualifications under 863-020-0025, the applicant must also submit the Agency's confirmation letter;

(d) The name and signature of the individual authorized by the applicant to submit the application;

(e) The applicant's authorized contact person, title, phone number, and e-mail address;

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- (f) The applicant's website address;
- (g) Information concerning the course presentation formats, such as classroom instruction, online, etc.; and
- (h) An affirmation that the applicant:
 - (A) Will comply with the statutory and administrative rule provisions applicable to continuing education providers, and
 - (B) Understands that the continuing education provider certification does not authorize the provider to offer an advanced course in real estate practices, the property manager advanced practices course, or the brokerage administration sales and supervision course. If the provider wishes to offer those courses, the provider may seek separate approval of the course under OAR chapter 863, division 22.

(2) The Agency will assign a provider number and mail a confirmation of certification to the applicant after review and approval of an application.

(3) The Agency will publish on its website and have available at the Agency a list of certified course providers and include the following information:

- (a) The provider's name, mailing address, physical address, and phone number;
- (b) The provider's authorized contact person, title, phone number, and e-mail address;
- (c) The provider's website address;
- (d) The course presentation formats offered by the provider, such as classroom instruction, online, etc.; and
- (e) The date of certification and provider number.

(4) Once certified, the continuing education provider must submit on an Agency-approved form any changes in the information provided on the application.

(5) If a provider no longer wishes to be certified or no longer meets the qualifications contained in OAR 863-020-0020, it must inform the Agency in writing within five business days.

(6) A continuing education provider certification expires on December 31, 2013, and annually thereafter on December 31 of each year, and is subject to renewal by submitting an application for renewal on an Agency-approved form at least 60 days before the certification expires.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.182
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0035

Courses Offered by Continuing Education Providers

(1) This rule applies to continuing education courses offered by continuing education providers except for the advanced course in real estate practices, the property manager advanced practices course, and the brokerage administration sales and supervision course. If the provider wishes to offer those courses, the provider may seek separate course approval under OAR chapter 863, division 22.

(2) A continuing education provider must ensure that a specific class or course offered is within the scope of one or more course topics listed in section (4) or (5) of this rule. The provider must also identify to real estate licensees which course topic(s) is covered by the course. The Agency will not determine whether individual courses or classes are within the scope of an eligible course topic.

(3) Each course offered for continuing education credit:

- (a) Must meet all course requirements under this rule,
 - (b) Must meet the requirements for the length of the course under OAR 863-020-0007,
 - (c) Must meet the requirements for learning objectives in OAR 863-020-0045, and
 - (d) May be presented in a classroom setting, online, or in another format of the provider's choosing.
- (4) The following course topics are eligible for real estate continuing education credit required by ORS 696.174 and OAR 863-020-0010:
- (a) Principal broker or property manager record-keeping.
 - (b) Principal real estate broker supervision responsibilities.
 - (c) Principal broker or property manager clients' trust accounts.
 - (d) Agency relationships and responsibilities for brokers, principal brokers, or property managers.
 - (e) Misrepresentation in real estate transactions.
 - (f) Property management.
 - (g) Advertising regulations.
 - (h) Real estate disclosure requirements.
 - (i) Real estate consumer protection.
 - (j) Anti-trust issues in real estate transactions.

- (k) Commercial real estate.
- (l) Real estate contracts.
- (m) Real estate taxation.
- (n) Real estate property evaluation, appraisal, or valuation.
- (o) Fair Housing laws or policy.
- (p) Managing a real estate brokerage.
- (q) Business ethics.
- (r) Risk management.
- (s) Dispute resolution.
- (t) Real estate finance.
- (u) Real estate title.
- (v) Real estate escrows.
- (w) Real estate development.
- (x) Condominiums.
- (y) Subdivisions.
- (z) Unit owner or home owner associations.
- (aa) Timeshares.
- (bb) Water rights.
- (cc) Environmental protection issues in real estate.
- (dd) Land use planning, zoning, or other public limitations on use.
- (ee) Real estate economics.
- (ff) Real estate law or regulation.
- (gg) Negotiation.

(5) A three-hour law and rule required course on recent changes in real estate rule and law under OAR 863-022-0055 is eligible for three hours of continuing education credit.

(6) The following do not fall within the scope of an eligible continuing education course topic listed under section (4) of this rule:

- (a) Real estate broker or property manager pre-licensing courses.
 - (b) Examination preparation classes.
 - (c) Sales meetings.
 - (d) Motivational classes or seminars.
 - (e) Time management classes or seminars.
 - (f) Sales and marketing classes or seminars.
 - (g) Psychology classes or seminars.
 - (h) Trade association orientation courses.
 - (i) Courses in standardized computer software programs not specifically related to the topics listed in section (4) of this rule.
 - (j) Courses with content that is specific to another state or jurisdiction.
- Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.174 & 696.184
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0040

Certain Courses Required for License Renewal that are Also Eligible for Continuing Education Credit

(1) Effective January 1, 2011, in addition to the eligible courses under OAR 863-020-0035 completed on or after July 1, 2010, the courses listed in subsection (2) through (4) of this rule are eligible for continuing education credit.

(2) An Agency-approved 27-hour advanced course in real estate practices that meets the requirements of OAR 863-022-0020.

(3) Effective January 1, 2013, an Agency-approved 27-hour property manager advanced practices course that meets the requirements of OAR 863-022-0022.

(4) An Agency-approved 40-hour brokerage administration and sales supervision course that meets the requirements of OAR 863-022-0015.

(5) Certification as a continuing education provider does not authorize the provider to offer an advanced course in real estate practices, the property manager advanced practices course, or the brokerage administration sales and supervision course. If the provider wishes to offer those courses, the provider may seek separate course approval under OAR chapter 863, division 22.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.022, 696.174, & 696.184
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0045

Course Learning Objectives

(1) The Agency does not review or approve a continuing education provider's learning objectives.

(2) As used in ORS Chapter 696 and this division 20, the term "learning objective" means a statement of a continuing education provider's goal for what a licensee will know or be able to do when the course is completed.

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(3) In addition to any other learning objectives a continuing education provider may develop for a course, the provider must ensure that each course within a course topic offered under OAR 863-020-0035(4) and (5) meets at least one of the learning objectives contained in section (5) of this rule.

(4) For course learning objectives relating to laws, statutes, and rules, only existing laws, statutes, and rules or those that have been adopted or enacted but are not yet in effect meet the requirements of this rule. Learning objectives related to proposed legislation or proposed regulations do not meet the requirements of this rule.

(5) At the end of the course, the licensee will be able to describe and, where appropriate, identify:

(a) Provisions in laws, statutes or administrative rules relevant to the course topic;

(b) The licensee's responsibilities under laws, statutes or administrative rules relevant to the course topic;

(c) Consumer protections relevant to the course topic;

(d) Governmental agencies with primary responsibility for regulating the course topic and the agencies' role in relation to consumers and licensees; or

(e) The principles, practices, or procedures relevant to the course topic and their impact on at least one of the following:

(A) Licensees;

(B) Consumers;

(C) Parties to the real estate transaction or property management agreement;

(D) The real estate marketplace;

(E) Real estate brokerage or property management practices;

(F) The licensees' real estate business; or

(G) A licensee's professional competence.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0050

Continuing Education Provider Responsibilities

(1) For each course offered, a continuing education provider must:

(a) Ensure that a course offered for continuing education credit is within the scope of one or more course topics listed in OAR 863-020-0035(3) or is a three-hour law and rule required course on recent changes in real estate rule and law under 863-022-0055;

(b) Identify to real estate licensees the course eligibility for continuing education credit as one of the following:

(A) A continuing education course under OAR 863-020-0035 and which course topic(s) the offered course covers,

(B) The course is a three-hour rule and law required course under OAR 862-022-0055,

(C) The course is the advanced course in real estate practices course under OAR 863-022-0020,

(D) The course is the property manager advanced practices course under OAR 863-022-0022, or

(E) The course is the brokerage administration and sales supervision course under OAR 863-022-0025;

(c) Ensure that the course meets the requirements for the length of a course under OAR 863-20-0007;

(d) Assign to each course a four-digit identifying course number;

(e) Ensure that courses offered under OAR 863-020-0035 meet the learning objective requirements contained in 863-020-0045; and

(f) Ensure that the instructor who teaches a continuing education course offered for credit:

(A) Meets the requirements set forth in ORS 696.186, and

(B) Completes and signs the form required by OAR 863-020-0060.

(2) A continuing education provider may provide the advanced course in real estate practices, the property manager advanced practices course, or the brokerage administration and sales supervision course only if the provider and the course have been approved under OAR 863, division 22.

(3) A continuing education provider must keep records as required by OAR 863-020-0055.

(4) A continuing education provider must give each licensee who completes a course a completed certificate of completion that includes:

(a) The licensee's name and license number;

(b) The name of the course;

(c) The name of the certified course provider and provider number;

(d) The course identification number assigned by the course provider;

(e) Identification of the course eligibility for continuing education credit as one of the following:

(A) A continuing education course under OAR 863-020-0035 and which course topic(s) the offered course covers,

(B) The course is a three-hour rule and law required course under OAR 862-022-0055,

(C) The course is the advanced course in real estate practices course under OAR 863-022-0020,

(D) The course is the property manager advanced practices course under OAR 863-022-0022, or

(E) The course is the brokerage administration and sales supervision course under OAR 863-022-0025;

(f) The date and location of the course;

(g) The length of time of each course; and

(h) The name of the instructor who taught the course.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0055

Continuing Education Provider Record-keeping Requirements

(1) A real estate continuing education provider must keep records of each course provided for three years from the date the course was provided. These records must include:

(a) The name of the course,

(b) The course identification number assigned by the course provider,

(c) Identification of the course eligibility for continuing education credit as one of the following:

(A) A continuing education course under OAR 863-020-0035 and which course topic(s) the offered course covers,

(B) The course is a three-hour rule and law required course under OAR 862-022-0055,

(C) The course is the advanced course in real estate practices course under OAR 863-022-0020,

(D) The course is the property manager advanced practices course under OAR 863-022-0022, or

(E) The course is the brokerage administration and sales supervision course under OAR 863-022-0025;

(d) The date and location of the course,

(e) The length of time of each course,

(f) The name of the instructor who taught the course,

(g) The signed form required by OAR 863-020-0060 containing the statement of instructor qualifications, and

(h) The licensee's name and license number for each licensee attending the course on that date.

(2) All continuing education providers, whether located within or outside of this state, must keep the required records at the address provided on the application form.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13

cert. ef. 8-15-12; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0060

Continuing Education Instructor Form

(1) As provided in OAR 863-020-0050, a continuing education provider must ensure that the instructor who teaches a continuing education course offered for credit meets the requirements contained in ORS 696.186. The Agency does not certify instructors.

(2) A continuing education provider must ensure that the instructor completes and signs a form containing the following information:

(a) The instructor's name, address, and phone number;

(b) The continuing education provider name and provider number;

(c) A description of the instructor's qualifications in sufficient detail that would enable the reader to know how the instructor has met those qualifications; and

(d) An attestation signed and dated by the instructor, identifying the instructor's qualifications under section (4) of this rule and affirming that the instructor:

(A) Has not had a professional or occupational license related to the topic of the course revoked for disciplinary reasons;

(B) Has not had a professional or occupational license related to the topic of the course that is currently suspended for disciplinary reasons; and

(C) Has not been determined by a state court, an administrative law judge, or a final agency order to have violated any statute, rule, regulation,

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or order pertaining to real estate activity in this or any other state in the preceding five years.

(3) The instructor must indicate on the form which of the following qualifications applies to the instructor:

(a) A bachelor's degree and two years of experience working in a field related to the course topic;

(b) Six years of experience working in a field related to the topic of the course;

(c) A total of six years of any combination of college-level coursework and experience working in a field related to the topic of the course;

(d) A designation by a professional real estate organization, as defined in section (5) of this rule, and two years of college-level coursework;

(e) A designation as a Distinguished Real Estate Instructor by the Real Estate Educators' Association;

(f) Successful completion of an instructor training course approved by the Board and two years of experience working in a field related to the topic of the course; or

(g) Certification or approval in good standing as a real estate instructor for the same or a similar course topic in any other state or jurisdiction.

(4) "Professional real estate organization," as used in section (4) of this rule, means a group of individuals with a formal membership whose membership includes real estate licensees or licensed escrow agents.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.184 & 696.186

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0065

Certification Revocation

The Agency may revoke the continuing education provider's certification if the provider disregards or violates any applicable provision of ORS Chapter 696 or this rule division. Such revocation is an agency order subject to the contested case provisions contained in ORS Chapter 183.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0000

Applicability and Purpose

(1) This division applies to:

(a) Real estate license applicants,

(b) Real estate licensees,

(c) Persons seeking Agency approval of the following courses:

(A) The education courses for real estate broker license applicants and

(B) The education course for property manager license applicants.

(d) Certified continuing education providers seeking approval of the following courses:

(A) The brokerage administration and sales supervision course for principal broker license applicants,

(B) The advanced practices course required for real estate brokers seeking their first active license renewal, or

(C) The property manager advanced practices course for licensed real estate property managers seeking their first active renewal.

(e) Certified continuing education providers who offer the Board-approved three-hour course on recent changes in real estate law and rule.

(2) This division sets forth the following course requirements for license applicants and licensees:

(a) The course of study required by OAR 863-014-0035 for real estate broker license applicants;

(b) The course required by OAR 863-024-0045 for property manager license applicants;

(c) The brokerage administration and sales supervision course required by OAR 863-014-0040 for principal broker license applicants;

(d) The advanced practices course required by OAR 863-020-0010 for real estate brokers seeking their first active license renewal; and

(e) The property manager advanced practices course required by OAR 863-020-0010 for licensed real estate property managers seeking their first active renewal.

(3) This division sets forth the application processes for Agency approval of the following:

(a) The course of study required by OAR 863-014-0035 for real estate broker license applicants or the course required by 863-024-0045 for property manager license applicants;

(b) The brokerage administration and sales supervision course required by OAR 863-014-0040 for principal broker license applicants;

(c) The advanced practices course required by OAR 863-020-0010 for real estate brokers seeking their first active license renewal;

(d) The property manager advanced practices course required by OAR 863-020-0010 for licensed real estate property managers seeking their first active renewal; and

(e) The three-hour course on recent changes in law and rule required for all renewing licensees under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0005

Definitions

As used in this division, unless the context requires otherwise:

(1) "Agency" means the Oregon Real Estate Agency.

(2) "Associated broker" means a broker that is "associated with," as that term is defined in ORS 696.010, a principal real estate broker.

(3) "Board" means the Oregon Real Estate Board.

(4) "Certified continuing education provider" means a person certified by the Agency under OAR 863-020-0030 to offer real estate continuing education courses that are eligible for credit under 863-020-0035 and 863-020-0040. The continuing education courses are taught by an instructor.

(5) "Clock-hour" is a 60-minute hour, excluding meal or rest breaks.

(6) "Commissioner" means the Real Estate Commissioner.

(7) "Individual" means a human being, not a legal entity.

(8) "In-state community colleges, colleges, and universities" means:

(a) Campuses and centers that are part of an accredited public university listed in ORS 352.002;

(b) Oregon community colleges established and operated under ORS Chapter 341; and

(c) Accredited private and independent institutions of higher education, as that term is defined in ORS 352.720, that are located in Oregon.

(9) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than a government agency.

(10) "Private career schools" means private career schools licensed by the Oregon Department of Education and approved by the Agency to provide the 150-hour real estate license applicant course of study under OAR 863-022-0010, the 60-hour property manager license applicant course under 863-022-0015, or both.

(11) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(12) "Property manager" means "licensed real estate property manager," as defined in ORS 696.010.

(13) "Real estate broker" is defined in ORS 696.010.

(14) "Real estate licensee" is defined in ORS 696.010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0010

Course Requirements for Real Estate Broker License Applicants

(1) The real estate broker license applicant course of study required by OAR 863-014-0035 must include 150 clock-hours in the seven courses listed in section (2) of this rule.

(a) Courses offered by private career schools must be approved by the Agency under OAR 863-022-0030.

(b) Courses offered by in-state community colleges, colleges, and universities must be approved by the Agency under OAR 863-022-0035.

(c) To be eligible for credit, a course provider must:

(A) Present each course for the designated number of clock-hours stated in section (2) of this rule,

(B) Include specific course topics required by the Agency as provided in section (3) of this rule, and

(C) Give each student a final examination for each course consisting of the number of questions stated in section (2) of this rule.

(2) The courses required for real estate broker license applicants are:

(a) Real Estate Law: 30 clock-hours and 60 questions on a final examination.

(b) Oregon Real Estate Practice: 30 clock-hours and 60 questions on a final examination.

(c) Real Estate Finance: 30 clock-hours and 60 questions on a final examination.

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(d) Contracts: 15 clock-hours and 30 questions on a final examination.

(e) Agency Law: 15 clock-hours and 30 questions on a final examination.

(f) Property Management: 10 clock-hours and 20 questions on a final examination.

(g) Real Estate Brokerage: 20 clock-hours and 40 questions on a final examination.

(3) An applicant must complete the required courses through Agency-approved private career schools or in-state community colleges, colleges, or universities, as those terms are defined in OAR 863-022-0005.

(4) To receive credit for courses provided by private career schools, license applicants must complete the course of study and receive a passing score of at least 75% on a final examination for each course.

(5) To receive credit for courses provided by in-state community colleges, colleges, and universities, license applicants must complete the course of study, including a final examination for each course and achieve a minimum grade of "C" or equivalent.

(6) The real estate broker license applicant course of study is not eligible for continuing education credit under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0015

Course Requirements for Property Manager License Applicants

(1) The course required by OAR 863-024-0045 for real estate property manager license applicants consists of a 60 clock-hour Agency-approved real estate property manager course. The property manager course covers the specialized area of the management of rental real estate, including Oregon's legal requirements.

(a) A course offered by private career schools must be approved by the Agency under OAR 863-022-0030.

(b) A course offered by in-state community colleges, colleges, and universities must be approved by the Agency under OAR 863-022-0035.

(2) The 60-hour property manager course prepares the applicant for the property manager license examination that will be in effect beginning January 1, 2013. To be eligible for credit, the 60-hour course must include 60 clock-hours allocated among topics in the number of hours as follows:

(a) (12 hours) Oregon real estate license statutes and administrative rules relating to the management of rental real estate, including requirements of licensees, agency law, and affirmative duties of a property manager.

(b) (12 hours) Clients' trust accounts and three-way reconciliation of bank statements, ledgers and record of receipts and disbursements for clients' trust accounts, and security deposits accounts.

(c) (12 hours) Tenant relations and fair housing laws, including the Oregon Residential Landlord and Tenant Act and the Fair Credit Reporting Act.

(d) (7 hours) Contracts and leases.

(e) (6 hours) Risk management and maintenance.

(f) (6 hours) Economics and accounting.

(g) (5 hours) Real property law.

(3) A license applicant must complete the Agency-approved property manager course through a private career school or an in-state community college, college, or university, as those terms are defined in OAR 863-022-0005.

(4) To receive credit for a course provided by a private career school, an applicant must complete the course and receive a passing score of at least 75% on a final exam.

(5) To receive credit for a course provided by a community college, college or university an applicant must complete the course, including a final examination and achieve a minimum grade of "C" or equivalent.

(6) The property manager license applicant course is not eligible for continuing education credit under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.022

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0020

Advanced Practices Course Requirement for the First Active Renewal of Broker License

(1) The course required by OAR 863-020-0010 before the first active renewal of the real estate broker's license or before the first license reactivation following an inactive first renewal is an Agency-approved advanced course in real estate practices.

(2) Effective August 15, 2012, a real estate broker who is required to take the advanced practices course may get credit for a course:

(a) Described in section (4) of this rule;

(b) Described in section (5) of this rule if the course was completed on or before December 31, 2010; or

(c) Described in section (6) of this rule if the course was completed between January 1, 2011 and before December 31, 2012.

(3) In order to renew a license, a real estate broker who completes the 27-hour course described in section (4) of this rule must also complete the three-hour course on recent changes in law and rule required under OAR 863-020-0010.

(4) Effective August 15, 2012, an Agency-approved advanced practices course must include 27 clock-hours allocated among topics in the number of hours as follows:

(a) (10 hours) Business ethics

(b) (3 hours) Review of recent administrative actions issued by the Agency

(c) (4.5 hours) Property management

(d) (3 hours) Business economics

(e) (3 hours) Advanced agency relationships, including dual representation

(f) (4.5 hours) Misrepresentation and negligence.

(5) To be eligible for credit, an advanced practices course completed on or before December 31, 2010 must:

(a) Meet the requirements under section (7) of this rule, which is a 30-hour course that includes three hours on recent changes in law and rule, that is provided by a person whose advanced practices course has been approved by the Agency on or before June 30, 2010, or

(b) Meet the requirements under section (8) of this rule, which is a 30-hour course that includes three hours on recent changes in law and rule, that is provided by a certified continuing education provider whose advanced practices course has been approved by the Board on or after July 1, 2010.

(6) To be eligible for credit, an advanced practices course completed on or after January 1, 2011 must meet the requirements under section (8) of this rule and be provided by a certified continuing education provider whose advanced practices course has been approved by the Board on or after July 1, 2010.

(7) A 30-hour advanced practices course approved by the Agency on or before June 30, 2010 must include 30 clock-hours allocated among topics in the number of hours and percentages as follows:

(a) (30% or 10 hours) Business ethics,

(b) (10% or 3 hours) Recent changes in real estate law and rule, including Oregon Real Estate License Law and administrative rule changes from the most recent legislative session and other legislative changes affecting real estate,

(c) (10% or 3 hours) Review of recent administrative actions issued by the Agency,

(d) (15% or 4.5 hours) Property management,

(e) (10% or 3 hours) Business economics (3 hours),

(f) (10% or 3 hours) Advanced agency relationship, including dual representation, and

(g) (15% or 4.5 hours) Misrepresentation and negligence.

(8) A 30-hour advanced practices course approved by the Board on or after July 1, 2010 must include 30 clock-hours allocated among topics in the number of hours and percentages as follows:

(a) (30% or 10 hours) Business ethics,

(b) (10% or 3 hours) A three-hour course on recent changes in real estate law and rule approved by the Board under OAR 863-022-0055,

(c) (10% or 3 hours) Review of recent administrative actions issued by the Agency,

(d) (15% or 4.5 hours) Property management,

(e) (10% or 3 hours) Business economics (3 hours),

(f) (10% or 3 hours) Advanced agency relationship, including dual representation, and

(g) (15% or 4.5 hours) Misrepresentation and negligence.

(9) To receive credit for an advanced practices course, a real estate broker must complete the course, including a final examination, and receive a passing score of at least 75% on a final examination.

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(10) The licensee must obtain a certificate of course completion and maintain it as required by OAR 863-020-0015.

(11) The advanced course in real estate practices and the three-hour course on recent changes in real estate law and rule are eligible for continuing education credit under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0022

Property Manager Advanced Practices Course Requirement for the First Active Renewal of License

(1) The property manager advanced practices course required by OAR 863-020-0010 before the first active renewal of the property manager license or before the first license reactivation following an inactive first renewal is an Agency-approved 27-hour property manager advanced practices course.

(2) Effective August 15, 2012, a property manager who is required to take the advanced practices course in order to renew a license on or after January 1, 2012, must also complete the three-hour course on recent changes in law and rule required under OAR 863-020-0010.

(3) Effective August 15, 2012, an Agency-approved advanced practices course must include 27 clock-hours allocated among topics in the number of hours as follows:

(a) (2 hours) Agency law and affirmative duties in ORS 696.890

(b) (2 hours) Property management agreements

(c) (3 hours) Managing the operation of a property management company

(d) (3 hours) Clients' trust accounts and security deposits accounts

(e) (6 hours) Property management accounting

(f) (2 hours) Oregon Residential Landlord and Tenant Act under ORS chapter 90

(g) (2 hours) Fair Housing Laws

(h) (2 hours) Property management records

(i) (2 hours) Real Estate License Law under ORS chapter 696

(j) (1.5 hours) Commercial property management

(k) (1.5 hours) Emergency plans, energy management plans, maintenance and repair

(4) To receive credit for an advanced practices course, a property manager must complete the course and receive a passing score of at least 75% on a final examination containing 60 questions.

(5) The licensee must obtain a certificate of course completion and maintain it as required by OAR 863-020-0015.

(6) The advanced practices course and the three-hour course on recent changes in real estate law and rule are eligible for continuing education credit under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174

Hist.: REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0025

Education Course Requirements for Principal Broker License Applicants

(1) The course required by OAR 863-014-0040 for principal real estate broker license applicants is a 40-hour Agency-approved brokerage administration and sales supervision course.

(2) The brokerage administration and sales supervision course covers legal requirements unique to principal brokers and reviews the material introduced in the 150-hour real estate broker applicant course of study described in OAR 863-022-0010.

(3) The 40-hour brokerage administration and sales supervision course prepares the applicant for the principal real estate broker license examination that will be in effect beginning January 1, 2013. To be eligible for credit, the 40-hour course must include 40 clock-hours allocated among topics in the number of hours as follows:

(a) (15 hours) Brokerage business, supervision and legal requirements, which includes:

(A) Introduction to real estate brokerage business practices

(B) Supervising and managing other real estate licensees, independent contractors and employees

(C) Financial records of the brokerage business

(D) Clients' trust accounts

(E) Required records and maintenance

(F) Property management

(b) (25 hours) Review of real estate principles and practices

(A) Real Estate Law

(B) Oregon Real Estate Practice

(C) Real Estate Finance

(D) Contracts

(E) Agency Law

(F) Property Management

(G) Real Estate Brokerage

(4) A license applicant must complete the brokerage administration and sales supervision course and receive a passing score of at least 75% on a final exam.

(5) An Agency-approved brokerage administration and sales supervision course is eligible for continuing education credit for licensees renewing under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0030

Agency Approval of Education Courses Provided by Private Career Schools

(1) Private career schools that wish to provide the real estate broker license applicant or property manager license applicant courses under OAR 863-022-0010 and 863-022-0015 must apply to the Agency for approval of these courses. No application fees are required.

(2) All license applicant courses under OAR 863-022-0010 and 863-022-0015 submitted by private career schools and approved by the Agency before August 15, 2012 are approved by this rule; however, the course approval expires December 31, 2012.

(3) Effective August 15, 2012, a private career school applying for Agency approval of a 150-hour course of study for real estate broker license applicants or a 60-hour course for property manager license applicants must submit an Agency-approved application form and the following documents:

(a) Proof of current licensing as a private career school with the Oregon Department of Education and an expiration date.

(b) Sample certificates of course completion.

(c) If the private career school wishes to provide a course through distance education, documentation that the course has been certified by the Association of Real Estate License Law Officials.

(d) If the private career school is applying for approval to use course materials owned and developed by a third-party vendor, written authorization from the vendor, on an Agency-approved form, that the course provider is authorized to use the course materials and the dates the provider is authorized to use the course.

(e) Course materials, including:

(A) Course curriculum or syllabus for the course of study.

(B) Student materials, including all course materials, textbooks and handouts.

(C) A completed Agency-approved topic checklist that lists the detailed course topics and indicates the location of the topic in the course materials. This requirement applies to all course materials, including materials developed by the course provider or materials developed by a third-party vendor.

(D) Instructor materials, if any.

(E) Final examinations.

(F) Examination answer keys, as a document that is separate from the examination.

(G) Agency-approved instructor forms for each instructor who will teach the course.

(f) Proof of current business registration with the Oregon Secretary of State. The applicant's name that is licensed with the Oregon Department of Education must be the exact name that is registered with the Secretary of State.

(4) After review, the Agency will approve or deny the completed application and notify the applicant. Upon approval, the Agency will send a letter of approval. If the Agency denies the application, the applicant may seek a contested case hearing pursuant to ORS Chapter 183.

(5) All course approvals expire on June 30 each year. Providers must apply for renewal of course approval at least 30 days before the expiration date.

(6) Approved course providers must comply with the provisions of OAR 863-022-0052 for submitting all changes to application information, changes to course materials, and changes to instructors. Within 10 days of license renewal by the Oregon Department of Education, a private career

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school must submit documentation to the Agency that the school's license has been renewed.

(7) If a private career school wants to provide courses other than the real estate broker or property manager license applicant courses, the school must comply with the following:

(a) To provide the advanced course in real estate practices or the property manager advanced practices course, the school must be a certified continuing education provider and apply for course approval under OAR 863-022-0045.

(b) To provide the brokerage administration and sales supervision course, the school must be a certified continuing education provider and apply for course approval under 863-022-0050.

(c) To provide the Board-approved three-hour law and rule update course under OAR 863-022-0055 required for licensee renewals, the school must be a certified continuing education provider.

(d) To provide any other continuing education course under OAR 863-020-0035 or 863-020-0040, the school must be a certified continuing education provider and comply with the requirements of OAR 863, division 20.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0035

Approval of Courses Provided by Community Colleges, Colleges, and Universities

(1) In-state community colleges, colleges, and universities that wish to provide the real estate broker license applicant or property manager license applicant courses under OAR 863-022-0010 and 863-022-0015 must apply to the Agency for approval of these courses. No application fees are required.

(2) All license applicant courses under OAR 863-022-0010 and 863-022-0015 submitted by in-state community colleges, colleges, and universities and approved by the Agency before August 15, 2012 are approved by this rule. However, the course approval expires December 31, 2012.

(3) Effective August 15, 2012, an in-state community college, college or university applying for Agency approval of a 150-hour course of study for real estate broker license applicants or a 60-hour course for property manager license applicants must submit an Agency-approved application form and the following documents:

(a) Sample certificates of course completion or a statement describing equivalent proof of completion.

(b) If the private career school is applying for approval to use course materials owned and developed by a third-party vendor, written authorization from the vendor, on an Agency-approved form, that the course provider is authorized to use the course materials and the dates the provider is authorized to use the course.

(c) Course materials, including:

(A) Course curriculum or syllabus for the course of study.

(B) Student materials, including all course materials, textbooks and handouts.

(C) A completed Agency-approved topic checklist that lists the detailed course topics and indicates the location of the topic in the course materials. This requirement applies to all course materials, including materials developed by the course provider or materials developed by a third-party vendor.

(D) Instructor materials, if any.

(E) Final examinations.

(F) Examination answer keys, as a document that is separate from the examination.

(4) After review, the Agency will approve or deny the completed application and notify the applicant. Upon approval, the Agency will send a letter of approval. If the Agency denies the application, the applicant may seek a contested case hearing pursuant to ORS Chapter 183.

(5) All course approvals expire on June 30 each year. Providers must apply for renewal of course approval at least 30 days before the expiration date.

(6) Approved course providers must comply with the provisions of OAR 863-022-0052 for submitting all changes to application information, changes to course materials, and changes to instructors.

(7) If an in-state community college, college or university wants to provide courses other than the real estate broker or property manager license applicant courses, the school must comply with the following:

(a) To provide the advanced course in real estate practices or the property manager advanced practices course, the school must be a certified con-

tinuing education provider and apply for course approval under OAR 863-022-0045.

(b) To provide the brokerage administration and sales supervision course, the school must be a certified continuing education provider and apply for course approval under 863-022-0050.

(c) To provide the Board-approved three-hour law and rule update course under OAR 863-022-0055 required for licensee renewals, the school must be a certified continuing education provider.

(d) To provide any other continuing education course under OAR 863-020-0035 or 863-020-0040, the school must be a certified continuing education provider and comply with the requirements of OAR 863, division 20.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0045

Agency Approval of Advanced Practices Course

(1) A person seeking Agency approval of the 27-hour advanced course in real estate practices described in OAR 863-022-0020 or the 27-hour property manager advanced practices course under 863-022-0022 must be a certified continuing education provider.

(2) The person must submit an Agency-approved form and the following documents:

(a) Sample certificates of course completion.

(b) For all providers, except those providers listed in subsection (c), written authorization from the vendor, on an Agency-approved form, to use course materials owned and developed by a third party vendor stating:

(A) That the course provider is authorized to use the course materials, and

(B) The dates the provider is authorized to use the course.

(c) For in-state community colleges, colleges and universities applying for approval to use course materials owned and developed by a third party vendor, attestation that the provider must submit all revisions or updates to the Real Estate Agency for approval before using such materials.

(d) Course materials, including:

(A) Course curriculum or syllabus for the course of study.

(B) Student materials, including all course materials, textbooks and handouts.

(C) A completed Agency-approved topic checklist listing the detailed course topics and indicating the location of the topic in the course materials. This requirement applies to all course materials, including materials developed by the course provider or materials developed by a third-party vendor.

(D) Instructor materials, if any.

(E) Final examinations.

(F) Examination answer keys, as a document that is separate from the examination.

(G) For all providers except in-state community colleges, colleges and universities, a continuing education instructor form for each instructor who will teach the course.

(3) The Agency will approve or deny the completed application and notify the applicant. Upon approval, the Agency will send a letter of approval. If the Agency denies the application, the applicant may seek a contested case hearing pursuant to ORS Chapter 183.

(4) All course approvals expire on June 30 each year. Providers must apply for renewal of course approval at least 30 days before the expiration date.

(5) Approved course providers must comply with the provisions of OAR 863-022-0052 for submitting all changes to application information, changes to course materials, and changes to instructors.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0050

Agency Approval of Brokerage Administration and Sales Supervision Course and Instructors

(1) A person seeking Agency approval of the 40-hour brokerage administration and sales supervision course described in OAR 863-022-0015 must be a certified continuing education provider.

(2) The person must submit an Agency-approved form and the following documents:

(a) Certificates of course completion.

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(b) For all providers except in-state community colleges, colleges and universities, that are applying for approval to use course materials owned and developed by a third party vendor, written authorization from the vendor, on an Agency-approved form, that the course provider is authorized to use the course materials and the dates the provider is authorized to use the course.

(c) For in-state community colleges, colleges and universities, that are applying for approval to use course materials owned and developed by a third party vendor, attestation that the provider must submit all revisions or updates to the Real Estate Agency for approval prior to using such materials

(d) Course materials, including:

(A) Course curriculum or syllabus for the course of study.

(B) Student materials, including all course materials, textbooks and handouts.

(C) A completed Agency-approved topic checklist that lists the detailed course topics and indicates the location of the topic in the course materials. This requirement applies to all course materials, including materials developed by the course provider or materials developed by a third-party vendor.

(D) Instructor materials, if any.

(E) Final examinations.

(F) Examination answer keys, as a document that is separate from the examination.

(G) For all providers except in-state community colleges, colleges and universities, a continuing education instructor form for each instructor who will teach the course.

(3) The Agency will approve or deny the completed application and notify the applicant. Upon approval, the Agency will send a letter of approval. If the Agency denies the application, the applicant may seek a contested case hearing pursuant to ORS Chapter 183.

(4) All course approvals expire on June 30 of each year. Providers must apply for renewal of course approval at least 30 days before the expiration date.

(5) Approved course providers must comply with the provisions of OAR 863-022-0052 for submitting all changes to application information, changes to course materials, and changes to instructors.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0052

Changes in Application Information, Instructors, Course Materials and Failure to Comply

(1) This rule applies to any course provider whose course was approved under OAR 863-022-0030, 863-022-0035, 863-022-0045, or 863-022-0050.

(2) For any change to the information a course provider submitted on an initial course application or on a renewal application, the course provider must submit an application to the Agency for approval of the changes.

(3) Within 10 business days of license renewal by the Oregon Department of Education, a private career school must submit documentation to the Agency that the school's license has been renewed.

(4) A course provider may not use materials that have not been approved by the Agency for that course provider. A course provider must submit an application to the Agency for approval of any change in the course materials. This requirement applies to courses developed by the course provider and to courses developed by third party vendors.

(5) A course provider must submit an application to the Agency for approval for each new instructor that will teach the course.

(6) A course provider must notify the Agency that an approved instructor will no longer teach the course within 10 days of such change.

(7) The Real Estate Agency may revoke the approval of a course if:

(a) The course provider fails to submit an application for approval of changes in course provider information submitted on an initial application or a renewal application,

(b) The course provider fails to submit an application for approval of any change to course materials, or

(c) The course provider uses course materials that have not been approved by the Agency.

(8) If the Agency revokes a course approval, the Agency will also revoke the course provider's authority to submit information for student examination eligibility to the examination provider as provided in OAR 863-022-0060.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 686.182, 686.184, 696.022 & 696.020

Hist.: REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0055

Board Approval of Three-Hour Rule and Law Change Course

(1) The Board will develop the course content required for a course on recent changes in real estate rule and law required by ORS 696.174, and the Agency will make the course content available to the public.

(2) The Board will update the course at least biannually.

(3) To be eligible for continuing education credit required under OAR 863-020-0010, the Board-approved course must be provided by a certified continuing education provider.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0060

Responsibilities of Providers of Real Estate Broker, Principal Broker and Property Manager License Application Courses

(1) For purposes of this rule, a "course provider" is:

(a) A private career school, in-state community college, college, or university that provides the 150-hour real estate broker license applicant course of study under OAR 863-022-0010, the 60-hour property manager license applicant course under 863-022-0015; or the 40-hour brokerage administration and sales supervision course under 863-022-0025; and

(b) A continuing education provider who provides the 40-hour brokerage administration and sales supervision course under OAR 863-022-0025.

(3) For purposes of this rule, "examination provider" means the vendor, under a contract with the Agency, which provides licensing examination services and collects the fee for such services directly from a license applicant.

(4) A course provider must certify to the examination provider that an applicant for a real estate license has successfully completed the course or courses according to the requirements and instructions of the examination provider.

(5) Before certifying that a license applicant completed a course as provided in section (4) of this rule, a course provider must obtain proof from a license applicant that the applicant has submitted a license application to the Agency.

(6) A course provider must inform each student taking a course that:

(a) The course provider will certify to the examination provider that an applicant for a real estate license has successfully completed the course or courses; and

(b) Before a course provider may certify that the applicant completed the course, a student must provide proof to the provider that the student has applied to the Agency for a real estate broker, principal broker or property manager license.

(7) In addition to the requirements under this rule, a course provider must provide a certificate of completion to each student.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

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125-246-0220	12-1-2012	Amend	1-1-2013	125-248-0300	12-1-2012	Amend	1-1-2013
125-246-0312	12-1-2012	Repeal	1-1-2013	125-249-0630	12-1-2012	Amend	1-1-2013
125-246-0316	12-1-2012	Adopt	1-1-2013	137-004-0900	1-2-2013	Adopt	2-1-2013
125-246-0318	12-1-2012	Adopt	1-1-2013	137-004-0900(T)	1-2-2013	Repeal	2-1-2013
125-246-0319	12-1-2012	Adopt	1-1-2013	137-110-0001	1-7-2013	Adopt	2-1-2013
125-246-0321	12-1-2012	Amend	1-1-2013	137-110-0001(T)	1-7-2013	Repeal	2-1-2013
125-246-0322	12-1-2012	Amend	1-1-2013	137-110-0005	1-7-2013	Adopt	2-1-2013
125-246-0323	12-1-2012	Amend	1-1-2013	137-110-0005(T)	1-7-2013	Repeal	2-1-2013
125-246-0333	12-1-2012	Amend	1-1-2013	137-110-0010	1-7-2013	Adopt	2-1-2013
125-246-0335	12-1-2012	Amend	1-1-2013	137-110-0010(T)	1-7-2013	Repeal	2-1-2013
125-246-0345	12-1-2012	Amend	1-1-2013	137-110-0020	1-7-2013	Adopt	2-1-2013
125-246-0350	12-1-2012	Amend	1-1-2013	137-110-0020(T)	1-7-2013	Repeal	2-1-2013
125-246-0351	12-1-2012	Amend	1-1-2013	137-110-0110	1-7-2013	Adopt	2-1-2013
125-246-0353	12-1-2012	Amend	1-1-2013	137-110-0110(T)	1-7-2013	Repeal	2-1-2013
125-246-0360	12-1-2012	Amend	1-1-2013	137-110-0200	1-7-2013	Adopt	2-1-2013
125-246-0400	12-1-2012	Amend	1-1-2013	137-110-0200(T)	1-7-2013	Repeal	2-1-2013

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137-110-0210(T)	1-7-2013	Repeal	2-1-2013	150-311.668(1)(a)-(A)	1-1-2013	Repeal	2-1-2013
137-110-0410	1-7-2013	Adopt	2-1-2013	150-311.668(1)(a)-(B)	1-1-2013	Repeal	2-1-2013
137-110-0410(T)	1-7-2013	Repeal	2-1-2013	150-311.670(1)	1-1-2013	Amend	2-1-2013
137-110-0420	1-7-2013	Adopt	2-1-2013	150-311.679(10)	1-1-2013	Repeal	2-1-2013
137-110-0420(T)	1-7-2013	Repeal	2-1-2013	150-311.684	1-1-2013	Amend	2-1-2013
137-110-0430	1-7-2013	Adopt	2-1-2013	150-311.706	1-1-2013	Repeal	2-1-2013
137-110-0430(T)	1-7-2013	Repeal	2-1-2013	150-311.706(1)	1-1-2013	Repeal	2-1-2013
137-110-0500	1-7-2013	Adopt	2-1-2013	150-311.806-(A)	1-1-2013	Amend	2-1-2013
137-110-0500(T)	1-7-2013	Repeal	2-1-2013	150-314.781	1-1-2013	Amend	2-1-2013
137-110-0510	1-7-2013	Adopt	2-1-2013	150-316.873	1-1-2013	Repeal	2-1-2013
137-110-0510(T)	1-7-2013	Repeal	2-1-2013	150-316.874	1-1-2013	Repeal	2-1-2013
137-110-0520	1-7-2013	Adopt	2-1-2013	150-316.876	1-1-2013	Repeal	2-1-2013
137-110-0520(T)	1-7-2013	Repeal	2-1-2013	150-316.877	1-1-2013	Repeal	2-1-2013
137-110-0600	1-7-2013	Adopt	2-1-2013	150-316.878	1-1-2013	Repeal	2-1-2013
137-110-0600(T)	1-7-2013	Repeal	2-1-2013	150-316.879	1-1-2013	Repeal	2-1-2013
137-110-0610	1-7-2013	Adopt	2-1-2013	150-316.882	1-1-2013	Repeal	2-1-2013
137-110-0610(T)	1-7-2013	Repeal	2-1-2013	150-316.884	1-1-2013	Repeal	2-1-2013
137-110-0620	1-7-2013	Adopt	2-1-2013	150-323.160(1)	1-1-2013	Amend	2-1-2013
137-110-0620(T)	1-7-2013	Repeal	2-1-2013	150-323.160(2)	1-1-2013	Amend	2-1-2013
137-110-0630	1-7-2013	Adopt	2-1-2013	150-323.220-(A)	1-1-2013	Amend	2-1-2013
137-110-0630(T)	1-7-2013	Repeal	2-1-2013	150-323.220-(B)	1-1-2013	Adopt	2-1-2013
137-110-0640	1-7-2013	Adopt	2-1-2013	162-050-0020	11-27-2012	Adopt	1-1-2013
137-110-0640(T)	1-7-2013	Repeal	2-1-2013	165-020-0440	11-29-2012	Adopt	1-1-2013
137-110-0650	1-7-2013	Adopt	2-1-2013	170-061-0015	12-14-2012	Amend(T)	1-1-2013
137-110-0650(T)	1-7-2013	Repeal	2-1-2013	170-062-0000	11-19-2012	Amend(T)	1-1-2013
137-110-0660	1-7-2013	Adopt	2-1-2013	177-040-0017	1-1-2013	Amend	2-1-2013
137-110-0660(T)	1-7-2013	Repeal	2-1-2013	177-094-0080	12-16-2012	Amend	1-1-2013
137-110-0670	1-7-2013	Adopt	2-1-2013	177-094-0080(T)	12-16-2012	Repeal	1-1-2013
137-110-0670(T)	1-7-2013	Repeal	2-1-2013	177-094-0085	12-16-2012	Amend	1-1-2013
137-120-0010	1-7-2013	Adopt	2-1-2013	177-094-0085(T)	12-16-2012	Repeal	1-1-2013
137-120-0010(T)	1-7-2013	Repeal	2-1-2013	259-008-0005	12-27-2012	Amend	2-1-2013
137-120-0020	1-7-2013	Adopt	2-1-2013	259-008-0060	12-27-2012	Amend	2-1-2013
137-120-0020(T)	1-7-2013	Repeal	2-1-2013	259-008-0064	12-27-2012	Amend	2-1-2013
141-090-0005	1-1-2013	Amend	1-1-2013	259-008-0065	12-27-2012	Amend	2-1-2013
141-090-0010	1-1-2013	Amend	1-1-2013	259-008-0066	12-27-2012	Amend	2-1-2013
141-090-0015	1-1-2013	Amend	1-1-2013	259-008-0070	12-14-2012	Amend(T)	1-1-2013
141-090-0020	1-1-2013	Amend	1-1-2013	259-008-0076	12-27-2012	Amend	2-1-2013
141-090-0025	1-1-2013	Amend	1-1-2013	259-020-0010	12-26-2012	Amend	2-1-2013
141-090-0030	1-1-2013	Amend	1-1-2013	259-020-0015	12-26-2012	Amend	2-1-2013
141-090-0032	1-1-2013	Amend	1-1-2013	259-020-0030	12-26-2012	Amend	2-1-2013
141-090-0035	1-1-2013	Amend	1-1-2013	259-020-0031	12-26-2012	Repeal	2-1-2013
141-090-0040	1-1-2013	Amend	1-1-2013	259-060-0010	12-24-2012	Amend	2-1-2013
141-090-0045	1-1-2013	Amend	1-1-2013	259-060-0015	12-24-2012	Amend	2-1-2013
141-090-0050	1-1-2013	Amend	1-1-2013	259-060-0600	12-26-2012	Amend	2-1-2013
141-090-0055	1-1-2013	Amend	1-1-2013	259-061-0010	1-2-2013	Amend	2-1-2013
150-291.349	1-1-2013	Amend	2-1-2013	259-061-0015	1-2-2013	Repeal	2-1-2013
150-294.187	1-1-2013	Amend	2-1-2013	259-061-0020	1-2-2013	Amend	2-1-2013
150-305.220(1)	1-1-2013	Amend	2-1-2013	259-061-0030	1-2-2013	Repeal	2-1-2013
150-305.220(2)	1-1-2013	Amend	2-1-2013	259-061-0050	1-2-2013	Repeal	2-1-2013
150-305.265(14)-(A)	1-1-2013	Am. & Ren.	2-1-2013	259-061-0055	1-2-2013	Repeal	2-1-2013
150-305.796	1-1-2013	Adopt	2-1-2013	259-061-0060	1-2-2013	Repeal	2-1-2013
150-306.115	1-1-2013	Amend	2-1-2013	259-061-0070	1-2-2013	Repeal	2-1-2013
150-306.115-(A)	1-1-2013	Amend	2-1-2013	259-061-0080	1-2-2013	Repeal	2-1-2013
150-306.115-(C)	1-1-2013	Amend	2-1-2013	259-070-0020	12-24-2012	Amend	2-1-2013
150-306.871(3)	1-1-2013	Repeal	2-1-2013	291-097-0005	12-28-2012	Am. & Ren.(T)	2-1-2013

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291-097-0015	12-28-2012	Am. & Ren.(T)	2-1-2013	330-070-0063	1-1-2013	Amend	2-1-2013
291-097-0020	12-28-2012	Am. & Ren.(T)	2-1-2013	330-070-0064	1-1-2013	Amend	2-1-2013
291-097-0023	12-28-2012	Suspend	2-1-2013	330-070-0070	1-1-2013	Amend	2-1-2013
291-097-0025	12-28-2012	Am. & Ren.(T)	2-1-2013	330-070-0073	1-1-2013	Amend	2-1-2013
291-097-0030	12-28-2012	Am. & Ren.(T)	2-1-2013	330-070-0089	1-1-2013	Amend	2-1-2013
291-097-0031	12-28-2012	Suspend	2-1-2013	330-070-0091	1-1-2013	Amend	2-1-2013
291-097-0040	12-28-2012	Am. & Ren.(T)	2-1-2013	330-090-0140	11-16-2012	Amend(T)	1-1-2013
291-097-0050	12-28-2012	Am. & Ren.(T)	2-1-2013	330-090-0160	11-16-2012	Amend(T)	1-1-2013
291-097-0060	12-28-2012	Am. & Ren.(T)	2-1-2013	330-110-0005	12-20-2012	Amend	2-1-2013
291-097-0070	12-28-2012	Am. & Ren.(T)	2-1-2013	330-110-0010	12-20-2012	Amend	2-1-2013
291-097-0080	12-28-2012	Am. & Ren.(T)	2-1-2013	330-110-0015	12-20-2012	Amend	2-1-2013
291-097-0090	12-28-2012	Am. & Ren.(T)	2-1-2013	330-110-0016	12-20-2012	Amend	2-1-2013
291-097-0100	12-28-2012	Am. & Ren.(T)	2-1-2013	330-110-0020	12-20-2012	Repeal	2-1-2013
291-097-0120	12-28-2012	Am. & Ren.(T)	2-1-2013	330-110-0025	12-20-2012	Amend	2-1-2013
291-097-0130	12-28-2012	Am. & Ren.(T)	2-1-2013	330-110-0030	12-20-2012	Amend	2-1-2013
291-097-0140	12-28-2012	Am. & Ren.(T)	2-1-2013	330-110-0035	12-20-2012	Amend	2-1-2013
291-097-0220	12-28-2012	Adopt(T)	2-1-2013	330-110-0036	12-20-2012	Amend	2-1-2013
291-097-0225	12-28-2012	Adopt(T)	2-1-2013	330-110-0040	12-20-2012	Amend	2-1-2013
291-097-0230	12-28-2012	Adopt(T)	2-1-2013	330-110-0042	12-20-2012	Amend	2-1-2013
291-097-0235	12-28-2012	Adopt(T)	2-1-2013	330-110-0045	12-20-2012	Amend	2-1-2013
291-097-0245	12-28-2012	Adopt(T)	2-1-2013	330-110-0046	12-20-2012	Adopt	2-1-2013
291-207-0100	1-1-2013	Adopt	2-1-2013	330-110-0047	12-20-2012	Adopt	2-1-2013
309-011-0024	12-28-2012	Adopt	2-1-2013	330-110-0048	12-20-2012	Adopt	2-1-2013
309-011-0026	12-28-2012	Adopt	2-1-2013	330-110-0050	12-20-2012	Repeal	2-1-2013
309-011-0028	12-28-2012	Adopt	2-1-2013	330-110-0055	12-20-2012	Amend	2-1-2013
309-011-0030	12-28-2012	Adopt	2-1-2013	330-135-0010	1-1-2013	Amend	2-1-2013
309-011-0032	12-28-2012	Adopt	2-1-2013	330-135-0015	1-1-2013	Amend	2-1-2013
309-011-0034	12-28-2012	Adopt	2-1-2013	330-135-0018	1-1-2013	Adopt	2-1-2013
309-011-0036	12-28-2012	Adopt	2-1-2013	330-135-0020	1-1-2013	Amend	2-1-2013
309-011-0120	12-28-2012	Amend	2-1-2013	330-135-0025	1-1-2013	Amend	2-1-2013
309-011-0125	12-28-2012	Amend	2-1-2013	330-135-0030	1-1-2013	Amend	2-1-2013
309-011-0130	12-28-2012	Amend	2-1-2013	330-135-0035	1-1-2013	Amend	2-1-2013
309-011-0135	12-28-2012	Repeal	2-1-2013	330-135-0040	1-1-2013	Amend	2-1-2013
309-011-0140	12-28-2012	Renumber	2-1-2013	330-135-0045	1-1-2013	Amend	2-1-2013
309-016-0825	1-7-2013	Adopt(T)	2-1-2013	330-135-0047	1-1-2013	Adopt	2-1-2013
309-090-0005	12-26-2012	Amend	2-1-2013	330-135-0048	1-1-2013	Adopt	2-1-2013
309-090-0025	12-26-2012	Amend	2-1-2013	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	331-710-0080	11-19-2012	Amend(T)	1-1-2013
330-070-0014	1-1-2013	Amend	2-1-2013	331-710-0090	11-19-2012	Amend(T)	1-1-2013
330-070-0019	1-1-2013	Amend	2-1-2013	331-718-0020	11-19-2012	Amend(T)	1-1-2013
330-070-0020	1-1-2013	Amend	2-1-2013	333-004-0000	12-26-2012	Amend	2-1-2013
330-070-0021	1-1-2013	Amend	2-1-2013	333-004-0010	12-26-2012	Amend	2-1-2013
330-070-0022	1-1-2013	Amend	2-1-2013	333-004-0020	12-26-2012	Amend	2-1-2013
330-070-0024	1-1-2013	Amend	2-1-2013	333-004-0030	12-26-2012	Amend	2-1-2013
330-070-0025	1-1-2013	Amend	2-1-2013	333-004-0040	12-26-2012	Amend	2-1-2013
330-070-0026	1-1-2013	Amend	2-1-2013	333-004-0050	12-26-2012	Amend	2-1-2013
330-070-0027	1-1-2013	Amend	2-1-2013	333-004-0060	12-26-2012	Amend	2-1-2013
330-070-0029	1-1-2013	Amend	2-1-2013	333-004-0070	12-26-2012	Amend	2-1-2013
330-070-0040	1-1-2013	Amend	2-1-2013	333-004-0080	12-26-2012	Amend	2-1-2013
330-070-0045	1-1-2013	Amend	2-1-2013	333-004-0100	12-26-2012	Amend	2-1-2013
330-070-0048	1-1-2013	Amend	2-1-2013	333-004-0110	12-26-2012	Amend	2-1-2013
330-070-0055	1-1-2013	Amend	2-1-2013	333-004-0120	12-26-2012	Amend	2-1-2013
330-070-0059	1-1-2013	Amend	2-1-2013	333-004-0130	12-26-2012	Amend	2-1-2013
330-070-0060	1-1-2013	Amend	2-1-2013	333-004-0140	12-26-2012	Amend	2-1-2013

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333-004-0160	12-26-2012	Amend	2-1-2013	335-080-0005	12-14-2012	Amend	1-1-2013
333-004-0170	12-26-2012	Repeal	2-1-2013	335-080-0010	12-14-2012	Amend	1-1-2013
333-004-0180	12-26-2012	Repeal	2-1-2013	335-080-0015	12-14-2012	Amend	1-1-2013
333-004-0190	12-26-2012	Repeal	2-1-2013	335-080-0025	12-14-2012	Amend	1-1-2013
333-004-0200	12-26-2012	Adopt	2-1-2013	335-095-0030	12-14-2012	Amend	1-1-2013
333-004-0210	12-26-2012	Adopt	2-1-2013	335-095-0040	12-14-2012	Amend	1-1-2013
333-004-0220	12-26-2012	Adopt	2-1-2013	335-095-0050	12-14-2012	Amend	1-1-2013
333-004-0230	12-26-2012	Adopt	2-1-2013	340-054-0005	12-14-2012	Amend	1-1-2013
333-008-0090	1-1-2013	Amend	2-1-2013	340-054-0010	12-14-2012	Amend	1-1-2013
333-052-0030	12-20-2012	Amend	2-1-2013	340-054-0011	12-14-2012	Adopt	1-1-2013
333-052-0040	12-20-2012	Amend	2-1-2013	340-054-0015	12-14-2012	Amend	1-1-2013
333-052-0043	12-20-2012	Adopt	2-1-2013	340-054-0020	12-14-2012	Repeal	1-1-2013
333-052-0044	12-20-2012	Adopt	2-1-2013	340-054-0021	12-14-2012	Repeal	1-1-2013
333-052-0050	12-20-2012	Amend	2-1-2013	340-054-0022	12-14-2012	Amend	1-1-2013
333-052-0060	12-20-2012	Amend	2-1-2013	340-054-0023	12-14-2012	Repeal	1-1-2013
333-052-0065	12-20-2012	Amend	2-1-2013	340-054-0024	12-14-2012	Repeal	1-1-2013
333-052-0070	12-20-2012	Amend	2-1-2013	340-054-0025	12-14-2012	Amend	1-1-2013
333-052-0080	12-20-2012	Amend	2-1-2013	340-054-0026	12-14-2012	Adopt	1-1-2013
333-052-0090	12-20-2012	Amend	2-1-2013	340-054-0027	12-14-2012	Adopt	1-1-2013
333-052-0100	12-20-2012	Amend	2-1-2013	340-054-0035	12-14-2012	Repeal	1-1-2013
333-052-0120	12-20-2012	Amend	2-1-2013	340-054-0036	12-14-2012	Adopt	1-1-2013
333-052-0130	12-20-2012	Amend	2-1-2013	340-054-0055	12-14-2012	Repeal	1-1-2013
333-200-0010	1-1-2013	Amend	2-1-2013	340-054-0056	12-14-2012	Adopt	1-1-2013
333-200-0020	1-1-2013	Amend	2-1-2013	340-054-0060	12-14-2012	Amend	1-1-2013
333-200-0080	1-1-2013	Amend	2-1-2013	340-054-0065	12-14-2012	Amend	1-1-2013
333-200-0090	1-1-2013	Amend	2-1-2013	340-054-0085	12-14-2012	Repeal	1-1-2013
333-500-0005	1-1-2013	Amend	2-1-2013	340-054-0087	12-14-2012	Repeal	1-1-2013
333-500-0010	1-1-2013	Amend	2-1-2013	340-054-0090	12-14-2012	Repeal	1-1-2013
333-500-0031	1-1-2013	Amend	2-1-2013	340-054-0093	12-14-2012	Repeal	1-1-2013
333-500-0032	1-1-2013	Amend	2-1-2013	340-054-0095	12-14-2012	Repeal	1-1-2013
333-500-0038	1-1-2013	Amend	2-1-2013	340-054-0097	12-14-2012	Repeal	1-1-2013
333-505-0001	1-1-2013	Amend	2-1-2013	340-054-0098	12-14-2012	Repeal	1-1-2013
333-505-0005	1-1-2013	Amend	2-1-2013	340-054-0100	12-14-2012	Amend	1-1-2013
333-505-0007	1-1-2013	Amend	2-1-2013	340-054-0102	12-14-2012	Amend	1-1-2013
333-505-0010	1-1-2013	Amend	2-1-2013	340-054-0104	12-14-2012	Amend	1-1-2013
333-505-0030	1-1-2013	Amend	2-1-2013	340-054-0106	12-14-2012	Amend	1-1-2013
333-505-0033	1-1-2013	Amend	2-1-2013	340-054-0108	12-14-2012	Amend	1-1-2013
333-505-0050	1-1-2013	Amend	2-1-2013	340-200-0040	12-10-2012	Amend	1-1-2013
333-505-0060	1-1-2013	Amend	2-1-2013	340-200-0040	12-11-2012	Amend	1-1-2013
333-505-0080	1-1-2013	Amend	2-1-2013	340-204-0010	12-11-2012	Amend	1-1-2013
333-510-0020	1-1-2013	Amend	2-1-2013	340-220-0030	12-11-2012	Amend	1-1-2013
333-510-0040	1-1-2013	Amend	2-1-2013	340-220-0040	12-11-2012	Amend	1-1-2013
333-520-0035	1-1-2013	Amend	2-1-2013	340-220-0050	12-11-2012	Amend	1-1-2013
333-520-0050	1-1-2013	Amend	2-1-2013	340-225-0090	12-11-2012	Amend	1-1-2013
333-520-0060	1-1-2013	Amend	2-1-2013	340-240-0010	12-11-2012	Amend	1-1-2013
333-520-0070	1-1-2013	Amend	2-1-2013	340-240-0030	12-11-2012	Amend	1-1-2013
333-525-0010	1-1-2013	Repeal	2-1-2013	340-240-0500	12-11-2012	Adopt	1-1-2013
334-001-0060	1-1-2013	Amend	1-1-2013	340-240-0510	12-11-2012	Adopt	1-1-2013
334-010-0027	1-1-2013	Amend	1-1-2013	340-240-0520	12-11-2012	Adopt	1-1-2013
334-010-0029	1-1-2013	Amend	1-1-2013	340-240-0530	12-11-2012	Adopt	1-1-2013
334-010-0046	1-1-2013	Amend	1-1-2013	340-240-0540	12-11-2012	Adopt	1-1-2013
334-040-0010	1-1-2013	Amend	1-1-2013	340-240-0550	12-11-2012	Adopt	1-1-2013
335-005-0010	12-14-2012	Amend	1-1-2013	340-240-0560	12-11-2012	Adopt	1-1-2013
335-060-0005	12-14-2012	Amend	1-1-2013	340-240-0570	12-11-2012	Adopt	1-1-2013
335-060-0006	12-14-2012	Adopt	1-1-2013	340-240-0580	12-11-2012	Adopt	1-1-2013

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340-240-0610	12-11-2012	Adopt	1-1-2013	410-122-0325	12-27-2012	Amend	2-1-2013
340-240-0620	12-11-2012	Adopt	1-1-2013	410-130-0180	12-28-2012	Amend(T)	2-1-2013
340-240-0630	12-11-2012	Adopt	1-1-2013	410-130-0240	12-28-2012	Amend(T)	2-1-2013
340-253-0000	12-11-2012	Adopt	1-1-2013	410-141-3060	1-1-2013	Amend(T)	2-1-2013
340-253-0040	12-11-2012	Adopt	1-1-2013	410-141-3160	1-4-2013	Amend(T)	2-1-2013
340-253-0060	12-11-2012	Adopt	1-1-2013	410-147-0400	1-1-2013	Amend(T)	2-1-2013
340-253-0100	12-11-2012	Adopt	1-1-2013	411-020-0002	11-28-2012	Amend	1-1-2013
340-253-0200	12-11-2012	Adopt	1-1-2013	411-020-0002(T)	11-28-2012	Repeal	1-1-2013
340-253-0250	12-11-2012	Adopt	1-1-2013	411-020-0030	11-28-2012	Amend	1-1-2013
340-253-0310	12-11-2012	Adopt	1-1-2013	411-020-0030(T)	11-28-2012	Repeal	1-1-2013
340-253-0320	12-11-2012	Adopt	1-1-2013	411-020-0085	11-28-2012	Amend	1-1-2013
340-253-0330	12-11-2012	Adopt	1-1-2013	411-020-0085(T)	11-28-2012	Repeal	1-1-2013
340-253-0340	12-11-2012	Adopt	1-1-2013	411-020-0123	11-28-2012	Adopt	1-1-2013
340-253-0400	12-11-2012	Adopt	1-1-2013	411-020-0123(T)	11-28-2012	Repeal	1-1-2013
340-253-0450	12-11-2012	Adopt	1-1-2013	411-020-0126	11-28-2012	Adopt	1-1-2013
340-253-0500	12-11-2012	Adopt	1-1-2013	411-020-0126(T)	11-28-2012	Repeal	1-1-2013
340-253-0600	12-11-2012	Adopt	1-1-2013	411-070-0470	1-1-2013	Amend(T)	2-1-2013
340-253-0630	12-11-2012	Adopt	1-1-2013	411-330-0020	1-4-2013	Amend	2-1-2013
340-253-0650	12-11-2012	Adopt	1-1-2013	411-330-0020(T)	1-4-2013	Repeal	2-1-2013
340-253-1000	12-11-2012	Adopt	1-1-2013	411-330-0065	1-4-2013	Adopt	2-1-2013
340-253-1010	12-11-2012	Adopt	1-1-2013	411-330-0065(T)	1-4-2013	Repeal	2-1-2013
340-253-1020	12-11-2012	Adopt	1-1-2013	413-020-0236	1-15-2013	Amend	2-1-2013
340-253-1030	12-11-2012	Adopt	1-1-2013	413-020-0245	1-15-2013	Amend	2-1-2013
340-253-3000	12-11-2012	Adopt	1-1-2013	413-030-0000	1-15-2013	Amend	2-1-2013
340-253-3010	12-11-2012	Adopt	1-1-2013	413-030-0003	1-15-2013	Amend	2-1-2013
340-253-3020	12-11-2012	Adopt	1-1-2013	413-030-0006	1-15-2013	Amend	2-1-2013
340-253-3030	12-11-2012	Adopt	1-1-2013	413-030-0009	1-15-2013	Amend	2-1-2013
340-253-3040	12-11-2012	Adopt	1-1-2013	413-030-0013	1-15-2013	Amend	2-1-2013
340-253-3050	12-11-2012	Adopt	1-1-2013	413-030-0016	1-15-2013	Amend	2-1-2013
340-262-1000	12-11-2012	Adopt	1-1-2013	413-030-0019	1-15-2013	Amend	2-1-2013
340-264-0040	12-11-2012	Amend	1-1-2013	413-030-0023	1-15-2013	Amend	2-1-2013
340-264-0078	12-11-2012	Amend	1-1-2013	413-030-0026	1-15-2013	Amend	2-1-2013
340-264-0080	12-11-2012	Amend	1-1-2013	413-030-0030	1-15-2013	Amend	2-1-2013
340-264-0100	12-11-2012	Amend	1-1-2013	413-030-0405	1-15-2013	Amend	2-1-2013
340-264-0175	12-11-2012	Adopt	1-1-2013	413-030-0410	1-15-2013	Amend	2-1-2013
410-120-0006	12-1-2012	Amend(T)	1-1-2013	413-030-0445	1-15-2013	Amend	2-1-2013
410-120-0006	1-1-2013	Amend	2-1-2013	413-030-0449	1-15-2013	Amend	2-1-2013
410-120-0006	1-1-2013	Amend(T)	2-1-2013	413-030-0454	1-15-2013	Amend	2-1-2013
410-120-0006	1-8-2013	Amend(T)	2-1-2013	413-030-0456	1-15-2013	Adopt	2-1-2013
410-120-0006(T)	12-1-2012	Suspend	1-1-2013	413-040-0005	1-15-2013	Amend	2-1-2013
410-120-0006(T)	1-1-2013	Repeal	2-1-2013	413-040-0006	1-15-2013	Amend	2-1-2013
410-120-0006(T)	1-1-2013	Suspend	2-1-2013	413-040-0008	1-15-2013	Amend	2-1-2013
410-120-0006(T)	1-8-2013	Suspend	2-1-2013	413-040-0009	1-15-2013	Amend	2-1-2013
410-120-1210	1-1-2013	Amend(T)	2-1-2013	413-040-0010	1-15-2013	Amend	2-1-2013
410-121-0030	1-1-2013	Amend	2-1-2013	413-040-0011	1-15-2013	Amend	2-1-2013
410-121-0030(T)	1-1-2013	Repeal	2-1-2013	413-040-0013	1-15-2013	Amend	2-1-2013
410-121-0033	1-1-2013	Amend	2-1-2013	413-040-0016	1-15-2013	Amend	2-1-2013
410-121-0033(T)	1-1-2013	Repeal	2-1-2013	413-040-0017	1-15-2013	Amend	2-1-2013
410-121-0040	1-1-2013	Amend	2-1-2013	413-040-0024	1-15-2013	Amend	2-1-2013
410-121-0040(T)	1-1-2013	Repeal	2-1-2013	413-040-0032	1-15-2013	Amend	2-1-2013
410-121-0100	1-1-2013	Amend	2-1-2013	413-040-0210	1-15-2013	Amend	2-1-2013
410-121-0100(T)	1-1-2013	Repeal	2-1-2013	413-040-0215	1-15-2013	Amend	2-1-2013
410-121-0111	1-1-2013	Adopt	2-1-2013	413-040-0240	1-15-2013	Amend	2-1-2013
410-121-0111(T)	1-1-2013	Repeal	2-1-2013	413-040-0270	1-15-2013	Amend	2-1-2013
410-121-0190	12-28-2012	Amend(T)	2-1-2013	413-040-0290	1-15-2013	Amend	2-1-2013
410-122-0186	12-27-2012	Amend	2-1-2013	413-040-0300	1-15-2013	Amend	2-1-2013

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413-070-0536	1-15-2013	Amend	2-1-2013	436-035-0370	1-1-2013	Amend	1-1-2013
413-070-0551	1-15-2013	Amend	2-1-2013	436-035-0380	1-1-2013	Amend	1-1-2013
413-070-0552	1-15-2013	Amend	2-1-2013	436-035-0385	1-1-2013	Amend	1-1-2013
413-070-0556	1-15-2013	Amend	2-1-2013	436-035-0390	1-1-2013	Amend	1-1-2013
413-070-0565	1-15-2013	Amend	2-1-2013	436-035-0395	1-1-2013	Amend	1-1-2013
413-070-0620	1-15-2013	Amend	2-1-2013	436-035-0400	1-1-2013	Amend	1-1-2013
413-070-0625	1-15-2013	Amend	2-1-2013	436-035-0410	1-1-2013	Amend	1-1-2013
413-070-0630	1-15-2013	Amend	2-1-2013	436-035-0420	1-1-2013	Amend	1-1-2013
413-070-0640	1-15-2013	Amend	2-1-2013	436-035-0430	1-1-2013	Amend	1-1-2013
413-080-0040	1-15-2013	Amend	2-1-2013	436-035-0440	1-1-2013	Amend	1-1-2013
413-080-0050	1-15-2013	Amend	2-1-2013	436-035-0450	1-1-2013	Amend	1-1-2013
413-080-0052	1-15-2013	Amend	2-1-2013	436-035-0500	1-1-2013	Amend	1-1-2013
413-080-0054	1-15-2013	Adopt	2-1-2013	436-050-0175	1-1-2013	Amend	1-1-2013
413-080-0055	1-15-2013	Amend	2-1-2013	436-070-0002	4-1-2013	Amend	1-1-2013
413-080-0059	1-15-2013	Amend	2-1-2013	436-070-0003	4-1-2013	Amend	1-1-2013
413-080-0063	1-15-2013	Repeal	2-1-2013	436-070-0010	4-1-2013	Amend	1-1-2013
413-080-0067	1-15-2013	Amend	2-1-2013	437-002-0005	12-14-2012	Amend	1-1-2013
413-120-0860	1-15-2013	Amend	2-1-2013	437-002-0120	12-14-2012	Amend	1-1-2013
415-012-0000	1-14-2013	Amend(T)	2-1-2013	437-002-0240	12-14-2012	Amend	1-1-2013
415-012-0010	1-14-2013	Amend(T)	2-1-2013	437-003-0001	12-14-2012	Amend	1-1-2013
415-012-0020	1-14-2013	Amend(T)	2-1-2013	437-005-0001	12-14-2012	Amend	1-1-2013
415-012-0030	1-14-2013	Amend(T)	2-1-2013	437-005-0002	12-14-2012	Amend	1-1-2013
415-020-0053	1-14-2013	Amend(T)	2-1-2013	437-005-0003	12-14-2012	Amend	1-1-2013
436-001-0003	12-28-2012	Amend	1-1-2013	441-710-0270	2-1-2013	Amend(T)	2-1-2013
436-001-0004	12-28-2012	Amend	1-1-2013	442-005-0000	1-1-2013	Amend	2-1-2013
436-001-0005	12-28-2012	Amend	1-1-2013	442-005-0010	1-1-2013	Amend	2-1-2013
436-001-0009	12-28-2012	Amend	1-1-2013	442-005-0020	1-1-2013	Amend	2-1-2013
436-001-0019	12-28-2012	Amend	1-1-2013	442-005-0030	1-1-2013	Amend	2-1-2013
436-001-0023	12-28-2012	Amend	1-1-2013	442-005-0040	1-1-2013	Amend	2-1-2013
436-001-0170	12-28-2012	Amend	1-1-2013	442-005-0050	1-1-2013	Amend	2-1-2013
436-001-0225	12-28-2012	Amend	1-1-2013	442-005-0070	1-1-2013	Amend	2-1-2013
436-001-0246	12-28-2012	Amend	1-1-2013	442-005-0080	1-1-2013	Amend	2-1-2013
436-001-0300	12-28-2012	Repeal	1-1-2013	442-005-0090	1-1-2013	Amend	2-1-2013
436-001-0410	12-28-2012	Amend	1-1-2013	442-005-0100	1-1-2013	Amend	2-1-2013
436-001-0420	12-28-2012	Amend	1-1-2013	442-005-0110	1-1-2013	Amend	2-1-2013
436-001-0430	12-28-2012	Amend	1-1-2013	442-005-0130	1-1-2013	Amend	2-1-2013
436-035-0002	1-1-2013	Amend	1-1-2013	442-005-0140	1-1-2013	Amend	2-1-2013
436-035-0003	1-1-2013	Amend	1-1-2013	442-005-0150	1-1-2013	Amend	2-1-2013
436-035-0005	1-1-2013	Amend	1-1-2013	442-005-0160	1-1-2013	Amend	2-1-2013
436-035-0007	1-1-2013	Amend	1-1-2013	442-005-0170	1-1-2013	Amend	2-1-2013
436-035-0008	1-1-2013	Amend	1-1-2013	442-005-0180	1-1-2013	Amend	2-1-2013
436-035-0009	1-1-2013	Amend	1-1-2013	442-005-0190	1-1-2013	Amend	2-1-2013
436-035-0011	1-1-2013	Amend	1-1-2013	442-005-0200	1-1-2013	Amend	2-1-2013
436-035-0012	1-1-2013	Amend	1-1-2013	442-005-0210	1-1-2013	Amend	2-1-2013
436-035-0017	1-1-2013	Amend	1-1-2013	442-005-0220	1-1-2013	Amend	2-1-2013
436-035-0018	1-1-2013	Amend	1-1-2013	442-005-0230	1-1-2013	Amend	2-1-2013
436-035-0030	1-1-2013	Amend	1-1-2013	442-005-0235	1-1-2013	Adopt	2-1-2013
436-035-0040	1-1-2013	Amend	1-1-2013	442-005-0240	1-1-2013	Amend	2-1-2013
436-035-0110	1-1-2013	Amend	1-1-2013	442-005-0260	1-1-2013	Amend	2-1-2013
436-035-0230	1-1-2013	Amend	1-1-2013	442-005-0270	1-1-2013	Amend	2-1-2013
436-035-0235	1-1-2013	Amend	1-1-2013	442-005-0280	1-1-2013	Amend	2-1-2013
436-035-0255	1-1-2013	Amend	1-1-2013	442-005-0290	1-1-2013	Amend	2-1-2013
436-035-0260	1-1-2013	Amend	1-1-2013	442-005-0300	1-1-2013	Amend	2-1-2013
436-035-0265	1-1-2013	Amend	1-1-2013	442-005-0310	1-1-2013	Amend	2-1-2013
436-035-0340	1-1-2013	Amend	1-1-2013	442-005-0320	1-1-2013	Amend	2-1-2013

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442-005-0340	1-1-2013	Amend	2-1-2013	461-155-0150	1-1-2013	Amend(T)	2-1-2013
442-005-0350	1-1-2013	Repeal	2-1-2013	461-155-0250	1-1-2013	Amend(T)	2-1-2013
442-010-0010	1-1-2013	Amend	2-1-2013	461-155-0270	1-1-2013	Amend(T)	2-1-2013
442-010-0020	1-1-2013	Amend	2-1-2013	461-155-0270	1-8-2013	Amend(T)	2-1-2013
442-010-0030	1-1-2013	Amend	2-1-2013	461-155-0270(T)	1-8-2013	Suspend	2-1-2013
442-010-0040	1-1-2013	Amend	2-1-2013	461-155-0300	1-1-2013	Amend(T)	2-1-2013
442-010-0050	1-1-2013	Amend	2-1-2013	461-160-0015	1-1-2013	Amend	2-1-2013
442-010-0055	1-1-2013	Amend	2-1-2013	461-160-0015	1-1-2013	Amend(T)	2-1-2013
442-010-0060	1-1-2013	Amend	2-1-2013	461-160-0055	1-1-2013	Amend	2-1-2013
442-010-0070	1-1-2013	Amend	2-1-2013	461-160-0055(T)	1-1-2013	Repeal	2-1-2013
442-010-0075	1-1-2013	Amend	2-1-2013	461-160-0580	1-1-2013	Amend	2-1-2013
442-010-0080	1-1-2013	Amend	2-1-2013	461-160-0620	1-1-2013	Amend	2-1-2013
442-010-0085	1-1-2013	Amend	2-1-2013	461-165-0060	1-1-2013	Amend	2-1-2013
442-010-0090	1-1-2013	Amend	2-1-2013	461-180-0100	1-1-2013	Amend	2-1-2013
442-010-0100	1-1-2013	Amend	2-1-2013	461-190-0211	1-1-2013	Amend(T)	2-1-2013
442-010-0110	1-1-2013	Repeal	2-1-2013	461-190-0211(T)	1-1-2013	Suspend	2-1-2013
442-010-0120	1-1-2013	Amend	2-1-2013	462-130-0010	12-31-2012	Amend	2-1-2013
442-010-0140	1-1-2013	Amend	2-1-2013	576-010-0000	1-1-2013	Amend	2-1-2013
442-010-0150	1-1-2013	Amend	2-1-2013	576-026-0005	1-1-2013	Repeal	2-1-2013
442-010-0160	1-1-2013	Amend	2-1-2013	576-026-0010	1-1-2013	Repeal	2-1-2013
442-010-0170	1-1-2013	Amend	2-1-2013	576-050-0015	1-1-2013	Amend	2-1-2013
442-010-0180	1-1-2013	Amend	2-1-2013	576-056-0000	1-1-2013	Adopt	2-1-2013
442-010-0190	1-1-2013	Amend	2-1-2013	576-056-0010	1-1-2013	Adopt	2-1-2013
442-010-0210	1-1-2013	Amend	2-1-2013	576-056-0020	1-1-2013	Adopt	2-1-2013
442-010-0215	1-1-2013	Amend	2-1-2013	576-056-0030	1-1-2013	Adopt	2-1-2013
442-010-0220	1-1-2013	Amend	2-1-2013	576-056-0040	1-1-2013	Adopt	2-1-2013
442-010-0230	1-1-2013	Amend	2-1-2013	576-056-0050	1-1-2013	Adopt	2-1-2013
442-010-0240	1-1-2013	Amend	2-1-2013	576-056-0060	1-1-2013	Adopt	2-1-2013
442-010-0260	1-1-2013	Amend	2-1-2013	576-056-0070	1-1-2013	Adopt	2-1-2013
442-010-0270	1-1-2013	Amend	2-1-2013	576-056-0080	1-1-2013	Adopt	2-1-2013
442-010-0280	1-1-2013	Repeal	2-1-2013	576-056-0090	1-1-2013	Adopt	2-1-2013
459-005-0400	12-5-2012	Adopt	1-1-2013	576-056-0100	1-1-2013	Adopt	2-1-2013
459-035-0001	12-5-2012	Amend	1-1-2013	576-056-0110	1-1-2013	Adopt	2-1-2013
459-035-0200	12-5-2012	Repeal	1-1-2013	576-056-0120	1-1-2013	Adopt	2-1-2013
459-035-0220	12-5-2012	Repeal	1-1-2013	576-056-0130	1-1-2013	Adopt	2-1-2013
461-115-0016	1-1-2013	Amend	2-1-2013	579-070-0005	12-20-2012	Amend	2-1-2013
461-115-0016(T)	1-1-2013	Repeal	2-1-2013	581-001-0016	1-15-2013	Adopt	2-1-2013
461-115-0430	1-1-2013	Amend	2-1-2013	581-002-0090	1-15-2013	Adopt	2-1-2013
461-120-0340	12-29-2012	Amend	2-1-2013	581-022-1065	1-15-2013	Repeal	2-1-2013
461-125-0830	1-1-2013	Amend(T)	2-1-2013	581-045-0003	1-15-2013	Amend	2-1-2013
461-130-0310	1-1-2013	Amend(T)	2-1-2013	584-018-0220	11-19-2012	Adopt	1-1-2013
461-130-0330	1-1-2013	Amend	2-1-2013	584-036-0082	11-19-2012	Repeal	1-1-2013
461-130-0335	1-1-2013	Amend	2-1-2013	584-052-0030	11-19-2012	Repeal	1-1-2013
461-135-0089	1-1-2013	Amend	2-1-2013	584-052-0031	11-19-2012	Repeal	1-1-2013
461-135-0400	1-1-2013	Amend(T)	2-1-2013	584-052-0032	11-19-2012	Repeal	1-1-2013
461-135-0407	1-1-2013	Adopt	2-1-2013	584-052-0033	11-19-2012	Repeal	1-1-2013
461-135-0407(T)	1-1-2013	Repeal	2-1-2013	584-080-0031	11-19-2012	Amend	1-1-2013
461-135-0780	1-1-2013	Amend(T)	2-1-2013	584-090-0115	11-19-2012	Amend	1-1-2013
461-135-1102	12-1-2012	Amend(T)	1-1-2013	584-100-0038	11-19-2012	Amend	1-1-2013
461-145-0080	12-29-2012	Amend	2-1-2013	584-100-0091	11-19-2012	Amend	1-1-2013
461-145-0220	1-1-2013	Amend(T)	2-1-2013	584-100-0096	11-19-2012	Amend	1-1-2013
461-145-0260	1-1-2013	Amend	2-1-2013	585-001-0007	12-17-2012	Adopt	2-1-2013
461-145-0260	1-1-2013	Amend(T)	2-1-2013	585-001-0009	12-17-2012	Adopt	2-1-2013
461-145-0260(T)	1-1-2013	Repeal	2-1-2013	589-002-0100	12-26-2012	Amend	2-1-2013
461-145-0580	1-1-2013	Amend	2-1-2013	589-002-0110	12-26-2012	Adopt	2-1-2013

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589-002-0130	12-26-2012	Adopt	2-1-2013	635-023-0095	1-1-2013	Amend(T)	2-1-2013
589-007-0700	12-26-2012	Amend	2-1-2013	635-023-0125	1-1-2013	Amend	2-1-2013
603-025-0030	1-1-2013	Amend	2-1-2013	635-023-0128	1-1-2013	Amend	2-1-2013
603-047-0010	12-21-2012	Adopt	2-1-2013	635-023-0130	1-1-2013	Amend	2-1-2013
603-047-0100	12-21-2012	Adopt	2-1-2013	635-023-0134	1-1-2013	Amend	2-1-2013
603-047-0200	12-21-2012	Adopt	2-1-2013	635-039-0080	1-3-2013	Amend	2-1-2013
603-047-0300	12-21-2012	Adopt	2-1-2013	635-039-0090	1-1-2013	Amend	2-1-2013
603-047-0400	12-21-2012	Adopt	2-1-2013	635-039-0090	1-1-2013	Amend(T)	2-1-2013
603-047-0500	12-21-2012	Adopt	2-1-2013	635-041-0020	1-1-2013	Amend	2-1-2013
603-052-1080	12-3-2012	Adopt	1-1-2013	635-045-0000	1-1-2013	Amend	2-1-2013
603-052-1090	12-3-2012	Adopt	1-1-2013	635-045-0002	1-1-2013	Amend	2-1-2013
603-052-1206	12-12-2012	Adopt	1-1-2013	635-056-0050	12-18-2012	Amend	2-1-2013
603-052-1209	12-12-2012	Adopt	1-1-2013	635-056-0075	12-18-2012	Amend	2-1-2013
603-052-1211	12-12-2012	Adopt	1-1-2013	635-065-0001	1-1-2013	Amend	2-1-2013
635-004-0220	1-1-2013	Amend	2-1-2013	635-065-0011	1-1-2013	Adopt	2-1-2013
635-004-0275	1-3-2013	Amend	2-1-2013	635-065-0015	1-1-2013	Amend	2-1-2013
635-004-0310	1-1-2013	Amend	2-1-2013	635-065-0090	1-1-2013	Amend	2-1-2013
635-004-0350	1-1-2013	Amend	2-1-2013	635-065-0401	1-1-2013	Amend	2-1-2013
635-004-0355	1-1-2013	Amend	2-1-2013	635-065-0625	1-1-2013	Amend	2-1-2013
635-004-0465	1-1-2013	Amend	2-1-2013	635-065-0735	1-1-2013	Amend	2-1-2013
635-005-0410	1-1-2013	Amend	2-1-2013	635-065-0740	1-1-2013	Amend	2-1-2013
635-005-0465	12-12-2012	Amend(T)	1-1-2013	635-065-0760	1-1-2013	Amend	2-1-2013
635-005-0465(T)	12-12-2012	Suspend	1-1-2013	635-065-0765	2-1-2013	Amend	2-1-2013
635-005-0480	1-1-2013	Amend	2-1-2013	635-066-0000	1-1-2013	Amend	2-1-2013
635-005-0585	1-1-2013	Amend	2-1-2013	635-066-0010	1-1-2013	Amend	2-1-2013
635-005-0740	1-1-2013	Amend	2-1-2013	635-066-0020	1-1-2013	Amend	2-1-2013
635-005-0800	1-1-2013	Amend	2-1-2013	635-067-0000	1-1-2013	Amend	2-1-2013
635-006-0001	1-1-2013	Amend	2-1-2013	635-067-0004	1-1-2013	Amend	2-1-2013
635-006-0200	1-1-2013	Amend	2-1-2013	635-069-0000	2-1-2013	Amend	2-1-2013
635-006-0210	1-1-2013	Amend	2-1-2013	635-072-0000	1-1-2013	Amend	2-1-2013
635-006-0211	1-1-2013	Amend	2-1-2013	635-073-0000	2-1-2013	Amend	2-1-2013
635-006-0215	1-1-2013	Amend	2-1-2013	635-073-0065	2-1-2013	Amend	2-1-2013
635-006-0232	1-14-2013	Amend	2-1-2013	635-073-0070	2-1-2013	Amend	2-1-2013
635-008-0175	1-1-2013	Amend	2-1-2013	635-078-0011	1-1-2013	Amend	2-1-2013
635-011-0100	1-1-2013	Amend	2-1-2013	635-095-0125	12-31-2012	Amend(T)	2-1-2013
635-011-0102	1-1-2013	Amend	2-1-2013	635-500-6650	1-14-2013	Adopt	2-1-2013
635-013-0003	1-1-2013	Amend	2-1-2013	635-500-6700	1-1-2013	Adopt	2-1-2013
635-013-0004	1-1-2013	Amend	2-1-2013	635-500-6705	1-1-2013	Adopt	2-1-2013
635-014-0080	1-1-2013	Amend	2-1-2013	635-500-6710	1-1-2013	Adopt	2-1-2013
635-014-0090	1-1-2013	Amend	2-1-2013	635-500-6715	1-1-2013	Adopt	2-1-2013
635-016-0080	1-1-2013	Amend	2-1-2013	635-500-6720	1-1-2013	Adopt	2-1-2013
635-016-0090	1-1-2013	Amend	2-1-2013	635-500-6725	1-1-2013	Adopt	2-1-2013
635-016-0090	1-1-2013	Amend(T)	2-1-2013	635-500-6730	1-1-2013	Adopt	2-1-2013
635-017-0080	1-1-2013	Amend	2-1-2013	635-500-6735	1-1-2013	Adopt	2-1-2013
635-017-0090	1-1-2013	Amend	2-1-2013	635-500-6740	1-1-2013	Adopt	2-1-2013
635-017-0095	1-1-2013	Amend	2-1-2013	635-500-6745	1-1-2013	Adopt	2-1-2013
635-018-0080	1-1-2013	Amend	2-1-2013	635-500-6750	1-1-2013	Adopt	2-1-2013
635-018-0090	1-1-2013	Amend	2-1-2013	635-500-6755	1-1-2013	Adopt	2-1-2013
635-019-0080	1-1-2013	Amend	2-1-2013	635-500-6760	1-1-2013	Adopt	2-1-2013
635-019-0090	1-1-2013	Amend	2-1-2013	635-500-6765	1-1-2013	Adopt	2-1-2013
635-019-0090	1-1-2013	Amend(T)	2-1-2013	660-024-0040	12-10-2012	Amend	1-1-2013
635-021-0080	1-1-2013	Amend	2-1-2013	660-024-0045	12-10-2012	Adopt	1-1-2013
635-021-0090	1-1-2013	Amend	2-1-2013	660-044-0000	1-1-2013	Amend	1-1-2013
635-023-0080	1-1-2013	Amend	2-1-2013	660-044-0005	1-1-2013	Amend	1-1-2013
635-023-0090	1-1-2013	Amend	2-1-2013	660-044-0040	1-1-2013	Adopt	1-1-2013

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660-044-0050	1-1-2013	Adopt	1-1-2013	736-021-0090	2-1-2013	Amend	2-1-2013
660-044-0055	1-1-2013	Adopt	1-1-2013	736-021-0100	2-1-2013	Amend	2-1-2013
660-044-0060	1-1-2013	Adopt	1-1-2013	736-021-0110	2-1-2013	Repeal	2-1-2013
690-501-0005	12-12-2012	Amend	1-1-2013	736-021-0120	2-1-2013	Amend	2-1-2013
690-501-0010	12-12-2012	Amend	1-1-2013	736-021-0130	2-1-2013	Amend	2-1-2013
690-501-0020	12-12-2012	Repeal	1-1-2013	736-021-0140	2-1-2013	Amend	2-1-2013
690-501-0030	12-12-2012	Amend	1-1-2013	736-021-0150	2-1-2013	Amend	2-1-2013
690-515-0000	12-12-2012	Amend	1-1-2013	736-021-0160	2-1-2013	Amend	2-1-2013
690-515-0010	12-12-2012	Amend	1-1-2013	736-045-0006	12-13-2012	Adopt	1-1-2013
690-515-0020	12-12-2012	Amend	1-1-2013	736-045-0011	12-13-2012	Adopt	1-1-2013
690-515-0030	12-12-2012	Amend	1-1-2013	736-045-0100	12-13-2012	Adopt	1-1-2013
690-515-0040	12-12-2012	Amend	1-1-2013	736-045-0200	12-13-2012	Adopt	1-1-2013
690-515-0050	12-12-2012	Amend	1-1-2013	736-045-0300	12-13-2012	Adopt	1-1-2013
690-515-0060	12-12-2012	Amend	1-1-2013	736-045-0305	12-13-2012	Adopt	1-1-2013
690-516-0005	12-12-2012	Amend	1-1-2013	736-045-0310	12-13-2012	Adopt	1-1-2013
690-516-0010	12-12-2012	Amend	1-1-2013	736-045-0320	12-13-2012	Adopt	1-1-2013
690-516-0020	12-12-2012	Repeal	1-1-2013	736-045-0330	12-13-2012	Adopt	1-1-2013
690-516-0030	12-12-2012	Amend	1-1-2013	736-045-0340	12-13-2012	Adopt	1-1-2013
690-517-0000	12-12-2012	Amend	1-1-2013	736-045-0400	12-13-2012	Adopt	1-1-2013
690-517-0020	12-12-2012	Amend	1-1-2013	736-045-0405	12-13-2012	Adopt	1-1-2013
690-517-0030	12-12-2012	Amend	1-1-2013	736-045-0410	12-13-2012	Adopt	1-1-2013
690-517-0040	12-12-2012	Amend	1-1-2013	736-045-0412	12-13-2012	Adopt	1-1-2013
690-517-0050	12-12-2012	Repeal	1-1-2013	736-045-0414	12-13-2012	Adopt	1-1-2013
690-518-0010	12-12-2012	Amend	1-1-2013	736-045-0416	12-13-2012	Adopt	1-1-2013
690-518-0030	12-12-2012	Amend	1-1-2013	736-045-0418	12-13-2012	Adopt	1-1-2013
690-518-0040	12-12-2012	Repeal	1-1-2013	736-045-0420	12-13-2012	Adopt	1-1-2013
690-518-0050	12-12-2012	Amend	1-1-2013	736-045-0422	12-13-2012	Adopt	1-1-2013
734-010-0220	11-21-2012	Amend	1-1-2013	736-045-0424	12-13-2012	Adopt	1-1-2013
734-010-0290	11-21-2012	Amend	1-1-2013	736-045-0426	12-13-2012	Adopt	1-1-2013
734-010-0300	11-21-2012	Amend	1-1-2013	736-045-0428	12-13-2012	Adopt	1-1-2013
734-010-0310	11-21-2012	Repeal	1-1-2013	736-045-0430	12-13-2012	Adopt	1-1-2013
734-010-0320	11-21-2012	Amend	1-1-2013	736-045-0432	12-13-2012	Adopt	1-1-2013
734-010-0330	11-21-2012	Amend	1-1-2013	736-045-0434	12-13-2012	Adopt	1-1-2013
734-010-0340	11-21-2012	Amend	1-1-2013	736-045-0436	12-13-2012	Adopt	1-1-2013
734-010-0350	11-21-2012	Amend	1-1-2013	736-045-0438	12-13-2012	Adopt	1-1-2013
734-010-0370	11-21-2012	Repeal	1-1-2013	736-045-0440	12-13-2012	Adopt	1-1-2013
734-010-0380	11-21-2012	Amend	1-1-2013	736-045-0442	12-13-2012	Adopt	1-1-2013
734-059-0100	11-20-2012	Amend	1-1-2013	736-045-0444	12-13-2012	Adopt	1-1-2013
734-073-0090	12-21-2012	Repeal	2-1-2013	736-045-0446	12-13-2012	Adopt	1-1-2013
735-001-0062	1-1-2013	Adopt	2-1-2013	736-045-0448	12-13-2012	Adopt	1-1-2013
735-012-0000	11-19-2012	Amend	1-1-2013	736-045-0500	12-13-2012	Adopt	1-1-2013
735-012-0000(T)	11-19-2012	Repeal	1-1-2013	736-045-0505	12-13-2012	Adopt	1-1-2013
735-070-0006	11-19-2012	Adopt	1-1-2013	800-001-0020	2-1-2013	Amend	2-1-2013
736-010-0060	11-16-2012	Amend	1-1-2013	800-010-0020	2-1-2013	Amend	2-1-2013
736-015-0006	11-16-2012	Amend	1-1-2013	800-010-0030	2-1-2013	Amend	2-1-2013
736-015-0015	11-16-2012	Amend	1-1-2013	800-015-0010	2-1-2013	Amend	2-1-2013
736-018-0045	12-31-2012	Amend	1-1-2013	800-020-0015	2-1-2013	Amend	2-1-2013
736-021-0010	2-1-2013	Amend	2-1-2013	800-020-0030	2-1-2013	Amend	2-1-2013
736-021-0020	2-1-2013	Amend	2-1-2013	800-020-0035	2-1-2013	Amend	2-1-2013
736-021-0030	2-1-2013	Amend	2-1-2013	800-030-0025	2-1-2013	Amend	2-1-2013
736-021-0040	2-1-2013	Amend	2-1-2013	801-001-0035	1-8-2013	Amend	2-1-2013
736-021-0050	2-1-2013	Amend	2-1-2013	804-010-0000	11-21-2012	Amend	1-1-2013
736-021-0060	2-1-2013	Amend	2-1-2013	804-010-0000(T)	11-21-2012	Repeal	1-1-2013
736-021-0065	2-1-2013	Adopt	2-1-2013	804-020-0001	11-21-2012	Amend	1-1-2013
736-021-0070	2-1-2013	Amend	2-1-2013	804-020-0001(T)	11-21-2012	Repeal	1-1-2013

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804-020-0003(T)	11-21-2012	Repeal	1-1-2013	839-025-0700	1-1-2013	Amend	2-1-2013
804-020-0010	11-21-2012	Amend	1-1-2013	845-015-0170	1-1-2013	Amend	2-1-2013
804-020-0010(T)	11-21-2012	Repeal	1-1-2013	847-008-0040	1-11-2013	Amend(T)	2-1-2013
804-020-0015	11-21-2012	Amend	1-1-2013	847-008-0065	1-11-2013	Amend	2-1-2013
804-020-0015(T)	11-21-2012	Repeal	1-1-2013	847-050-0027	1-11-2013	Amend	2-1-2013
804-020-0030	11-21-2012	Amend	1-1-2013	847-050-0041	1-11-2013	Amend	2-1-2013
804-020-0030(T)	11-21-2012	Repeal	1-1-2013	847-050-0041(T)	1-11-2013	Repeal	2-1-2013
804-020-0040	11-21-2012	Amend	1-1-2013	847-050-0065	1-11-2013	Amend	2-1-2013
804-020-0040(T)	11-21-2012	Repeal	1-1-2013	847-050-0065(T)	1-11-2013	Repeal	2-1-2013
804-020-0045	11-21-2012	Amend	1-1-2013	848-005-0020	1-1-2013	Amend(T)	1-1-2013
804-020-0045(T)	11-21-2012	Repeal	1-1-2013	852-001-0001	1-3-2013	Amend	2-1-2013
804-020-0065	11-21-2012	Amend	1-1-2013	852-001-0002	1-3-2013	Amend	2-1-2013
804-020-0065(T)	11-21-2012	Repeal	1-1-2013	852-005-0005	1-3-2013	Amend	2-1-2013
804-040-0000	11-21-2012	Amend	1-1-2013	852-005-0015	1-3-2013	Amend	2-1-2013
804-040-0000(T)	11-21-2012	Repeal	1-1-2013	852-005-0030	1-3-2013	Amend	2-1-2013
806-010-0090	12-31-2012	Amend	2-1-2013	852-005-0040	1-3-2013	Repeal	2-1-2013
808-002-0020	12-4-2012	Amend	1-1-2013	852-010-0005	1-3-2013	Amend	2-1-2013
808-005-0020	12-4-2012	Amend	1-1-2013	852-010-0015	1-3-2013	Amend	2-1-2013
808-040-0025	12-4-2012	Amend	1-1-2013	852-010-0020	1-3-2013	Amend	2-1-2013
808-040-0050	12-4-2012	Amend	1-1-2013	852-010-0022	1-3-2013	Amend	2-1-2013
808-040-0060	12-4-2012	Amend	1-1-2013	852-010-0023	1-3-2013	Amend	2-1-2013
809-001-0000	12-21-2012	Amend	1-1-2013	852-010-0030	1-3-2013	Amend	2-1-2013
809-001-0020	12-21-2012	Repeal	1-1-2013	852-010-0035	1-3-2013	Amend	2-1-2013
809-001-0025	12-21-2012	Repeal	1-1-2013	852-010-0051	1-3-2013	Amend	2-1-2013
809-001-0030	12-21-2012	Repeal	1-1-2013	852-010-0080	1-3-2013	Amend	2-1-2013
809-010-0025	12-21-2012	Amend	1-1-2013	852-020-0029	1-3-2013	Amend	2-1-2013
809-020-0030	12-21-2012	Amend	1-1-2013	852-020-0031	1-3-2013	Amend	2-1-2013
809-055-0000	12-21-2012	Amend	1-1-2013	852-020-0035	1-3-2013	Amend	2-1-2013
811-015-0080	11-28-2012	Adopt	1-1-2013	852-020-0045	1-3-2013	Amend	2-1-2013
813-004-0200	1-4-2013	Adopt	2-1-2013	852-020-0050	1-3-2013	Amend	2-1-2013
813-004-0210	1-4-2013	Adopt	2-1-2013	852-020-0060	1-3-2013	Amend	2-1-2013
813-004-0220	1-4-2013	Adopt	2-1-2013	852-020-0070	1-3-2013	Amend	2-1-2013
813-004-0230	1-4-2013	Adopt	2-1-2013	852-050-0001	1-3-2013	Amend	2-1-2013
813-004-0240	1-4-2013	Adopt	2-1-2013	852-050-0005	1-3-2013	Amend	2-1-2013
813-004-0250	1-4-2013	Adopt	2-1-2013	852-050-0006	1-3-2013	Amend	2-1-2013
813-004-0260	1-4-2013	Adopt	2-1-2013	852-050-0012	1-3-2013	Amend	2-1-2013
813-004-0270	1-4-2013	Adopt	2-1-2013	852-050-0013	1-3-2013	Amend	2-1-2013
813-004-0280	1-4-2013	Adopt	2-1-2013	852-050-0014	1-3-2013	Amend	2-1-2013
813-004-0290	1-4-2013	Adopt	2-1-2013	852-050-0016	1-3-2013	Amend	2-1-2013
813-004-0300	1-4-2013	Adopt	2-1-2013	852-050-0018	1-3-2013	Amend	2-1-2013
813-004-0310	1-4-2013	Adopt	2-1-2013	852-050-0021	1-3-2013	Amend	2-1-2013
813-250-0000	12-6-2012	Amend(T)	1-1-2013	852-050-0022	1-3-2013	Adopt	2-1-2013
813-250-0010	12-6-2012	Suspend	1-1-2013	852-050-0025	1-3-2013	Amend	2-1-2013
813-250-0020	12-6-2012	Amend(T)	1-1-2013	852-060-0025	1-3-2013	Amend	2-1-2013
813-250-0030	12-6-2012	Amend(T)	1-1-2013	852-060-0027	1-3-2013	Amend	2-1-2013
813-250-0040	12-6-2012	Amend(T)	1-1-2013	852-060-0060	1-3-2013	Amend	2-1-2013
813-250-0050	12-6-2012	Suspend	1-1-2013	852-060-0065	1-3-2013	Amend	2-1-2013
833-020-0051	2-1-2013	Amend	2-1-2013	852-060-0070	1-3-2013	Amend	2-1-2013
833-020-0081	2-1-2013	Amend	2-1-2013	852-070-0005	1-3-2013	Amend	2-1-2013
833-030-0041	2-1-2013	Amend	2-1-2013	852-070-0010	1-3-2013	Amend	2-1-2013
833-040-0041	2-1-2013	Amend	2-1-2013	852-070-0016	1-3-2013	Amend	2-1-2013
836-053-1404	12-20-2012	Amend(T)	2-1-2013	852-070-0020	1-3-2013	Amend	2-1-2013
836-053-1405	12-20-2012	Amend(T)	2-1-2013	852-070-0025	1-3-2013	Amend	2-1-2013
839-009-0335	11-21-2012	Amend	1-1-2013	852-070-0030	1-3-2013	Amend	2-1-2013
839-009-0390	11-21-2012	Amend	1-1-2013	852-070-0035	1-3-2013	Amend	2-1-2013

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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	855-065-0005	12-13-2012	Amend	1-1-2013
852-080-0020	1-3-2013	Amend	2-1-2013	855-110-0007	12-13-2012	Amend	1-1-2013
852-080-0025	1-3-2013	Amend	2-1-2013	858-010-0016	11-20-2012	Amend(T)	1-1-2013
852-080-0030	1-3-2013	Amend	2-1-2013	858-010-0017	11-20-2012	Amend(T)	1-1-2013
852-080-0040	1-3-2013	Amend	2-1-2013	858-010-0017(T)	11-20-2012	Suspend	1-1-2013
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855-041-0035	12-17-2012	Am. & Ren.	2-1-2013	863-020-0030	2-1-2013	Amend	2-1-2013
855-041-0036	12-17-2012	Renumber	2-1-2013	863-020-0035	2-1-2013	Amend	2-1-2013
855-041-0037	12-17-2012	Renumber	2-1-2013	863-020-0040	2-1-2013	Amend	2-1-2013
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855-041-0165	12-17-2012	Am. & Ren.	2-1-2013	877-001-0025	1-1-2013	Amend	1-1-2013
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855-041-0350	12-17-2012	Renumber	2-1-2013	877-025-0006	1-1-2013	Amend	1-1-2013
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855-041-0360	12-17-2012	Am. & Ren.	2-1-2013	877-025-0016	1-1-2013	Repeal	1-1-2013
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918-030-0120	12-22-2012	Amend(T)	2-1-2013				
918-030-0125	12-22-2012	Amend(T)	2-1-2013				
918-030-0130	12-22-2012	Amend(T)	2-1-2013				
918-030-0135	12-22-2012	Amend(T)	2-1-2013				
918-098-0550(T)	1-1-2013	Repeal	2-1-2013				
918-098-1530	1-1-2013	Amend	2-1-2013				
918-098-1530(T)	1-1-2013	Repeal	2-1-2013				
918-098-1550	1-1-2013	Amend	2-1-2013				
918-305-0105	1-1-2013	Amend(T)	1-1-2013				
918-305-0105(T)	1-1-2013	Suspend	1-1-2013				
918-674-0057	1-1-2013	Adopt	2-1-2013				
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945-020-0010	12-13-2012	Adopt	1-1-2013				
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966-100-0100	1-2-2013	Adopt	2-1-2013				
966-100-0200	1-2-2013	Adopt	2-1-2013				
966-100-0300	1-2-2013	Adopt	2-1-2013				
966-100-0400	1-2-2013	Adopt	2-1-2013				
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