

OREGON BULLETIN

Supplements the 2013 *Oregon Administrative Rules Compilation*

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For November 16, 2012–December 14, 2012



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KATE BROWN
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

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

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

Locating Administrative Rules Unit Publications

The *Oregon Administrative Rules Compilation* and the *Oregon Bulletin* are available on-line through the Oregon State Archives web site at <<http://arcweb.sos.state.or.us>>. Printed volumes of the *Compilation* are deposited in Oregon’s Public Documents Depository Libraries listed in OAR 543-070-0000. Complete sets and individual volumes of the *Compilation* may be ordered by contacting: Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, OR 97310, (503) 373-0701, Julie.A.Yamaka@state.or.us

2012–2013 Oregon Bulletin Publication Schedule

The Administrative Rules Unit accepts proposed rulemaking notices and administrative rule filings Monday through Friday, 8:00 am to 5:00 pm, at the Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310. To expedite the rulemaking process agencies are encouraged file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and submit their filings early in the submission period to meet the following deadlines:

Submission Deadline — Publishing Date

December 14, 2012	January 1, 2013
January 15, 2013	February 1, 2013
February 15, 2013	March 1, 2013
March 15, 2013	April 1, 2013
April 15, 2013	May 1, 2013
May 15, 2013	June 1, 2013
June 14, 2013	July 1, 2013
July 15, 2013	August 1, 2013
August 15, 2013	September 1, 2013
September 13, 2013	October 1, 2013
October 15, 2013	November 1, 2013
November 15, 2013	December 1, 2013

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12 - 18

DETERMINATION OF A STATE OF EMERGENCY IN CLATSOP, COLUMBIA, CURRY, DOUGLAS, LINCOLN, AND TILLAMOOK COUNTIES DUE TO DAMAGING WINDS, HEAVY RAINS, FLOODING, MUDSLIDES, AND LANDSLIDES.

Pursuant to ORS 401.165, I find that a threat to life, safety, and property exists due to severe weather that has caused a natural disaster of major proportions to the state highway system in Clatsop, Columbia, Curry, Douglas, Lincoln, and Tillamook Counties. Beginning November 16, 2012, damaging winds, heavy rains caused flooding, mudslides, landslides and erosion throughout the Counties.

This has resulted in an estimated \$1,356,865 of damage to federal-aid highways in Clatsop, Columbia, Curry, Douglas, Lincoln, and Tillamook Counties. This storm system damaged state highways throughout these Counties with scour, washouts, sink holes, serious tree and debris flow, mudslides and landslides.

NOW, THEREFORE, IT IS DIRECTED AND ORDERED:

The Oregon Department of Transportation shall provide appropriate assistance and seek federal resources to effect repairs and restoration of the federal-aid highway system in Clatsop, Columbia, Curry, Douglas, Lincoln, and Tillamook Counties.

This order was made by proclamation this 14th day of December, 2012.

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

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

OTHER NOTICES

REQUEST FOR COMMENTS PROPOSED CERTIFICATION OF COMPLETION EYERLY AIRCRAFT SITE, SALEM, MARION COUNTY

COMMENTS DUE: 5 p.m., Jan. 31, 2013

PROJECT LOCATION: 1945 Turner Road SE, Salem, Oregon
PROPOSAL: DEQ is providing this public notice and an opportunity to comment on a proposed certification of completion for environmental cleanup activities conducted at the Eyerly Aircraft site in Salem, Oregon. The Oregon Military Department entered into a consent order with DEQ on Oct. 31, 2012 to address final remedial actions required by the Dec. 12, 2012 record of decision for the Eyerly Aircraft site.

HIGHLIGHTS: The Eyerly Aircraft site consists of the Eyerly property and adjacent Oregon Military Department properties located at the Salem Airport on Turner Road. The Eyerly property operated as a military aircraft construction and maintenance facility from 1928 to 1950. A carnival ride maintenance and repair business occupied the Eyerly property from the 1950's until 2004. The adjacent properties are occupied by the Oregon Military Department's Army Aviation Support Facility No. 1. Oregon Military Department took ownership of the Eyerly property in October 2012. The property is currently vacant and used for equipment storage and vehicle parking by the Oregon Military Department.

Past activities at the Eyerly property resulted in contamination of soil and groundwater by chromium and volatile organic compounds. Cleanup activities including excavation of chromium and petroleum contaminated soil were effective in reducing contaminant concentrations to within acceptable levels for planned uses of the site by the Oregon Military Department. The final remedy in the record of decision included land use restrictions on the Eyerly property and groundwater use restrictions on both the Eyerly and the Oregon Military Department properties.

The land use restrictions implemented for the Eyerly property were recorded with the Marion County Clerk on April 26, 2012. In accordance with the consent order with DEQ, the Oregon Military Department recorded the land use restrictions for their two properties with the Marion County Clerk's office on Nov. 21, 2012.

Recording of the land use restrictions satisfies the requirements of the consent order and DEQ is proposing that a certification of completion be issued for the site and that no further action is required. The certification of completion requires the Oregon Military Department to comply with the land use restrictions, and to conduct a five year review of the remedy to ensure it remains protective of human health and the environment.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Salem office at 750 Front St. NE, Suite 120 in Salem, Oregon by contacting Nancy Sawka at 503-378-5075 to make a file review appointment. Site summary information may be accessed electronically by request to sawka.nancy@deq.state.or.us.

Comments on the proposed certification of completion must be received by **5 p.m. on Thursday Jan. 31, 2013**, to be considered in DEQ's decision. Written comments should be sent by mail to Attention: Nancy Sawka, DEQ Project Manager, 750 Front St. NE, Suite 120, Salem, Oregon 97301-1039, by e-mail to sawka.nancy@deq.state.or.us, or fax at 503-373-7944. Upon written request by 10 or more persons or by a group having 10 or more members, DEQ will conduct a public meeting for the purpose of receiving verbal comments regarding the proposed certificate of completion.

THE NEXT STEP: All comments received will be addressed at the completion of the comment period. Once comments are adequately addressed, the DEQ may approve, modify or deny the proposed certificate of completion.

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

REQUEST FOR COMMENTS PROPOSED CONSENT ORDER FOR PROSPECTIVE PURCHASE AGREEMENT, INNOVATIVE WOODLAND SQUARE LLC, ALBANY, LIINN COUNTY, OREGON

COMMENTS DUE: 5 p.m., Jan. 30, 2013

PROJECT LOCATION: 1415 Salem Ave. SE, Albany, Oregon
PROPOSAL: DEQ is proposing to enter into a consent order for a Prospective Purchase Agreement with Innovative Woodland Square LLC for the property at 1415 Salem Ave. SE, Albany, Oregon.

HIGHLIGHTS: Innovative Woodland Square LLC is acquiring the property from Mr. Larry Mathews to provide productive use and beneficial redevelopment of the property by building affordable apartments for the City of Albany. Petroleum contamination related to the former operation of a retail service station and underground storage tank system is present in the soil. Contaminant levels are above DEQ's screening levels for the proposed use of the property so a cleanup is needed.

A grocery store and retail service station was constructed and operated on the southwest corner of the property from about 1949 to 1970. The store and service station buildings were demolished in 2004.

Environmental investigations conducted in the area of the former service station identified three abandoned underground storage tanks, a hydraulic hoist, and related petroleum contamination in the soil and groundwater. Contamination in the soil is above DEQ's screening levels for residential property use. Woodland Square has completed an environmental evaluation of the property and has proposed remedial actions to address the contamination. These remedial actions include decommissioning and removal of the underground storage tanks, hydraulic hoist and associated piping and pump islands; remediating or removing petroleum contaminated soil to applicable cleanup levels; conducting a soil gas vapor assessment if needed; defining the extent and migration of contaminated groundwater; and, if necessary, installing groundwater monitoring wells and completing at least four quarters of groundwater monitoring.

DEQ's consent order requires that Woodland Square submit a plan to complete the remedial actions and reduce petroleum contamination to below the applicable screening levels for the intended use of the property. If it is found that contamination is migrating offsite or towards Periwinkle Creek on the eastern border of the property, the potential risk from this contamination will need to be evaluated and addressed appropriately. DEQ reserves the right to require institutional and/or engineering controls on the property to achieve protective conditions for current and future use. The decision to require a control will be based on the level of protection provided by the remedial actions completed on the property.

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

The proposed consent order will provide Woodland Square a release from liability for claims by the State of Oregon under ORS 465.255 relating to historical releases of hazardous substances at or from the property. The proposed consent order will also provide Woodland Square with third party liability protection.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Salem office at 750 Front St. NE, Suite 120 in Salem, Oregon by contacting Nancy Sawka at 503-378-5075 to make a file review appointment. Site information and documents may be received electronically by sending a request to sawka.nancy@deq.state.or.us.

Comments on the proposed certification of completion must be received by **5 p.m. on Thursday Jan. 30, 2013**, to be considered in DEQ's decision. Written comments should be sent by mail to Attention: Nancy Sawka, DEQ Project Manager, 750 Front St. NE, Suite 120, Salem, Oregon 97301-1039, by e-mail to sawka.nancy@deq.state.or.us, or fax at 503-373-7944. Upon written request by 10 or more persons or by a group having 10 or more members, DEQ will

OTHER NOTICES

conduct a public meeting for the purpose of receiving verbal comments regarding the consent order.

THE NEXT STEP: All comments received will be addressed at the completion of the comment period. Once comments are adequately addressed, the DEQ may approve, modify or deny the proposed consent order.

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

NOTICE OF APPROVAL OF REMEDIAL ACTION APPROVED REMEDIAL ACTION FOR UNION PACIFIC RAILROAD BULK PLANT

PROJECT LOCATION: 123 Chocktoot Street, Chiloquin

PROJECT DESCRIPTION: Union Pacific Railroad has completed a cleanup of petroleum-contaminated soil at the former bulk plant on the corner of Chocktoot Street and Klamath Avenue. This facility was formerly the Shell Oil Bulk Plant. The remedial action involved excavating approximately 2,800 tons of contaminated soil and disposing of it offsite at a permitted landfill. The excavated area was then backfilled with clean imported soil.

This remedial action was recommended in a Record of Decision issued by DEQ in January 2012. The work was conducted between August and October 2012. Based on review of the construction completion report, DEQ will issue a No Further Action determination for this site.

BACKGROUND: The Southern Pacific Transportation Company leased the site to the Shell Oil Company prior to 1984. Beginning that year, Southern Pacific leased the site to the May-Slade Oil Company, which operated the bulk fuel facility until 1998. Union Pacific Railroad became the property owner when the company purchased Southern Pacific in 1996. May-Slade subleased the site to the Clough Oil Company in 2000 or 2001. May-Slade terminated their lease with Union Pacific Railroad in 2005, at which time Clough Oil removed all aboveground and underground structures. Cleanup and environmental monitoring began at this site in 1991, when five underground petroleum storage tanks were removed. The recent removal of petroleum-contaminated soil has reduced remaining contamination to acceptable levels.

FOR MORE INFORMATION: The project file, including environmental investigation reports, may be reviewed by appointment at DEQ's Columbia Gorge office, 400 E. Scenic Drive, Suite 307, The Dalles, OR 97058. To schedule an appointment, contact DEQ project manager Bob Schwarz 541-298-7255 x230 or schwarz.bob@deq.state.or.us.

To access site summary information in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter ECSI# 2435 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI # 2435 in the Site ID/Info column.

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.

REQUEST FOR COMMENTS, PROPOSED CONDITIONAL APPROVAL OF CLEANUP AT FORMER VAL'S TEXACO AND DELPHIA OIL BULK PLANT

COMMENTS DUE: 5 p.m., Wednesday Jan. 30, 2013

PROJECT LOCATION: Both locations are in Astoria, Oregon. The former Val's Texaco is located at 452 West Marine Drive. The former Delphia Oil is located at 65 Portway St.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, the Department of Environmental Quality issues this notice regarding a proposed conditional No Further Action cleanup determination for a portion of the Astoria Area Wide petroleum cleanup site. The Astoria Area Wide site is divided into five operating areas based on property ownership, geography, and contaminant characteristics. Area 2 formerly contained Val's Texaco, a service station and Delphia Oil, a bulk fuel facility. Val's Texaco is directly south of and adjacent to Delphia Oil. Together, Val's Texaco and Delphia Oil are bordered by Marine Drive to the south; Portway Road to the east; Industry Street, Burlington Northern Railroad and the former Shell Oil Bulk Fuel Facility to the north; and the Delphia Warehouse/Storage building and a Steam Engine Museum to the west.

HIGHLIGHTS: In December 2001, DEQ issued an order (DEQ No. ECSR-NWR-01-11) to the Port of Astoria, Val's Texaco, Delphia Oil and several other current and past owners and operators, requiring investigation and cleanup at and adjacent to the Port's facilities where releases of petroleum fuels occurred. The site-wide investigation work was completed in 2008. Cleanup alternatives for other areas of the site have been completed or are in progress. Val's Texaco and Delphia Oil conducted a supplemental investigation in 2008 and 2009 that focused on determining the extent of light non-aqueous phase liquid at the Delphia Oil property. Delphia Oil completed several removal actions from 2004 through 2011 during which approximately 1,109 gallons of liquid petroleum (gasoline) were removed from the site, primarily through vacuum extraction. A residual risk assessment was completed to evaluate risk posed by remaining contamination in Val's Texaco and Delphia Oil. The risk assessment indicates that while residual soil and groundwater contaminants remain at the site, concentrations are below DEQ's risk-based screening values. Current environmental conditions are therefore protective of human health and the environment. DEQ's NFA determination is based on site use being industrial; if site use changes additional site work may be necessary. This information will be memorialized in a deed restriction to be recorded with the property deed.

HOW TO COMMENT: Send comments by 5 p.m., Wednesday Jan. 30, 2013, to DEQ Project Manager Anna Coates at 2020 SW Fourth Ave., Suite 400, Portland, Oregon 97201-4987, or coates.anna@deq.state.or.us or fax to: 503-229-6945. To review the project file, call Dawn Weinberger at 503 229-6729 for a file review appointment. To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, then enter 2277 (ECSI #) in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 2277 (ECSI #) in the Site ID/Info column.

THE NEXT STEP: Once the public comment period has closed DEQ will consider all comments before making a decision concerning the no further action determination.

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

REQUEST FOR COMMENTS PROPOSED APPROVAL OF CLEANUP AT NORTHWEST SOLVENTS, PORTLAND, OREGON

COMMENTS DUE: 5pm, January 31, 2013

PROJECT LOCATION: 635 N Columbia Blvd, Portland, Oregon
PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" (NFA) determination based on results of site investigation and remedial activities performed at the Northwest Solvents site located at 635 N Columbia Blvd, Portland, Oregon. DEQ has determined that the cleanup is complete and residual solvent and metals contamination does not pose risks to human health and the environment exceeding the acceptable levels defined in ORS 465.315. DEQ is therefore proposing issuance of a No Further Action determination for the facility.

OTHER NOTICES

HIGHLIGHTS: NW Solvents is a distributor of dry cleaning solvents and race car fuels. The site includes indoor warehouse storage and a small office. A subgrade truck loading dock accesses the warehouse. A dry well was located in the loading dock bay for drainage.

After a solvent spill in the loading dock area the dry well was removed and solvent-contaminated soil removed. A groundwater well was installed in the loading dock bay and groundwater contamination was found. A groundwater sparging (aeration) system was installed in the well to remediate groundwater. After a year of sparging, the system was shut down and three months later a groundwater sample was collected. Residual soil solvents and metals contamination (from the dry well) as well as groundwater solvent levels were compared to Oregon DEQ Risk-Based Concentrations. Remaining soil and groundwater contaminant levels were below Risk-Based Concentrations for all applicable risk pathways. The loading dock dry well was replaced with permeable pavers.

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 No Further Action Recommendation Memo and Cleanup Record of Decision for the Northwest Solvents site 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 (ECSI) database on the Internet; go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 5171 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5171 in the Site ID/Info column. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at williams.robert.k@deq.state.or.us. To be considered, DEQ must receive written comments by 5 pm on January 31, 2013. Upon written request by ten or more persons or by 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 Northwest Solvents 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 & Outreach (503) 229-6488 or toll free in Oregon at (800) 452-4011; fax to 503-229-6945; or e-mail to deqinfo@deq.state.or.us. People with hearing impairments may call the Oregon Telecommunications Relay Service 1-800-735-2900 number.

PUBLIC NOTICE OF A RECORD OF DECISION FOR THE SKOPIŁ'S DRY CLEANER PROPERTY, LOCATED AT 2605 WILLAMETTE STREET, EUGENE, OREGON

Oregon Department of Environmental Quality (DEQ) is giving public notice of a December 10, 2012 record of decision (ROD) for a cleanup of soil and groundwater contamination at the Skopil's Dry Cleaner property, located at 2605 Willamette Street, Eugene, Oregon. In the ROD, DEQ has selected a remedial action at the Skopil's Dry Cleaner Site (Site).

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

Skopil's has already performed an interim remedial action measure at the Site involving removal of contaminated soil, as well

as in-situ chemical oxidation, followed by several years of groundwater quality and air quality monitoring.

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

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

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

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

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

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

Project documents for this site are available for public review at DEQ's Eugene office, 165 E. 7th Avenue, Suite 100, Eugene 97401. Contact the file specialist at (541) 686-7838 or 1-800-844-8467 (toll-free in Oregon) for an appointment.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR FORMER WALLOWA COUNTY GRAIN GROWERS (WCGG) BULK PLANT

COMMENTS DUE: 5 p.m., January 31, 2013

PROJECT LOCATION: NE intersection of Fish Hatchery Ln. and Depot St., Enterprise

PROPOSAL: The Oregon Department of Environmental Quality's Voluntary Cleanup Program proposes to issue a no further action determination for the former WCGG Bulk Plant site located in the NE intersection of Fish Hatchery Ln. and Depot St., Enterprise. DEQ issues a no further action determination when a cleanup has met regulatory standards.

HIGHLIGHTS: The site was a petroleum bulk plant that operated from 1938 until approximately 2006. The above ground storage tanks were removed in 2006. The site is currently a commercial propane storage and distribution facility.

A subsurface investigation was performed in September 2010 and documented soil and groundwater contamination related to the site's long term operations. Additional investigations were performed to determine the full extent and degree of contamination. Soil and groundwater contamination present at the site was determined by DEQ not to pose a risk to human health or the environment. The Voluntary Cleanup Program has determined no further action is required.

A *Contaminated Media Management Plan* will be prepared for use by site workers and utility workers to address worker safety and material management if subsurface disturbance is required.

HOW TO COMMENT: Send comments by 5 p.m., January 31, 2013, to DEQ Project Manager Katie Robertson by phone at

OTHER NOTICES

541-278-4620, by mail at 700 SE Emigrant, Suite 330, Pendleton, OR 97801, by e-mail at robertson.katie@deq.state.or.us or by fax at 541-278-0168.

To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to www.deq.state.or.us/lq/ECSI/ecsi.htm, select "Search complete ECSI database" link, enter 3100 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 3100 in the Site ID/Info column. To review the project file, contact the project manager above for a file review appointment.

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

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

REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION FOR THE FORMER NICHOLS BOAT WORKS SITE

COMMENTS DUE: 5 p.m., January 30, 2013

PROJECT LOCATION: North Second Street, Hood River, Oregon

PROPOSAL: The Oregon Department of Environmental Quality's (DEQ) Cleanup Program proposes to issue a conditional no further action determination for the former Nichols Boat Works property (Site) located in Hood River. DEQ issues a no further action determination when a cleanup has met regulatory standards.

HIGHLIGHTS: The Site is a former shipbuilding and repair facility that had operated at four locations in the same general vicinity since 1941. The current location was in use from the early 1970s through 1998. The existing Hood River waterfront was created for industrial use by extensive dredge filling during the 1960s.

In 2002, as part DEQ's request for investigation of the Site, the owners cooperatively entered into DEQ's Cleanup program for oversight and help with redevelopment. DEQ oversaw activities, including field investigations and a soil removal and approved a final remedy in 2007. The final remedy was based on a zoning change, development plans, and residual human health and ecological risk assessments that confirmed that the Site did not pose any unacceptable risks. The remedy includes institutional and engineering controls and includes a contaminated media management plan and contingency plans to help management of soils and sediments.

Confirmation sampling indicated that concentrations were below applicable exposure pathway levels and is protective of human health and the environment. The Site will remain listed on the DEQ's Confirmed Release List and Inventory of Hazardous Substances.

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, select "Search complete ECSI database" link, enter 2553 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 2553 in the Site ID/Info column. To review the project file, contact the project manager below for a file review appointment.

HOW TO COMMENT: Send comments by 5 p.m., January 30, 2013, to DEQ Project Manager David Anderson by phone at 541-633-2012, by mail at 475 NE Bellevue Dr, Suite 110, Bend OR 97701, by e-mail at andreson.david@deq.state.or.us, or by fax at 541-388-8283.

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

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 866-863-6668, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS PROPOSED (CONDITIONAL) NO FURTHER ACTION FOR NOSLER, INC.

COMMENTS DUE: January 31, 2013.

PROJECT LOCATION: 107 Southwest Columbia Street, Bend, Oregon.

PROPOSAL: Statutory Authority: ORS 465.200-900; Applicable Rules: OAR 340-122-010-110; Conditional No Further Action (NFA) determination; Nosler, Inc., 107 Southwest Columbia Street, Bend, Oregon.

HIGHLIGHTS: Nosler, Inc., entered the Oregon Department of Environmental Quality's (DEQ) Voluntary Cleanup Program (VCP) in June 2010 for its property located at Columbia Street, where Nosler currently operates its manufacturing facility. Site evaluations and identified remedial actions conducted under VCP oversight were a result of the deflagration that occurred on June 2, 2010.

HOW TO COMMENT: Send comments by 5 p.m., January 31, 2013, to DEQ Project Manager Cliff Walkey at 475 NE Bellevue Drive, Suite 110, Bend, Oregon, walkey.cliff@deq.state.or.us or fax: (541) 388-8283.

To review the project file, call Mr. Walkey at (541) 633-2003 to schedule a file review appointment.

To access site summary information and other documents for this facility in DEQ's Environmental Cleanup Site Information database, go to: http://www.deq.state.or.us/lq/ecsi/ecsilist.asp?SiteID=3155&Bus_Name=&Address=&County=ALL&City=&Zip_Code=&LatitudeMin=&LatitudeMax=&LongitudeMin=&LongitudeMax=&Township=All&TownshipZone=N&Range=1&RangeZone=E&Section=All&ActionCode=All&Substance=None&Alias=None&Submit=Submit&listtype=lis

Click the link labeled ECSI #3155 to access site-specific information.

THE NEXT STEP: After the 30-day public comment period closes, DEQ will consider comments received and provide a written response to each comment received. DEQ will then either proceed with the conditional NFA finding, as proposed, or revise its proposal.

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

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR SUBURBAN EAST SALEM WATER DISTRICT

COMMENTS DUE: 5 p.m., January 31, 2013

PROJECT LOCATION: 3805 La Branch Street, Salem, Marion County

PROPOSAL: No Further Action under Oregon Environmental Cleanup Law ORS 465.200. The site operates as the Suburban East Salem Water District service center, including an administrative office, a community center, and a warehouse. A new building is being constructed north of the administrative offices, the location of a former fire station.

HIGHLIGHTS: Petroleum contamination of soil was suspected when sheen developed on surface water following demolition of the old fire station in November 2011. Multiple phases of assessment were completed to determine the extent of soil contamination for proposed remediation (soil excavation). During trenching and remedial excavation in June 2012, previously unknown concrete septic tanks and a steel tank were found. More soil was removed in October 2012, as contamination remained following the initial excavation. Contaminated soil was excavated to 15 feet below ground surface and taken to Coffin Butte Landfill for disposal. Confirmation samples were collected from the excavation base and petroleum was not detected in soil. Groundwater was not encountered during any site investigation or cleanup activities.

OTHER NOTICES

HOW TO COMMENT: Send comments by 5 p.m., January 31, 2013, to DEQ Project Manager Cathy Rodda at 165 E. 7th Avenue, Suite 100, Eugene, OR 97401, by fax 541-686-7551, or by email rodda.cathy@deq.state.or.us.

To see the project records, call Cathy Rodda at 541-687-7325 for a file review appointment.

To access site summary information and file documents online, go to the project WebDocs page at: <http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceIdType=11&SourceId=5715&Screen=Load>. You can also review DEQ's Environmental Cleanup Site Information database at <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>. Enter 5715 in the Site ID box, click "Submit" at the bottom of the page, then click the link labeled 5715 in the Site ID/Info column.

THE NEXT STEP: If no comments opposed to closure are received, no further action (investigation or remedial action) will be required for the petroleum contamination at the SESWD facility. This no further action determination applies only to reported diesel-related contamination, and does not include other environmental conditions at the facility.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach, 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR FORMER TRI-CITIES TEXACO SERVICE STATION

COMMENTS DUE: 5 p.m., January 31, 2013

PROJECT LOCATION: 410 S Molalla Ave., Oregon City

PROPOSAL: The Oregon Department of Environmental Quality's Leaking Underground Storage Tank Program proposes to issue a no further action determination for the former Tri-Cities Texaco service station site located at 410 S Molalla Ave., Oregon City. DEQ issues a no further action determination when a cleanup has met regulatory standards.

HIGHLIGHTS: The former petroleum service station was operational from 1953 to 1986. The site remains in commercial use as an automotive paint business. Petroleum contamination was first documented at the property in 1986.

Over 2,000 tons of contaminated soil was excavated and transported off-site for treatment. Multiple phases of subsurface investigations have been performed at the property to determine the full extent of soil and groundwater contamination related to the site. Soil and groundwater contamination present at the site were determined by DEQ not to pose a risk to human health or the environment. The LUST Program has determined no further action is required.

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

To access site summary information and other documents in DEQ's LUST database, go to www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp, enter 03-86-0002 in the LUST Number box and click "Lookup" at the bottom of the page. Next, click the link labeled 03-86-0002 in the Log Number column. To review the project file, contact the project manager above for a file review appointment.

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

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

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Board of Architect Examiners
Chapter 806

Rule Caption: Prorates fee for 2013 and 2014 architect registration renewals to coincide with longer renewal cycle.

Date: 1-31-13 **Time:** 9:30 a.m. **Location:** OBAE Offices
205 Liberty St. NE, Suite A
Salem, OR 97301

Hearing Officer: James Denno

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.085

Proposed Amendments: 806-010-0105

Last Date for Comment: 1-31-13, 4:30 p.m.

Summary: Proposed changes to rule to prorate the fee for renewal of registration during the 2013 and 2014 renewal cycles which lengthen the renewal period by 6 months in order to transition the renewal cycle from a fiscal to calendar year cycle. The fee will be \$250 in each of these two renewal cycles instead of \$200, and the renewal will be good for 2 1/2 years instead of 2 years. Subsequent renewals will be for 2 calendar years at existing fee.

Rules Coordinator: Jim Denno

Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301

Telephone: (503) 763-0662

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

Rule Caption: Revises professional development (PD) requirements for new applicants, reactivating and renewing licensees; other miscellaneous updates.

Date: 1-30-13 **Time:** 4:30 p.m. **Location:** 800 NE Oregon St.
Conference Rm. 445
Portland, OR 97232

Hearing Officer: Sandy Leybold

Stat. Auth.: ORS 681

Stats. Implemented: ORS 681.250, 681.264, 681.270, 681.290, 681.325, 681.330, 681.340 & 681.360

Proposed Amendments: 335-005-0020, 335-060-0005, 335-060-0006, 335-060-0007, 335-060-0010, 335-070-0020, 335-070-0040, 335-070-0050, 335-070-0080, 335-080-0005, 335-080-0010, 335-080-0015, 335-080-0025, 335-095-0030

Proposed Repeals: 335-070-0010, 335-070-0030, 335-070-0055, 335-070-0060, 335-070-0065, 335-070-0070, 335-070-0075, 335-070-0085

Last Date for Comment: 1-31-13, 5 p.m.

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

- Modifies professional development (PD) and English language proficiency requirements for applicants for licensure.
- Clarifies accepted PD activities, topics, and providers/sponsors, and those requiring special approval.
- Requires licensees switching to inactive status during the licensure period to report PD as for an active license renewal.
- Changes and simplifies PD requirements for reactivation of inactive and expired licenses.
- Streamlines PD rules for brevity and clarity.
- Specifies requirements for renewing conditional licenses that have previously been agency policy.
- Reinforces circumstances in which a conditional license is required.
- Clarifies requirement for Competency Checklist for speech-language pathology assistant (SLPA) certification.

Rules Coordinator: Sandy Leybold

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

Telephone: (971) 673-0220

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Board of Psychologist Examiners
Chapter 858

Rule Caption: Modifies requirements for licensure by endorsement, education and exam; clarifies criteria for complaint rejection.

Stat. Auth.: ORS 675.010–675.150

Stats. Implemented: ORS 675.030, 675.045, 675.050, 675.063, 675.070 & 675.110

Proposed Amendments: 858-010-0010, 858-010-0015, 858-010-0016, 858-010-0017, 858-010-0030, 858-020-0025

Proposed Repeals: 858-010-0010(T), 858-010-0015(T), 858-010-0016(T), 858-010-0017(T), 858-010-0030(T), 858-020-0025(T)

Last Date for Comment: 1-22-13, 5 p.m.

Summary: Modifies the core and clinical coursework content areas and adds a requirement for a minimum number of graded courses to the clinical psychology educational requirements for licensure as a psychologist for applicants who possess a doctoral degree from a regionally accredited, provincially chartered, or foreign program. Also allows these and psychologist associate applicants to complete limited coursework outside of their degree-granting program if the applicant's degree-granting program was deficient in required content areas. Modifies the requirements for licensure by endorsement and no longer requires applicants who have maintained an active psychologist license for 15 years or more to fulfill the EPPP exam requirement. Also clarifies the licensure by endorsement and standard application procedures. Establishes when a candidate for licensure must retake the jurisprudence exam. Clarifies the criteria used to reject a complaint filed with the Board.

Rules Coordinator: LaReé Felton

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

Telephone: (503) 373-1196

NOTICES OF PROPOSED RULEMAKING

Department of Agriculture Chapter 603

Rule Caption: Expansion of the Sudden Oak Death Quarantine Boundary in Curry County, Oregon.

Date: 1-24-13
Time: 7 p.m.
Location: Chetco Library Meeting Rm.
405 Alder
Brookings, OR

Hearing Officer: Eric Reusche

Stat. Auth.: ORS 561.510 & 561.540

Other Auth.: ORS 561.190

Stats. Implemented: ORS 561.510

Proposed Amendments: 603-052-1230

Last Date for Comment: 1-31-13, 5 p.m.

Summary: Phytophthora ramorum (sudden oak death) has been found outside the current boundary in SW Curry County, Oregon. The proposed amendment would expand the quarantine to include the newly discovered infested sites east and southeast of the current quarantine boundary plus a buffer area of approximately three miles. The provisions of the quarantine would not change, but the proposal would clarify the definition of "disease-free area" and a new federal order for infected nurseries would be referenced.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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Rule Caption: Designates and explains general production and restricted districts for Brassica spp. (includes rapeseed/canola) production.

Date: 1-23-13
Time: 9 a.m.
Location: Cascade Hall
Oregon State Fairgrounds
2330 17th St. NE
Salem, OR 97301

Hearing Officer: Casaria Taylor

Stat. Auth.: ORS 561.190, 561.510-561.600, 570.305, 570.405, 540.410-540.415 & 570.450

Other Auth.: ORS 561.280

Stats. Implemented: ORS 570.405-570.415 & 570.450

Proposed Adoptions: 603-052-0861, 603-052-0862, 603-052-0882, 603-052-0884, 603-052-0886, 603-052-0888, 603-052-0901, 603-052-0921

Proposed Amendments: 603-052-0860, 603-052-0870, 603-052-0880

Proposed Repeals: 603-052-0850, 603-052-0852

Last Date for Comment: 1-25-13, 5 p.m.

Summary: The rules define control areas for Brassica spp. including rapeseed and provide regulations that will be applicable to the seeding and growing of rapeseed for any purpose in a general production area and protected districts. The rules are designed to promote a farmers' right to grow their choice of product while balancing potential conflicts that may emerge with other producers because of cross-pollination, disease, pests, and volunteer plants. The rules designate areas of Oregon that will be classified as protected districts; Brassica spp. production will be restricted by rules that are specific to each protected district. All land not in a protected district will be regulated as general production area.

Brassica spp. require special care and isolation when grown in the same area. Oregon has four protected districts. The Willamette Valley Protected District consists of a rectangle beginning at the northwest corner of Township 1N, Range 6W and proceeding east to the northeast corner of Township 1N, Range 2E, then south to the southeast corner of Township 19S, Range 2E, then west to the southwest corner of Township 19S, Range 6W, then north to the starting point. Best Management Practices for all Brassica spp. must be followed in the Willamette Valley Protected District. These include methods to minimize plant disease, pests and volunteer plants. Cover crops

and forage crops are allowed if they are not allowed to flower. Any production of rapeseed will require a production contract, variance, or a research permit. Any rapeseed production will be isolated from specialty seed crops by at least three miles, and will be identified in the Willamette Valley Specialty Seed Association pinning, isolation, and priority system.

The Central Oregon Protected District consists of Crook, Deschutes, and Jefferson counties. Rapeseed production will require a research permit. Rapeseed fields must be isolated by at least three miles, and the location must be recorded at the the appropriate Oregon State University County Extension office. Farming practices must manage plant disease, pests, and volunteer plants.

The Northeast Oregon Protected District consists of Baker, Union, and Wallowa counties, except for the following part of Wallowa County, which is designated as a general production area: Township 4N, Range 43E; Township 4N Range 44E; Township 4N, Range 45E; Township 5N, Range 43E; Township 5N, Range 44E; and Township 5N, Range 45E; and the portions of Township 6N, Range 43E; Township 6N, Range 44E; and Township 6N, Range 45E that are located within Oregon's borders. Rapeseed production is allowed, but is subject to certain requirements. The required isolation distance will be at least two miles, and all fields must be recorded at the appropriate Oregon State University County Extension Office. Farming practices must manage plant disease, pests, and volunteer plants.

The Malheur/Idaho Protected District consists of a 3-mile wide strip of land along the Idaho border from the point where Payette County, Idaho's northern border intersects Malheur County's eastern border, south to the point where Highway 95 crosses the Oregon border. Rapeseed is prohibited in the Malheur/Idaho Protected District.

Production contracts for rapeseed production in the Willamette Valley Protected District may be entered into with Oregon Department of Agriculture (ODA). Variances in the Willamette Valley may be obtained from ODA. Research permits may be issued by ODA if an accredited university is involved. ODA will maintain specified records of rapeseed fields. ODA has the authority to seek injunctive relief and seek summary destruction of any Brassica spp. that violates any rules or the terms of a production contract, variance, or research permit.

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, Oregon Occupational Safety and Health Division Chapter 437

Rule Caption: Proposed changes to personal protective equipment (PPE) in construction, and hole openings/skylights in general industry.

Date:	Time:	Location:
1-24-13	1 p.m.	Oregon OSHA, Red Oaks Square 1230 NE Third St., Suite A-115 Bend, OR 97701-4374
1-29-13	9:30 a.m.	Oregon OSHA 1750 NW Naito Pkwy., Suite 112 Portland, OR 97209-2533
1-31-13	9:30 a.m.	Labor & Industries Bldg.*** 2nd Floor - Conference Rm. 260 350 Winter St. NE Salem, OR 97301

Hearing Officer: Sue Joye

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

Stats. Implemented: ORS 654.001-654.295

Proposed Adoptions: 437-002-0023, 437-003-0134

Proposed Amendments: 437-002-0020, 437-002-0134, 437-003-0001

Proposed Repeals: 437-003-0128

Last Date for Comment: 2-6-13, Close of Business

NOTICES OF PROPOSED RULEMAKING

Summary: ***NOTE: The January 31, 2013 hearing will be video streamed. This is not interactive; view and audio only. Please check Oregon OSHA's web site www.orsosha.org (when it is close to the hearing date) for the link to watch this hearing on January 31, 2013.

Personal Protective Equipment in Construction:

Oregon OSHA is proposing to revise the personal protective equipment (PPE) sections of its construction standards regarding requirements for eye and face protective devices, head protection, foot protection, extremities and torso to include protective clothing, respiratory devices, and protective shields and barriers.

Oregon OSHA updated the Division 2, subdivision I, Personal Protective Equipment references in its regulations on December 8, 2011. The update referenced more recent editions of applicable national consensus standards and removed requirements that employers prepare and maintain written training certification records. Oregon OSHA repealed all of Division 2/I rules with some exceptions and replaced them with a new Oregon initiated rule, 437-002-0134 Personal Protective Equipment, that includes sections covering the scope/application, hazard assessment, equipment, training, payment, fall protection, clothing, high visibility garments, and eye, head, foot, leg, hand and skin protection.

The change was mostly a format change that simplified the existing text while making little change to the overall rule requirements with a few exceptions. Oregon OSHA modified the hazard assessment requirement to clarify that employers must identify hazards to the entire body, including the torso and extremities, when performing the assessment. The assessment previously was limited to head, hands, eyes and face and foot protection.

We are proposing to remove the current PPE requirements in various locations of the construction standard and replace them with the same requirements that are in General Industry standards of Division 2, Subdivision I. These requirements (with the exception of a written assessment certification) will be substantially similar allowing for greater consistency in construction and general industry.

The design requirements for eye and face-protective devices, head protection, and foot protection are currently the same in Division 2 General Industry, Shipyard Employment, Marine Terminals, Longshoring and Division 3 Construction. These revisions are a continuation of Oregon OSHA's effort to update or remove references to specific consensus and industry standards located throughout its standards.

Personal Protective Equipment in General Industry:

Oregon OSHA will also amend the general industry PPE rule 437-002-0134, to include ANSI Z89.1-2009, American National Standard for Industrial Head Protection, as another option of compliance, as published in the June 22, 2012 Federal Register. http://www.osha.gov/FedReg_osha_pdf/FED20120622A.pdf

Hole Openings (including skylights) in General Industry:

Oregon OSHA is also proposing a change to the hole covering requirements for holes in floors, roofs, and other walking/working surfaces (to include skylights and skylight screens). Currently employers in construction and general industry have different hole cover strength criteria. To eliminate the confusion or inconsistencies, Oregon OSHA will change the general industry requirements to be the same as the construction requirements as referenced in the Federal OSHA proposal for walking working surfaces and personal protective equipment (fall protection) found in the May 24, 2010 Federal Register http://www.osha.gov/FedReg_osha_pdf/FED20100524.pdf.

Please visit our web site www.orsosha.org

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

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

Rule Caption: Proposed changes in general industry with small capacity cranes standard.

Date:	Time:	Location:
1-24-13	1 p.m.	OR OSHA Red Oaks Square 1230 NE Third St., Suite A-115 Bend, OR 97702-4374
1-29-13	9:30 a.m.	OR OSHA 1750 NW Naito Pkwy., Suite 112 Portland, OR 97209-2533
1-31-13	9:30 a.m.	Labor & Industries Bldg.* Second Floor - Rm. 260 350 Winter St. NE Salem, OR 97301

Hearing Officer: Sue Joye

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

Stats. Implemented: ORS 654.001-654.295

Proposed Adoptions: 437-002-0231

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

Summary: Note to hearings: All three hearings listed in this notice will start at the conclusion of Oregon OSHA's public hearing concerning changes to Personal Protective Equipment (PPE) in construction.

*This hearing will be video streamed. This is not interactive; view and audio only. Please check Oregon OSHA's web site www.orsosha.org (when it is close to the hearing date) for the link to watch this hearing on January 31, 2013.

Oregon OSHA was approached initially by industry representatives from National Electrical Contractors Association (NECA) and the International Brotherhood of Electrical Workers (IBEW) concerning the February 9, 2011 adopted changes to the Cranes and Derricks in Construction (subdivision CC) standard.

They wanted to discuss the impact on their industry's digger derrick operations in relationship to the Edison Electric Institute (EEI) vs. the Occupational Safety and Health Administration and Secretary of Labor (OSHA), No. 10-1311 (D.C. Circuit) lawsuit which challenged various aspects of OSHA's final rule, Cranes and Derricks in Construction (Subdivision CC). The final outcome was a settlement agreement, essentially allowing any digger derrick work subject to subdivision V of Division 3 Construction (1926) an expanded exemption, essentially a removal from coverage under subpart CC.

The NECA/IBEW representatives wanted Oregon OSHA to explore the idea of alternative operator training for not only digger derricks but also small capacity cranes commonly used within the electrical industry. Oregon OSHA was also approached by city and county employers, water districts, sign companies and employers that manufacturer and deliver goods such as pre-cast concrete about potential operator certification options. A majority of these employers will use these mobile cranes for a variety of purposes including systems maintenance, and less frequently in conjunction with construction activities. In addition, small capacity mobile cranes have allowed employers to create a safer work environment from an ergonomic standpoint.

Oregon OSHA agreed to consider an alternative operator training rule. The rule would be an additional crane operator training requirement in the General Occupation Safety and Health, Division 2 rules. The rule would require all employers having mobile operations that use small capacity mobile cranes (more than one ton and less than 20 ton) comply with this new training requirement or those rules for operator qualification or certification found in 1926.1427, Division 3 subdivision CC. The rule would also be available and accepted as an alternative to operator qualifications required in the construction rule subdivision CC. The additional option would allow those operators who use mobile cranes as a part of a normal maintenance, delivery or general industry application to comply with the subdivision CC rules found 1926.1427 when there is a crossover to a construction activity when using the same crane for both activities. Oregon OSHA will add a note in Division 3/CC, 1926.1427, informing the reader of the additional Oregon option in Division 2/N, 437-002-0231.

NOTICES OF PROPOSED RULEMAKING

Oregon OSHA put together an advisory group that helped develop this proposal for employer groups that use mobile cranes in construction and maintenance activities. These employers are aware of the requirements for crane operator qualification or certification that take effect November 10, 2014 for construction activities. Some advisory group members began using national programs such as National Commission for the Certification of Crane Operators (NCCCO) to certify their operators. They reported that even experienced operators are having difficulty passing the practical test and that the failure rate and added expense (due to failure) was becoming more common whether experienced or not. The consensus amongst the advisory group was that most employees operate smaller cranes and the practical test given at the regional training locations were on larger, up to, 50 ton cranes. The cranes being used for testing vary in size dependent on the venue and information give to the testing agency at the time of intake. The cranes used for certification are not the types of cranes the employees actually use daily, which potentially contributed to a higher failure rate.

The reason Oregon OSHA considered this rule is that requiring situational-appropriate training will provide greater and more effective protection to the workers involved in the crane operations. The requirement to receive testing and training on the actual crane that they will operate will allow them to be better trained and likely accomplish the tasks safer than they would if Oregon OSHA simply applies a general rule.

Please visit our web site www.orosha.org

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

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

Rule Caption: Propose to adopt federal OSHA changes in construction to demolition, underground construction, and digger derricks.

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

Stats. Implemented: ORS 654.001-654.295

Proposed Amendments: 437-003-0001

Last Date for Comment: 2-6-13, Close of Business

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

Oregon OSHA is proposing to amend 1926.800 as published in the August 17, 2012 Federal Register. This will bring all crane and derrick use in construction work under one subdivision CC, and it will correct the technical errors in the previous rule that substantively altered the demolition and underground construction provisions, and replace subparagraphs 1926.800(t)(1) through (4). The revisions made by this proposed rule will enable Oregon OSHA to cover all cranes and derricks used in construction under subpart CC. These proposed revisions implement the original purpose of the rule and will benefit both employees and employers. Also, in this Federal Register are reference changes to 1926.856 and 1926.858; and will remove subdivision DD.

Oregon OSHA is proposing to make the amendments published in the November 9, 2012 Federal Register, in 1926.1400 to broaden the exemption for digger derricks. Oregon OSHA is following Federal OSHA in revising the exemption in 1926.1400(c)(4) to include within the exemption "any other work subject to subdivision V of Division 3." This revision expands the exemption to remove from coverage under subpart CC the types of non-pole, digger-derrick work. Also, 1926.952 will be amended with a reference change to 1926.1400(c)(4).

Oregon OSHA proposes to make these amendments in construction.

Please visit our web site www.orosha.org

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

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

Department of Environmental Quality Chapter 340

Rule Caption: Conversion technology and anaerobic digestion facility performance standards and solid waste permit requirements.

Date:	Time:	Location:
1-16-13	2 p.m.	DEQ Headquarters, Rm. EQC-A 811 SW 6th Ave., 10th Floor Portland, OR 97204

Hearing Officer: DEQ staff

Stat. Auth.: ORS 459.005-459.418, 459.785, 459A.025, 459A.100, 459A.115, 459A.120, 468.020 & 468.065

Stats. Implemented: ORS 459.005, 459.015, 459.045, 459.205, 459.215, 459.225, 459.235, 459.236, 459.245, 459.248, 459.255, 459.268, 459.272, 459.705, 459.708, 459.710, 457.715, 459.720, 459.755, 459A, 459A.110 & 459A.115

Proposed Adoptions: 340-096-0160, 340-096-0170, 340-096-0180, 340-096-0190, 340-096-0200

Proposed Amendments: 340-064-0015, 340-064-0022, 340-064-0035, 340-064-0055, 340-093-0030, 340-093-0050, 340-093-0070, 340-093-0105, 340-093-0110, 340-093-0115, 340-095-0090, 340-095-0095, 340-096-0001, 340-096-0010, 340-096-0040, 340-096-0060, 340-096-0070, 340-096-0080, 340-096-0090, 340-096-0100, 340-096-0110, 340-096-0120, 340-096-0130, 340-096-0140, 340-096-0150, 340-097-0001, 340-097-0110, 340-097-0120

Last Date for Comment: 1-22-13, 5 p.m.

Summary: This rulemaking would establish performance standards and solid waste permit requirements for conversion technology facilities and anaerobic digestion facilities to: 1) protect the environment, 2) establish appropriate permitting requirements for anaerobic digestion and conversion technology facilities, 3) establish appropriate fee schedules for anaerobic digestion facilities and the new conversion technology facility permit category and 4) provide regulatory certainty for emerging technology providers and DEQ staff. This rulemaking also proposes changes to existing Oregon rules that include grammar and rule reference corrections to solid waste and waste tire rules, exempt certain low-risk facilities from solid waste disposal permit requirements, and make clarifying adjustments to composting rules.

Rules Coordinator: Maggie Vandehey

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

Telephone: (503) 229-6878

Department of Forestry Chapter 629

Rule Caption: Amends the Forest Land Management Classification System (FLMCS) Administrative Rule.

Date:	Time:	Location:
3-12-13	6 p.m.	Cannon Beach Chamber of Commerce, Community Hall 207 North Spruce Cannon Beach, OR 97110
3-13-13	6 p.m.	Hillsboro Main Library 2850 NE Brookwood Pkwy. Hillsboro, OR 97124

Hearing Officer: John Barnes

Stat. Auth.: ORS 526.016(4)

Other Auth.: ORS 526.041, 530.490 & OAR 629-035-0050

Stats. Implemented: ORS 530.050 & 530.500

Proposed Amendments: 629-035-0055

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 4-5-13, 5 p.m.

Summary: This proposed rule amendment will establish two new land management classifications for the purposes of highlighting the visibility of areas managed for conservation values when mapping the strategies set forth in approved forest management plans. Copies of the proposed rule amendments may be viewed on the Department's web page at: http://www.oregon.gov/odf/Pages/lawsrules.aspx#Proposed_Rules or at the office of the State Forester, and are available upon request. Other documents related to the proposed rule amendment include minutes and supporting meeting materials, including audio transcripts, for the Oregon Board of Forestry meetings from March 2011 through November 2012. Those materials are available through the Board of Forestry website: www.oregonforestry.gov.

Written comments must be received by 5:00 p.m. on April 5, 2013. Submissions should be addressed to: State Forests Policy and Planning Specialist, Oregon Department of Forestry, 2600 State Street, OR 97310; or sent to ODFStateForestsComments@odf.state.or.us, or via FAX 503-945-7376.

Comments received by 5:00 p.m. on April 5, 2013 will be compiled by theme. Department of Forestry staff will respond to the comments and present the information to the Board of Forestry for its consideration in deciding whether to approve the amended rule. The date of proposed adoption of the amended rule by the Board of Forestry will be announced in the Secretary of State's Oregon Bulletin. The Department anticipates the Board of Forestry will have an opportunity to do so in June 2013. Production of revised FLMCS maps will occur within 12 months following rule adoption.

Rules Coordinator: Sabrina Perez

Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

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

Rule Caption: Long Term Care Community Nursing Services.

Date:	Time:	Location:
1-16-13	2:30 p.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Proposed Adoptions: 411-048-0150, 411-048-0160, 411-048-0170, 411-048-0180, 411-048-0190, 411-048-0200, 411-048-0210, 411-048-0220, 411-048-0230, 411-048-0240, 411-048-0250

Proposed Repeals: 411-048-0000, 411-048-0010, 411-048-0020, 411-048-0030, 411-048-0040, 411-048-0050, 411-048-0060, 411-048-0070, 411-048-0080, 411-048-0100, 411-048-0120, 411-048-0130

Last Date for Comment: 1-22-13, 9 a.m.

Summary: The Department of Human Services (Department) is proposing to replace the contract registered nursing service rules in OAR chapter 411, division 048 with rules for long term care community nursing services.

The proposed rules establish standards and procedures for Medicaid enrolled providers who provide long term care community nursing services. Long term care community nursing services provide ongoing registered nurse (RN) services to eligible individuals who are receiving Medicaid funded home and community based waived services in a home based or foster home setting.

Rules Coordinator: Christina Hartman

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

Department of Oregon State Police, Office of State Fire Marshal Chapter 837

Rule Caption: Modify reporting requirements for compliance with Oregon's Community Right to Know Program.

Date:	Time:	Location:
1-24-13	1:30 p.m.	4760 Portland Rd. NE Salem, OR 97305

Hearing Officer: Mariana Ruiz-Temple

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307-453.414

Proposed Amendments: 837-085-0040, 837-085-0070, 837-085-0080

Last Date for Comment: 1-24-13, 12 p.m.

Summary: This rule is being modified to raise the minimum reporting requirements for the majority of hazardous substances (generally and minimally hazardous), and to raise the minimum reporting requirements of gasoline and diesel at retail gas stations.

Rules Coordinator: Connie Dalke

Address: Department of Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305-1760

Telephone: (503) 934-8211

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Department of Public Safety Standards and Training Chapter 259

Rule Caption: Remove "comments" from mandatory disqualifier language.

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664

Proposed Amendments: 259-008-0070

Proposed Repeals: 259-008-0070(T)

Last Date for Comment: 1-21-13, Close of Business

Summary: A number of questions have been raised about the intent of the "comment" language found in this rule. The comments were adopted with a goal of adding clarity, but have instead created confusion in the legal interpretation of the rules. It is the recommendation of legal counsel to remove the comments from the mandatory disqualifier language.

Rules Coordinator: Linsay Hale

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

Telephone: (503) 378-2431

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Rule Caption: Repeal rule division outlining unfunded reimbursement program.

Stat. Auth.: ORS 181.655

Stats. Implemented: ORS 181.655

Proposed Repeals: Rules in 259-015, 259-015-0000, 259-015-0005, 259-015-0010

Last Date for Comment: 1-21-13, Close of Business

Summary: ORS 181.655 allows for DPSST, through the Board, to offer reimbursement to agencies to help defray the cost of training officers. While the requirement remains in statute, the program has not been funded for decades. Because the program will continue to be unfunded, these rules are being repealed to eliminate constituent confusion.

Rules Coordinator: Linsay Hale

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

Telephone: (503) 378-2431

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Rule Caption: Remove outdated references to supervisory and middle management training.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-012-0005

Last Date for Comment: 1-21-13, Close of Business

NOTICES OF PROPOSED RULEMAKING

Summary: Due primarily to budget reductions, DPSST no longer offers courses for supervisory or middle management certification levels. This rule update removes the outdated references to the Supervisory and Middle Management training.

Rules Coordinator: Linsay Hale

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

Telephone: (503) 378-2431

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Department of Transportation
Chapter 731

Rule Caption: Modifies provisions for submission of unsolicited proposals to the Oregon Innovative Partnerships Program.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stats. Implemented: ORS 367.800–367.826

Proposed Amendments: 731-070-0050

Last Date for Comment: 1-21-13, Close of Business

Summary: OARs 731-070-0050 through 731-070-0230 govern the process by which private entities or units of government may submit unsolicited proposals for transportation projects under the Oregon Innovative Partnerships Program (OIPP). Recent experience has revealed that when an unsolicited proposal is submitted on a project that has progressed considerably through ODOT's project development process, it can be disruptive and expensive to change course mid-stream. ODOT seeks to restrict submission of unsolicited proposals in certain circumstances.

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, 355 Capitol St. NE, MS 51, Salem, OR 97301

Telephone: (503) 986-3171

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Land Conservation and Development Department
Chapter 660

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

Date:	Time:	Location:
1-22-13	4 p.m.	Newport City Library 35 Nye St. Newport, OR
1-24-13	8 a.m.	DLCD Basement Hearing Rm. 635 Capitol St., NE Salem, OR

Hearing Officer: Matt Spangler; LCDC

Stat. Auth.: ORS 197.040

Other Auth.: Statewide Planning Goal 4 (OAR 660-015-0000(4))

Stats. Implemented: ORS 196.471, 197.010 & 215.700–215.799

Proposed Amendments: Rules in 660-036

Last Date for Comment: 1-24-13, Close of Hearing

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

Rules Coordinator: Casaria Taylor

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

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

Rule Caption: Allowance for tsunami emergency hazard response storage structures in forest zones.

Date:	Time:	Location:
1-16-13	6:30 p.m.	Tillamook Bay Comm. College 4301 Third St. Rm. 214 Tillamook, OR 97141
1-25-13	8 a.m.	DLCD Basement Hearing Rm. 635 Capitol St. Salem, Oregon

Hearing Officer: Patrick Wingard; LCDC

Stat. Auth.: ORS 197.040

Other Auth.: Statewide Planning Goal 4 (OAR 660-015-0000(4))

Stats. Implemented: ORS 197.010 & 215.700–215.799

Proposed Amendments: Rules in 660-006

Last Date for Comment: 1-25-13, Close of Hearing

Summary: The proposed amendments to OAR 660, division 6, would authorize the approval of certain types of emergency storage structures in forest zones near coastal areas in order to facilitate local community tsunami preparedness planning efforts. Coastal communities have requested authorization for such structures in forest zones because there are insufficient locations above mapped tsunami inundation zones inside urban growth boundaries that are reasonably close to assembly areas and in proximity to designated tsunami evacuation routes.

Rules Coordinator: Casaria Taylor

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

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

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Oregon Department of Aviation
Chapter 738

Rule Caption: Waldo Lake access by seaplanes.

Date:	Time:	Location:
1-31-13	6 p.m.	Willamalane Center Ken Long Rm. 250 S 32nd St. Springfield OR

Hearing Officer: Staff

Stat. Auth.: ORS 835.035, 835.112 & 835.200

Stats. Implemented: ORS 835.200, 835.205 & 835.210

Proposed Adoptions: 738-040-0037

Last Date for Comment: 1-31-13, Close of Hearing

Summary: The Oregon Marine Board (OMB) has exempted seaplanes from OAR 250-030-0030(4) and OAR 250-020-0221(10) which places a ban on internal combustion motors on Waldo Lake.

The Oregon Aviation Board (OAB) is adopting this rule to help administer seaplane usage on Waldo Lake and to establish parameters for locations and times seaplanes may access the lake. Seaplanes will be allowed to access the lake as a form of transportation similar to a motorized vehicle driving to the site. The permanent rule will also address seaplane pilots conducting invasive species inspections prior to landing on Waldo Lake.

Rules Coordinator: Lauri Kunze

Address: Oregon Department of Aviation, 3040 25th St. SE, Salem, OR 97302-1125

Telephone: (503) 986-3171

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Oregon Department of Education
Chapter 581

Rule Caption: Renumbers rule relating to media services in public schools.

Stat. Auth.: ORS 326.051 & 329.075

Stats. Implemented: ORS 329

Proposed Ren. & Amends: 581-022-1520 to 581-022-2340

Last Date for Comment: 1-21-13, 5 p.m.

Summary: The renumbering and possible amendment of the rule relating to media services is part of a larger project to reorganize Division 22 for which notice was previously filed in the prior month

NOTICES OF PROPOSED RULEMAKING

with the Secretary of State. This notice was filed to correct an error in that filing. That filing moved the media services rules out of division 22. We do not plan to do that but instead the rule will be renumbered but kept in Division 22.

Rules Coordinator: Cindy Hunt

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

Telephone: (503) 947-5651

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

Rule Caption: Health Evidence Review Commission Process for Evidence-based Reports.

Date:	Time:	Location:
1-16-13	1:30 p.m.	General Services Bldg. 1225 Ferry St. SE Mt. Mazama Rm. (basement) Salem, OR

Hearing Officer: Zarie Haverkate

Stat. Auth.: ORS 414.695 & 413.042

Stats. Implemented: ORS 414.695 & 414.698

Proposed Adoptions: 409-060-0100, 409-060-0110, 409-060-0120, 409-060-0130, 409-060-0140, 409-060-0150

Last Date for Comment: 1-18-13, 5 p.m.

Summary: The Office for Oregon Research and Development needs to adopt rules to document the process the Health Evidence Review Commission (HERC) will follow in developing medical technology assessments and other evidence based reports based on comparative effectiveness research so that the public and interested stakeholders understand what to expect from the Commission and know how to best provide input into the process.

Proposed rules are available on the OHPR website: <http://www.oregon.gov/oha/ohpr/pages/rulemaking/index.aspx>

Rules Coordinator: Zarie Haverkate

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

Telephone: (503) 373-1574

Rule Caption: Prohibition against identifying individuals in public use data sets.

Stat. Auth.: ORS 192.440 & 442.420(3)(d)

Stats. Implemented: ORS 192.410–192.440, 192.496, 192.501 & 442.420(3)(d)

Proposed Amendments: 409-021-0130

Last Date for Comment: 1-22-13, 5 p.m.

Summary: The Office for Oregon Health Policy and Research (OHPR) needs to amend these rules in order to improve privacy protections relating to public use health data sets. The amendment prohibits users of public use health data from attempting to ascertain the identity of individuals.

Rules Coordinator: Zarie Haverkate

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

Telephone: (503) 373-1574

Rule Caption: Prohibition against identifying individuals in public use data sets.

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Proposed Amendments: 409-025-0160

Last Date for Comment: 1-22-13, 5 p.m.

Summary: The Office for Oregon Health Policy and Research (OHPR) needs to amend these rules in order to improve privacy protections for APAC public use data sets. The amendment prohibits users of APAC public use data from attempting to ascertain the identity of individuals.

Rules Coordinator: Zarie Haverkate

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

Telephone: (503) 373-1574

Rule Caption: Amendment to the Physician VISA Waiver Program Rule.

Stat. Auth.: ORS 413.248

Stats. Implemented: ORS 413.248

Proposed Amendments: 409-035-0020

Last Date for Comment: 1-22-13, 5 p.m.

Summary: The Office for Oregon Health Policy and Research needs to amend OAR 409-035-0020 to allow Federally Qualified Health Centers (FHQCs) with a HPSA score at or above the requirements of 22 CFR 41.63 to apply for a J-1 Waiver through the Authority.

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

Rules Coordinator: Zarie Haverkate

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

Telephone: (503) 373-1574

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Dental Pilot Projects.

Date:	Time:	Location:
1-16-13	1 p.m.	Portland State Office Bldg. 800 NE Oregon St. Rm. 1C Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: 2011 OL Ch. 716

Stats. Implemented: 2011 OL Ch. 716

Proposed Adoptions: 333-010-0400, 333-010-0405, 333-010-0410, 333-010-0415, 333-010-0420, 333-010-0425, 333-010-0430, 333-010-0435, 333-010-0440, 333-010-0445, 333-010-0450, 333-010-0455, 333-010-0460, 333-010-0465, 333-010-0470

Last Date for Comment: 1-22-13, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division, Oral Health Program is proposing to permanently adopt administrative rules in chapter 333, division 10 to provide administrative oversight of Dental Pilot Projects as defined in SB 738 (2011 OL Ch. 716), which passed during the 2011 Legislative Session. The proposed rules provide administrative guidance to the required content of Dental Pilot Project applications, process for review, approval and monitoring of Dental Pilot Projects and steps to terminate or conclude a Dental Pilot Project.

Rules Coordinator: Brittany Sande

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

Telephone: (971) 673-1291

Rule Caption: Pursuant to SB 1507, revision of HIV testing-related rules.

Date:	Time:	Location:
1-16-13	3 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1B Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 431.110, 433.001, 433.004, 433.008 & 433.045–433.080

Other Auth.: 2012 OL Ch. 26

Stats. Implemented: ORS 431.110, 433.001, 433.004, 433.006 & 433.045–433.080

Proposed Adoptions: 333-022-0200, 333-022-0205, 333-022-0210, 333-022-0300, 333-022-0305, 333-022-0310, 333-022-0315

Proposed Repeals: 333-012-0260, 333-012-0262, 333-012-0264, 333-012-0265, 333-012-0266, 333-012-0267, 333-012-0268, 333-012-0269, 333-012-0270

NOTICES OF PROPOSED RULEMAKING

Proposed Renumberings: 333-012-0300 to 333-022-0410, 333-012-0310 to 333-022-0415, 333-012-0320 to 333-022-0420, 333-012-0330 to 333-022-0425, 333-012-0350 to 333-022-0435, 333-012-0360 to 333-022-0440, 333-012-0370 to 333-022-0445, 333-012-0380 to 333-022-0450, 333-012-0390 to 333-022-0455

Proposed Ren. & Amends: 333-012-0280 to 333-022-0400, 333-012-0290 to 333-022-0405, 333-012-0340 to 333-022-0430, 333-012-0400 to 333-022-0460

Last Date for Comment: 1-22-13, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division is proposing permanent changes to Oregon Administrative Rules (OARs) pertaining to HIV testing. During the 2012 legislative session, the Oregon Legislature passed Senate Bill 1507 (Oregon Laws 2012, chapter 26), which amended Oregon Revised Statutes 433.045, 433.055, 433.065, 433.075 and 433.085. SB 1507 removed requirements for obtaining informed consent prior to collecting a specimen for testing for HIV. Instead of informed consent, changes to statute resulting from SB 1507 now require that health care providers notify the individual that he/she will be tested for HIV and allow the individual an opportunity to decline the test. In addition the statute declares that the "notification and opportunity to decline testing required... may be verbal or in writing, and may be contained in a general medical consent." The statutory changes necessitated changes to OARs related to HIV testing.

Overview of proposed revisions:

(1) The Public Health Division is proposing to adopt a new rule division (022) within chapter 333 of the OARs because rules related to HIV testing, consent and occupational exposure to HIV don't group logically with other Public Health Division rules found in division 012 relating to Traveler's Accommodations, Recreation Parks, Organizational Camps, Swimming Pools, Bath Houses, Food Service Facilities, Mobile Units, and Vending Machines.

(2) Definitions in proposed OAR 333-022-0010 (borrowing language from repealed OAR 333-012-0260) have been updated.

(3) Requirements for informed consent for HIV testing (repeal of OAR 333-012-0265 and adoption of OAR 333-022-0205) have been removed and substituted with language from SB 1507 requiring notification of the individual being tested, allowing the individual to decline, and advising that notification may be done verbally or in writing, including via a general medical consent form.

(4) Proposed OAR 333-022-0210 (borrowing language from repealed OAR 333-012-0270) on confidentiality of HIV test results permits disclosure of HIV test results by licensed health care providers and health care facilities in a manner consistent with HIPAA. It also specifies circumstances under which public health may disclose HIV test results. In addition, subsections added permitting public health to disclose identity of an individual with a positive HIV test result for purposes of notification of a person with a substantial exposure to avoid danger to the exposed person and to a health care provider for purposes of facilitating or arranging treatment.

(5) Rules on HIV testing in occupational and health care settings have been rewritten and renumbered to remove reference to informed consent for testing and simplify procedures for testing sources after bloodborne exposures in certain occupational settings.

(6) Rules on monitoring health care providers with HIV or viral hepatitis (proposed OAR 333-022-0400 through 333-022-0460) have been renumbered from OAR 333-012-0280 through 333-012-0400. These rules remain unchanged, except where references to other rules need to be updated.

Rules Coordinator: Brittany Sande

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

Telephone: (971) 673-1291

Oregon Health Insurance Exchange Chapter 945

Rule Caption: Administrative Charges and Fees.

Date:	Time:	Location:
1-22-13	10 a.m.	16760 SW Upper Boones Ferry Rd., Suite 200 Durham, OR 97224

Hearing Officer: Gregory Jolivet

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.105

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

Last Date for Comment: 1-22-13, 5 p.m.

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

Rules Coordinator: Gregory Jolivet

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

Telephone: (503) 373-9406

Oregon Health Licensing Agency Chapter 331

Rule Caption: Add license pathway for individuals seeking temporary polysomnography licensure and add qualification/documentation requirements.

Stat. Auth.: ORS 676.607, 676.615, 688.819

Stats. Implemented: ORS 688.819, 688.830

Proposed Amendments: 331-710-0050, 331-710-0080, 331-710-0090, 331-718-0020

Last Date for Comment: 1-28-13, 5 p.m.

Summary: Require that polysomnography licensure applicants who received education through a CAAHEP accredited program submit a certificate of completion directly from the educational institution to the Agency.

Create a temporary license pathway under Temporary License — Indirect Supervision for individuals who have received an academic degree and are waiting to take the board approved national examination. Temporary license would be valid for 1 year with no renewal. Applicants under pathway three will be required to submit certain documentation to qualify for license. Documentation includes fingerprint based national criminal background check and statement from the college or universities Registrar of Dean verifying the applicant has completed the work necessary to obtain a degree in polysomnography.

Revise temporary license indirect supervision pathway two to require an applicant submit education equivalent to 80 clock hours of education and have the pathway be longer effective as of July 1, 2013.

Rules Coordinator: Samantha Patnode

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

Telephone: (503) 373-1917

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Update rules to reflect the Internal Revenue Code compensation limitations effective January 1, 2013.

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

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

Stats. Implemented: ORS 238 & 238A

Proposed Amendments: 459-005-0525, 459-005-0545, 459-080-0500

Last Date for Comment: 3-1-13, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: The rule updates are needed to reflect the most current Internal Revenue Code (IRC) compensation limitations beginning in 2013.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Rule Caption: Clarifies retirement eligibility for Police Officer and Firefighter (P&F) members of the OPSRP Pension Program.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.160, 238A.165

Proposed Amendments: 459-075-0200

Last Date for Comment: 1-31-13, 5 p.m.

Summary: Under the OPSRP Pension Program a P&F member can meet the eligibility requirements for normal and early retirement as P&F if they have held a position continuously as P&F for a period of five years immediately prior to the effective date of retirement. The modifications to OAR 459-075-0200 provide clarity in meeting the five year requirement as P&F when a member separates from employment with one employer as P&F and begins employment as P&F with another employer, and also clarifies the status of a member who is employed concurrently as P&F and other than P&F.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Oregon State Marine Board Chapter 250

Rule Caption: Restricts vessel speed and operations in an artificial lagoon near the mouth of Hood River.

Date:	Time:	Location:
1-22-13	5 p.m.	Marina Center Boardroom. 1000 E. Port Marina Dr. Hood River, OR

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.110 & 830.175

Proposed Amendments: 250-020-0141

Last Date for Comment: 1-31-13, Close of Business

Summary: The agency proposes to amend OAR 250-020-0141 restricting boat operation within an artificial lagoon on the immediate west side of the mouth of the Hood River. Rule rule would create a "Slow No Wake" zone within a marked area of approximately 494 feet by 155 feet. The area is heavily used by swimmers, sail- and kite-boarders, and personal watercraft engaged in instruction activities.

Rules Coordinator: June LeTarte

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

Telephone: (503) 378-2617

Oregon University System, Western Oregon University Chapter 574

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

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Proposed Amendments: 574-050-0005

Last Date for Comment: 1-21-13, 5 p.m.

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

Rules Coordinator: Debra L. Charlton

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

Telephone: (503) 838-8597

Public Utility Commission, Board of Maritime Pilots Chapter 856

Rule Caption: Fix rates for pilotage in an emergency for Coos/Yaquina Bays required by statutory amendment.

Stat. Auth.: ORS 776.115 & 2012 OL Ch. 55, Sec. 5

Stats. Implemented: ORS 776.115(7) & 2012 OL Ch. 55, Sec. 5(b)

Proposed Adoptions: 856-030-0045

Last Date for Comment: 1-30-13, Close of Business

Summary: Adopts existing provisions of pilotage tariff for rates applicable to provision of pilotage services to vessels in an emergency.

Rules Coordinator: Susan Johnson

Address: Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., Suite 507, Portland, OR 97232

Telephone: (971) 673-1530

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Amends licensure, program approval and highly qualified teacher rules.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120–342.430, 342.455–342.495 & 342.533

Proposed Adoptions: 584-066-0015

Proposed Amendments: 584-005-0005, 584-018-0205, 584-018-0305, 584-060-0250, 584-070-0411, 584-100-0016, 584-100-0038, 584-100-0101, 584-100-0106

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

Summary: 584-005-0005 Definitions — aligns definitions with recent rule changes.

584-018-0205 Educational Leadership for Administrator Licensure Standards — corrects typographical error; and adds language accidentally omitted from the proposed rule.

584-018-0305 Knowledge, Skills, Abilities, Cultural Competencies and Professional Dispositions for Initial School Counselor License — Removes dead hyperlink from rule; eliminates language to conform rule to other commission standards.

584-060-0250 License for Conditional Assignment — eliminates provisions of the rule that were redundant and outside scope of regulation (e.g. references to private schools).

584-066-0015 Knowledge, Skills and Abilities for Elementary Math Specialists — Adopts new standards for Elementary Math Specialists.

584-070-0411 Initial School Social Worker License — removes testing requirements from current rules.

584-100-0016 Highly Qualified Elementary Teacher Not New to the Profession — aligns rules with federal directive regarding use of HOUSSE for highly qualified teachers.

584-100-0038 HOUSSE for Middle-Level and High School Teachers (7-12) — aligns rules with federal directive regarding use of HOUSSE for highly qualified teachers.

584-100-0101 Licenses Considered "Full State Certification" — proposes to add Charter School Registry to "full state certification."

584-100-0106 Licenses Not Considered to be "Full State Certification" — updates the list to align with new licenses added by Commission since rule last reviewed.

Rules Coordinator: Victoria Chamberlain

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

Telephone: (503) 378-6813

ADMINISTRATIVE RULES

Board of Chiropractic Examiners Chapter 811

Rule Caption: License Suspension and Probation Provisions Adoption.

Adm. Order No.: BCE 3-2012

Filed with Sec. of State: 11-28-2012

Certified to be Effective: 11-28-12

Notice Publication Date: 10-1-12

Rules Adopted: 811-015-0080

Subject: The OBCE proposes to place their general policy regarding suspended licensees and probation provisions into administrative rule. Current policy lacks the effect of law and rule requirement.

Rules Coordinator: Donna Dougan—(503) 373-1579

811-015-0080

License Suspension and Probation

(1) Chiropractic physicians and Chiropractic Assistants who are placed on suspension may not provide chiropractic treatment or services to any patient and are not to be in the clinic during business hours.

(2) The suspended chiropractic physicians shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, member of the public, or other person as to the nature of and reason for the suspension. It shall be prohibited to portray themselves to patients in any way as potentially practicing. Suspended chiropractic physicians may not perform intake functions and greeting patients. Suspended chiropractors and assistants should not be visible to patients as that could induce the belief they are practicing.

(3) Suspended chiropractic physicians shall prominently post in their clinic a suspension notice provided by the Board in a place conspicuous and readable to the public. The suspension notice shall remain posted during the entire period of actual suspension. The Board may waive this for good cause.

(4) Chiropractic physicians and assistants are prohibited from misrepresenting the status of licensure to any patients.

(5) Chiropractic physicians will be prohibited from using any student interns during the period of suspension or probation.

(6) Suspended chiropractic physicians may not provide any therapies as a CA. They may not personally sell or provide supplements or other products to clinic patients or persons coming in to the clinic. They may not perform adjustments on family or friends while they are suspended as this is the practice of chiropractic. They may not take films or perform any diagnostic procedures.

(7) Suspended chiropractic physicians may not engage in marketing which leads clients, consumers or patients to believe they are a practicing chiropractic physician at the time they are suspended. They may not place new advertising which indicates in any way the suspended chiropractic physician is practicing chiropractic during the suspension period.

(8) The list of prohibitions in this rule is not all inclusive and if the Board determines that a chiropractor was practicing chiropractic during the term of suspension it may result in disciplinary action. Violations of this rule may result in further discipline pursuant to ORS 684.100.

(9) A limited exception includes providing expert testimony at hearing or deposition, information to legal counsel in regards to a patient's case that is in legal process of resolution regarding care provided prior to the suspension. Suspended chiropractic physicians are not prohibited from performing such business functions such as billing and attending tasks not related to patient scheduling, care, treatment or evaluation; but, it must be done outside of regular business hours.

Stat. Auth.: ORS 183.684 & 684.100
Stats. Implemented: ORS 684.155(b)
Hist.: BCE 3-2012, f. & cert. ef. 11-28-12

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

Rule Caption: Outlines licensing requirements; designates accrediting bodies; clarifies SLPA supervisor qualifications; clarifies reporting requirements

Adm. Order No.: SPA 2-2012

Filed with Sec. of State: 12-14-2012

Certified to be Effective: 12-14-12

Notice Publication Date: 7-1-11

Rules Adopted: 335-060-0006, 335-060-0007

Rules Amended: 335-005-0010, 335-060-0005, 335-080-0005, 335-080-0010, 335-080-0015, 335-080-0025, 335-095-0030, 335-095-0040, 335-095-0050

Subject: Re-filing rules previously filed on October 10, 2011 with Secretary of State's office (and to become effective that date), due to clerical error that resulted in the rules being submitted to Legislative Counsel on October 7, 2011. These rules:

Outline educational and other requirements for licensure of speech-language pathologists (SLPs) and audiologists to be consistent with updated American Speech-Language Hearing Association (ASHA) standards.

Specify requirements for all licensees regarding English language fluency.

Specify approved accrediting bodies for training programs.

Clarify SLPA supervision requirements and reporting guidelines.

List qualifications for SLPA supervision by SLPs licensed by Board or Teacher Standards and Practices Commission.

Conform rules to changes in ORS 681 made in 2011 and ORS 676 made in 2009 Legislative Session.

Change miscellaneous text for clarity.

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

335-005-0010

Definitions

(1) Misrepresentation includes any untrue statements or statements that are likely to mislead. Misrepresentation also includes the failure to state any information that is material and that reasonably ought to be considered.

(2) Unprofessional Conduct includes:

(a) Failure or refusal of an applicant for a license from the Board or of a licensee of the Board to cooperate fully in any investigation conducted by the Board.

(b) Making a false statement to the Board.

(c) Attempting to obtain a license from the Board by means of fraud, misrepresentation, or concealment of material facts.

(d) Sexual misconduct with a client.

(e) Any act of theft, dishonesty or misrepresentation involving a client, another practitioner, third party providers, or a government agency.

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

(g) Assisting or permitting any person to practice speech-language pathology or audiology without a license.

(h) Practicing speech-language pathology or audiology when impaired by drugs, alcohol or any other substance.

(i) Verbal or physical abuse of a client.

(j) Sexual harassment: Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(B) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(C) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

(k) Violating an employer's ethics or conduct policy.

(l) Conviction of a crime or admitting to an act that even in the absence of a conviction would constitute a crime.

(m) Failing to report to this Board a misdemeanor or felony conviction or arrest for a felony crime within 10 days after the conviction or arrest.

(n) Failing to immediately report to the Board any adverse action taken against a license or certificate holder by a state or federal agency; or another state speech-language pathology or audiology licensing agency; or professional association.

(o) Unprofessional conduct as defined in ORS 676.150.

Stat. Auth.: ORS 681

Stat. Implemented: ORS 681.330

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2008, f. & cert ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12

ADMINISTRATIVE RULES

335-060-0005

Definitions

(1) An Inactive License or Certificate may be obtained by those otherwise qualified individuals who are not employed in the field of speech-language pathology or audiology, not residing in Oregon, or are retired from the profession.

(2) A Conditional License is a license certificate issued by the Board to applicants who have completed degree requirements in OAR 335-060-010, and are engaged in post-graduate supervised clinical experience. The examination is not required for a conditional license.

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

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

(b) For applicants for conditional licenses in speech-language pathology or initial licenses in audiology, when the applicant has completed all degree requirements, but the university is not scheduled to confer the degree for up to 90 days from the date of application, the Board will accept a letter from the university registrar, documenting that the applicant has completed all degree requirements, and has been approved to receive the degree. An official transcript showing the conferral of the degree must be submitted within 60 days of license issuance.

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

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

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

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

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

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

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

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

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

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

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

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

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

335-060-0006

Licensure of Speech-Language Pathologists

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

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

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

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

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

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

(a) Begun after completing all graduate degree requirements;

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

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

(d) A minimum of 80% of the hours spent in direct client/patient contact (assessment/diagnosis/evaluation, screening, treatment, report writing, family/client consultation, and/or counseling), with the remainder in related record keeping and administrative duties.

(3) For those speech-language pathologists completing their professional training after January 1, 2006, "examinations" under ORS 681.260(4) means the Praxis Examination in Speech-Language Pathology as administered by the Educational Testing Service. Applicants must score a minimum of 600 to qualify for licensure.

(4) Applicants whose first language is not English may be required to submit scores from the following standardized tests to demonstrate English language fluency:

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

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

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

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

Stat. Authority: ORS 681

Stats. Implemented: ORS 681.250 & 681.260

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

335-060-0007

Licensure of Audiologists

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

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

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

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

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

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

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

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

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

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

(A) Begun after completing all graduate degree requirements;

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

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

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

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

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

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

(C) A minimum of 1,820 hours.

(3) "Examinations" under ORS 681.264(4) means the Praxis Examination in Audiology as administered by the Educational Testing Service. Applicants must score a minimum of 600 to qualify for licensure.

(4) Applicants whose first language is not English may be required to submit scores from the following standardized tests to demonstrate English language fluency:

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

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

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

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

Stat. Authority: ORS 681
Stats. Implemented: ORS 681.250 & 681.264
Hist.: SPA 2-2011, f. & cert. ef. 10-10-11; SPA 1-2012, f. & cert. ef. 2-23-12; SPA 2-2012, f. & cert. ef. 12-14-12

335-080-0005

Definitions

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

(2) Supervisor means a licensed speech-language pathologist or audiologist who undertakes responsibility for managing and directing a conditional licensee in nine months of full-time post-educational professional employment. A supervisor must hold an active license in speech-language pathology issued by the Board or hold their Certificate of Clinical Competency in Speech-Language Pathology issued by the American Speech-Language Hearing Association.

Stat. Auth.: ORS 681
Stat. Implemented: ORS 681.325, 681.260(4) & (5)
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2006, f. & cert. ef. 5-8-06; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12

335-080-0010

Licensing; Qualifications; Procedure

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

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

(b) The area of employment; whether it will be speech-language pathology or audiology or both;

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

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

(2) The applicant must meet the degree requirements as stated in OAR 335-060-0006.

Stat. Auth.: ORS 681
Stat. Implemented: ORS 681.260 & 681.270
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12

335-080-0015

Supervisors Responsibility and Nature of Supervision

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

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

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

(4) Any changes in supervision must be reported to the Board immediately.

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

Stat. Auth.: ORS 681
Stat. Implemented: ORS 681.260(4), 681.325(2) & (3)
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12

335-080-0025

Written Evidence of Conditional License Completion

(1) At the conclusion of the conditional licensee's licensing period, the supervisor shall certify in writing that the conditional licensee has completed the required supervised clinical experience.

(2) The supervisor shall also briefly describe the nature and extent of the duties and tasks performed by the conditional licensee; the nature and extent of the management and direction of the supervisor; and the competency of the work performed by the conditional licensee.

Stat. Auth.: ORS 681
Stat. Implemented: ORS 681.260
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12

335-095-0030

Certification of Speech-Language Pathology Assistants

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

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

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

(3) Written evidence of 100 clock contact hours of clinical interaction.

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

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

(c) Clinical interaction documentation must show the date, clinical activity, amount of time and the supervisor's initials and signature. While the practicum student is in training, the supervisor for the clinical interaction must be licensed by Board, or hold the ASHA Certificate of Clinical Competency.

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

(e) Applicants presenting transcripts showing practicum course(s) with the required number of clock contact hours of clinical interaction are not required to submit the completed Board Competency Checklist.

(f) Applicants whose first language is not English may be required to submit scores from the following standardized tests to demonstrate English language fluency:

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

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

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

Stat. Auth.: ORS 681.360, 681.375, 681.420 & 681.460
Stat. Implemented: ORS 681.360 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04; SPA 3-2006, f. & cert. ef. 5-8-06; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09; SPA 1-2010(Temp), f. & cert. ef. 8-11-10 thru 2-4-11; SPA 1-2011, f. 1-28-11, cert. ef. 2-1-11; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12

335-095-0040

Qualifications for Supervising Speech-Language Pathology Assistants

(1) All supervision of services provided by a speech-language pathology assistant must be performed by a speech-language pathologist who:

(a) holds an active, valid license issued by the Board of Examiners for Speech-Language Pathology and Audiology; or

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(b) is exempt from licensure under ORS 681.230(2) and holds an active, valid basic or standard teaching license with an endorsement in speech impaired or an initial or continuing teaching license with an endorsement in communication disorders issued by the Teacher Standards and Practices Commission.

(2) The supervising speech-language pathologist must have the following professional work experience:

(a) at least two years of professional speech-language pathology work experience following completion of their graduate degree in speech-language pathology or communications disorders. The clinical post-graduate fellowship year may be counted as one year of professional experience.

(b) if exempt from licensure under ORS 681.230(2), and initially licensed by the Teacher Standards and Practices Commission prior to 1999, a minimum of five years of professional work experience in speech-language pathology within the ten years preceding the provision of supervision. The supervising speech-language pathologist must have held an active basic or standard teaching license with an endorsement in standard speech impaired or an initial or continuing teaching license with an endorsement in communication disorders issued by the Teacher Standards and Practices Commission during qualifying work experience. Work experience while holding a restricted transitional license, conditional assignment permit, or other provisional license issued by the Teacher Standards and Practices Commission is excluded from qualifying work experience.

(3) The supervising speech-language pathologist must agree to supervise according to Board requirements, as outlined in OAR 335-095-0050.

Stat. Auth.: ORS 681.360, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.360 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 1-2010(Temp), f. & cert. ef. 8-11-10 thru 2-4-11; SPA 1-2011, f. 1-28-11, cert. ef. 2-1-11; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12

335-095-0050

Requirements for Supervising Licensed Speech-Language Pathology Assistants

(1) The amount and type of supervision required will be based on the skills and experience of the speech-language pathology assistant.

(a) For the first 90 calendar days of licensed employment, with a given employer, a minimum of 30% of all the time an assistant is providing clinical interaction must be supervised. A minimum of 20% of hours spent in clinical interaction must be directly supervised.

(b) Subsequent to the first 90 calendar days of licensed employment with a given employer, a minimum of 20% of all the time an assistant is providing clinical interaction must be supervised. A minimum of 10% of hours spent in clinical interaction must be directly supervised.

(c) The supervising speech-language pathologist must be able to be reached throughout the work day. A temporary supervisor may be designated as necessary.

(d) If the supervising speech-language pathologist is on extended leave, an interim supervising speech-language pathologist who meets the requirements stated in 335-095-0040 must be assigned.

(e) The caseload of the supervising speech-language pathologist must allow for administration, including speech-language pathology assistant supervision, evaluation of clients and meeting times. Speech-language pathology assistants may not have a caseload; therefore, all clients are considered part of the supervising speech-language pathologist's caseload. The supervising speech-language pathologist is responsible to make all diagnostic and treatment related decisions for all clients on the caseload, and to supervise any speech-language pathology assistants assigned to assist with that caseload.

(f) Supervision requirements must be met for all clients on the caseload who receive treatment from the speech-language pathology assistant.

(2) The supervising speech-language pathologist may not supervise more than the equivalent of two full-time speech-language pathology assistants.

(3) The supervising speech-language pathologist must co-sign each page of records.

(4) Supervision of speech-language pathology assistants must be documented.

(a) Documentation must include the following elements: date, activity, clinical interaction hours, and direct or indirect supervision hours. Clinical logs documenting supervision must be completed and supervision hours calculated for each calendar month for each caseload. Each entry should be initiated by the supervising speech-language pathologist. Each page of documentation should include the supervising speech-language pathologist's signature and license numbers issued by this Board and the Teacher Standards and Practices Commission if applicable. Supervision

documentation must be retained by the speech-language pathology assistant for four (4) years.

(b) Documentation must be available for audit requests from the Board.

(5) In remote geographic areas of the state or in other situations with severe shortages of licensed personnel, where Direct Supervision requirements cannot be met by an on-site Speech-Language Pathologist, educational facilities may apply for a one year exemption from certain requirements for supervision of certified Speech-Language Pathology Assistants.

(a) This exemption allows educational facilities to use the review and evaluation of audio- or video-taped records or live audio- or video-conferencing of clinical interactions, or a combination thereof, to provide a portion of the required Direct Supervision hours, up to a maximum of 75% of the required Direct Supervision hours.

(b) During the exemption period, a licensed Speech-Language Pathologist may supervise up to four full-time equivalent certified Speech-Language Pathology Assistants.

(c) This exemption will expire on July 31st of the year in which it is granted. An exemption shall only be granted for a maximum of two years out of each consecutive five year period.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.360, 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 4-2008(Temp), f. & cert. ef. 8-13-08 thru 2-8-09; Administrative correction 2-18-09; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09; SPA 2-2011, f. & cert. ef. 10-10-11; SPA 2-2012, f. & cert. ef. 12-14-12

Board of Geologist Examiners Chapter 809

Rule Caption: Updated rules related to Board review and processing of complaints regarding public practice of geology.

Adm. Order No.: BGE 3-2012

Filed with Sec. of State: 12-13-2012

Certified to be Effective: 12-21-12

Notice Publication Date: 11-1-12

Rules Amended: 809-020-0030, 809-055-0000

Subject: 809-020-0030 Misconduct: The rule amendments clarify the links between Board rules OAR 809-003-0000 Definitions and OAR 809 Division 20 Code of Professional Conduct and the Board's statutory responsibilities and authorities related to discipline. The revised rule provides registrants with a clearer understanding of the types of behaviors that can be subject to disciplinary action by the Board. Disciplinary action can include but is not limited to imposition of civil penalties. By clarifying the rule, the possibility for misunderstandings among the registrant pool should be reduced.

809-055-0000 Complaint Process: The rule amendments ensure the rule correctly reflects current procedures used by the Board to investigate complaints, thereby increasing clarity for registrants and other parties involved with complaint cases.

Rules Coordinator: Christine Valentine—(503) 566-2837

809-020-0030

Misconduct

Any violation of the Code of Professional Conduct is misconduct under OAR 809-003-0000(11) and is grounds for discipline under ORS 672.675(2) and the assessment of civil penalties under 672.690(1). Misconduct under OAR 809-003-0000(11) also includes, but is not limited to, any of the following acts committed in connection with or related to the public practice of geology:

(1) Signing or stamping work not prepared under the direct supervision or control of the registered geologist;

(2) Offering or accepting gifts (other than those of nominal value, such as entertainment or hospitality), with the intent of influencing the judgment of a client, prospective client, government official, or another geologist in connection with a project, or employment, in which the registered geologist is to be retained or has a financial interest;

(3) Fraud, deceit, misrepresentation, false impersonation, false or forged evidence, or a felony conviction;

(4) Practicing geology while impaired by alcohol or other drugs;

(5) Engaging in false, misleading or deceptive advertising;

(6) Negligence, gross negligence, or incompetence.

Stat. Auth.: ORS 672

Stats. Implemented:

Hist.: GE 4-1984, f. & ef. 12-18-84; BGE 3-2012, f. 12-13-12, cert. ef. 12-21-12

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809-055-0000

Complaint Process

(1) "Complaint" is an issue brought to the attention of the Board that may or may not result in formal charges as provided in ORS 672.665.

(2) "Coordinator" means Complaint Coordinator where used in this rule.

(3) "Respondent" refers to a person or firm against whom a complaint has been made.

(4) The primary objectives of the Board in the review of complaints are to safeguard the health, safety, welfare, and property of the people of Oregon and to regulate the public practice of geology.

(5) The Board makes all recommendations and decisions regarding complaints during a Board meeting.

(6) The Board addresses complaints as follows:

(a) The Board Chair assigns one member of the Board to serve as Coordinator. All complaints under consideration by the Board will be referred to this Coordinator for processing and investigation. The Coordinator has the investigatory powers and authority of the Board Chair for purposes of conducting the investigation.

(A) The Coordinator is supported by the Board Administrator.

(B) In the event the Coordinator requests to be recused from a case due to a potential conflict of interest, the Board Chair may appoint another Board member to serve as Coordinator for said case.

(b) Complaints filed with the Board pursuant to ORS 672.665 must be in writing and sworn to, where sworn to means the complainant declares by signature under penalty of perjury that the statements and information in the complaint are believed to be true.

(c) Receipt of all complaints filed with the Board will be acknowledged by the Board staff.

(d) The complainant will not be considered a party to the case.

(e) To the extent permitted by law, the Board will cooperate with other licensing boards during the conduct of an investigation.

(7) Complaints will be processed and investigated through the Coordinator, with assistance from the Board Administrator and staff, as follows:

(a) A case number will be assigned and a preliminary review of the complaint will be made.

(A) If the Coordinator concludes that the complaint may have validity, the Coordinator may have the Board Administrator notify the respondent of the allegations and request written response from the respondent along with supporting or requested records and information.

(B) If the Coordinator concludes that the complaint does not appear to have validity, the Coordinator will prepare a summary for the Board's consideration.

(b) The Coordinator may engage with the following individuals during the review of a complaint:

(A) The Coordinator may consult with individual Board members or, through the Board Administrator, consult with the Board counsel;

(B) The Coordinator may seek the services of one or more Board registrants serving in the capacity of technical reviewers to assist in evaluating the case; and

(C) The Coordinator may seek the services of any other individuals as necessary to gather information and complete the case investigation on behalf of the Board.

(c) The respondent must supply any written comments as follows:

(A) Written comments and information requested on behalf of the Board must be provided to the Board office within 21 calendar days after the notification is mailed, unless an extension is authorized by the Board Administrator.

(B) After the 21 calendar days or any extension authorized, the Coordinator will evaluate the complaint using available evidence including any documentation or comments received from the respondent, Board members, investigators, technical reviewers, Board staff, and the Board's counsel.

(d) The Coordinator will present the case status and investigatory results during a Board meeting.

(e) The Board Administrator, with any needed assistance from the Coordinator, will carry out the recommendations or decisions of the Board, including but not limited to preparing requests for additional information, letters of concern, settlement proposals, notices of violation, securing technical reviewers and investigators, and closing out cases.

Stat. Auth.: ORS 670.310(1), 672.615(8) & 672.665

Stats. Implemented:

Hist.: GE 2-1992, f. 9-30-92, cert. ef. 10-1-92; BGE 1-2000, f. & cert. ef. 8-3-00; BGE 2-2000, f. & cert. ef. 11-17-00; BGE 1-2002, f. & cert. ef. 2-6-02, Renumbered from 809-050-0040; BGE 2-2009, f. & cert. ef. 12-11-09; BGE 3-2012, f. 12-13-12, cert. ef. 12-21-12

Rule Caption: 2011–2013 Operating Budget Adjustment and Board Policies and Procedures Update.

Adm. Order No.: BGE 4-2012

Filed with Sec. of State: 12-13-2012

Certified to be Effective: 12-21-12

Notice Publication Date: 11-1-12

Rules Amended: 809-001-0000, 809-010-0025

Rules Repealed: 809-001-0020, 809-001-0025, 809-001-0030

Subject: Budget Rule: The Board increased its allowable expenditure limit for the 2011-2013 biennium in accordance with a revised budget that incorporates updated revenue and expense information. No fee increases are required.

Notice Rule: The Board is required to follow the Oregon Administrative Procedures Act (APA), and the Board's rule was updated to remove a conflict with the APA.

Policies/Procedures Rules: The Board deleted rules that refer to outdated State of Oregon policies and procedures as the contracting, procurement and personnel policies and procedures for the Board. The Board has adopted updated policies for contracting, procurement, and personnel policies and procedures outside of administrative rule as allowed by state law for semi-independent agencies.

Rules Coordinator: Christine Valentine—(503) 566-2837

809-001-0000

Notice

Before adoption, amendment, or repeal of any permanent rule, the State Board of Geologist Examiners shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the intended action;

(2) By mailing a copy of the notice to persons on the State Board of Geologist Examiners mailing list established under ORS 183.335(8);

(3) By mailing or furnishing a copy of the notice to:

(a) The Associated Press;

(b) Association of Engineering Geologists;

(c) Department of Geology and Mineral Industries;

(d) Department of Geology, Oregon State University;

(e) Department of Geology, University of Oregon;

(f) Department of Geology, Portland State University;

(g) Capitol Press Room;

(h) Earth and Physical Science Department, Western Oregon University; and

(i) Department of Geology, Southern Oregon University.

Stat. Auth.: ORS 183, 192, 670.310(1) & 672

Stats. Implemented: ORS 183.335

Hist.: GE 1(Temp), f. & ef. 11-3-77; GE 2, f. & ef. 12-13-77; GE 1-1982, f. & ef. 5-14-82; GE 1-1983, f. & ef. 2-17-83; GE 1-1984, f. & ef. 2-1-84; BGE 1-2002, f. & cert. ef. 2-6-02; BGE 3-2004, f. & cert. ef. 6-23-04; BGE 4-2012, f. 12-13-12, cert. ef. 12-21-12

809-010-0025

Operating Budget

The Oregon State Board of Geologist Examiners hereby adopts by reference the 2011–2013 Biennial Budget of \$485,122 covering the period from July 1, 2011, and ending June 30, 2013. With Board approval, the Administrator of the Board may amend budgeted accounts as necessary within the approved budget of \$485,122 for the effective operation of the Board. The Board will not exceed the approved 2011–13 Biennium Budget unless registrants are noticed, a public hearing is convened, and this rule is amended as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 670.310, 672.705 & 182.462

Stats. Implemented: ORS 672.705 & 1999 OL Ch. 1084

Hist.: BGE 1-1999, f. & cert. ef. 6-17-99; BGE 1-2001, f. & cert. ef. 3-23-01; BGE 2-2003, f. 6-13-03, cert. ef. 7-1-03; BGE 1-2005, f. & cert. ef. 8-15-05; BGE 2-2007, f. 6-25-07, cert. ef. 7-1-07; BGE 1-2009, f. 6-15-09, cert. ef. 7-1-09; BGE 1-2011, f. 6-21-11, cert. ef. 7-1-11; BGE 4-2012, f. 12-13-12, cert. ef. 12-21-12

Board of Licensed Social Workers Chapter 877

Rule Caption: Converts LCSWs to 2-year license; updates CE rules, licensee record requirements, adopts AG Model Rules.

Adm. Order No.: BLSW 1-2012

Filed with Sec. of State: 12-14-2012

Certified to be Effective: 1-1-13

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Notice Publication Date: 12-1-12

Rules Adopted: 877-001-0009, 877-001-0028

Rules Amended: 877-001-0006, 877-001-0020, 877-001-0025, 877-020-0008, 877-020-0010, 877-020-0055, 877-020-0057, 877-025-0006, 877-025-0011, 877-030-0025, 877-030-0040

Rules Repealed: 877-025-0016, 877-040-0055

Subject: Converts LCSWs to 2-year license with a transition period beginning January 1, 2012 and ending December 31, 2013, without raising fees, prorating current yearly amount due for licensure renewal to the equivalent two-year amount. The Board is required to use the AG Model rules. The rules eliminate conflicts between Board rules and the 2012 AG Model Rules through deletion of OAR 877-040-0055 which contains provisions in conflict with the 2012 AG Model Rules. The rules establish specific requirements for regulated social workers to identify a name of record, address of record, and employer of record, and further require the regulated social worker to report any changes in these three record types to the Board within 30 days. The rules update and clarify CE requirements for renewal. The rules expand the types of mental health professionals that meet Board requirements for a CE study

group. The rules permit limited CE credit for language courses taken to improve the ability of the regulated social worker to serve clients with increased competency. The rules correct citation errors in Division 20 of OAR Chapter 877.

Rules Coordinator: Martin Pittioni—(503) 373-1163

877-001-0006

Definitions

(1) "Authorization to practice regulated social work" is defined in ORS 675.510 as a certificate or license issued by the State Board of Licensed Social Workers under ORS 675.510 to 675.600.

(2) "Regulated social worker" is defined in ORS 675.510 as a baccalaureate social worker registered under 675.532; a master's social worker licensed under 675.533; a clinical social work associate certified under 675.537; or a clinical social worker licensed under 675.530.

(3) The term "board" in OAR chapter 877 means the State Board of Licensed Social Workers established by ORS 675.590, unless otherwise specified.

(4) For the purpose of interpreting ORS 675.510(2), "professional practice" is characterized by all of the following:

(a) A client who receives professional services.

(b) Mental health services provided by a person who has or, by offering the services, purports to have specialized training in or knowledge of applying principles and methods listed in or suggested by ORS 675.510(2)(a) to (e).

(c) The organized providing of services in coordination with a volunteer organization or in a setting through which the provider receives remuneration for the services.

(5) For the purpose of interpreting ORS 675.510(2)(f):

(a) "Supervising clinical social work practice" means providing evaluation and direction of the clinical social work practice of the person supervised.

(b) "Administering clinical social work practice" means providing leadership, oversight, or direction to a practitioner who engages in the practice of clinical social work that substantially affects the use by the practitioner of principles and methods listed in or suggested by ORS 675.510(2)(a) to (e).

(c) "Teaching clinical social work practice" means providing instruction to one or more students in an academic or instructional setting by using one of the principles and methods listed in or suggested by ORS 675.510(2)(a) to (e) but does not include the use of such teaching tools as role plays, process recordings, case discussions, or video or audio tapes of client interactions that do not involve providing mental health services to a live client in the class room setting.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)

Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150

Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-001-0009

Name, Address and Employer of Record

(1) Name of Record:

(a) A regulated social worker and applicant for licensure or certification as a regulated social worker shall establish and keep his/her current legal name on file with the board at all times.

(b) The name currently on file with the board shall be considered the name of record.

(c) At the time of a name change, the regulated social worker shall send a signed, written notification of change of name to the board, accompanied by legal proof of that name change. Legal proof shall be in the form of official records such as a birth certificate, marriage certificate or a court order/decre.

(d) Upon receipt of written notification and legal proof of name change, the board will change its records to reflect the regulated social worker's name change.

(e) The regulated social worker must report any name change to the board within 30 days of the effective date of the name change.

(f) The name of record shall be the same name used for the regulated practice of social work.

(2) Address of Record:

(a) The regulated social worker and applicant for licensure or certification as a regulated social worker shall designate and provide an address of record to the board and keep it current with the board at all times.

(b) The regulated social worker and applicant for licensure or certification as a regulated social worker may designate, at his or her discretion, a current employment address, or home address, or P.O. Box address as an address of record with the board.

(c) Upon receipt of notification from the regulated social worker of a change of address of record, the board will change its records to reflect the regulated social worker's current address of record.

(d) The board will send all official documents including license or certification renewal notices and Notices of Proposed Disciplinary Action to the regulated social worker's address of record with the board. The board may elect to use electronic means of communication for all other forms communication, including but not limited to rulemaking notices and distribution of news from the board

(e) A Notice of Proposed Disciplinary Action sent to the regulated social worker or applicant for licensure or certification as a regulated social worker at the address of record by certified mail or registered mail, is sufficient notice even if the regulated social worker or applicant for licensure or certification as a regulated social worker fails to or refuses to respond to the postal service "return receipt" and never receives the Notice. Such mailing permits the board to proceed with disciplinary action in the absence of a request for a hearing.

(f) A regulated social worker and applicant for licensure or certification as a regulated social worker must report a change in his/her address of record to the board within 30 days of the effective date of the change.

(3) Employer of Record: Any regulated social worker actively practicing social work shall report his/her current place of employment to the board. Each change in employer and employer's mailing address must be submitted to the board no later than 30 days after the change.

Stat. Auth: ORS 675.510 - 675.600 & OAR 137-001-0005 - 137-001-0100

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-001-0020

Fees for Certification and Licensure

Following are the fees due, without pro ration, as a condition of obtaining and retaining a certificate or license under this division of rules:

(1) The application fee for an initial certificate or license is:

(a) Registered Baccalaureate Social Worker — \$50;

(b) Licensed Master's Social Worker — \$50;

(c) Clinical Social Work Associate — \$150;

(d) Licensed Clinical Social Worker — \$150.

(2) The fee for initial issuance of a certificate or license is:

(a) Registered Baccalaureate Social Worker — \$50;

(b) Licensed Master's Social Worker — \$100;

(c) Clinical Social Work Associate — \$60;

(d) Licensed Clinical Social Worker — \$260.

(3) The fee for the renewal of a certificate or license is:

(a) Registered Baccalaureate Social Worker:

(A) Active — \$100;

(B) Inactive — \$40.

(b) Licensed Master's Social Worker:

(A) Active — \$200;

(B) Inactive — \$80.

(c) Clinical Social Work Associate — \$60;

(d) Licensed Clinical Social Worker:

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- (A) Active — \$260;
- (B) Inactive — \$96.

(4) The late fee for a request for renewal of a certificate or license received by the board after the renewal date of the certificate or license is:

- (a) Registered Baccalaureate Social Worker — \$50;
- (b) Licensed Master's Social Worker — \$50;
- (c) Clinical Social Work Associate — \$50;
- (d) Licensed Clinical Social Worker on active status — \$200;
- (e) Licensed Clinical Social Workers on inactive status or Licensed Clinical Social Workers renewing a license under the provisions of OAR 877-020-0060 — \$50.

(5) The fees in 877-001-0020(1)(b) and (2)(b) are waived for any Clinical Social Work Associate who applies for Licensed Master's Social Worker licensure after having completed 75 hours of supervision required in 877-020-0010(3)(b)(A).

(6) The Board may waive any fees in sections (1) through (4) of this rule, upon written request, for any active duty military personnel deployed for 90 days or more outside the State of Oregon.

Stat. Auth: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994 & 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-001-0025

Renewals of Authorization to Practice Regulated Social Work

(1) Renewal of authorizations to practice regulated social work: The holder of an authorization to practice regulated social work may renew the authorization by submitting the following to the board:

(a) A completed application for renewal that shows that the holder of the authorization has met the requirements for continuing education in division 25 of this chapter of rules.

(b) The fee required by OAR 877-001-0020.

(2) An authorization lapses at the conclusion of the 30th day following the renewal date unless the holder has met the requirements of section (1) of this rule.

(3) The renewal date for an authorization is the final day of the birth month of the holder in the year the authorization expires. An authorization expires as follows:

- (a) A certificate of clinical social work associate expires each year.
- (b) A master's social worker license and a certificate of baccalaureate social worker registration and a license as a clinical social worker expire in the month following the first birth month that occurs a minimum of 18 months following the initial issuance and every second year thereafter.

(4) An authorization expires when it lapses under section (2) of this rule.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-001-0028

Transition from one year to two year licensure for Licensed Clinical Social Workers

(1) The fee for active licensure renewal as a Licensed Clinical Social Worker of \$260 provided for in OAR 877-001-0020(3)(d)(A) shall be reduced by half, to \$130, for even-numbered licenses with renewal dates between January 1, 2013 and December 31, 2013, and the renewal term provided for in 877-001-0025(3)(b) shall be reduced by half for the licenses renewed under the provision of this subsection.

(2) The fee for active licensure renewal as a Licensed Clinical Social Worker under the reduced requirements of OAR 877-020-0060 of \$130 provided for in 877-001-0020(3)(d)(A) shall be reduced by half, to \$65, for even-numbered licenses with renewal dates between January 1, 2013 and December 31, 2013, and the renewal term provided for in 877-001-0025(3)(b) shall be reduced by half for the licenses renewed under the provision of this subsection.

Stat. Auth: ORS 675.510 - 675.600 & OAR 137-001-0005 - 137-001-0100
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-020-0008

Licensing Requirements

To be eligible for an initial clinical social work license, except when the provisions of OAR 877-020-0016 apply, a person must meet the requirements in sections (1) through (5) of this rule:

(1) The person must complete the requirements in OAR 877-020-0009 to receive a certificate of social work associate and must hold a cur-

rent certificate in good standing, or must have completed the equivalent of this requirement in another state.

(2) The person must be fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action. The board uses the following additional standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:

(A) Good moral character. For purposes of this rule, lack of "good moral character" may be established by reference to acts or conduct which would cause a reasonable person to have substantial doubt about the individual's honesty, fairness, or respect for the rights of others or for the laws of the state or nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice clinical social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person's history includes conduct that may call into question the person's fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person's relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(3) The person must complete the requirements of an approved plan of practice and supervision in accordance with the rules in this division of rules.

(4) The person must pass both the examination administered by the board on the subjects listed in section (5)(a) of this rule with a score of not less than 90 per cent and a national examination for clinical social workers administered by an organization approved by the board on the subjects listed in section (5)(b) of this rule. The person may take the national exam any time after having completed 75 hours of supervision required in OAR 877-020-0010(3)(b)(A).

(5) The subjects tested on the exam are:

(a) For the examination on the Oregon statutes and rules:

(A) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing the practice standards and responsibilities of a licensed clinical social worker.

(B) Oregon Revised Statutes relating to mental health practice that may be relevant to clinical social work practice.

(b) For the national examination:

(A) Human Development, Diversity and Behavior in the Environment.

(B) Assessment, Diagnosis and Treatment Planning.

(C) Psychotherapy, Clinical Interventions and Case Management

(D) Professional Ethics and Values.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.535

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 3-1990(Temp), f. & cert. ef. 10-15-90; BCSW 1-1991, f. & cert. ef. 3-15-91; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-020-0010

Plan of Practice and Supervision

(1) After a person submits an application described in OAR 877-020-0009, the board will inform the person whether the application, including the plan of practice and supervision, is approved.

(2) After an application has been approved, an associate may request a change to a plan of practice and supervision by submitting a request to the board that provides a justification for the change and ensures that the plan, as modified, will meet the requirements of this division of rules.

(3) For the associate to satisfactorily complete a plan of practice and supervision, the following requirements must be met while the associate is working under an approved plan of practice and supervision:

(a) The contact with clients described in OAR 877-020-0009(4)(b) must be direct contact during which the associate practices clinical social work, which is defined in ORS 675.510(2).

(b) The associate must meet with a supervisor identified in the plan, as required in OAR 877-020-0009(4)(d):

(A) For a total of 100 hours over a period of not less than 24 consecutive months nor more than 60 consecutive months, of which a minimum of 50 hours must be individual supervision. The associate must meet at least twice each month with a plan supervisor for a minimum of one hour. If there is a second supervisor for group supervision, the requirement in this paragraph (A) is met by a single one-hour meeting with each supervisor.

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(B) After the associate has completed the plan requirements contained in paragraph (A) of this sub-section, the associate must continue to meet at least once each month with a plan supervisor for a minimum of one hour.

(c) All supervision must be accomplished directly, in a professional setting.

(d) The associate must submit to the board, on a form provided by the board, each evaluation by the supervisor (or supervisors in the event two are authorized) required by OAR 877-020-0012(2)(e)(A) of the progress by the associate toward completion of the plan.

(e) The associate must pass the national examination required by OAR 877-020-0008.

(f) The associate must work with each supervisor identified in an approved plan for not less than six months unless

(A) A change in supervision is required by a reason outside the control of the associate and the board approves the change; or

(B) The associate has completed the requirements of the plan.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-020-0055

Return to Active Status for Licensees

(1) The holder of an inactive certificate or license may submit a written request to the board to return to active status.

(2) As a condition of approving the request, the board may require the holder to complete continuing education in specified topics. Normally, the board will not impose a requirement to complete continuing education if the period of inactive status is less than two years.

(3) As a condition of approving the request, the board may require the holder to work under a plan of practice and supervision, or to meet other requirements that demonstrate the holder's fitness before re-activating the license. The requirement to work under a plan of practice and supervision is based on the candidate's circumstances, including the candidate's practice experience and the duration of the inactive period. Normally, the board will not impose a requirement to work under a plan of practice and supervision if the period of inactive status is less than five years.

(4) The holder of an inactive license must pass the examination on Oregon statutes and rules described in OAR 877-020-0008(5)(a) if the request to return to active status is received by the board more than 36 months after the board notified the holder that the license was inactive.

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-020-0057

Re-licensing of Former License Holder

(1) A person whose license has lapsed (applicant) may apply to the board to receive a new license.

(2) To be eligible for a license, an applicant:

(a) Must meet the degree requirements in OAR 877-020-0009(2).

(b) Must meet the fitness requirements in OAR 877-020-0008(2) and is subject to the provisions of OAR 877-022-0005 as an applicant for a license.

(c) Must have passed the national examination described in OAR 877-020-0008(5) and (6).

(d) May be subject to requirements of the board, determined on an individual basis, to work under a plan of practice and supervision designed to take into account the experience of the applicant, recency of practice, and other factors that pertain to the applicant.

(e) May be subject to requirements of the board, determined on an individual basis, to complete continuing education in specified topics.

(f) Must pass the examination on Oregon statutes and rules described in OAR 877-020-0008(5)(a).

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-025-0006

Types of Continuing Education

To meet the requirements of this division of rules, continuing education must be one of the following:

(1) A conference, seminar, book, journal article or workshop that:

(a) Addresses subjects related to the regulated social worker's work practice;

(b) Is attended (or read as applicable) by the regulated social worker in person, on-line or through a web cast; and

(c) Is provided or approved by a credentialing body recognized and approved by the board. The board recognizes and approves a credentialing body based on the following practices of the body:

(A) The body uses an established process for determining which training to provide or approve.

(B) The body uses an established process for determining who will present the training.

(C) The body provides, with respect to the training, written materials that demonstrate the relevance of the training to the field of clinical social work.

(D) The body establishes an appropriate number of continuing education credits for the training.

(E) The body verifies the credentials of the presenters of the training.

(F) The body uses an established system for the evaluation of presenters.

(G) The body provides a certificate of completion to those who attend, based on actual attendance.

(2) A conference, seminar, book, journal article, or workshop that:

(a) Meets the following requirements:

(A) Is related to the field of clinical social work or, in the case of a baccalaureate social worker or master's social worker, the field of social work;

(B) Addresses subjects related to the regulated social worker's work practice;

(C) Is not provided or approved by a credentialing body recognized and approved by the board; and

(D) Is attended (or read as applicable) by the regulated social worker in person, on-line, or through a web cast.

(b) Is approved by the Board based on the regulated social worker's written application that:

(A) Contains the following information:

(i) Name or description of the event.

(ii) Date of the event.

(iii) Brief description of the training sufficient to show that the training meets the requirements of section (2)(a) of this rule.

(iv) Name and credentials of each presenter.

(v) Number of continuing education units requested.

(vi) Copy of the certificate of completion.

(B) Is received by the board not later than the time of the submission of the report required by OAR 877-025-0021 and not later than 45 days prior to the last day of the birth month of the regulated social worker.

(c) No more than 10 hours of continuing education described in OAR 877-025-0006(2) may be credited in a report.

(3) For Registered Baccalaureate Social Workers and Licensed Master's Social Workers, an in-service, agency-sponsored program that otherwise meets the requirements of subsection (2) of this rule section. CE credit form such a qualifying in-service can be used for up to half the applicable CE hours required for renewal. (4) A course related to social work at an accredited college or university.

(4) A training video or audio recording approved by a credentialing body recognized and approved by the board using the standards provided in section (1)(c) of this rule. Successful completion is demonstrated by award to the regulated social worker by the credentialing body.

(5) Participation in a study group, subject to the following limitations:

(a) The group must contain a minimum of five and a maximum of ten — mental health professionals who meet for a minimum of an hour on a scheduled basis to discuss topics directly related to the field of social work.

(b) The focus of the group's meeting must be a presentation or discussion of a book or article published by a professional body.

(c) The topics of the group's discussion must be directly related to established mental health care and relevant to good practice.

(d) A maximum of two hours may be credited for a single group meeting.

(e) Credit for participation in a study group must be approved by the board. To apply for approval, a regulated social worker must submit the names of the group members and discussion topics to the board.

(f) For purposes of this section, mental health professionals is defined as those who:

(A) Hold a current license or certification for mental health service delivery issued by the State of Oregon; or

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(B) Are certified under the authority of ORS 430.256 and 430.357 as Certified Alcohol and Drug Counselors to provide alcohol and drug abuse prevention services, intervention services and treatment; or

(C) Are employed by or contracting with an entity that is certified or licensed by the State of Oregon under ORS 430.610 to 430.695 to provide mental health treatment or addiction services, and authorized to use the designation of 'Qualified Mental Health Professional' or 'Qualified Mental Health Associate' under the rules of the State of Oregon.

(6) Development and presentation of a conference, workshop, or seminar that would be countable for credit under section (1) or (2) of this rule.

(7) A language course taken and completed with a passing grade at an accredited college, community college or university for the purpose of improving the regulated social worker's capacity to serve clients with increased competency. No more than 25% of the continuing education credited in a report can originate from language credit as provided for in this subsection.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-025-0011

Required Hours of Continued Education

(1) Generally.

(a) A regulated social worker is required to report continuing education for all periods during which the person's registration or license is active except for the period covered by the initial certificate of registration or license, unless a waiver is granted under section (2) of this rule. An initial issuance is the first issuance of the board of a certificate of registration or license to the regulated social worker.

(b) Following the first renewal of a certificate of registration or license, except when the regulated social worker is on inactive status, the regulated social worker must complete continuing education in each reporting period at the times described in OAR 877-025-0021. The holder of an inactive certificate of registration or license is not required to submit the biennial report.

(c) A report covering a two-year period must include:

(A) For a registered baccalaureate social worker, a minimum of 20 hours of creditable continuing education, including a minimum of 6 hours of ethics.

(B) For a master's social worker, a minimum of 30 hours of creditable continuing education, including a minimum of 6 hours of ethics.

(C) For a licensed clinical social worker, a minimum of 40 hours of creditable continuing education, including a minimum of 6 hours of ethics. A licensed clinical social worker who reports more than 40 hours for a two-year reporting period or 20 for a one-year reporting period may carry over the excess hours to the next required report. No more than 10 hours may be carried over to the next reporting period.

(d) In a report that covers a shorter period than two years, as may happen in the case of the first report by a new regulated social worker or following the reactivation of a registration or license, the number of hours required by sub-section (c) of this section is pro-rated.

(2) Waiver of requirement.

(a) Upon timely written request of a regulated social worker, made as soon as the regulated social worker is aware of the possible need for a waiver, the board may reduce the number of hours required by section (1) of this rule in the event the regulated social worker is unable, due to circumstances beyond the reasonable control of the [licensee] regulated social worker, to complete the number of hours of continued education required by this division of rules.

(b) A reduction authorized by the board would normally reflect the regulated social worker's ability to attend training during the time not affected by the adverse circumstances leading to the request. For instance, a regulated social worker unaffected by the adverse circumstance during the first year of a two-year reporting period would be expected to obtain 20 hours of credit.

(c) Examples of circumstances that may justify a waiver are:

(A) A circumstance beyond the reasonable control of the regulated social worker makes it impracticable to attend training for an extended time.

(B) The health of the regulated social worker or of another person makes it impracticable to attend training for an extended time.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-030-0025

Applicability

The following rules in this division of rules provide a standard of ethics to be followed by regulated social workers and applicants for licensure or certification to practice as a regulated social worker.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

877-030-0040

Conduct and Reporting Requirements of Regulated Social Workers

(1) Conduct: The following minimum standards of professional conduct apply to regulated social workers:

(a) Private conduct of regulated social workers is a personal matter to the same extent as with any other person, except when that conduct compromises the fulfillment of professional responsibilities.

(b) Regulated social workers may not participate in, condone, or be associated with dishonesty, fraud, deceit, or misrepresentation.

(c) Regulated social workers may not misrepresent their professional qualifications, education, experience, or affiliations.(2) Reporting Requirements:

(a) Regulated social workers must report to the Board as soon as practicable, but not later than 10 days after:

(A) Being convicted of a misdemeanor or felony;

(B) Being arrested for a felony crime;

(C) Receiving notice of a civil lawsuit that names the regulated social worker as a defendant and makes allegations related to the regulated social worker's practice of clinical social work or the regulated social worker's license or certificate;

(D) Becoming an in-patient in a psychiatric hospital or psychiatric day treatment facility; or

(E) Receiving notice of a regulatory action related to the regulated social worker's license or certificate.

(b) Regulated social workers must report child and elderly abuse as required by ORS 419B.005 to 419B.050 and 124.050 to 124.095.

(c) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker is required to report to the board any information the regulated social worker has that appears to show that a regulated social worker is or may be an impaired professional or may have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580. A regulated social worker is an impaired professional if the regulated social worker is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder.

(d) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker licensee who has reasonable cause to believe that a licensee has engaged in prohibited or unprofessional conduct is required to report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting regulated social worker must report the conduct without undue delay, but in no event later than 10 working days after the reporting regulated social worker learns of the conduct. In this section:

(A) "Licensee" means a health professional licensed or certified by or registered with a board.

(B) "Board" has the meaning given that term in ORS 676.150.

(C) "Prohibited conduct" means conduct by a licensee that:

(i) Constitutes a criminal act against a patient or client; or

(ii) Constitutes a criminal act that creates a risk of harm to a patient or client.

(D) "Unprofessional conduct" means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee's profession or conduct that endangers the health, safety or welfare of a patient or client.

(2) Administrative Reporting Requirements: Regulated Social Workers must notify the Board as soon as practicable, but no later than 30 days, after changes in the regulated social workers name of record, address of record, and employer of record, including changes in the mailing address of the employer of record, as defined in OAR 877-001-0009.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

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Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13

Board of Massage Therapists
Chapter 334

Rule Caption: Clarifying Internal Cavity, Class Certification, Discipline, and Exempt Practices Rule Language, adding a definition.

Adm. Order No.: BMT 2-2012

Filed with Sec. of State: 12-4-2012

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Notice Publication Date: 11-1-2012

Rules Amended: 334-001-0060, 334-010-0027, 334-010-0029, 334-010-0046, 334-040-0010

Subject: 334-010-0029 Internal Cavity: clarified rule language;
334-010-0027 Exempt Practices: corrected spelling;
334-010-0046 Class Certification: clarified in state and out of state school requirements;
334-001-0060 Definitions: added successful completion definition;
334-040-0010 Discipline: clarified rule language.

Rules Coordinator: Christine West—(503) 365-8657, ext. 302

334-001-0060

Definitions

(1) "Advantageous" means in the Board's best interests, as assessed according to the judgment of the Board.

(2) "Award" means either the act or occurrence of the Board's identification of the Person with whom the Board will enter into a Contract.

(3) "Barter" means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money.

(4) "Board" means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115.

(5) "Bodywork" means the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of:

(a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics;

(b) Appliances, tools or devices;

(c) Topical preparations; or

(d) Hot and cold applications.

(6) "Boundary" means the limits in a professional relationship which create safety based on the needs of the client.

(7) "Boundary violation" means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client.

(8) "Caring" means acting in a manner in which things, events, people or relationships matter.

(9) "Certified Class or program" means a class or program that is approved by the Board and is offered:

(a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or

(b) By a community college or university approved by the Department of Education; or

(c) In another state and licensed or approved by the appropriate agency in that state.

(10) "Client" means any individual, group of individuals, or organization to whom an LMT provides massage

(11) "Client vulnerability" means factors which diminish a client's ability to be self-determining.

(12) "Compensation" means something given or received as payment including but not limited to bartering, tips, monies, donations, or services.

(13) "Conflict of interest" means any action or decision or recommendation by an LMT at the detriment of a client.

(14) "Contact hours" means actual hours in class under the instruction of and in the presence of an instructor.

(15) "Contract" means an agreement for purchase, lease, rental or other acquisition or sale or other disposal by the Board of Goods or Services.

(16) "Contract Price" means, as the context requires;

(a) The maximum payments that the Board will make under a Contract if the Contractor fully performs under the Contract;

(b) The maximum not-to-exceed amount of payments specified in the Contract; or

(c) The unit prices for Goods and Services set forth in the Contract.

(17) "Contractor" means the Person with whom the Board enters into a Contract.

(18) "Critical Reflection" means a process whereby knowledge and action are connected to each other through the application of careful, conscious, deliberate reflection on:

(a) Personal practice (perceptions, assumptions, motivations, values, behaviors).

(b) Assessment and understanding of a situation.

(c) Likely or actual consequences or impact of one's actions.

(19) "Dual Relationship" means any relationship of a personal or business nature with a client that is in addition to or concurrent with a professional relationship in which the LMT is providing or has provided massage or bodywork services to that same client.

(20) "Ethics" means a system of valued societal beliefs and behaviors that may be used to guide and evaluate conduct to ensure the protection of an individual's person and rights.

(21) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Require prompt execution of a Contract to remedy the condition; and

(c) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen;

(22) Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs

(23) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Board is authorized by law to procure.

(24) "Indorsement" means:

(a) the process of evaluating and recognizing the credentials of a person licensed in Oregon in another health care specialty that includes in its scope of practice, acts defined as massage: or

(b) the process of evaluating and recognizing the credentials of a massage or bodywork practitioner authorized to practice massage or bodywork in another jurisdiction.

(25) "Informed consent" means a process wherein clients have knowledge of what will occur, that participation is voluntary, and that the client is competent to give consent.

(26) "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT

(27) "LMT" means a Licensed Massage Therapist.

(28) "Massage" or "massage therapy" is defined in ORS 687.011.

(29) "Offer" means a response to a request for price quote or response to a Solicitation Document.

(30) "Offeror" means a Person who submits an Offer.

(31) "Personal power" means recognizing and taking personal responsibility for the inherent power differential between the LMT and the client and recognizing and taking personal responsibility for the impact of professional decisions, actions and behavior on the client.

(32) "Power differential" means the basic inequality inherent in the professional relationship between an LMT and a client in terms of who has the advantage in the relationship. The LMT is presumed to have the advantage by virtue of the authority which emerges from the role of professional and the vulnerability which is automatically part of the role of client.

(33) "Practical Work Experience" means experience gained while employed or self-employed providing legal massage/bodywork to the public within the last five (5) years, in another state or jurisdiction.

(34) "Practice of massage" is defined in ORS 687.011.

(35) "Professional authority" means the power inherent in the professional role and which is derived from a combination of an LMT's specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an LMT's personal power.

(36) "Professional relationship" means the relationship established when a LMT contracts with a client, verbally or in writing, to provide any service associated with the practice of massage or bodywork.

(37) "Professional role" means assuming the demands and responsibilities of professional authority by taking charge of the conditions which

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create and maintain client safety and trust in the professional-client relationship.

(38) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.

(39) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.

(40) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained.

(41) "Successful Completion" means the written receipt of credit from classes taken at a community college or university or the written receipt of a certificate from a program or private career school.

(42) "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2012, f. 12-4-12, cert. ef. 1-1-13

334-010-0027

Exempt Practices

(1) Practitioners exempt from the Oregon Board of Massage Therapists licensing authority are defined as practitioners who:

(a) Do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of:

(A) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement, as defined per 687.031(1)(j)(i). Examples include the Feldenkrais Method of Somatic Education as defined on May 16, 2011, by the Feldenkrais Guild® of North America and The Trager® Approach as defined on May 16, 2011, by the United States Trager® Association; or

(B) Using minimal touch over specific points on the body to facilitate balance in the nervous system, as defined per 687.031(1)(j)(ii). An example includes Bowenwork® and/or the Bowen Technique as defined on May 16, 2011 by the Bowenwork Academy USA; or

(C) Using touch to affect the energy systems or channels of energy of the body, as defined per 687.031(1)(j)(iii). An example includes Polarity Therapy as defined on May 16, 2011 by the American Polarity Therapy Association; and

(b) Hold an active certification from a National or International professional organization or credentialing agency that:

(A) Requires a minimum level of training specific to their discipline, demonstration of competence and adherence to an approved scope of practice and ethical standards;

(B) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and

(c) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(2) It is the exempt practitioner's responsibility to insure they meet the criteria for being exempt and only practice within their exempt scope of practice. Practitioners may be subject to discipline by the Board if they:

(a) Refer to themselves or imply they are a massage therapist;

(b) Practice outside of the exempt scope of practice;

(c) Practice without an active certification from a National or International professional organization or credentialing agency; or

(d) Fail to provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(3) The State Board of Massage Therapists has the authority to verify a practitioners claimed exemption from licensure of ORS 687 under subsection (1)(j) of section 687.031. Verification may include, but is not limited to, consultation with the practitioners certifying organization or agency.

(4) Practitioners, Disciplines and/or Organizations seeking to be named in the exemption shall contact the Board of Massage Therapists to request a review.

Stat. Auth.: ORS 687, SB 454

Stats. Implemented: ORS 687.031

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2012, f. 12-4-12, cert. ef. 1-1-13

334-010-0029

Internal Cavity

(1) An internal cavity massage must be performed using gloves and utilizing universal precautions for communicable disease control.

(2) Internal Cavities consist of nasal cavities, oral cavities, auricular cavities, anal cavities, and vaginal cavities.

(3) Prior to performing these special procedures, an LMT must:

(a) Be able to present evidence of the completion of specialized contact hours as training beyond the minimum competencies, which includes but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client safety, client consent, client communication, draping techniques, sanitation, and ethical responsibilities related to internal cavity massage;

(b) Be able to articulate a therapeutic rationale which is acknowledged by the client; rationale may include a medical prescription and/or permission to consult with the clients health care provider(s);

(c) Acquire prior written and verbal consent before proceeding;

(d) Intra-anal and intra-vaginal written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.

(4) While performing these procedures a LMT must use appropriate draping techniques at all times. Any temporary exposure of the genital area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the genital area must be covered again.

(5) Under no circumstances will intravaginal or intra-anal techniques be performed on individuals under 18 years of age.

Stat. Auth.: ORS 687

Stats. Implemented: ORS 687.121

Hist.: BMT 1-2012, f. 6-19-12, cert. ef. 7-1-12; BMT 2-2012, f. 12-4-12, cert. ef. 1-1-13

334-010-0046

Class Certification

(1) A class or program certified under ORS 687.051 must be offered by:

(a) In State Schools:

(A) A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or

(B) By a community college or university and approved by the Division of Vocational Education or the Department of Education, or the appropriate agency of another jurisdiction; or

(C) By a college accredited either by the Northwest Accreditation Commission or a like regional association or by a college in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; or

(D) Approved by the Board.

(b) Out of State Schools:

(A) Must be accredited by the governing body where the school is located; or

(B) By a college accredited either by the Northwest Accreditation Commission or a like regional association for the purpose of granting degrees.

(2) In order for a class or program to be approved, the person or institute offering the class or program must apply to the Board. The application packet must contain, but not be limited to:

(a) A completed Board application;

(b) Verification of content meeting the Model Curriculum;

(c) Course descriptions and syllabi;

(d) The institution's Code of Ethics and fraternization policy;

(e) The method of evaluation to determine the student's successful completion of a class;

(f) The attendance requirements for students to successfully complete each class;

(g) Minimum qualifications for selecting instructors.

(3) The authorized representative of the certified class or program must notify the Board at least 60 days prior to any significant changes to information provided in the application process.

(4) A certified class or program must renew their certification on a regular basis as determined by the Board.

(5) Certification of the class or program may be revoked by the Board if it is determined that the requirements have not been or are no longer being met.

ADMINISTRATIVE RULES

(6) Denial or revocation of a class or program certification by the Board, if otherwise not resolved, must be heard by the Board pursuant to ORS 183.411 to 183.497.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & cf. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2012, f. 12-4-12, cert. ef. 1-1-13

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license, impose probation, reprimand, censure, impose remedial education or corrective actions, and/or impose a civil penalty for any of the following reasons:

(1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;

(2) Knowingly or recklessly making any false statement to the Board;

(3) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;

(4) Conviction of a crime in this state, or jurisdiction;

(5) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;

(6) Allowing the use of a license by an unlicensed person;

(7) Presenting as one's own license, the license of another;

(8) Practicing massage under a false or assumed name without notification to the Board;

(9) Impersonating another massage therapist;

(10) Assisting, employing, or permitting an unlicensed person to practice massage;

(11) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;

(12) Practicing or offering to practice massage beyond the scope permitted by law;

(13) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;

(14) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;

(15) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;

(16) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;

(17) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:

(a) Failure to furnish any requested papers or documents,

(b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,

(c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;

(18) Failing to comply with an order issued by the Board;

(19) Unprofessional or dishonorable conduct which includes but is not limited to:

(a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:

(A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;

(B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:

(i) Sexual intercourse;

(ii) Genital to genital contact;

(iii) Oral to genital contact; oral to anal contact;

(iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or

(v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.

(C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,

(i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress instead of providing privacy for disrobing;

(ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;

(iii) An examination or touching of genitals;

(iv) Inappropriate comments about or to the client, including but not limited to,

making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;

(v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or

(vi) Kissing.

(b) Violating the client's rights of privacy, and confidentiality.

(c) Failure to disclose or release information about a client if required by law or on written consent of client.

(d) Intentionally harassing, abusing, or intimidating a client either physically or verbally.

(e) Any conduct or practice which could endanger the health or safety of a client or the public.

(f) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.

(g) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.

(h) Routinely practicing in an incompetent manner.

(i) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.

(j) Practicing a modality or technique without adequate training or licensure.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; Sections (6) - (20)(h) Renumbered from 334-030-0020; BMT 2-1998, f. & cert. ef. 7-22-98; Renumbered from 334-030-0025 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2012, f. 12-4-12, cert. ef. 1-1-13

Board of Pharmacy Chapter 855

Rule Caption: Amend Wholesaler and Fee Rules.

Adm. Order No.: BP 6-2012

Filed with Sec. of State: 12-13-2012

Certified to be Effective: 12-13-12

Notice Publication Date: 11-1-2012

Rules Amended: 855-065-0005, 855-110-0007

Subject: The rule amendments in division 65 amend the definition of Class II Wholesaler to include Oxygen USP and medical gases.

The rule amendments in division 110 implement a licensing and delinquent fee for the registration and renewal of Supervising Physician Dispensing Outlets as required by 2012 Senate Bill 1565.

Both rules expire by Temporary rule on December 16, 2012.

The complete text of these rules is available on the Board's website at: www.pharmacy.state.or.us.

Rules Coordinator: Karen MacLean—(971) 673-0001

855-065-0005

Definitions

(1) "Authenticate" means to verify that each transaction listed on the pedigree and other accompanying documentation has occurred and is accurately recorded.

(2) "Authorized Distributor of Record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue Code, complies with either or both of the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; or

ADMINISTRATIVE RULES

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer no less than monthly.

(3) "Broker" means a person engaged in the marketing, offering, or contracting for wholesale distribution and sale of a drug into, within, or out of Oregon and who does not take physical possession of the brokered substance.

(4) "Chain Pharmacy Warehouse" means a physical location for drugs that acts as a central warehouse and performs intra company sales or transfers of drugs to a group of chain pharmacies that have the same common ownership and control.

(5) "Closed Door Pharmacy" means a pharmacy that provides pharmaceutical services to a defined and exclusive group of patients and is not open for dispensing to the general patient population and cannot be registered as a wholesale distributor.

(6) "Co-Manufacturing Partner" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug.

(7) "Common Carrier" means an organization that is available to the public to transport a product or service using its facilities, or those of other carriers.

(8) "Contraband Drug" means a drug that is counterfeit, stolen, misbranded, obtained by fraud, or purchased by an entity for its own use and placed in commerce in violation of an own-use agreement for that drug.

(9) "Cooperative Pharmacy Warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization or pharmacy buying cooperative and distributes drugs exclusively to its members. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Cooperative Pharmacy Warehouse must also be listed as an Authorized Distributor of Record for that manufacturer.

(10) "Designated Representative" means an individual designated by each wholesale distributor registered by the Board who will serve as the primary contact person for the wholesale distributor with the Board and who is responsible for managing the company's operations at that registered location.

(11) "Drop Shipment" means a drug transaction whereby the manufacturer, that manufacturer's co-manufacturing partner, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor delivers a drug directly to a chain pharmacy warehouse, a cooperative pharmacy warehouse, a pharmacy, or other person authorized to administer or dispense prescription drugs to a patient, but transfers title to the drug to a wholesale distributor. A drop shipment shall be considered as part of a normal chain of distribution as defined in section (16) of this rule.

(12) "Drug Sample" means a unit of a drug that is intended to promote the sale of the drug, but which is not itself for sale.

(13) "Intra Company Transfer" means the transfer of any drug between a division, subsidiary, parent, and an affiliated or related company under the common ownership and control of a corporate entity.

(14) "Manufacturer" means anyone, including a manufacturer's co-manufacturing partner, who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a drug, except when the process is part of a shared pharmacy service agreement as defined in OAR 855-006-0005.

(15) "Manufacturer's Exclusive Distributor" means an entity, including a manufacturer's wholly owned distributor, that contracts with a manufacturer who is registered under Division 60 of this chapter of rules, to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and takes title to that manufacturer's drug, but does not have general responsibility to direct the drug's sale or disposition. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Manufacturer's Exclusive Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(16) "Normal Chain of Distribution" means a chain of distribution, including a drop-shipment, for a prescription drug that goes from: a manufacturer; a manufacturer's co-manufacturing partner; a manufacturer's exclusive distributor; or a manufacturer's third-party logistics provider to:

(a) A pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(b) A manufacturer's authorized distributor of record, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(c) A manufacturer's authorized distributor of record, to a chain pharmacy warehouse, to that chain pharmacy warehouse's intra company phar-

macy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(d) A chain pharmacy warehouse, to that chain pharmacy warehouse's intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(e) A manufacturer's authorized distributor of record, to a specialty wholesaler, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(f) A manufacturer's authorized distributor of record to a cooperative pharmacy warehouse, to a member of the affiliated group purchasing organization or pharmacy buying cooperative, to a patient or a person authorized to administer or dispense a prescription drug to a patient.

(17) "Pedigree" means a statement or record in a written or electronic form that accurately records each wholesale distribution of a prescription drug from the sale by a manufacturer through acquisition and sale by any wholesale distributor or repackager until final sale to a pharmacy or other person authorized to administer or dispense the drug. The pedigree must include, but not be limited to, the following information for each transaction:

(a) The source of the prescription drug, including the name and principal address of the seller;

(b) The proprietary and established name of the prescription drug, the National Drug Code number, the amount of the prescription drug, its dosage form and dosage strength, the date of the purchase, the sales invoice number or other unique shipping document number that identifies the transaction, container size, number of containers, expiration date, and lot number or control number of the prescription drug;

(c) The business name and address of each owner of the prescription drug and its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the prescription drug.

(18) "Prescription Drug" means any drug required by law to be dispensed only by a prescription.

(19) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(20) "Specialty Wholesale Distributor" means an entity that exclusively distributes a limited product line of drugs to a specific group of pharmacies or registered practitioners as approved in writing by the Board. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Specialty Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(21) "Third-Party Logistics Provider" means an entity that contracts with a manufacturer who is registered under these rules to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, but does not take title to the drug or have general responsibility to direct the sale or disposition of the drug. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Third-Party Logistics Provider must also be listed as an Authorized Distributor of Record for that manufacturer.

(22) "Wholesale Distribution" means distribution of a drug to a person other than a consumer or patient, but does not include:

(a) Delivery by a retail pharmacy of a prescription drug to a patient or patient's agent pursuant to the lawful order of a licensed practitioner.

(b) The sale of minimal quantities of a prescription drug by retail pharmacies to licensed practitioners for office use.

(c) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons, including but not limited to transfer of a drug by a pharmacy to another pharmacy to alleviate a temporary shortage.

(d) Intra company transfer of drugs as defined in these rules.

(e) The lawful distribution of a drug sample by a manufacturer's or a distributor's representative.

(f) The sale of a drug by a charitable organization described under 501(c)(3) of the Internal Revenue Code to a non-profit affiliate of the organization to the extent permitted by law.

(g) The purchase or acquisition of a drug by a hospital or other health care entity that is a member of a group purchasing organization, for the hospital's or health care entity's own use, from the group purchasing organization or from other hospitals or health care entities that are members of the organization or under common control.

(h) The transfer of a prescription drug between pharmacies pursuant to a shared pharmacy service agreement as defined in OAR 855-006-0005.

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(i) The distribution by a manufacturer, as part of a prescription assistance program, of a drug intended for a specific patient, to a person authorized to prescribe, administer or dispense prescription drugs.

(j) The sale, purchase, or trade of blood and blood components intended for transfusion.

(k) Drug returns, when conducted in accordance with state and federal laws and regulations. A drug return includes the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled drugs to the original manufacturer, wholesale distributor, or to a third-party returns processor or reverse wholesaler, and the returns of saleable drugs to the original manufacturer or wholesaler.

(l) The transporting of a drug by common carrier where the common carrier does not take title to the drug and does not have responsibility to direct the drug's sale or distribution.

(m) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy from or with another pharmacy.

(n) The distribution of drugs by a manufacturer registered under Division 60 of this chapter of rules of its own products to a person other than a patient.

(23) "Wholesale Distributor" means any entity engaged in the wholesale distribution of drugs, including any entity whose business name appears on any invoice or other type of shipping document indicating possession or title. The term "Wholesale Distributor" includes but is not limited to, own-label distributors; private-label distributors; warehouses, including manufacturers' and distributors' warehouses; drug wholesalers or distributors; independent wholesale drug traders; third-party logistics providers; cooperative pharmacy warehouses; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(24) "Wholesaler" means any wholesale distributor:

(a) "Class I Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which prescription drugs, medicinal chemicals, or poisons are sold, dispensed, stocked, exposed or offered for sale at wholesale to a pharmacy or other legally licensed drug outlets or persons;

(b) "Class II Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which any of the products in paragraphs (A)–(E) below are stored, or offered for sale or distribution at wholesale to a drug outlet or practitioner legally authorized to resell, distribute, dispense or administer:

(A) Non-prescription drugs;

(B) Drugs distributed exclusively for veterinary use. If any prescription drugs not intended for veterinary use are offered for sale, the wholesaler must register as a Class I wholesaler;

(C) Prescription devices that do not contain a prescription drug;

(D) Drugs or devices possessed by a state or local government agency, or non-profit relief organization approved by the Board.

(E) Oxygen USP and medical gases.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09; BP 4-2012(Temp), f. & cert. ef. 6-19-12 thru 12-16-12; BP 6-2012, f. & cert. ef. 12-13-12

855-110-0007

Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic (including family planning clinics). Expires March 31 annually — \$100. Delinquent renewal fee (postmarked after February 28) — \$25.

(2) Drug Distribution Agent. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(3) Drug Room (including correctional facility). Expires March 31 annually — \$100. Delinquent renewal fee (postmarked after February 28) — \$75.

(4) Manufacturer. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(5) Medical Device, Equipment & Gas Class C. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(6) Nonprescription Class A. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(7) Nonprescription Class B. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(8) Nonprescription Class D. Expires January 31 annually — \$100. Delinquent renewal fee (postmarked after December 31) — \$25.

(9) Prophylactic and/or Contraceptive Wholesaler and/or Manufacturer — \$100. Expires December 31 annually.

(10) Re-inspection fee — \$100. Applies to any re-inspection of a drug outlet occasioned to verify corrections of violations found in an initial inspection.

(11) Retail or Institutional Drug Outlet. Expires March 31 annually — \$300. Delinquent renewal fee (postmarked after February 28) — \$75.

(12) Wholesaler Class I. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(13) Wholesaler Class II. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(14) Remote Dispensing Machine/Facility. Expires March 31 annually — \$100. Due by February 28 annually.

(15) Charitable Pharmacy. Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$25.

(16) Home Dialysis. Expires March 31 annually — \$300. Delinquent renewal fee (postmarked after February 28) — \$75.

(17) Supervising Physician Dispensing Outlet. Expires March 31 annually — \$300. Delinquent renewal fee (postmarked after February 28) — \$75.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, 689.774 & 2012 OL Ch. 34

Hist.: PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1998, f. & cert. ef. 3-23-98; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09; BP 6-2010, f. & cert. ef. 6-29-10; BP 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11; BP 8-2011, f. & cert. ef. 12-15-11; BP 5-2012(Temp), f. & cert. ef. 6-19-12 thru 12-16-12; BP 6-2012, f. & cert. ef. 12-13-12

Board of Psychologist Examiners Chapter 858

Rule Caption: Clarifies the requirements to reactivate a license.

Adm. Order No.: BPE 5-2012

Filed with Sec. of State: 11-19-2012

Certified to be Effective: 11-19-12

Notice Publication Date: 10-1-12

Rules Amended: 858-010-0050

Subject: The rule change clarifies the amount of continuing education (CE) sufficient to maintain professional competence which is required to reactivate a license from inactive status to active or semi-active status. It also delineates the prorated CE and license fee calculation upon reactivation.

Rules Coordinator: LaRee Felton—(503) 373-1196

858-010-0050

Inactive Status

Inactive status may be granted to licensees who have made a request in writing to the Board.

(1) To reactivate a license from inactive status to active or semi-active status, the licensee shall request in writing and report professional and continuing education activities sufficient to maintain professional competence, which must at a minimum meet the basic requirements for continuing education, as described in OAR 858-040-0015, within the 24 month period immediately preceding the date of request. The residual licensure fee and continuing education requirements from the date of reinstatement to the end of the renewal period shall be calculated on a prorated basis.

(2) Reactivation Request. If the written request to reactivate a licensee from inactive status to active or semi-active status occurs within five years the Board may, at its discretion, reactivate the license.

(3) If the Board determines that the licensee has not engaged in professional and continuing education activities sufficient to maintain professional competence, or if the written request to reactivate the license is not received within five years, the licensee must re-take the Oregon jurisprudence examination and obtain a passing score.

(4) If the inactive licensee does not pass the Oregon jurisprudence examination, the Board may require the submission of a study plan designed to correct deficiencies in the licensee's examination performance and/or require that the licensee establish a Board approved consultation relationship as described in OAR 858-010-0036, the duration of which may be specified by the Board.

(5) The Board may reactivate the license upon receipt of documentation that the proposed study plan and/or period of consultation has been

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successfully completed and the deficiencies rectified, or at its discretion, may require the re-take and successful passing of the Oregon jurisprudence examination.

Stat. Auth.: ORS 675.110
Stats. Implemented: ORS 675.110
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & ef. 9-5-79; PE 3-1980, f. & ef. 12-12-80; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 2-1988, f. & cert. ef. 10-7-88; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 3-1993, f. & cert. ef. 4-13-93; Renumbered to 858-040-0010; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10; BPE 5-2012, f. & cert. ef. 11-19-12

Rule Caption: Modifies requirements for licensure by endorsement.

Adm. Order No.: BPE 6-2012(Temp)

Filed with Sec. of State: 11-20-2012

Certified to be Effective: 11-20-12 thru 4-13-13

Notice Publication Date:

Rules Amended: 858-010-0016, 858-010-0017

Rules Suspended: 858-010-0017(T)

Subject: Modifies the requirements for licensure by endorsement and no longer requires applicants who have maintained an active psychologist license for 15 years or more to fulfill the EPPP exam requirement. Also clarifies the licensure by endorsement and standard application procedures.

Rules Coordinator: LaReé Felton—(503) 373-1196

858-010-0016

Standard Application Procedure

(1) Filing of Applications: Applicants must submit a complete application for licensure to the Board. The Board shall process each submitted application to determine if the application file is ready for review. Applications are considered ready for review for completeness when the following items have been received:

(a) Final graduate level transcript(s) imprinted with date degree was awarded

(b) Reference forms;

(c) Social Security Number Authorization Form;

(d) For non-APA accredited schools only:

(A) University Accreditation Form;

(B) Educational Record in Psychology Form; and

(C) Verification of pre-degree supervised work.

(e) Verification of post-degree supervised work experience (if completed);

(f) National written examination (EPPP) score (if taken);

(g) Verification of licensure in good standing in other states (if any);

(h) Application fee;

(i) Fingerprinting fee and results of the criminal background check; and

(j) Other clarifying information requested by the Board.

(2) The Board may issue a license if the candidate for licensure:

(a) Meets the education requirements of OAR 858-010-0010, 858-010-0011, or 858-010-0015;

(b) Completes the supervised work experience requirements of OAR 858-010-0036 or 858-010-0037.

(c) Passes the national written examination (EPPP); and

(d) Passes the Oregon jurisprudence examination.

Stat. Auth.: ORS 675.030

Stats. Implemented: ORS 675.030(1)(a), (b), (c), (d), (e) & (2)

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 2-2011, f. & cert. ef. 5-31-11; BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12; BPE 2-2012, f. & cert. ef. 6-8-12; BPE 6-2012(Temp), f. & cert. ef. 11-20-12 thru 4-13-13

858-010-0017

Licensure by Endorsement

Applicants that possess and have maintained an active license to practice psychology issued by a board that is a member jurisdiction of the Association of State and Provincial Psychology Boards based on a doctoral degree may be licensed by endorsement.

(1) Applicants who have maintained an active psychologist license based on a doctoral degree in psychology for less than 15 years must comply with the requirements set forth below:

(a) Filing of Applications: Applicants must submit a complete Licensure by Endorsement Application to the Board. The Board shall process each submitted application to determine if the application file is

ready for review. Applications are considered ready for review for completeness when the following items have been received:

(A) Final graduate level transcript(s) imprinted with date degree was awarded;

(B) Social Security Number Authorization Form;

(C) An official verification of licensure in good standing from each health care professional license or registration, current or expired;

(D) A copy of the applicant's:

(i) Licensure file from the state(s) in which the applicant is licensed;

(ii) CPQ file from ASPPB;

(iii) Certification file from ABPP; or

(iv) HSPP file from the National Register.

(E) Endorsement Reference Forms from three mental health professionals;

(F) National written examination (EPPP) score;

(G) Application fee; and

(H) Fingerprinting fee and results of criminal background check.

(b) The Board may issue a license if the candidate for licensure:

(A) Has met the educational requirements for licensure of OAR 858-010-0010 or 858-010-0011;

(B) Has complied with the post-doctoral supervised work experience requirements of OAR 858-010-0036;

(C) Passes the Oregon jurisprudence examination; and

(D) Has received a passing score on the National Written Examination (EPPP).

(2) Applicants who have maintained an active psychologist license for 15 years or more must comply with the requirements set forth below:

(a) Filing of Applications: Applicants must submit a complete Licensure by Endorsement Application to the Board. The Board shall process each submitted application to determine if the application file is ready for review. Applications are considered ready for review for completeness when the following items have been received:

(A) Social Security Number Authorization Form;

(B) An official verification of licensure in good standing from each health care professional license or registration, current or expired;

(C) A copy of the applicant's:

(i) Licensure file from the state(s) in which the applicant is licensed;

(ii) CPQ file from ASPPB;

(iii) Certification file from ABPP; or

(iv) HSPP file from the National Register.

(D) Endorsement Reference Forms from three mental health professionals;

(E) National written examination (EPPP) score;

(F) Application fee; and

(G) Fingerprinting fee and results of criminal background check.

(b) The Board may issue a license if the candidate for licensure passes the Oregon jurisprudence examination.

(c) An applicant who meets the standard of section (2) is not required to fulfill the EPPP exam requirement.

Stat. Auth.: ORS 675.030

Stats. Implemented: ORS 675.030

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 2-2011, f. & cert. ef. 5-31-11; BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12; BPE 2-2012, f. & cert. ef. 6-8-12; BPE 3-2012(Temp), f. & cert. ef. 10-15-12 thru 4-13-13; BPE 6-2012(Temp), f. & cert. ef. 11-20-12 thru 4-13-13

Bureau of Labor and Industries

Chapter 839

Rule Caption: Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment

Adm. Order No.: BLI 12-2012

Filed with Sec. of State: 11-21-2012

Certified to be Effective: 11-21-12

Notice Publication Date: 10-1-12

Rules Amended: 839-009-0335, 839-009-0390, 839-009-0410

Subject: The amendment to OAR 839-009-0335 will add harassment to the title of OAR 839-009-0335 to conform to ORS 659A.270 to ORS 659A.285.

The amendments to OAR 839-009-0390 and 839-007-0410 will clarify that an eligible employee need not be eligible to take protected leave under the Oregon Family Leave Act in order to qualify for protected leave under the Oregon Military Family Leave Act and conform with ORS 659A.090(1) and ORS 659A.093.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

ADMINISTRATIVE RULES

839-009-0335

Relationship of ORS 659A.270 to 659A.285, Leave for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking, to OFLA

To the extent the employee's need for leave under ORS 659A.270 to 659A.285 is also covered by the Oregon Family Leave Act (OFLA), the employer may run the two types of leave concurrently.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 12-2012, f. & cert. ef. 11-21-12

839-009-0390

Length of Leave

(1) During a period of military conflict, an employee who is a spouse or domestic partner of a member of the Armed Forces of the United States, the National Guard or the military reserve forces of the United States who has been notified of an impending call or order to active duty or who has been deployed, is entitled to a total of 14 days of unpaid leave per deployment that may be taken:

(a) After the military spouse or domestic partner has been notified of an impending call or order to active duty and before deployment; and/or

(b) When the military spouse or domestic partner is on leave from deployment.

(2) The 14 day entitlement is per deployment. If multiple deployments occur in an employee's leave year, the employee is entitled to use 14 days of Oregon Military Family Leave Act ("OMFLA") leave for each deployment.

(3) The 14 days of unpaid leave to which the employee is entitled are individual days on which the employee, if working their normal schedule, would otherwise perform services for compensation for the employer. (Example: Employee normally works Monday through Friday. Employee is entitled to 14 days of leave, which if taken consecutively would be Monday through Friday on two consecutive weeks plus Monday through Thursday of the third week.)

(4) OMFLA leave need not be taken in one, uninterrupted period, but may be taken intermittently.

(a) For the purpose of intermittent leave, OMFLA leave is calculated for an employee by multiplying the number of hours the employee normally works per day by 14. (For example, an employee normally employed to work eight hours per day is entitled to 14 times eight hours, or a total of 112 hours of OMFLA leave.)

(b) If an employee's schedule varies from day to day, a daily average of the employee's hours must be used for calculating the employee's normal work day. For example, an employee working an average of six hours per day is entitled to 14 times six hours, or a total of 84 hours of OMFLA leave. An employee working an average of 10 hours per day is entitled to 14 times 10 hours, or 140 hours.

(c) If an employee takes intermittent OMFLA leave, only the actual number of hours of leave taken may be counted toward the hours of OMFLA leave to which the employee is entitled.

Stat. Auth.: ORS 659A.093(6)

Stats. Implemented: ORS 659A.090 - 659A.099

Hist.: BLI 10-2010, f. & cert. ef. 2-24-10; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 12-2012, f. & cert. ef. 11-21-12

839-009-0410

Relationship of OMFLA to OFLA

An eligible employee need not be eligible for protected leave under the Oregon Family Leave Act ("OFLA") in order to take protected leave under the Oregon Military Family Leave Act ("OMFLA"). Protected leave taken by an eligible employee under OMFLA may be included in the total amount of leave authorized under ORS 659A.162(1) of OFLA if the employee is also eligible for OFLA leave and has any leave entitlement remaining.

Stat. Auth.: ORS 659A.093(6)

Stats. Implemented: ORS 659A.090 - 659A.099

Hist.: BLI 10-2010, f. & cert. ef. 2-24-10; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 12-2012, f. & cert. ef. 11-21-12

Department of Administrative Services Chapter 125

Rule Caption: Repeal, Amend and Renumber for housekeeping and clarity and to amend Charitable Fund Drive costs.

Adm. Order No.: DAS 2-2012

Filed with Sec. of State: 11-20-2012

Certified to be Effective: 12-1-12

Notice Publication Date: 11-1-12

Rules Repealed: 125-021-0005

Rules Ren. & Amend: 121-020-0010 to 125-020-0010, 121-020-0020 to 125-020-0020, 121-020-0030 to 125-020-0030, 121-020-0040 to 125-020-0040, 121-020-0050 to 125-020-0050, 121-030-0000 to 125-030-0006, 121-030-0010 to 125-030-0016, 121-030-0020 to 125-030-0021, 121-030-0030 to 125-030-0031, 121-030-0040 to 125-030-0041, 121-030-0050 to 125-030-0051, 121-030-0060 to 125-030-0061, 121-030-0070 to 125-030-0071, 121-030-0080 to 125-030-0083, 121-030-0090 to 125-030-0090, 121-040-0010 to 125-170-0010

Subject: The new rules better organize the administrative rules for DAS, eliminating Chapter 121, Office of Business Administration by amending and renumbering rules under DAS Chapter 125. Also, to reflect a division name change due to the reorganization effective July 1, 2012.

Amend and Renumber Division 30, Rules 121-030-0000 through 121-030-0090 to 125-030-0000 through 125-030-0090, Annual Charitable Fund Drive Program. The rule is being amended to put an upper limit on the funds the Campaign Management Organization can expend in coordinating the campaign.

Rules Coordinator: Janet Chambers—(503) 378-5522

125-020-0010

Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in OAR Chapter 125, Division 20, unless the context requires otherwise:

(1) "Custodian" refers to a public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian, unless the public record is not otherwise available.

(2) "Department" refers to the Oregon Department of Administrative Services.

(3) "Designee" refers to any officer or employee of the Department, appointed by the Director to respond to requests for public records of the Department of Administrative Services.

(4) "Director" refers to the Director of the Department of Administrative Services.

(5) "Division" refers to an organizational component or operating unit of the Department of Administrative Services.

(6) "Duplication or Duplicating" refers to the process of reproducing a public record or writing in any format.

(7) "Person" includes any natural person, corporation, partnership, firm or association.

(8) "Photocopy(ing)" includes a photograph, microphotograph and any other reproduction on paper or film in any scale, or the process of reproducing, in the form of a photocopy, a public record or writing.

(9) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(10) "Public record or writing" includes a document, book, paper, photograph, file, sound recording, machine readable electronic record or other material regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use.

(11) "Requestor" refers to the person requesting inspection, copies, or other reproduction of a public record of the Department.

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0010 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-020-0020

Applicability of Rules

The Administrative Rules set forth in Chapter 125, Division 20 shall apply to all public records for which the Department is custodian, except as otherwise administered under OAR 105-010-0011 and 105-010-0016 of the Department's Human Resource Services Division.

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

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Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0020 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-020-0030

Access to Public Records

The Director or designee, in carrying out responsibilities of ORS 192.430, as custodian of public records:

(1) Shall allow access to and disclosure of the public records subject to ORS 192.410 to 192.505.

(2) Shall make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of the Department's duties; and

(3) Shall allow for inspection of the Department's public records during normal working days and hours at the location which the records reside, or any other reasonable location designated by the Director or designee.

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0030 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-020-0040

Requests to Inspect or Obtain Copies of Public Records

(1) A request to inspect or obtain copies of a public record of the Department shall be made in writing to the Director, and shall include:

(a) The name, address and telephone number of the requestor;

(b) Identification of the records from which information is requested, if known.

(c) The time period the records were produced and officials involved in producing the records or other relevant information, if known;

(d) The format in which the information is needed (i.e. photocopies, audio or video cassette, machine readable, or electronic format, etc.);

(e) The number of copies needed, if copies are requested; and

(f) Instruction to the Department to certify copies, if necessary.

(2) The Director or designee may waive the requirement, under paragraph (1) of this rule, for a request to be in writing, if it is determined that effective administration is aided by the waiver.

(3) A review of the requested records will be conducted by the Department as necessary to determine whether the records are exempt from disclosure, in accordance with ORS 192.410 to 192.505 and any other references establishing an exemption to disclosure of public records.

(4) The Director or designee will advise the requestor, within a reasonable amount of time, whether the records may be disclosed, the date, time, and place they may be inspected or obtain copies of the records, and the estimated cost of inspection, duplication, and other related fees as described in OAR 125-020-0050.

(5) If the requested records contain information exempt from disclosure, the requestor will be furnished a copy of the record with the exempt material removed.

(6) The Director or designee may require and designate a Department employee to supervise the inspection of requested records.

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0040 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-020-0050

Fees for Public Records and Other Services

(1) The Department will establish fees and miscellaneous charges, for providing access to or copies of public records in paper, electronic, or other format, based on the Department's actual costs of preparing and providing the records. Costs associated with a request for public records may include per page copy and facsimile fees, postage when applicable, staff time to locate, review, remove information exempt from disclosure, and/or transfer the material to a requested electronic or other necessary format appropriate for releasing the public record(s).

(2) No additional fee will be charged for providing records in an alternative format when required by the Americans with Disabilities Act.

(3) The Director or designee may reduce or waive fees when:

(a) Time spent making the records available for inspection or preparation for photocopying was negligible; or

(b) Supplying the requested records is within the normal scope of Department activity; or

(c) Payment would cause extreme or undue financial hardship upon the requestor; or

(d) Making the record available primarily benefits the general public.

(4) All fees and charges must be paid in advance of releasing the requested public records for inspection or before photocopies are provided.

Payments must be made by check or money order and made payable to the Department of Administrative Services.

(5) Consistent with ORS 279.550, to conserve and protect the State's resources, photocopies will be produced on recycled paper in double-sided print format whenever feasible to reduce costs and paper waste.

(6) Due to the threat of computer virus, the Department will not permit requestors to provide diskettes for electronic reproduction of computer records. Requests for other electronic reproduction will be evaluated at the time of the request and a determination made as to the feasibility and accessibility of the requested electronic format. The Department may require the requestor to provide the electronic media to which the record(s) will be copied.

(7) A request for public records requiring the Department to access the State's mainframe computer system, may include but not be limited to fees for computer usage time, data transfer costs, disk work space costs, programming, and fixed portion costs for printing and/or tape drive usage. Any fees charged the requestor as a result of accessing the State's mainframe computer system would be included in subsection (9)(h) of this rule.

(8) The Department limits the transmission of facsimile copies for public record requests to 30 pages.

(9) Fees:

(a) Photocopies (single or double-sided): 25 cents per page;

(b) Facsimile: \$5 1st page, \$1 per page thereafter;

(c) Diskette — 3 1/2 in.: \$1 ea.;

(d) Audio Cassette — 90 min.: \$1 ea.;

(e) Video Cassette — 2 hrs.: \$2 ea.;

(f) Postage/Freight: First Class or Bulk rate based on weight;

(g) Staff Time: Calculated based on employee(s) hourly rate of pay;

(h) Indirect Costs/Third Party Charges: Based on actual/ invoiced fees;

(i) Publications: Fees for specific publications will be based on actual costs of development, printing and distribution, and determined by the Division distributing or releasing the publication.

(j) Certification of Public Record: \$5

Stat. Auth.: ORS 184.340 & 192.430

Stats. Implemented: ORS 192.410 - 192.505

Hist.: BAD 2-1997, f. 6-18-97, cert. ef. 7-1-97; Renumbered from 121-020-0050 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0006

Annual Charitable Fund Drive Program

(1) The purpose of the Annual Charitable Fund Drive Program is to:

(a) Provide a wide range of choices for state employees and retirees from state service who wish to give to charitable organizations and support Oregon communities;

(b) Encourage volunteer leadership;

(c) Consolidate charitable solicitation and minimize work-place disruption;

(d) Minimize cost to government and charitable organizations in charitable solicitation efforts;

(e) Ensure funds are solicited by qualified funds or federations;

(f) Ensure solicitation is conducted in a voluntary atmosphere.

(2) No organized charitable solicitations of state employees in state offices, facilities or other places of employment shall be permitted without prior approval of the Director of the Department of Administrative Services.

(3) All solicitations by charitable organizations that are approved in accordance with this rule shall be made in one combined annual fund drive for cash contributions or payroll deductions that shall be conducted on dates established by order of the Director of the Department of Administrative Services.

(4) OAR chapter 125, division 30, does not apply to the Governor's Annual Food Drive, the annual Christmas Toys for Joy Program or the Campaign for Equal Justice.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043, 292.045

Hist.: EX 2-1988(Temp), f. & ef. 7-27-88; EX 1-1989, f. & ef. 1-27-89; EX 1-1990, f. & cert. ef. 5-8-90; EX 3-1990(Temp), f. & cert. ef. 8-3-90; EX 1-1991, f. & cert. ef. 1-28-91; EX 1-1993(Temp), f. & cert. ef. 4-13-93; ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 2-2002, f. & cert. ef. 7-30-02; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0000 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0016

Definitions

As used in OAR 125-030-0000 through 125-030-0090:

(1) "Charitable Organization" means either:

(a) A nonprofit organization that is recognized as a 501(c)(3) organization under the Internal Revenue Code and is registered as a charitable

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organization with the Attorney General as required by ORS 128.610 to 128.995,or;

(b) A state-created nonprofit fund that receives donations, which may be deducted from taxable income as “charitable contributions” under Section 170(a) and (c) of the Internal Revenue Code.

(2) “Fund” means an entity that disburses charitable contributions to ten or more charitable organizations.

(3) “Federation” means an entity that serves as the agent for a group of at least ten charitable organizations.

(4) “Local Presence” means a demonstrated presence in the State of Oregon as evidenced by the provision of direct and substantial charitable services or activities benefiting Oregonians in Oregon throughout the previous calendar year.

(5) “Charitable Fund Drive Management Organization” means the person or organization selected to administer the annual Charitable Fund Drive on behalf of all participating funds and federations.

(6) “Charitable Fund Drive Committee” or “Committee” means the committee appointed to set policies and implement the Charitable Fund Drive Program for state employees.

(7) A “conflict of interest,” whether actual or potential, means any action, decision or recommendation, the effect of which would be or could be to the pecuniary benefit or detriment of a fund, federation or associated charitable organization.

(8) “Department” means the Department of Administrative Services.

(9) “Director” means the Director of the Department of Administrative Services.

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

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043, 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0010 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0021

Charitable Fund Drive Committee

(1) The Charitable Fund Drive Committee shall be composed of seven members, all of whom must be employees of the State of Oregon.

(2) The Director shall appoint members who:

(a) Reflect the diversity of employees including, but not limited to, geography, race, gender, age, chosen profession, disability, and agency affiliation;

(b) Have skills in the following areas:

(A) Marketing;

(B) Fundraising;

(C) Organizational skills;

(D) Accounting; and

(E) Payroll.

(3) The Director will appoint members to serve a term of one to three years.

(4) No member may serve more than two consecutive terms.

(5) No member shall take any action that creates a conflict of interest with respect to any fund, federation, or affiliated charitable organization that the member is associated with in a leadership capacity.

(6) The Director will appoint one member as chair. The Governor shall be the honorary chair.

(7) The responsibilities of the Committee are to:

(a) Implement OAR 125-030-0000 to 125-030-0090 and propose changes for adoption by the Director as necessary;

(b) Establish and enforce policies and procedures for managing the Charitable Fund Drive, recommending any rules for the Director’s adoption;

(c) Prescribe, review and approve initial and renewal applications of funds and federations;

(d) Select, supervise, and establish guidelines for the Charitable Fund Drive Management Organization;

(e) Ensure the funds and federations have equal access to state resources;

(f) Provide and communicate fund drive information to state agencies and fund drive participants;

(g) Ensure the fund drive is free from coercion and unfair or misleading conduct;

(h) Approve budget and costs and ensure funds are properly accounted for;

(i) Hear grievances of funds and federations; and

(j) Prepare and distribute requests for proposals to be used in evaluating and selecting the Charitable Fund Drive Management Organization and make a final recommendation to the Director.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 184.340, 292.045 & 184.345

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-1998(Temp), f. & cert. ef. 6-25-98 thru 8-31-98; BAD 2-1998, f. 12-17-98, cert. ef. 12-24-98; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0020 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0031

Quorum

A majority of the members of the Charitable Fund Drive Committee constitutes a quorum for the transaction of business.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0030 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0041

Participation Requirements for Charitable Organizations

(1) To participate in the Annual Charitable Fund Drive, each organization claiming to be a charitable organization must participate as a member of an eligible fund or federation and must satisfy each of the following requirements:

(a) The organization must meet the definition of “charitable organization” in OAR 125-030-0010;

(b) The organization must have a “local presence” as defined in OAR 125-030-0010;

(c) The organization must have an Internal Revenue Service determination letter or advance ruling indicating that it is an exempt organization under Internal Revenue Code Section 501(c)(3), if applicable; and;

(d) The organization must comply with the relevant provisions of ORS 128.610 to 128.995 concerning registration with and reporting to the Attorney General, if required.

(2) Any organization claiming to be a charitable organization must provide the following information to the fund(s) or federation(s) for submission to the Committee upon request:

(a) Evidence that the organization meets the definition of “charitable organization” in OAR 125-030-0010, including a copy of the Internal Revenue Service determination letter indicating that the charitable organization is an exempt organization under Internal Revenue Code Section 501(c)(3), if applicable;

(b) Evidence of the organization’s local presence as defined in OAR 125-030-0010;

(c) Evidence that the organization has complied with the relevant provisions of ORS 128.610 to 128.995, concerning registration with and reporting to the attorney general, if required, or an explanation of why the organization has not registered and reported; and

(d) A copy of the charitable organization’s written policy on nondiscrimination regarding race, color, religion, national origin, disability, age, sex, sexual orientation, or association with any of these protected classes, and applicable to persons served by it.

(3) Public Accountability Standards: Each charitable organization shall annually prepare and make a report available to the fund(s) and federation(s) that represent it. The report shall include a full description of the organization’s activities, including types of solicitation for contributions, the names of its chief administrative personnel, and full disclosure of the source of and use of all contributions. The report shall also disclose the charitable organization’s fund-raising costs and the estimated percentage of money collected that will be applied to administrative costs and to charitable activities. The funds and federations shall make this information available to state employees upon request during the annual solicitation.

(4) A charitable organization shall be denied participation in the current year’s Annual Charitable Fund Drive for failure to meet the eligibility requirements set forth in OAR 125-030-0040 (1) through (3). The Committee will notify the fund or federation representing the charitable organization in writing of the denial of participation.

(5) A charitable organization shall be removed from participation in the current year’s Annual Charitable Fund Drive and denied participation in the Annual Charitable Fund Drive for the following two years, if the charitable organization fails to properly account for, allocate, or represent financial transactions. The Committee will notify the fund or federation representing the charitable organization in writing of the charitable organization’s removal from participation from the current year’s Annual Charitable Fund Drive and denial of participation in the Annual Charitable Fund Drive for the following two years within 45 days after the date a quorum of Committee members determines that a disqualifying event has occurred.

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

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 184.340, 292.045 & 184.305

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 2-1998, f. 12-17-98, cert. ef. 12-24-98; BAD 2-2002, f. & cert. ef. 7-30-02; BAD 1-2003(Temp), f. & cert. ef. 6-11-03 thru 12-

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8-03; BAD 3-2003, f. & cert. ef. 11-10-03; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0040 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0051

Participation Requirements for Funds and Federations

(1) To participate in the Annual Charitable Fund Drive, each fund or federation must satisfy each of the following requirements:

(a) The organization must meet the definition of "charitable organization" in OAR 125-030-0010;

(b) The organization must meet the definition of a "fund" or "federation" in OAR 125-030-0010;

(c) The organization must have a "local presence" as defined in OAR 125-030-0010;

(d) The organization must have an Internal Revenue Service determination letter or advance ruling indicating that it is an exempt organization under Internal Revenue Code Section 501(c)(3), if applicable;

(e) The organization must comply with the relevant provisions of ORS 128.610 to 128.995 concerning registration with and reporting to the Attorney General, if required;

(2) Any organization claiming to be a fund or federation must submit the following information to the Committee upon request:

(a) Evidence that the fund or federation meets the definition of "charitable organization" in OAR 125-030-0010, including a copy of the Internal Revenue Service determination letter indicating that the fund or federation is an exempt organization under Internal Revenue Code Section 501(c)(3), if applicable;

(b) Evidence that the fund or federation meets the definition of a "fund" or "federation" in OAR 125-030-0010;

(c) Evidence of the fund's or federation's local presence as defined in OAR 125-030-0010;

(d) Evidence that the fund or federation has complied with the relevant provisions of ORS 128.610 to 128.995, concerning registration with and reporting to the Attorney General, if required, or an explanation of why the organization has not registered and reported; and

(e) A copy of the organization's written policy on nondiscrimination regarding race, color, religion, national origin, disability, age, sex, sexual orientation, or association with any of these protected classes, and applicable to persons served by it.

(3) Public Accountability Standards: Each fund or federation shall annually prepare and submit to the Committee, as part of the application, a report that includes a full description of its activities, including types of solicitation for contributions, the names of its chief administrative personnel, and full disclosure of the source of and use of all contributions. The report shall also disclose the fund-raising costs and the estimated percentage of money collected that will be applied to administrative costs and to charitable activities. The funds and federations shall make this information available to state employees upon request during the annual solicitation.

(4) Each fund or federation that participates in the Annual Charitable Fund Drive, shall support and participate in the events and activities associated with the fund drive.

(5) Each fund or federation must submit an application to the Charitable Fund Drive Committee in the form prescribed by the Committee and by the date established by the Committee. At a minimum, the funds and federations shall be asked to provide the information required by OAR 125-030-0050(1) through (3) and to affirm their intention to participate as required by 125-030-0050(4). The Committee may request additional information or clarification of the information submitted with an application.

(6) Once a fund or federation has been accepted for participation in the Annual Charitable Fund Drive, the Committee may exercise discretion and accept previous application information in determining eligibility for participation in subsequent Annual Charitable Fund Drives. The Committee will notify the fund or federation in writing if it elects to exercise such discretion.

(7) A fund or federation shall be denied participation in the current year's Annual Charitable Fund Drive for:

(a) Failure to meet the eligibility requirements set forth in OAR 125-030-0050(1) through (4); or

(b) Failure to apply or renew the application to participate in the Annual Charitable Fund Drive by the deadline set by the Committee.

(8) A fund or federation shall be notified in writing of acceptance for or denial of participation in the current year's Annual Charitable Fund Drive within 45 days after the application deadline.

(9) A fund or federation shall be removed from participation in the current year's Annual Charitable Fund Drive and denied participation in the Annual Charitable Fund Drive for the following two years if the fund or federation fails:

(a) To properly account for, allocate, or represent financial transactions; or

(b) To pay the fund's or federation's allocated share of the costs of the fund drive.

(10) A fund or federation shall be notified in writing of its removal from participation from the current year's Annual Charitable Fund Drive and denial of participation in the Annual Charitable Fund Drive for the following two years within 45 days after the date a quorum of Committee members determines that a disqualifying event has occurred.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 2-1998, f. 12-17-98, cert. ef. 12-24-98; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0050 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0061

Charitable Fund Drive Management Organization

(1) The Charitable Fund Drive Committee will select a person or organization as the Charitable Fund Drive Management Organization through an open competitive process.

(2) The selection process will consider cost, experience, and ability to conduct a statewide fund drive.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; ASD 1-1994(Temp), f. & cert. ef. 4-14-94; DAS 2-1995(Temp), f. & cert. ef. 5-19-95; BAD 1-2002(Temp), f. 1-31-02, cert. ef. 2-1-02 thru 7-30-02; BAD 2-2002, f. & cert. ef. 7-30-02; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0060 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0071

Charitable Fund Drive Costs

(1) It is the responsibility of the Charitable Fund Drive Committee to allocate the costs of the fund drive to each participating fund and federation. The Charitable Fund Drive Committee will consider such factors as the contributions received by each fund and federation, the exposure of each fund and federation to the employee base, and fixed costs.

(2) Participating funds and federations shall sign a memorandum of agreement with the Charitable Fund Drive Committee and the Charitable Fund Drive Management Organization to develop a cooperative fund drive and pay all costs of the fund drive. Such costs include, but are not limited to, costs incurred for the overall management and coordination of the Annual Charitable Fund Drive; design and printing of brochures and payroll deduction forms; training provided to employee volunteers; promotional events; and any other expenditure deemed necessary and approved by the Charitable Fund Drive Committee.

(3) The Charitable Fund Drive Committee is committed to keeping administrative costs reasonable. Charitable Fund Drive costs are ideally held to less than 10% of total donations per campaign; because donations are not known at the time the campaign budget is set and because donation levels fluctuate, the total campaign budget shall not exceed 12% of the prior year's total donations.

(4) Interest accrued on employee and retiree donations may be used by the Charitable Fund Drive Committee to offset fund drive costs, including bank transaction fees.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0070 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-030-0083

Appeals

(1) Funds and federations may appeal:

(a) Denial of participation;

(b) Removal from participation; and

(c) Actions of the Charitable Fund Drive Committee with respect to the Committee's policies and procedures.

(2) Any appeal by a fund or federation must be in writing and received by the Charitable Fund Drive Committee within ten business days of the mailing of the written notice of denial, removal, or Committee action. The appeal must specify the particular action that is being appealed and why.

(3) The Charitable Fund Drive Committee has 45 days from the date of the appeal letter to respond.

(4) A fund or federation that is not satisfied with the response of the Committee may appeal in writing to the Director within ten business days of the date on which the Committee mailed its response.

(5) The decision of the Director shall be final.

Stat. Auth.: ORS 184.340, 292.045 & 184.305

Stats. Implemented: ORS 292.043 & 292.045

Hist.: ASD 1-1993, f. 12-29-93, cert. ef. 1-1-94; BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0080 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

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125-030-0090

Designation of Direct Recipients

Funds and federations shall allow state employees and retirees to designate any affiliated charitable organization eligible to participate in the Annual Charitable Fund Drive as the direct recipient of an employee's or retiree's contribution.

Stat. Auth.: ORS 184.340, 292.045 & 184.305
Stats. Implemented: ORS 292.043 & 292.045
Hist.: BAD 1-2008, f. 9-16-08, cert. ef. 9-19-08; Renumbered from 121-030-0090 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

125-170-0010

Process for Allocating Available Moneys in the Administrative Services Economic Development Fund

(1) The Department of Administrative Services will distribute lottery proceeds to recipients on a quarterly basis. This allocation will be based on a plan approved by the Chief Financial Office.

(2) If, in any quarter, the moneys transferred from the State Lottery Fund to the Administrative Services Economic Development Fund are insufficient to pay for the quarterly allocations, the Department of Administrative Services shall allocate funds in the following priority order:

(a) Satisfy current debt service obligations for the Westside Light Rail (allocated in the first and fifth quarters);

(b) Satisfy all other current debt service obligations (allocated in the first and fifth quarters);

(c) Satisfy all Constitutionally mandated allocations.

(d) Satisfy all statutorily mandated allocations.

(e) Satisfy all other allocations on a proportional basis. Allocations in a particular quarter may be based on the cash flow needs of the recipients. This may require deferring allocations to a recipient in one quarter with the objective of funding the full allocation during the balance of the biennium.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)(d) & ORS 461.500 - 461.555
Stat. Implemented: 2003 HB 5076
Hist.: BAD 1-2001, f. & cert. ef. 10-1-01; BAD 4-2003, f. 12-23-03, cert. ef. 12-24-03; Renumbered from 121-040-0010 by DAS 2-2012, f. 11-20-12, cert. ef. 12-1-12

Rule Caption: Adopts, Amends and Repeals Department of Administrative Services Public Contracting Rules.

Adm. Order No.: DAS 3-2012

Filed with Sec. of State: 11-29-2012

Certified to be Effective: 12-1-12

Notice Publication Date: 10-1-12

Rules Adopted: 125-246-0316, 125-246-0318, 125-246-0319, 125-247-0805, 125-247-0810

Rules Amended: 125-246-0100, 125-246-0110, 125-246-0165, 125-246-0170, 125-246-0210, 125-246-0220, 125-246-0321, 125-246-0322, 125-246-0323, 125-246-0333, 125-246-0335, 125-246-0345, 125-246-0350, 125-246-0351, 125-246-0353, 125-246-0360, 125-246-0400, 125-246-0500, 125-246-0556, 125-246-0576, 125-246-0800, 125-247-0100, 125-247-0110, 125-247-0165, 125-247-0255, 125-247-0260, 125-247-0265, 125-247-0270, 125-247-0275, 125-247-0280, 125-247-0285, 125-247-0287, 125-247-0288, 125-247-0296, 125-247-0300, 125-247-0330, 125-247-0575, 125-247-0600, 125-247-0690, 125-247-0700, 125-247-0710, 125-247-0720, 125-247-0731, 125-247-0740, 125-247-0750, 125-247-0760, 125-248-0100, 125-248-0300, 125-249-0630

Rules Repealed: 125-246-0312, 125-246-0410, 125-246-0420, 125-246-0430, 125-246-0440, 125-246-0450, 125-246-0460, 125-246-0470, 125-246-0560

Subject: Since 2005, the Department of Administrative Services (DAS) has developed and amended rules (Rules) to put into practice the Public Contracting Code, ORS 279ABC (Code). The Rules apply to state agencies subject to DAS procurement authority (Agencies). In 2012, the Legislature made changes to select sections of the Code. In addition to the legislative changes to the Code, the Department of Justice and Agencies requested select Rule changes to streamline or reduce duplications in 2011 and 2012. Now, in response to the legislative changes and requests for change from stakeholders, DAS needs to amend the select Rules listed above.

DAS also needs to amend the Rules to reflect the name change from State Procurement Office due to the reorganization of DAS effective July 1, 2012.

Rules Coordinator: Janet Chambers—(503) 378-5522

125-246-0100

Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) are policy and procedure for the Public Contracting of Agencies subject to these Rules and all state agencies that are subject to the DAS rules adopted under ORS 279A.140(2)(h) to regulate personal services contracts (see OAR 125-246-0353). According to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. Except for those Public Contract Model Rules expressly adopted by the Department in OAR 125-246-0100, 125-247-0100, 125-248-0100 and 125-249-0100, the Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

(a) Division 246, which applies to all Public Contracting;

(b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services;

(c) Division 248, which applies only to Public Contracting for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and

(d) Division 249, which applies only to Public Contracting for construction services.

(2) If a conflict arises between these Division 246 Rules and Rules in Division 247, 248 or 249, the Rules in Divisions 247, 248 or 249 take precedence over these Division 246 Rules.

(3) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(4) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and despite other provisions of the Public Contracting Code, under the following conditions:

(a) Federal funds are involved; and

(b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, or 279C.005 through 279C.670.

(5) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in OAR 125-246-0110:

(a) "Contracting agency(ies)" is replaced by "Authorized Agency(ies)."

(b) "Goods or services" is replaced by "Supplies and Services."

(c) "Agreements to agree" and "price agreement" are replaced by "Price Agreement."

(6) Capitalization of Defined Terms. Uncapitalized terms in those Model Rules expressly adopted by the Department have the same meaning as the same terms that are capitalized and defined in OAR 125-246-0110.

(7) Department Policy. Agencies must comply with Department policies, if applicable.

(8) For purposes of these Division 246 Rules, the Department adopts the following Model Public Contract Rules: OAR 137-046-0300, 137-046-0330, 137-046-0400, 137-046-0410, 137-046-0420, 137-046-0430, 137-046-0440, 137-046-0450, 137-046-0460, 137-046-0470, 137-046-0480.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0110

Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

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(2) “Adequate” is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) “Advantageous” means a judgmental assessment by the Agency of the Agency’s best interests.

(4) “Advocate for Minority, Women and Emerging Small Business”, (also known as the Director of Economic & Business Equity), means the individual appointed by the Governor to advise the Governor, Legislature and Director’s Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses, (also known as the Office of Economic & Business Equity), according to ORS 200.025.

(5) An “Administrator” or “Administering Agency” is defined in OAR 125-246-0400.

(6) “Affected Person” or “Affected Offeror” means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(7) “Affirmative Action” is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) “Agency” means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department according to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority according to OAR 125-246-0170.

(9) “Agreement to Agree” means a Price Agreement as defined in Subsection (109).

(10) “Amendment” means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements of OAR 125-247-0805, 125-248-0340, 125-249-0160, and 125-249-0910. For the purposes of these Rules, Amendments are included within the definitions of “Procurements” and “Contract Administration.”

(11) “Architect” is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms “architect,” “licensed architect” and “registered architect.

(12) “Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services” is defined in ORS 279C.100(2).

(13) “As-Is, Where-Is” applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they are in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer’s own inspection. Implied and express warranties are excluded in sales of Goods “As-Is, Where-Is.”

(14) “Authorized Agency” means any Person authorized according to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency’s behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see OAR 125-246-0170 only.

(15) “Award” means the Agency’s identification of the Person(s) with whom the Agency intends to enter into a Contract.

(16) “Bid” means a Written response to an Invitation to Bid.

(17) “Bidder” means a Person who submits a Bid in response to an Invitation to Bid.

(18) “Brand Name or Equal Specification” is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers’ names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency’s requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(19) “Brand Name Specification” is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names,

makes, manufacturer’s names, catalog numbers or similar identifying characteristics.

(20) “Business Day” means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding State of Oregon holidays.

(21) “Chief Procurement Officer” means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules.

(22) “Class Special Procurement” is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

(23) “Client” means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof (“Services and Incidental Supplies”), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual’s or family’s benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(24) “Client Services” means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription;

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses services;

(n) Religious practices, traditions and services, separately or in any combination thereof; and

(o) Educational services.

The term “Client Services” does not include benefits or services provided as a condition of employment with an Agency.

(25) “Closing” means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(26) “Code” is the “Public Contracting Code,” defined in ORS 279A.010(1)(bb), and “Code” means ORS Chapters 279A, 279B and 279C.

(27) “Competitive Quotes” means the sourcing method according to OAR 125-249-0160.

(28) “Competitive Range” means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0260 or 125-249-0650.

(29) “Competitive Sealed Bidding” means the sourcing method according to ORS 279B.055.

(30) “Competitive Sealed Proposals” means the sourcing method according to ORS 279B.060.

(31) “Consultant” means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.

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(32) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.

(33) "Contract Administration" means all functions related to a given Contract, including Amendments, between an Agency and a Contractor from:

- (a) The time the Contract is signed by all parties until;
- (b) The Work is completed and accepted or the Contract is terminated, final payment has been made, and any disputes have been resolved.

(34) "Contract Administrator" means the officer, employee, or other individual designated in Writing by an Authorized Agency, by name or position description, to conduct the Contract Administration of a Contract or class of Contracts.

(35) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."

(36) "Contract Price" means, as the context requires, the maximum monetary obligation that an Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(37) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(38) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(39) "Contracting Agency."

(a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf according to ORS 279A.140.

(b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.

(40) "Cooperative Procurement" is defined in OAR 125-246-0400.

(41) "Cooperative Procurement Group" is defined in OAR 125-246-0400.

(42) "Days" means calendar days.

(43) "Disqualification" means a disqualification, suspension or debarment of a Person according to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).

(44) "Department" means the Oregon Department of Administrative Services. The procurement authority of the Department is described in OAR 125-246-0170, originating with the Director, delegated to the Chief Procurement Officer, and subdelegated in Writing by the Chief Procurement Officer to any subdelegatee within the Department. When a Rule refers to any action of the Department, any individual acting on behalf of the Department must be authorized to take such action in accordance with OAR 125-246-0170.

(45) "Department Price Agreement" means a Price Agreement issued by the Department on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. According to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a mandatory Department Price Agreement for those authorized Supplies and Services exists.

(46) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(47) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.

(48) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(49) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.

(50) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(51) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Agency's Procurements made available over the Internet via:

(a) The World Wide Web;

(b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the Chief Procurement Officer. An Electronic Advertisement may or may not include a Solicitation Document.

(52) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

(a) The World Wide Web or some other Internet protocol; or

(b) ORPIN.

(53) "Electronic Procurement System" means ORPIN or other system approved by the Chief Procurement Officer, constituting an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(54) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(55) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a Contract to remedy the condition.

An "Emergency Procurement" means a sourcing method according to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(56) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(57) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(58) "Established Catalog Price" means the price included in a catalog, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer or Contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(59) "Executive Department" is defined in ORS 174.112.

(a) Subject to ORS 174.108, "Executive Department" means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in Section 1, Article III of the Oregon Constitution, and that are not:

(A) In the judicial department or the legislative department;

(B) Local governments; or

(C) Special government bodies.

(b) Subject to ORS 174.108, as used in the statutes of this State, "Executive Department" includes:

(A) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(B) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

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(C) Any entity created by the Executive Department other than an entity described in Subsection (B), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(60) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

- (a) Operational, budget and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;
- (e) Public safety;
- (f) Market conditions;
- (g) Technical complexity; and
- (h) Funding sources.

(61) "Fire Protection Equipment" is defined in ORS 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(62) "Flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(63) "Formal Selection Procedure" means the procedure according to OAR 125-248-0220.

(64) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers according to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(65) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305. This definition does not apply to OAR 125-247-0255 and 125-247-0260.

(66) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

- (a) Unsatisfactory job progress;
- (b) Defective work not remedied;
- (c) Third-party claims filed or reasonable evidence that claims will be filed;

(d) Failure to make timely payments for labor, equipment and materials;

- (e) Damage to the prime Contractor or subcontractor; or
- (f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(67) "Goods" means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(68) "Goods and Services" or "Goods or Services" is defined in ORS 279B.005 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies and Services" in this Rule). "Goods and Services" or "Goods or Services" does not include Personal Services. "Supplies and Services" includes Personal Services.

(69) "Grant" is defined in ORS 279A.010(1)(k)(A) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(70) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(71) "Informal Selection" means the procedure according to OAR 125-248-0210.

(72) "Intermediate Procurement" means a sourcing method according to ORS 279B.070 or OAR 125-249-0160.

(73) "Interstate Cooperative Procurement" is defined in OAR 125-246-0400.

(74) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with ORS 279B.055, 279B.070 or 279C.335.

(75) "Joint Cooperative Procurement" is defined in OAR 125-246-0400.

(76) "Judicial Department" is defined in ORS 174.113 and means the Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. The Judicial Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(b) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Judicial Department other than an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(77) "Labor Dispute" is defined in ORS 662.010 and includes any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(78) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(79) "Legally Flawed" is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(80) "Legislative Department" is defined in ORS 174.114 and, subject to ORS 174.108, means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. The Legislative Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

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(c) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(81) "Locality" is defined in ORS 279C.800(3) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(82) "Lowest Responsible Bidder" is defined in ORS 279A.010(1)(r) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(83) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(84) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(85) "Multistep" means more than one step, phase, tier, or round in a process used in Competitive Sealed Bidding or Competitive Sealed Proposals according to ORS 279B and OAR Division 247.

(86) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

(87) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in Section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under Section 501(a) of the Internal Revenue Code.

(88) "Nonresident Offeror" means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of "Resident Offeror."

(89) "Not-for-Profit Organization" means a Nonprofit Corporation as defined in ORS 307.130(1)(c).

(90) "OAR" means the Oregon Administrative Rules.

(91) "Offer" means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(92) "Offeror" means a Person who submits an Offer

(93) "Offering" means a Bid, Proposal, or Quote.

(94) "Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(95) "Old Contracts" means all Public Contracts entered into before March 1, 2005.

(96) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the Chief Procurement Officer .

(97) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(98) "Ordering Instrument" or "Order" means a document used by an Authorized Agency in compliance with the Public Contracting Code, these Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency's appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider's responsive and appropriate acceptance of the Offer creates a Public Contract.

(99) "Ordinary Construction Services" means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(100) "Original Contract" means the initial Contract or Price Agreement of the Department or an Authorized Agency. See OAR 125-246-0400 for the definition of "Original Contract" that the Public Contracting Code and Rules use for Cooperative Procurements only.

(101) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the Department , as further described in OAR 125-246-0500.

(102) "ORS" means the Oregon Revised Statutes.

(103) "Participant" is defined in OAR 125-246-0400.

(104) "Permissive Cooperative Procurement" is defined in OAR 125-246-0400.

(105) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and means the State Accident Insurance Fund Corporation and the Department of Revenue. "Person" is defined in ORS 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(106) "Personal Services" means the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, which primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, information technology professional, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor). "Personal Services" is also defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services.

(107) "Personal Services Contract" means a Contract or a member of a class of Contracts for Personal Services, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(108) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(109) "Price Agreement."

(a) "Price Agreement" is defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

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(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A "Price Agreement" as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule's definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(110) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring or selling: Supplies and Services; Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(111) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods according to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 2729C.450.

(112) "Procurement File" means any of the following files maintained by an Authorized Agency: a solicitation, Contract, Amendment, Work Order, or contract administration file, separately or collectively.

(113) "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(114) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(115) "Property" is defined in ORS 279A.250 and means personal property.

(116) "Proposal" means a Written response to a Request for Proposals.

(117) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services according to OAR 125-248-0110, whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(118) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(119) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(120) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(121) "Public Body" is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(122) "Public Contract" is defined in ORS 279A.010(1)(z) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants. For the purposes of these Rules, "Public Contract" means Contract.

(123) "Public Contracting" is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(124) "Public Contracting Code" or "Code" is defined in ORS 279A.010(1)(bb) and means 279A, 279B and 279C.

(125) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(126) "Public Improvement" is defined in ORS 279A.010(1)(cc) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(127) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for or by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(128) "Purchase Order" means an Ordering Instrument or Order, as defined in this Rule.

(129) "Qualifications Based Selection (QBS)" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services Contracts.

(130) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement according to either OAR 125-247-0270 or 125-249-0160.

(131) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(132) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(133) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(134) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(135) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(136) "Related Services" is defined in ORS 279C.100(8).

(137) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.

(138) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency and describing: the Authorized Agency's circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-0645.

(139) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(140) "Resident Bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "Resident Bidder."

(141) "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a "resident Offeror."

(142) "Responsible" means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under OAR 125-247-0575 or 125-249-0370.

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(143) “Responsible Bidder” or “Responsible Proposer” is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(144) “Responsible Offeror” means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively.

(145) “Responsible Proposer” or “Responsible Bidder” is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(146) “Responsive” means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(147) “Responsive Bid” or “Responsive Proposal” is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(148) “Responsive Offer” means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(149) “Responsive Proposal” or “Responsive Bid” is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(150) “Retainage” is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(151) “Rules” means these Public Contracting Rules of the Department including Divisions 246 through 249, unless otherwise indicated.

(152) “Scope” means the extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the Contract.

(153) “Secondary Waste Materials” means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. “Secondary Waste Materials” includes post-consumer waste. “Secondary Waste Materials” does not include excess virgin resources of the manufacturing process. For paper, “Secondary Waste Materials” does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(154) “Serial Negotiation” means a Negotiation that is sequential, ongoing, consecutive, alternating, or repetitive.

(155) “Services” or “services,” for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

(156) “Signature” means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(157) “Signed” means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(158) “Small Procurement” means a sourcing method according to ORS 279B.065.

(159) “Sole-Source Procurement” means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(160) “Solicitation” means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself. A Solicitation and award process uses methods identified in ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 279B.060 (bidding and proposals); 279B.070 (intermediate procurements); ORS 279B.085 (special procurements); 279C.100 through 279C.125 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying

Services, and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements).

(161) “Solicitation Document” means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. “Solicitation Document” includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency’s participation in a Procurement. The following examples are not Solicitation Documents because they do not invite offers from prospective Contractors: Request for Qualifications, a prequalification of Bidders, a request for information, and a request for product prequalification.

(162) “Special Government Body” is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS Chapter 338.

(D) An education service district.

(E) A community college district or community college service district established under ORS Chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this Section that is:

(i) Not part of state government or local government;

(ii) Created according to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, “Special Government Body” includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this Section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(163) “Special Procurement” means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) “Class Special Procurement” is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) “Contract-specific Special Procurement” means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(164) “Specification” is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics, or of the nature of the Supplies and Services to be procured by an Agency. “Specification” includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(165) “State” means the State of Oregon.

(166) “State Government,” subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(167) “Substantial Completion” is defined in ORS 12.135 and means the date when the contractee accepts in Writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or

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occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(168) "Supplies and Services" includes "Supplies or Services" and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, governed under ORS 279C.

(169) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof. See OAR 125-050.

(170) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(171) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of \$5,000 to \$150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(172) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(173) "Transitional Contracts" means all Public Contracts first advertised before March 1, 2005, but not entered into until on or after March 1, 2005. See OAR 125-246-0100(6).

(174) "Unnecessarily Restrictive" is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(175) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(176) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(177) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(178) "Work Order" means an Ordering Instrument related to Services, including any incidental Supplies.

(179) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(180) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0165

Delegation Policy and Procedures

(1) Generally.

(a) Purpose. This Rule describes the policy and procedures related to the delegation of authority under OAR 125-246-0170, including but not limited to:

- (A) Policy of the Code;
- (B) Individual Representation;
- (C) Forms of Delegations and Revocations of Authority;
- (D) Changes in Individual Representation;
- (E) Procedural Requirements;
- (F) Signature; and
- (G) Commitment of Funds.

(b) This Rule applies to all delegations and sub-delegations of Authority (collectively, Delegations), modifications of Delegations, and revocations of Delegations under OAR 125-246-0170. This Rule does not

delegate authority. All delegations by authority under the Rules are found solely in OAR 125-246-0170.

(2) Policy of the Code. The policy of the Code is to clarify responsibilities, instill public confidence, promote efficient use of resources, implement socioeconomic programs, allow meaningful competition, and provide a structure that supports evolving procurement methods, according to ORS 279A.015. These Rules support this policy of the Code.

(3) Individual Representation. Public Contracting may be delegated only to an individual, representing the State's interests. Authority under these Rules may be delegated only to individuals acting on behalf of the Agencies and in accordance with this Rule. All individual delegates must hold and use this Authority within the scope of their employment by the Agency and act on behalf of the Agency as the Agency's representative. Sub-delegations may be in whole or in part according to ORS 279A.075. Any individual may decline a sub-delegation in whole or in part. A delegator or delegatee may also be referred to in this Rule as an "Authorized Individual."

(4) Forms of Delegations and Revocations of Authority. ORS 279A.075 provides that the exercise of all authorities in the Code may be delegated and sub-delegated in whole or in part. The form of a Delegation or revocation of Authority by an Authorized Individual may be by:

- (a) OAR 125-246-0170 by the Director of the Department;
- (b) A Written external or internal policy by an authorized delegator or revoker;
- (c) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or
- (d) A letter or memorandum signed by an authorized delegator or revoker.

(5) Changes in Individual Representation. If an Agency determines that an Authorized Individual has ceased to represent that Agency for Procurement (Absent Individual), then:

(a) The Authority of the Absent Individual automatically reverts back to the individual who originally delegated the Authority to the Absent Individual. The Agency must determine who receives the reverted Authority in accordance with this Rule. If the Absent Individual is a head of an Agency or Designated Procurement Officer, the delegator of authority to that individual must notify the Chief Procurement Officer within thirty (30) days after the change in representation.

(b) Sub-delegations, if any, by an Absent Individual remain in effect unless and until the Authority of any sub-delegatees is modified or revoked by an Authorized Individual.

(6) Procedural Requirements.

(a) Compliance. Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code, related Rules and policies of the Department. Delegation of Authority does not exempt anyone from the requirements of the Public Contracting Code, related Rules, and policies of the Department. Any individual receiving delegated Authority is responsible for following the Public Contracting Code, related Rules, and policies of the Department.

(b) Modifications or Revocations.

(A) Authority. Subject to the conditions of Subsection (ii) below, any Delegation may be modified or revoked by:

- (i) The Director of the Department,
- (ii) The Chief Procurement Officer in accordance with Section 3(d)(F);
- (iii) The head of an Agency in accordance with Subsection (2)(a)(B);

or

(iv) The original authorized delegator or successor of this delegator who made this Delegation being modified or revoked.

(B) Conditions.

- (i) This modification or revocation of a Delegation must be Writing;
- (ii) The delegatee must receive reasonable notice of the modification or revocation of the Delegation; and
- (iii) This modification or revocation of a Delegation must be based upon a determination, as set forth in the related policy of the Department.

(c) Maintenance of Documents. The Authorized Agency must maintain copies of letters, memoranda, or agreements granting a Delegation.

(7) Signature. When an Authorized Agency has delegated Authority according to OAR 125-246-0170, the Authorized Agency's signature constitutes both the execution and approval of the Contract, except as described in Subsections (1)(h), (2)(a)(B), and (2)(b)(F).

(8) Commitment of Funds. ORS 291 and 293, together with the policies of the State Controller's Division of the Department, provide for public financial administration, including: appropriations, allotments by the Department, and an individual's authority to commit or encumber funds,

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financially obligate the Agency, and decide to expend funds. This type of authority may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority (collectively, Commitment of Funds).

(9) Requests for Delegations. Any Agency may submit a delegation request through ORPIN to the Chief Procurement Officer for authority in accordance with the Public Contracting Code, this Rule, and any related policy of the Department. All requested Delegations must be approved in Writing by the Chief Procurement Officer and based upon a consideration of relevant criteria as follows:

(a) The nature of the Supplies and Services to be provided;

(b) Resources of the Agency requesting the delegation, including trained and qualified contract officers and staff, the Agency's experience and expertise, staff time available, and the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated;

(c) The Agency's Procurement and public contracting past performance;

(d) Department's resources to exercise the authority if it is not delegated; and

(e) Value added by the Agency if the authority is delegated.

(10) Revocation of Delegations. The Chief Procurement Officer may revoke any delegation issued under Section (9) of this Rule at any time by written notice to the Designated Procurement Officer of the Agency, as defined in OAR 125-246-0170, based upon, but not limited to any of the following:

(a) Failure to comply with the requirements of the delegation;

(b) Deficiencies evidenced by performance audits performed by the Department, the Secretary of State, or the Legislative Assembly.

(c) Failure to comply with the Department training requirements to obtain an Oregon Basic Procurement Certification, Advanced Certification, or specific training described in the delegation;

(d) Lack of adequate experience in terms of procurement knowledge and any specialized knowledge pertinent to the authority delegated;

(e) The available resources of the Department to conduct the purchasing activities if authority is revoked; and

(f) The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is revoked.

(11) Return of Delegations from Agencies to the Chief Procurement Officer. If an Agency needs assistance, an Agency may request that the Chief Procurement Officer reclaim the authority previously delegated to the Agency. With sole discretion, the Chief Procurement Officer may accept the reclamation request for assistance according to the responsibilities, resources, and needs of the Department and the Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stat. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0170

Delegation of Authority

(1) Generally.

(a) Purpose. This Rule delegates the procurement authority of the Department (Authority). Only this Rule delegates this Authority.

(b) Authority of Agencies. The Director of the Department delegates Authority to the Designated Procurement Officers of the Authorized Agencies in Section (2) of this Rule.

(c) Authority of the Chief Procurement Officer. The Director of the Department delegates Authority to the Chief Procurement Officer in Section (3) of this Rule.

(d) Authority of the Director. According to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Agencies. Other Sections of the Code authorize specific actions by the Director of the Department. According to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Agencies.

(2) Delegation to Individuals in Agencies.

(a) Chain of Delegation and Responsibilities.

(A) Head and Designated Procurement Officer of the Agency.

(i) Conditional Delegation. The Director delegates Authority, only as set forth in this Section (2), to the heads of Authorized Agencies, on the condition that the heads of Authorized Agencies subdelegate such Authority to their Agencies' Designated Procurement Officers, who may further subdelegate such Authority in accordance with policies of their Agencies (Chain of Delegation). Every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency; if none

is appointed, the head of the Agency is deemed to be the Designated Procurement Officer and assumes the Authority, duties and responsibilities of the Designated Procurement Officer (collectively, "Designated Procurement Officer"). The heads of the Agencies may not subdelegate Authority outside this Chain of Delegation, except as provided in Subsection (2)(a)(B).

(ii) Manner of Appointment. The Authorized Agency determines its procedure for appointing its Designated Procurement Officer, and this Rule does not require or imply any inherent Authority in individual(s) or the Agency in order to make this appointment. The Agency must send a Written notice of its appointment of the Designated Procurement Officer to the Chief Procurement Officer.

(B) Exceptions: Head and Other Individuals of the Agency.

(i) Execution of Contracts. Heads of Authorized Agencies may subdelegate the Authority to execute Contracts, as described in Subsection (2)(b)(F), to other individuals within their respective Agency, provided this subdelegation is in accordance with a Written alternative subdelegation plan, maintained on file with the Agency's Designated Procurement Officer.

(ii) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295. Heads of Authorized Agencies may subdelegate the Authority to procure general or special counsel authorized by the Attorney General, as described in Subsection (2)(d)(Q), to other individuals within their respective Agency, provided the head of the Authorized Agency has determined that the individual receiving the subdelegation has the requisite skills and knowledge to carry out the subdelegation. Such subdelegations may be further subdelegated within that Authorized Agency, provided the subdelegator has determined that each individual receiving the Delegation has the requisite skills and knowledge to carry out the subdelegation.

(iii) Chain of Delegation. Authorized Individuals in accordance with Subsections (2)(a)(B)(i) and (ii) are included in the Chain of Delegation.

(C) Responsibilities. Each individual in the Chain of Delegation remains responsible for the exercise of Authority by that individual's subdelegates, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, is responsible for all delegated procurement activity on behalf of the Authorized Agency, as described in this Section (2), except as provided in Subsection (2)(a)(B).

(b) Duties and Responsibilities of Designated Procurement Officers. The Authority, duties and responsibilities of the Designated Procurement Officer, according to (2)(a)(A), are as follows:

(A) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated Authority;

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Authorized Agency;

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Authorized Agency in accordance with the Code and these Rules;

(E) Award Contracts only as authorized in accordance with this Rule;

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their final, legally enforceable forms.

If the Designated Procurement Officer is unable to make a Commitment of Funds as described in Subsection (1)(h), then the head of the Authorized Agency may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).

(G) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon the monitoring described in Subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing; and

(J) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110.

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(c) Delegation by Rule Based Upon Thresholds. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$5,000, according to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, and Amendments of Contracts resulting from Intermediate Procurements, according to ORS 279B.070, OAR 125-247-0270, and any related policy;

(D) Informal Selection Procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Competitive Quotes for Public Improvements estimated not to exceed \$100,000, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding \$150,000 and according to OAR 125-247-0255;

(G) Competitively Sealed Proposals not exceeding \$150,000 and according to OAR 125-247-0260;

(H) Sole-Source Procurements not exceeding \$150,000 and according to ORS 279B.075 and OAR 125-247-0275;

(I) Special Procurements in accordance with OAR 125-247-0287 not exceeding \$150,000.

(J) Purchase of Used Personal Property Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(9);

(K) Reverse Auctions Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(10); and

(L) Contract Administration as follows:

(i) For Contracts and Ordering Instruments authorized according to this Section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;

(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department Price Agreements and Contracts procured by the Department on behalf of Agencies. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s);

(iii) Activities specified in Writing by the Chief Procurement Officer or delegatee;

(iv) Activities specified in a related policy of the Department; and

(v) Despite Subsection (2)(c)(L)(i) through (iv) above, this Delegation by Subsection (2)(c)(L) does not include:

(I) The Contract Administration of Department Price Agreements; or

(II) For Contracts procured by the Department on behalf of Agencies, Amendments when the amended value of Contract exceeds \$150,000; and terminations of such Contracts when the amended value of such Contract exceeds \$150,000.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0400, provided that:

(i) No such Procurement results in a Permissive Cooperative Procurement that is open to any Agency outside of those Agencies jointly named in the original Procurement;

(ii) No such Procurement of Supplies and Services exceeds the Threshold of \$150,000, including all Amendments, according to OAR 125-247-0805;

(iii) No such Procurement of Public Improvements exceeds \$100,000, including Amendments according to OAR 125-249-0160 and 125-249-0910; and

(iv) The Authorized Agency must follow any related policy of the Department.

(C) Federal program Procurements not exceeding \$150,000 or according to a delegation agreement with the Chief Procurement Officer, and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements according to OAR 125-247-0288(1) and (2);

(E) Client Services procured under ORS 279B.055 through ORS 279B.085 and related Rules, including all amendments according to OAR 125-247-0805;

(F) Renegotiations of Existing Contracts with Incumbent Contractors Special Procurements according to OAR 125-247-0288(3) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and any Amendments and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer;

(G) Advertising Contracts Special Procurements according to OAR 125-247-0288(4);

(H) Equipment Repair and Overhaul Special Procurements according to OAR 125-247-0288(5);

(I) Contracts for Price Regulated Items Special Procurements according to OAR 125-247-0288(6);

(J) Investment Contracts Special Procurements according to OAR 125-247-0288(7);

(K) Food Contracts Special Procurements according to OAR 125-247-0288(8);

(L) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295;

(M) Special Procurement(s) related to disaster response, according to OAR 125-247-0287;

(N) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(O) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691; and

(P) Brand Name Specification Determinations for Sole Source Procurements not exceeding \$150,000 and according to OAR 125-247-0691.

(Q) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800.

(3) Delegation to the Chief Procurement Officer.

(a) Powers and Authorities. The Director of the Department delegates to the Chief Procurement Officer the rights, powers and authority vested in the Director of the Department to:

(A) Delegate and subdelegate these authorities in whole or in part according to ORS 279A.075;

(B) Approve Special Procurement requests, according to ORS 279B.085 and related Rules, and receive filed protests of approvals of Special Procurements, according to ORS 279B.400(1);

(C) Conduct hearings, approve Agency findings, approve exemption requests, and issue exemption orders, according to ORS 279C.335, ORS 279C.345, 279C.390, and related Rules;

(D) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(E) Receive, maintain, and act upon information contained in reports, including but not limited to ORS 279A.140(h) and 279C.355, as required by the Public Contracting Code and these Rules;

(F) Receive and resolve protests according to ORS 279B.400 to 279B.420 and Division 247 Rules, except for appeals from a decision of the Chief Procurement Officer or delegatee;

(G) Receive notices, conduct hearings, and make decisions regarding prequalifications, debarments, and Disqualifications according to ORS 279A.110, 279B.425, ORS 279C.450, ORS 200.065(5), and ORS 200.075(1), except for appeals from a decision of the Chief Procurement Officer or delegatee;

(H) Approve expedited notices for Sole-Source Procurements according to OAR 125-247-0275;

(I) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, according to ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(J) Approve General Service Administration federal programs or federal Contracts in accordance with OAR 125-246-0360;

(K) Authorize public notice of bids, proposals, and public improvement Contracts to be published electronically and according to ORS 279B.055(4)(c) and 279C.360(1);

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(L) Approve the manner and character of retainage according to ORS 279C.560(1) and (5);

(M) Approve exemptions waiving or reducing the bid security or bonds for Public Improvement projects in accordance with ORS 279C.390(1);

(N) Approve electronic-filing (e-filing) in accordance with ORS 84.049, 84.052 and 84.064;

(O) Approve procurement-related activities required by other law;

(P) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110; and

(Q) Other procurement actions of the Department specifically required by these Rules.

(b) Duties and Responsibilities of the Chief Procurement Officer. The authority, duties and responsibilities of the Chief Procurement Officer are as follows:

(A) Conduct Procurements, including administration of Contracts, for Agencies.

(B) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(C) Subdelegate authority in whole or part, based upon consideration and documentation of one or more of the following factors in making this decision:

(i) The procurement expertise, specialized knowledge and past experience of the individual;

(ii) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(iii) The individual's adherence to the Code, these Rules, standards, procedures and manuals;

(iv) The ability and assent of the individual to be accountable for the delegated Procurement; or

(v) The short-term demands upon the staff and resources of the Department, arising from unusual circumstances;

(D) Revoke authority delegated by the Chief Procurement Officer or in accordance with (3)(d)(F), in whole or part, based upon consideration and documentation of one or more of the following factors in making this decision:

(i) The procurement expertise, specialized knowledge and past experience of the individual;

(ii) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(iii) The individual's adherence to the Code, these Rules, standards, procedures and manuals; or

(iv) The ability and assent of the individual to be accountable for the delegated Procurement;

(E) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(F) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(G) Provide training and instruction opportunities to assure Department staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contract, Contract compliance, spend, Delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon monitoring described in Subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(J) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition according to ORS 279A.015.

(c) Delegation by Rule Based Upon Threshold. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies and according to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, and Amendments of Contracts resulting from Intermediate Procurements, on behalf of Agencies and according to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, on behalf of Agencies and according to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed \$100,000, according to ORS 279C.410 notes and OAR 125-249-0160; and

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, according to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services); and ORS 279C.410 and OAR 125-249-0210 (Public Improvements), respectively.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400, except as provided in Section (7)(a)(C) of this Rule; and the Chief Procurement Officer may delegate this authority by agreement to an Authorized Agency, provided this Delegation to an Authorized Agency meets the following criteria:

(i) There is no pre-existing Department Price Agreement or Mandatory Use Agreement;

(ii) The proposed Procurement does not negatively impact DAS Price Agreements or other Contracts identified by the Department;

(iii) A competitive process was used for the original agreement; and

(iv) The initial Solicitation was or will be advertised in Oregon.

(B) Special Procurements according to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360;

(F) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(G) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691;

(H) Brand Name Specification Determinations for Sole Source Procurements according to OAR 125-247-0691;

(I) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800; and

(J) All Procurements otherwise delegated to an Authorized Agency according to Section (2) if the Chief Procurement Officer, at her or his own discretion, revokes and assumes this delegated authority, based upon a determination that any Authorized Agency refuses or fails to comply with any Delegation described in Section (2).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0210

Subcontracting to and Contracting with Emerging Small Businesses; Disqualification

(1) As set forth in ORS 279A.105, an Authorized Agency may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its Workforce from economically distressed areas, as designated by the Oregon Business Development Department.

(2) For purposes of ORS 279A.105, a subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its Workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Business Development Department according to administrative rules adopted by the Oregon Economic and Community Development Department; or

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Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

(b) The Contractor certifies in Writing to the Authorized Agency that a substantial number of the subcontractor's employees, or subcontractors that will manufacture or provide the Goods or perform the Services under the Contract, reside in an area designated as economically distressed by the Oregon Business Development Department according to administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the Authorized Agency must determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitutes a substantial number.

(3) Discrimination in Subcontracting Prohibited.

(a) Prohibition. An Offeror who competes for or is awarded a Public Contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman, emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(b) Certification. Authorized Agencies must include in each Solicitation Document a requirement that Offerors certify in their Offers that the Offeror has not and will not discriminate, in violation of Subsection (3)(a), against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(4) Disqualification

(a) An Authorized Agency may disqualify a Person from consideration of award of the Authorized Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Public Contract according to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with Subsections (d) and (e) of this Section.

(b) As provided in ORS 200.065 and 200.075 an Authorized Agency may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:

(A) For a Disqualification under ORS 200.065, the Authorized Agency may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another Authorized Agency according to ORS 200.065.

(B) For a Disqualification under ORS 200.075, the Authorized Agency may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) An Authorized Agency may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.

(d) The Authorized Agency must provide Written notice to the Person of a proposed Disqualification. The Agency must deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice must:

(A) State that the Authorized Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Authorized Agency does not receive the Person's Written request for a hearing within the time stated, the Person must have waived the right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular Sections of the statutes and rules involved;

(F) State the proposed Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(e) Hearing. Upon the Authorized Agency's receipt of the Person's timely request, the Authorized Agency must promptly deliver written notification and this request to the Chief Procurement Officer. The Chief Procurement Officer must schedule a hearing upon its receipt of the Person's timely request. The Department must notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing before the hearing. The Chief Procurement Officer has the discretion to delegate authority under OAR 125-246-0170(3)(a)(G) and specify how the delegatee must review and hear Disqualifications.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.200.065, 200.075, 105 & 279A.110

125-246-0220

Advocate's Office and OMWESB

(1) The Director of Economic & Business Equity (also known as the "Governor's Advocate's Office for Minority, Women and Emerging Small Business") was created in the Office of the Governor, and the Director of Economic & Business Equity is the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Director of Economic & Business Equity oversees the resolution of business concerns with Authorized Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Director of Economic & Business Equity is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses according to ORS 200.025.

(2) The "Office of Minority, Women and Emerging Small Business" (OMWESB), as part of the Governor's Office, administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Emerging Small Business (ESB) Programs. As the sole certification authority in Oregon for disadvantaged, minority-and woman-owned businesses, and emerging small businesses, the Office of Minority, Women and Emerging Small Business (OMWESB) provides certification services for disadvantaged, minority, woman and emerging small businesses, according to ORS 200.025 and 200.055.

(3) A "Disadvantaged Business Enterprise" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(4) An "Emerging Small Business" is a business with its principal place of business located in this State; a business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for non-construction firms business which has fewer than 20 employees; an independent business (not a subsidiary, affiliate, or successor company of another business whose average gross receipts would exceed the stated limits); and a business properly licensed and legally registered in this State.

(5) A "Minority or Women Business Enterprise" is a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals, according to ORS 200.005.

(6) The general policy of the Department and these Rules is to expand economic opportunities for Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by exposing them to contracting and subcontracting opportunities available through Public Contracts, according to ORS 279A.105 and based upon the Legislative findings set forth in ORS 200.015.

(7) The Agency must support the participation of Minority, Women owned and Emerging Small Businesses in its purchasing processes by notifying the Director of Economic & Business Equity as required under ORS 200.035.

(8) When a Public Improvement Contract is less than \$100,000 and the Offerors are being drawn exclusively from a list of Certified Emerging Small Businesses maintained by the Office of Minority, Women and Emerging Small Business, the Authorized Agency may let the Contract without formal competitive sourcing methods after a good faith effort to obtain a minimum of three competitive Quotes from Emerging Small Businesses. To obtain maximum exposure for all firms and guard against favoritism, care must be taken to obtain Quotes from different firms each time the list is used. The Authorized Agency must keep a Written record of the source and amount of the Quotes received and comply with the applicable requirements of this Rule.

(9) In carrying out the policy of affirmative action, an Authorized Agency may rely upon ORS 279A.100 and advice of legal counsel regarding its application.

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(10) No Special Procurement according to ORS 279B.085 and no exemption according to ORS 279C.335 approved by the Chief Procurement Officer waives or excepts the requirement of notice to the Director of Economic & Business Equity in accordance with ORS 200.035 and any DAS policy. All Agencies must comply with ORS 200.035, notwithstanding the Public Contracting Code.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.100 & 279A.105
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0316

Lighting Preference Relating to Mercury

Authorized Agencies must comply with Oregon Laws 2012, Chapter 52, Section 4, including but not limited to:

(1) When making procurement decisions on lighting that contains mercury, an Agency must:

- (a) Request information from potential suppliers on mercury content, energy use, lumen output and lighting lifetime;
- (b) Issue specifications; and
- (c) Favor lighting that contains mercury that meets the mercury content standards established by Oregon Laws 2012, Chapter 52, Section 3.

(2) After consultation with the Department of Environmental Quality, the Chief Procurement Officer may direct Agencies to use information and issue specifications to favor lighting in accordance with (1), and Agencies must follow the directions, if any.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: Sec. 4, Ch. 52, OLs 2012
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0318

Oregon Employment Preference

Authorized Agencies must comply with Oregon Laws 2012, Chapter 53, Section 6, including but not limited to the following requirements for a discretionary preference:

(1) An Authorized Agency may give a preference to an Offer including a personnel deployment disclosure form (Disclosure Form) that states that the Offeror will employ more workers within Oregon than a competing Offer if the Offers otherwise suit the Agency's specifications for the procurement equally well.

(2) The Agency may state in the solicitation documents for any procurement (Solicitation) that the Agency will consider a Disclosure Form and may give a preference described in Section (1) above. Then,

- (a) An Offeror may submit a Disclosure Form with its Offer;
- (b) If the Agency determines that the Offers suit the Agency's specifications for the procurement equally well, then the Agency may consider any Disclosure Forms submitted with those Offers in evaluating the Offers; and

(c) The Agency may prefer the Offer with a Disclosure Form that indicates that the Offeror will employ more workers within Oregon than a competing Offer, with or without Disclosure Form information.

(3) The Disclosure Form submitted by an Offeror must state:

- (a) The number of workers that the Offeror and its subcontractors plan to deploy to perform the work described in the Solicitation;
- (b) The number of workers that the Offeror and its first-tier subcontractors will employ within Oregon; and

(c) The number of jobs in each of the categories described in subsections (3)(a) and (b) that would be a newly created job.

(4) The Agency may adopt its own form and contents for the Disclosure Form, unless the Chief Procurement Officer requires Agencies to use an approved form and contents of the Disclosure Form.

(5) The Agency may:

- (a) Verify the information stated in the Disclosure Form before awarding a public contract; and
- (b) Require that the contractor maintain a minimum number of workers and jobs over the term of the contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: Sec. 4, Ch. 52, OLs 2012
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0319

Federally Funded Transit Projects – Preference for Exceeding Federal Buy America Requirements

See OAR 137-046-0330.
Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: Sec. 4, Ch. 52, OLs 2012
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0321

Recycling Policy

(1) The Department promotes the Procurement by all Authorized Agencies of products made from Recycled Materials in accordance with ORS 279A.125 and 279B.270.

(2) When purchasing Goods, or pursuant to Subsection (2)(c), Personal Services that relate to the use of recovered resources and Recycled Materials, Authorized Agencies must:

(a) Review the procurement Specifications currently utilized in order to eliminate, wherever economically feasible, discrimination against the Procurement of recovered resources or Recycled Materials;

(b) Develop purchasing practices that, to the maximum extent economically feasible, assure purchase of materials which are recycled or which may be recycled or reused when discarded. The Department will make Recycled Products and materials available to Authorized Agencies whenever they can be obtained;

(c) Provide incentives for the maximum possible use of recovered resources and Recycled Materials, wherever economically feasible, in all procurement Specifications issued.

(3) Pursuant to ORS 279A.125, notwithstanding provisions of law requiring the Department to award a Contract to the lowest or best Offeror, the Department must give preference to the procurement of Goods manufactured from Recycled Materials, if the Recycled Product's costs do not exceed the costs of nonrecycled products by more than 5%, or a higher percentage if a Written determination is made by the Department. The requirements of ORS 279A.125 may be applied to Authorized Agencies by agreement or policy of the Department.

(4) The Offeror must indicate in the Offer, the materials considered relevant to the 5% preference. The 5% preference will only apply to the value of that portion of the Offer that offers non-paper products containing verifiable recycled contents.

(5) All Contracts must require Contractors to use, in the performance of the Contract Work, to the maximum extent economically feasible, Recycled Paper;

(a) All Contracts must require Contractors to use, in the performance of the Contract Work, to the maximum extent economically feasible, recycled PETE products, as well as other recycled plastic resin products. "Recycled PETE products" means a product containing post-consumer polyethylene terephthalate material. The Department must provide guidelines to Authorized Agencies and Contractors on the availability of necessary Goods that contain recycled PETE, as well as other recycled plastic resin supplies and materials; the Department must also identify suppliers able to provide necessary Goods containing recycled PETE, as well as other recycled plastic resin supplies and materials, pursuant to ORS 279A.150.

(b) All Authorized Agencies must include the following language in any Invitation to Bid or Request for Proposal: "Vendors must use recyclable products to the maximum extent economically feasible in the performance of the contract Work set forth in this document," pursuant to ORS 279B.270(2); and

(c) The Department must include Recycled Product purchasing information within publications and training programs provided to local governments requesting state government purchasing assistance, pursuant to ORS 279A.145.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.125, 279A.145, 279A.150, 279B.270 & 279B.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0322

Preference for Recycled Materials

(1) Notwithstanding provisions of law requiring an Authorized Agency to award a Contract to the lowest or best Offer of a Provider, and in accordance with ORS 279A.125 and Subsection (2) of this Section, an Authorized Agency charged with the Procurement of Goods for any public use must give preference to the Procurement of Goods manufactured from Recycled Materials whenever the Authorized Agency uses Competitive Sealed Bidding or Competitive Sealed Proposals pursuant to ORS 279B.055 or 279B.060, respectively, and as set forth in this Rule.

(2) In comparing Goods from two or more Offerors, if at least one Provider offers Goods manufactured from Recycled Materials and at least one Provider does not, an Authorized Agency must select the Provider offering Goods manufactured from Recycled Materials if each of the following four conditions exists:

- (a) The Recycled Product is available;
- (b) The Recycled Product meets applicable standards;

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(c) The Recycled Product can be substituted for a comparable non-recycled product; and

(d) The Recycled Product's costs do not exceed the costs of non-recycled products by more than five percent (5%), or a higher percentage if a Written determination is made by the Authorized Agency and set forth in the Solicitation Document.

When making this determination, the Authorized Agency must consider the costs of the Goods following any adjustments the Authorized Agency makes to the price of the Goods after evaluation pursuant to OAR 125-246-0310.

(3) For the purposes of this Section, an Authorized Agency must determine if Goods are manufactured from Recycled Materials in accordance with standards established by the Department .

(4) Providers must certify in their Offers:

(a) The minimum, if not exact, percentage of Recycled Product in all materials and supplies offered; and

(b) Both the post-consumer and secondary waste content thereof. Providers may certify a zero percent Recycled Product content. This certification applies to Public Improvement products and all other Procurements.

(5) To be eligible for a preference under ORS 279A.125 and this Rule:

(a) The Provider must indicate which materials and supplies contain verifiable recycled content; and

(b) Such products must meet the requirements of ORS 279A.125 and this Rule.

(6) A preference under ORS 279A.125 will only be applied to those products in the Offer that contain verifiable recycled content.

(7) Offers that contain false information about (i) the percentage of Recycled Product, post-consumer and secondary waste content, or (ii) verifiable recycled content, must be rejected as nonresponsive, and the Provider offering false information may be deemed non-responsible.

(8) Contracts awarded as a result of a preference under ORS 279A.125 are subject to such investigation, including but not limited to, audits, plant visitations, examination of invoices, laboratory analysis, and other documents, etc., as the Department deems necessary to confirm that the products supplied therein contain the percentages of Recycled Product, post-consumer and secondary waste stated in the Offer.

(9) Failure to provide products containing the percentages of Recycled Product, post-consumer and secondary waste stated in the Offer may result in:

(a) The Provider reimbursing the State for the portion of the Contract Price that is attributable to the preference applied under ORS 279A.125;

(b) Contract termination; or

(c) Both (a) and (b), or such other remedies as the Department deems appropriate.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0323

Recycled Paper and Paper Products

(1) The Department promotes the use of Recycled Paper and paper products, and no less than 35% of Authorized Agency Procurements of paper products may be from Recycled Paper Products, pursuant to ORS 279A.155.

(2) The Department must make available to Agencies paper and paper products that contain significant quantities of Recycled Materials in all grades where it can be obtained. The Department and Authorized Agencies must purchase Recycled Paper and paper products when the cost of such Recycled Paper or paper products is no more than five (5%) higher than the cost of the same quality paper or paper products containing little or no Recycled Paper. The Department and Authorized Agencies must give a preference of up to five percent (5%) pursuant to ORS 279A.125(2), to suppliers of Recycled Paper and paper products, over the lowest price of non Recycled Paper and paper products if the fitness and quality of the Recycled Paper content paper meet Specification requirements and the type of Recycled Paper content is equivalent to the same type of virgin material.

(3) Except as provided in this Rule and regardless of cost, the Department must make Recycled Paper and paper products available to Authorized Agencies through a Recycled Paper agreement. Authorized Agencies that find it economically feasible to exceed the incentive in Section (2) of this Rule for Recycled Paper may do so either by use of agreements for Recycled Paper or by indicating on their purchase request

the percentage of Recycled Paper incentive, which is economically feasible for them.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.125 & 270A.155

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0333

Independent Contractors

(1) An Authorized Agency may, within the limits of its delegation under OAR 125-246-0170 and its legislatively approved budget, Contract for Personal Services with Providers who are Independent Contractors.

(2) "Independent Contractor" means a Person who provides services to an Authorized Agency in which the Authorized Agency neither controls nor has the right to control the means or manner by which Work is performed. The Authorized Agency may control the results of the services, but not control the means or manner of Contractor's performance of the Work.

(3) Within the parameters of employment, Workers' compensation, and other relevant state and federal laws, and after determining that the contract will not violate any collective bargaining agreements, an Authorized Agency may contract for Personal Services when:

(a) The Work cannot be done in a reasonable time with the Authorized Agency's own Workforce;

(b) An independent and impartial evaluation is required; or

(c) It will be less expensive to contract for the Work.

(4) The Authorized Agency may not use Personal Services Contracts to obtain and pay for the services of an employee. If a Contractor is not an Independent Contractor, the Authorized Agency may not enter into a Personal Services Contract with the Contractor; instead, the Authorized Agency must follow personnel policies for employment options.

(5) Independent Contractor Status. The Authorized Agency must develop a Statement of Work for Trade or Personal Services, including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, that will not result in an employee relationship with the potential Contractor. Contractors must complete the Independent Contractor Certification either as a contract provision or on a form approved by the Chief Procurement Officer (Independent Contractor Certification). If the Contractor cannot certify Independent Contractor status, the Authorized Agency may not contract with the Contractor using a Trade or Personal Services Contract, including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, except as otherwise allowed in Subsection (5)(f) of this Rule:

(a) An Independent Contractor Certification must be part of each Contract;

(b) If the Contractor is a corporation, the Independent Contractor Certification is still required.

(c) If the nature of the Services or project is such that an employee/employer relationship will exist, the Authorized Agency must hire the individual through normal personnel procedures.

(d) The Contract must include the Contractor's legal name and address. Either the Contract or a separate cover sheet for the Contract must include the Contractor's Social Security or federal tax identification number.

(e) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

(f) When a Contractor cannot certify that the Contractor meets the definition of "independent contractor," is customarily engaged in an independently established business, and meets at least three of the requirements for such a business in accordance with ORS 670.600, then the Authorized Agency may contract with the Contractor only if the Designated Procurement Officer of the Authorized Agency approves the Contract upon a determination that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.140

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0335

Authority and Standards for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) Identification of Personal Services Contracts.

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(a) According to ORS 279A.140(2)(h), the Chief Procurement Officer may designate Contracts or classes of Contracts as Personal Services Contracts for the purposes of reporting Personal Services Contracts in accordance with ORS 279A.140 and identifying the appropriate required procedures in accordance with ORS 279A.070 and 279A.140. In the event of uncertainty or disagreement as to the status of any particular Contract or class of Contracts, the Chief Procurement Officer may determine whether a particular contract is a Personal Services Contract.

(b) The Authorized Agency must identify within the Contract that the Authorized Agency is contracting for Personal Services. A failure to adequately describe Personal Services within the Contract will not invalidate the Procurement or Contract if the Authorized Agency properly used a sourcing method according to ORS 279B.055 through 279B.085 or 279C.100 through 279C.125 and substantially followed the related Rules.

(3) Contracting Out for Services Provided by Employees.

(a) Where the Authorized Agency is contemplating contracting for Work performed by Authorized Agency employees represented by a labor organization, the Authorized Agency must review the relevant collective bargaining agreement to ensure the contract complies with the provisions and, if applicable, the requirements of ORS 279A.140.

(b) Whenever the Authorized Agency pays more in a given 12-month period to a Provider under a Personal Services Contract for services historically performed by state employees than would have been paid to the Authorized Agency employee performing the same Work, the Authorized Agency must report that fact, with a justifying statement to the Department. The report must be made at the conclusion of each fiscal year.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0345

Procedures for Personal Services Contracts

(1) Contract and Amendment Forms for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services. Authorized Agencies must comply with OAR 125-248-0300(1).

(2) Other Forms for Personal Services Contracts and Amendments. Authorized Agencies must use one of the forms provided or approved by the Chief Procurement Officer for Personal Services Contracts and Amendments (Forms).

(a) Revised Forms.

(A) Designated Procurement Officer Approval up to \$150,000. For revised Forms up to a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to the Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(B) Department of Justice Approval over \$150,000. For revised Forms exceeding a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval.

(b) Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(c) The Authorized Agency must review the approved Form at least every two years. If upon review the Authorized Agency revises the Form, the Authorized Agency must obtain Department of Justice approval before using the revised Form.

(3) Screening, Selection, Evaluation and Award Procedures. An Authorized Agency must follow the procedures set forth in Division 248 of these Rules when contracting for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services. For all other Personal Services Contracts, an Authorized Agency must select a sourcing method from the seven methods available according to ORS 279B.055 through 279B.085 and follow the screening, selection, evaluation and award procedures set forth for the selected sourcing method in Division 247 of these Rules.

(4) Amendments and Reinstatements. The procedures for Amendments and reinstatements are found in OAR 125-247-0805, 125-248-0340, and 125-246-0570, respectively. Procedures for Amendments and reinstatements for Architectural, Engineering, Photogrammetric

Mapping, Transportation Planning or Land Surveying Services, and Related Services are found in OAR 125-248-0340 and 125-248-0310, respectively.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.70 & 279A.140(h)(B)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0350

Approval of Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) Chief Procurement Officer Approval. Except as provided in OAR 125-246-0170, the Chief Procurement Officer must approve all Personal Services Contracts exceeding \$150,000 before the Authorized Agency executes the Contract.

(3) Requisite Approvals First. All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Services Contract entered into by an Authorized Agency becomes binding upon the State and before any service may be performed or payment made under the Contract, unless the Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(4) Approval after Legal Sufficiency Review. The Chief Procurement Officer may not approve a Personal Services Contract before the Attorney General approves this Personal Services Contract under ORS 291.047.

(5) Types of Approvals.

(a) When Attorney General legal sufficiency approval is required under ORS 291.047, the Authorized Agency must seek legal approval;

(b) When an Authorized Agency contracts for services normally provided by another Authorized Agency or for services for which another Authorized Agency has statutory responsibilities, the Authorized Agency is required to seek the other Authorized Agency's approvals, prior to final approval by the Chief Procurement Officer. Examples of these special approvals include, but are not limited to:

(A) Department, Risk Management Division, for providing tort liability coverage.

(B) Department, State Services Division, Publishing and Distribution, for printing services;

(C) Department, State Controller's Division, for accounting services;

(D) Office of the Treasurer, Debt Management Division, for financial and bond counsel services (bond counsel services also require the approval of the Attorney General); and

(E) Department, Enterprise Information Strategy and Policy Division, for information-system related and telecommunications services. The Authorized Agency is also encouraged to use this Division's Enterprise Planning and Policy Section as a resource in carrying out information system-related projects. This may include:

(i) Assistance to the Authorized Agency in developing Statements of Work related to information system projects;

(ii) Reviews to assure consistency with State standards and direction; and

(iii) A listing of vendors that provide information system-related services.

(c) The Authorized Agency's and Contractor's execution must be obtained;

(d) The Chief Procurement Officer approval, when required, is last.

(6) Attorney or Financial Auditing Services.

(a) The Attorney General has sole authority to contract for attorney services. Only the Attorney General may grant exceptions in Writing on a case-by-case basis;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Only the Secretary of State Audits Division may grant exceptions in Writing on a case-by-case basis.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0351

Acquiring Services Before Obtaining Requisite Approvals

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) Personal Services may be performed before all requisite approvals are obtained under a Personal Services Contract if the Personal Services

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Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(3) The process set forth in this Rule is intended to allow Authorized Agencies to acquire services before obtaining all requisite approvals for those Personal Services Contracts that call for payments of less than the Threshold for legal sufficiency review by the Attorney General.

(4) The Chief Procurement Officer may authorize an Authorized Agency to acquire services before obtaining all requisite approvals when circumstances exist that require prompt action to protect the interests of the State. An Authorized Agency may seek such authorization for a Personal Services Contract or a class of Personal Services Contracts to address specific recurring needs to acquire services on short notice. An Authorized Agency seeking the Chief Procurement Officer's authorization must describe particular circumstances that make it impracticable to obtain all requisite approvals before acquiring services. The Chief Procurement Officer will only authorize an Authorized Agency to acquire services before obtaining all requisite approvals if the Authorized Agency follows the procedures set forth in this Rule. The Chief Procurement Officer's authorization according to this Rule only allows the Authorized Agency to acquire services before obtaining all requisite approvals. It does not authorize the Authorized Agency to make any payments before obtaining all requisite approvals.

(5) The Authorized Agency seeking the Chief Procurement Officer's authorization to acquire services before obtaining all requisite approvals must provide:

(a) Written findings to the Chief Procurement Officer that describe the specific recurring circumstances that require the Authorized Agency to take prompt action to protect the interests of the State because they create substantial risk of loss, damage, interruption of services or threat to public health or safety. The Authorized Agency must also describe why, under these specific circumstances, it will be impracticable to obtain all requisite approvals before acquiring services;

(b) The Personal Services Contract form that the Authorized Agency will use for the Contract entered into after acquiring services, but before making payments.

(c) Documentation demonstrating that the Authorized Agency has established procedures to administer the Contract or class of Contracts, for which it seeks authorization.

(6) The Chief Procurement Officer after review of the material required by Section (5) above, may authorize the Authorized Agency to acquire the specific services under the specific circumstances described in response to Section (5)(a) above before obtaining all requisite approvals. If the Chief Procurement Officer provides authorization, the Chief Procurement Officer will do so in Writing, subject to any conditions or limitations the Chief Procurement Officer deems appropriate, including but not limited to the duration of the authorization, and any other terms and conditions the Chief Procurement Officer may determine are appropriate.

(7) If Authorized Agency acquires services before obtaining all requisite approvals when authorized by the Chief Procurement Officer, the Authorized Agency, as soon as practicable after acquiring the services, must enter into a Written Contract in the form submitted by the Authorized Agency and approved by the Chief Procurement Officer. The Authorized Agency must not revise the terms of the approved Contract form submitted by Authorized Agency without the Chief Procurement Officer's approval.

(8) The Authorized Agency must not make any payments for services before obtaining all requisite approvals.

(9) The Chief Procurement Officer authorization to perform services before obtaining all requisite approvals does not exempt the Authorized Agency from obtaining legal sufficiency review, if required under the provisions of ORS 291.047.

(10) An Authorized Agency authorized to perform services before obtaining all requisite approvals must follow all applicable screening and selection requirements unless otherwise exempt from those requirements.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0353

Reporting Requirements for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) The Department maintains for state agencies an electronic reporting system within ORPIN for reporting Personal Services Contracts. Each state agency that is not exempt from the Public Contracting Code must

report in ORPIN each Personal Services Contract and Amendment. The report must include the state agency name, not-to-exceed amount of the Contract, the name of the Contractor, the duration of the Contract, its basic purpose, and a copy of the Personal Services Contract or Amendment. Whenever a state agency pays more in a calendar year under a Personal Services Contract for services historically performed by state employees than the state agency would have paid to the state agency's employees performing the same Work, the state agency must so report through ORPIN and include in the report a statement of justification for the greater costs, according to ORS 279A.140(2)(h)(A)(i).

(3) The Department must submit a report to the Legislature summarizing state agency Personal Services Contracts. This report must include the name of the state agency, the not-to-exceed amount of the Contracts, the name(s) of Contractor(s), the duration of Contract(s) and the basic purpose of the Contract(s). The report must also include the total dollar figure of all Personal Services Contracts for each fiscal year.

(4) The Department maintains an electronic file of Personal Services Contracts report forms for public review. The electronic file includes a justification statement, when applicable, and documentation of the selection process for each Contract.

(5) The state agency must keep in the Procurement File all Personal Services Contracts, justification statements, when applicable, documentation of the selection process for each Contract, and the report forms in compliance with OAR 166-300-0015(7) and any other applicable laws.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(h)(A)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0360

Purchases Through Federal Programs

(1) Exemption. An Authorized Agency may purchase certain authorized Supplies and Services through General Service Administration (GSA) federal programs or federal Contracts (Federal Programs) without Competitive Sealed Bidding, Competitive Sealed Proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Authorized Agency has federal authorization to purchase through the Federal Program and follows the procedures set forth in this rule.

(2) Federal Authorization.

(a) The Federal Programs named in ORS 279A.180 are accessible to Authorized Agencies for purchasing Supplies and Services. In addition, by this Rule, the Director of the Department (Director) hereby makes the determination according to ORS 279A.180, that the GSA Order of 2000 and any subsequent revisions or updating of this GSA Order of 2000 (GSA Orders) describe other Federal Programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies; therefore, Authorized Agencies may purchase through those Federal Programs described in a GSA Order without making individual requests for determination to the Director.

(b) If an Authorized Agency desires to purchase through another Federal Program that is not expressly named in ORS 279A.180 or a GSA Order, the Authorized Agency must request in Writing a determination from the Director or the Director's designated representative. In the request, the Authorized Agency must document that the federal government has authorized states, including the Authorized Agency, to purchase through the proposed Federal Program. The request of the Authorized Agency and the determination by the Director or representative must be limited to those other Federal Programs described in ORS 279A.180 that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies.

(c) If no federal authorization exists as described in Sections (2)(a) and (b) of the Rule, then an Authorized Agency is not permitted to purchase through any Federal Program.

(3) Procedures. To purchase through a Federal Program, an Authorized Agency must document in its Procurement File that:

(a) The federal authority for the Authorized Agency to purchase through the Federal Program, referring to ORS 279A.180, a GSA Order, or the Chief Procurement Officer's approval of an Authorized Agency's request.

(b) The acquisition meets the Authorized Agency's needs;

(c) The price and other terms of the acquisition are Advantageous to the State;

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(d) No mandatory Department Price Agreement for the authorized Supplies and Services exists, based upon the Authorized Agency's inquiry through ORPIN;

(e) The Authorized Agency has considered the acquisition's impact upon local business as follows:

(A) If the Procurement is in excess of \$5,000, the Authorized Agency has given timely notice through ORPIN of its needs, reasons, and intent to procure through a Federal Program;

(B) The Authorized Agency has provided a reasonable time period under the circumstances for individuals to respond to the notice and send Written comments to the Authorized Agency; and

(C) The Authorized Agency has considered any comments and replied, if appropriate, before proceeding with its Procurement through a Federal Program. This Rule provides for an informal opportunity to comment to and be considered by the Authorized Agency, instead of the formal notice requirements for Solicitations in excess of \$5,000 according to ORS 200.035.

(f) State and local preference programs, including but not limited to the Inmate Work Program of ORS 279.015, the Products of Disabled Individuals Program of ORS 279.835 to 850, and state requirements Contracts under OAR 125-247-0296, are not waived or otherwise adversely affected by an acquisition through a Federal Program;

(g) The Authorized Agency has complied with OAR 137-045-0010 to 137-045-0090, and if it is required, obtained a legal sufficiency review or exemption from the Department of Justice; and

(h) The Authorized Agency is informed of its Federal Program's Procurement Process, including:

(A) Voluntary and Direct Contract. The Authorized Agency and Contractors participate voluntarily. The Contractors make direct deliveries to the Authorized Agency and retain the right to decline orders on a case-by-case basis, for any reason, within a five-Day period of receipt of that order;

(B) Funding Fee. The price of a Federal Program Contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the Federal Program;

(C) New Contract. When a Contractor accepts an order from an Authorized Agency, a new Contract is formed. The Contract's terms and conditions are incorporated by reference; and

(D) Additional Terms and Conditions. The Authorized Agency may add to its Contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the Federal Program's Contract terms and conditions. Examples of such terms and conditions include, but are not limited to:

(i) Prompt Payment. The Authorized Agency may apply the terms and conditions of Oregon's prompt payment law to its Contracts, but if the Authorized Agency fails to make this addition, then the Authorized Agency may be subject to the Federal Prompt Payment Act, 31 U.S.C. sec. 3901 et seq., as implemented at subpart 32.9 of the Federal Acquisition Regulation (FAR);

(ii) Commercial Terms. Patent indemnity and other commercial terms and conditions may be added if they do not conflict with the Federal Program's terms and conditions; and

(iii) Conflict Resolution. The Authorized Agency may revise the Contract's dispute resolution provision to use Alternative Dispute Resolution (ADR) to the extent authorized by law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070 & Sec.335, Ch. 794, OL 2003 (HB 2341)

Stats. Implemented: ORS 279A.180

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0400

Cooperative Procurement

(1) See OAR 137-046-0400 through 137-046-0480.

(2) Regardless of OAR 137-046-0400 through 137-046-0480, Authorized Agencies must comply with the following provisions:

(a) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in this subsection (2)(a):

(A) "Administering Contracting Agency" is replaced by "Administrator."

(B) "Purchasing Contracting Agency" is replaced by "Participant."

(b) Definitions.

(A) An "Administrator" means a governmental body that solicits and establishes the Original Contract for Supplies and Services or Public Improvements in a Cooperative Procurement. "Administrator" means the Chief Procurement Officer or subject to the approval of the Chief

Procurement Officer: an Agency, another Public Body within the state of Oregon, or a governmental body outside the state of Oregon. An Administrator has the same rights and responsibilities as an Administering Contracting Agency under ORS 279A.200 through 279A.225.

(B) A "Participant" means a governmental body that procures Goods, Services, or Public Improvements from a Provider based on the Original Contract established by an Administrator in a Cooperative Procurement. For the purpose of the Cooperative Procurement Rules, the procured Services include Architectural, Engineering and Land Surveying Services, and Related Services. A Participant may be the Chief Procurement Officer or, subject to the approval of the Chief Procurement Officer: an Authorized Agency, a local Public Body, a state agency with independence under ORS 279A.050, or a governmental body located outside the State of Oregon. A Participant has the same rights and responsibilities as a Participating or Purchasing Contracting Agency under ORS 279A.200 through 279A.225.

(c) Authority for Cooperative Procurements

(A) The Chief Procurement Officer will enter into Cooperative Procurements on behalf of Agencies, unless an Authorized Agency receives a delegation of authority according to OAR 125-246-0170 to act as an Administrator or Participant.

(B) Subject to a delegation of authority described in subsection (2)(c)(A) of this Rule, an Administrator or Participant may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and these Rules.

(C) For Permissive Cooperative Procurements, each Participant that participates after the Award of the Original Contract must determine, in Writing, whether the Solicitation and award process for the Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085, consistent with 279A.200(2). The Participant must maintain this Written determination in the Participant's Procurement File.

(d) Responsibilities

(A) The Administrator of a Cooperative Procurement may establish any terms and conditions necessary to allow other Participating Authorized Agencies or Cooperative Procurement Groups of which the Participant is a member (collectively, "Participant") to participate in a Cooperative Procurement. The Administrator may require Participants to enter into a Written agreement that establishes the terms and conditions for participation in a Cooperative Procurement. These terms and conditions may include, but are not limited to: the establishment of any administrative fees for the Administrator, whether each Person must enter into a Written agreement with the Administrator, and any other matters related to the administration of the Cooperative Procurement source selection and the resulting Original Contract. The Administrator may include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Participants' compliance with the Code and these Rules.

(B) In administering or applying these Rules, the Administrator must collaboratively review and compare the procurement needs and requirements of both the Administrator and the respective Participant(s) for the purpose of using a Cooperative Procurement to achieve cost savings (for examples: lowest total cost of acquisition, least time to procure, process streamlining, Return on Investment calculation based on a comparison of the total costs of individual Authorized Agency Procurements versus a Cooperative Procurement).

(C) If a Participant enters into a Contract based on a Cooperative Procurement, the Participant must comply with the Code, these Rules, and any terms and conditions set out by the Administrator, including:

(i) The extent to which the Participant may participate in the Cooperative Procurement;

(ii) The advertisement of the Solicitation Document for the Cooperative Procurement; and

(iii) Public notice of the Participant's intent to establish Contracts based on a Cooperative Procurement.

(D) Joint, Permissive, and Interstate Cooperative Procurement Solicitations must comply with OAR 125-247-0305.

(e) Amendments of Cooperative Procurements must comply with OAR 125-247-0805.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140, 279A.205, 279A.210, 279A.215, 279A.220, 279A.225

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

ADMINISTRATIVE RULES

125-246-0500

Oregon Procurement Information Network (ORPIN)

(1) The Oregon Procurement Information Network, known as ORPIN, an Internet-based, on-line system, is the official publication forum for state Procurement notices and advertisements, as functionality allows, by the Department and all Agencies.

(2) All state Agencies must use ORPIN to comply with the reporting requirements for:

(a) Personal Services Contracts in accordance with OAR 125-246-0353;

(b) Agreements under ORS 190 in accordance with OAR 125-246-0365; and

(c) Special Procurements in accordance with OAR 125-247-0287(12).

(3) Authorized Agencies must use ORPIN in accordance with the Department's ORPIN Policy no. 125-009-020, the Department's MWESB Procurement Policy no. 125-009-030, and the Executive Order No. 12-03.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0556

Procurement Files

(1) Application. This Rule applies to Procurement Files, as defined in OAR 125-246-0110.

(2) Required Documentation. All Procurement Files must contain:

(a) All Written documents delivered to an Agency from the Department, whether the documents relate to approvals, revocations, orders, modifications, or other actions (Actions), related to the documents' subject matter and Action;

(b) An executed Contract, if awarded, and any Ordering Instruments and Amendments (collectively, Contract);

(c) The record of the actions used to develop and administer the Contract;

(d) A copy of the Solicitation, if any;

(e) The Contract Administrator and any delegates;

(f) Any required findings or statement of justification for the selection of the Provider and sourcing method according to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 085 (seven methods for Supplies and Services); 279C.100 through 279C.125 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services); or ORS 279C.300 through 279C.450 (Public Improvements);

(g) Documentation of Contract Administration according to OAR 125-246-0555 and if required by the selected procurement method:

(i) A list of prospective Providers notified of any Solicitation;

(ii) The method used to advertise or notify prospective Providers;

(iii) A copy of each Offer that resulted in the Award of a Contract;

(iv) The record of any Negotiation of the Statement of Work and results;

(v) A record of all material Communications regarding the Solicitation by interested Providers according to OAR 125-246-0635;

(vi) All information describing how the Provider was selected, including the method and basis for awarding the Contract;

(vii) A copy of the Request for Special Procurement, if any;

(viii) Documentation for a Federal Program purchase according to OAR 125-246-0360; and

(ix) Documentation related to Cooperative Procurements according to OAR 125-246-0400.

(3) Time Period. The Agency must maintain Procurement Files, including all documentation, for a period in compliance with OAR 166-300-0015(7) and any other applicable laws. Procurement Files must be made immediately available for review upon the request of the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0576

Payment Authorization for Cost Overruns for Services Contracts

(1) Payments on Contracts for Trade or Personal Services that exceed the maximum contract consideration (Cost Overruns) require approval (Approval). If the aggregated value of the Contract, including Cost Overruns, does not exceed \$150,000, the Designated Procurement Officer of the requesting Authorized Agency may approve the Cost Overruns in accordance with Section (2) of this Rule. If the aggregated value of the Contract, including Cost Overruns, exceeds \$150,000, the Chief

Procurement Officer may approve the Cost Overruns in accordance with Section (2) of this Rule. The Cost Overruns may also require approval from the Department of Justice pursuant to ORS 291.047 and 291.049.

(2) Approval may be provided if:

(a) The Original Contract was duly executed and, if required, approved by the Department and the Attorney General;

(b) Payments relate to Services that were provided during the term of the Contract;

(c) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract;

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the Original Contract, or the most recent Amendment, if any, was signed. Such circumstances include, but are not limited to: emergencies arising in the course of the Contract that require prompt action to protect the Work already completed, compliance with official or judicial commands or directives issued during contract performance or insurance that the purpose of the Contract will be realized;

(e) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or performance rendered;

(f) The aggregated value of the Contract, including the Cost Overrun, and the Contract's objective are within the procurement authority of the Authorized Agency pursuant to OAR 125-246-0170, and the Authorized Agency currently has funds available for payment under the Contract; and

(g) The Agency must prepare a Written report that describes the Authorized Agency's discovery of the Cost Overrun, the reasons for the Cost Overrun, and the Agency's satisfaction of the conditions set forth in this Section (2) (Report). The Authorized Agency must maintain this Report in its Procurement File and make this Report available to the Department upon request.

(h) The Designated Procurement Officer of the Authorized Agency approves in Writing the payment of the overrun, or such portion of the overrun amount as the Designated Procurement Officer of the Authorized Agency determines may be paid consistent with the conditions of this Rule. If the Designated Procurement Officer of the Authorized Agency has signed the Contract, or has immediate supervisory responsibility over performance of the Contract, that Person must designate an alternate delegate to grant or deny Written approval of payment.

(3) The Authorized Agency must obtain any Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any Cost Overrun payment.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-246-0800

Policy; Applicability; Methods

(1) Policy. A sound and responsive Public Contracting system, according to ORS 279A.015, may include purchasing, selling, and leasing activities. By definition, a Public Contract includes sales and leases by Agencies according to ORS 279A.010(1)(z). The policies of ORS 279A.015 apply to public selling and leasing activities.

(2) Applicability. This Rule applies to the sales and leases of Supplies and Services. This Rule does not apply to residential property or the public selling activity of Agencies specifically exempted from the Public Contracting Code by another provision of law or specifically authorized to conduct public selling or leasing activity by another provision of law. The sale or lease of Supplies and Services includes but is not limited to: concessions, software rights, and personal property.

(3) Methods. Agencies must use a method, as feasible for selling or leasing, according to ORS 279B.055 through 279B.085. For the sale of Goods, the value of the sale transactions for the purpose of selecting the appropriate sourcing method must be based on the gross amount of receipts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.010(x), 279A.015, 279A.050(1)(2), 279A.065(5)(a) & 279A.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0100

Applicability

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 247 apply to Public Contracting for Supplies and Services. In the event of conflict or ambiguity, the more

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specific requirements of the Rules in this Division 247 take precedence over the more general requirements of the Rules in Division 246.

(2) The Rules implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 247 of the Rules specifically addresses matters covered in ORS Chapter 279B.

(3) For purposes of these Division 247 Rules, the Department adopts the following Model Public Contract Rules: OAR 137-047-0255, 137-047-0257, 137-047-0260, 137-047-0261, 137-047-0265, 137-047-0270, 137-047-0310, 137-047-0320, 137-047-0400, 137-047-0410, 137-047-0420, 137-047-0440, 137-047-0450, 137-047-0460, 137-047-0470, 137-047-0480, 137-047-0490, 137-047-0525, 137-047-0575, 137-047-0620, 137-047-0640, 137-047-0650, 137-047-0660, 137-047-0670, 137-047-0700, 137-047-0710, 137-047-0720, 137-047-0745, 137-047-0740, 137-047-0750, 137-047-0760, 137-047-0800, 137-047-0810.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.015

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

125-247-0110

Feasibility Determination, Cost Analysis and Department Report

(1) The Table of Contents for this Rule is as follows:

Section 2: Generally

Section 3: Feasibility Determination

Section 4: Cost Analysis: Estimation of Agency and Contractor Data

Section 5: Decision: Comparison of Compensation and Other Costs

Section 6: Decision: Comparison of Agency and Contracting Costs

Section 7: Department Evaluation and Report

(2) Generally.

(a) Before conducting a Procurement for Services, an Authorized Agency must, in the absence of a Feasibility Determination under Section (3) of this Rule, conduct a Written Cost Analysis under Sections (4) through (6) of this Rule (Cost Analysis).

(b) Responsibilities for the Conduct of the Cost Analysis.

(A) An Agency with procurement authority must conduct the Cost Analysis for its Agency-specific Procurements;

(B) An Agency without procurement authority must conduct the Cost Analysis for its Agency-specific Procurements to be procured by the Department;

(C) At the Department's request, an Agency must contribute to the Cost Analysis for statewide Price Agreement Procurements; and

(D) The Department must conduct the Cost Analysis for statewide Price Agreement Procurements and Department -specific Procurements.

(c) This Rule applies to a Procurement for Services that the Authorized Agency estimates will result in one or more Contracts with a value that exceeds \$250,000 for the estimated term of the Contract(s) (Value), including incidental costs related to the Services, and Amendments. Authorized Agencies must not fragment to avoid this threshold (see OAR 125-246-0630).

(d) If a Procurement is conducted in accordance with this Rule, an Award is made, and one or more Amendments then increase the estimated contract's value over \$250,000, a Cost Analysis is not required at that time.

(e) "Services" has the meaning as defined in OAR 125-246-0110, except that for purposes of this Rule only:

(A) "Services" does not include the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100 as defined in ORS 279C.100; and

(B) "Services" does not include Client Services, defined as of August 4, 2009, in OAR 125-246-0110, as follows:

(i) "Client" means any individual, family or Provider;

(I) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(II) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(III) Who is under the custody, care, or both of the Agency; or

(IV) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(ii) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(I) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(II) Sustenance, including clothing;

(III) Employment training or Skills training to improve employability;

(IV) Services for people with disabilities;

(V) Foster care or foster care facilities;

(VI) Residential care or residential care facilities;

(VII) Community housing;

(VIII) In-home care including home delivered meals;

(IX) Medical care, services and treatment, including but not limited to:

(aa) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(bb) Alcohol and drug treatment;

(cc) Smoking cessation;

(dd) Drugs, prescriptions and non-prescription;

(ee) Nursing services and facilities;

(ff) Transportation or relocation;

(gg) Quality of life, living skills training; or

(hh) Personal care; or

(ii) Legal services and expert witnesses services;

(jj) Religious practices, traditions and services, separately or in any combination thereof; and

(kk) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(3) Feasibility Determination. An Authorized Agency may proceed with the Procurement of Services without conducting a Cost Analysis if the Authorized Agency makes Written findings that one or more of the Special Circumstances described in Subsection (3)(b) make the Authorized Agency's use of its own personnel and resources to provide the Services not feasible (Feasibility Determination).

(a) Approval of Feasibility Determination.

(A) The Designated Procurement Officer or delegate (DPO) of an Authorized Agency must approve the Feasibility Determination for its Procurement;

(B) The DPO of an Agency without authority must approve the Feasibility Determination for an Agency-specific Procurement to be procured by the Department on behalf of that Agency;

(C) The Chief Procurement Officer or delegate (CPO) must approve the Feasibility Determination for a statewide Price Agreement Procurement or Department -specific Procurement. At the Department's request, DPOs must cooperate with the Department to prepare the findings for the Feasibility Determination for a statewide Price Agreement Procurement.

(b) Special Circumstances. Special Circumstances include any circumstances, conditions or occurrences that would make the Services, if performed by the Authorized Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Authorized Agency. Special Circumstances may include, but are not limited to, the follow circumstances:

(A) Expertise. The DPO approves a determination that the Authorized Agency lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the finding, the Authorized Agency must compare the Authorized Agency's capability, experience or expertise in the field most closely involved in performing the Services with a potential contractor's capability, experience or expertise in the same or a similar field.

(B) Funding Requirement. The terms under which the Authorized Agency receives a grant or other funds for use in a Procurement require the Authorized Agency to obtain Services through an independent contractor;

(C) Law Requirement. Other state or federal law requires the Authorized Agency to procure Services through an independent contractor;

(D) Real or Personal Property. The Procurement is for Services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(E) Conflict of Interest; Unbiased Review. The Authorized Agency cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the Authorized Agency's existing personnel or persons the Authorized Agency could hire through a regular or ordinary process would not be suitable;

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(F) Emergency Procurement. The Procurement is for Services to which the provisions of ORS 279B.080 apply;

(G) Delay. The Procurement is for Services, the need for which is so urgent, temporary or occasional that attempting to perform the Services with the Authorized Agency's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the Services; and

(H) Services Completed within Six Months. The Services that the Authorized Agency intends to procure will be completed within six months after the date on which the contract for the Services is executed.

(c) Procurement File. All written determinations required in this Section (3) must be made a part of the Procurement File in accordance with OAR 125-246-0556.

(4) Cost Analysis: Estimation of Agency and Contractor Data.

(a) Costs of Using Authorized Agency's Own Personnel and Resources. The Authorized Agency must estimate the Authorized Agency's cost of performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The salary or wage and benefit costs for the employees of the Authorized Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision or monitoring of the performance of the Services.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs.

(i) Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(ii) Any costs related to stopping and dismantling a project or operation because the Authorized Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(iii) The miscellaneous costs related to performing the Services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this Subsection (4)(a) over the expected duration of the Procurement. These costs exclude the Authorized Agency's indirect overhead costs for existing salaries or wages and benefits for administrators and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Authorized Agency performed the Services.

(D) Other Information. The Authorized Agency's costs described in this Subsection (4)(a)(A) do not constitute an exclusive list of cost information. An Authorized Agency may consider other reliable information that bears on the cost to the Authorized Agency of performing the Services. For example, if the Authorized Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Authorized Agency may consider those actual costs in making its estimate.

(b) Costs a Potential Contractor Would Incur. The Authorized Agency must estimate the cost a potential Contractor would incur in performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The estimated salary or wage and benefit costs for a potential Contractor and potential Contractor's employees who work in the business or industry most closely involved in performing the Services; and who would be necessary and directly involved in performing the Services or who would inspect, supervise, or monitor the performance of the Services.

(i) The Authorized Agency may, but is not required to, communicate with any actual Contractor for information related to this estimate (see OAR 125-246-0635).

(ii) The Authorized Agency may consider in making this estimate any public source of information, including but not limited to:

(I) Other Contracts of the Authorized Agency or another Agency for reasonably comparable services;

(II) Trade or other marketplace websites;

(III) Industry or professional associations and publications;

(IV) The Oregon Bureau of Labor and Industries or an agency of another jurisdiction that performs comparable functions; and

(V) A survey of Persons who provide reasonably comparable services by means including but not limited to Internet or telephone searches.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs. The miscellaneous costs related to performing the Services. These miscellaneous costs include but are not limited to reasonably foreseeable fluctuations in the costs listed in Subsections (4)(b)(A) through (C) over the expected duration of the Procurement.

(D) Other Information. The potential Contractor's costs described in Subsections (4)(b)(A) through (C) do not constitute an exclusive list of cost information. An Authorized Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if in the recent past, the Authorized Agency conducted a Solicitation that required cost information or permitted negotiation of price based on a cost analysis for Services reasonably comparable to the current Services, the Authorized Agency may use that cost information in estimating the costs of current Services.

(5) Decision: Comparison of Compensation and Other Costs.

(a) The Authorized Agency must compare:

(A) The Authorized Agency's estimated costs under Subsection (4)(a) and

(B) The Contractor's estimated costs under Subsection (4)(b).

(b) Decision. If the Authorized Agency's costs exceed the Contractor's costs under Subsection (5)(a) for the sole reason that the Contractor's costs for salaries or wages and benefits under Subsection (4)(b)(A) are lower than the Authorized Agency's costs for salaries or wages and benefits under Subsection (4)(a)(A), then the Authorized Agency may not conduct the Procurement.

(6) Decision: Comparison of Agency and Contracting Costs.

(a) If Subsection (5)(b) does not apply, the Authorized Agency must compare:

(A) The Authorized Agency's estimated costs under Subsection (4)(a) and

(B) The total estimated costs that the Authorized Agency would incur in procuring the Services from a Contractor (Contracting Costs).

(b) Profit Included. Contracting Costs include the Authorized Agency's estimate of Contractor's profit in addition to the estimate of Contractor's costs under Subsection (4)(b). If the Authorized Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Authorized Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Authorized Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Authorized Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.

(c) Decision. If the Authorized Agency's Contracting Cost under this Section is lower than the Authorized Agency's cost under Subsection (4)(a), the Authorized Agency may conduct the Procurement. If the Authorized Agency's Contracting Cost is higher than the Authorized Agency's cost under Subsection (4)(a), the Authorized Agency may not conduct the Procurement, unless the Exception of Subsection (6)(d) applies

(d) Exception Based on Lack of Agency Personnel and Resources; Reporting. If the Authorized Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Authorized Agency may still conduct the Procurement if, at the time the Authorized Agency intends to conduct the Procurement, the Authorized Agency determines that it lacks personnel and resources to perform the Services within the time the Authorized Agency requires the Services (Exception). When an Authorized Agency conducts a Procurement under this Exception, the Authorized Agency must:

(A) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Authorized Agency requires the Services and the basis for the Authorized Agency's decision to conduct the Procurement;

(B) Obtain the Written approval by the DPO of the Authorized Agency of the Exception before conducting an Agency-specific Procurement or the Written approval by the CPO of the Exception before the Department conducts a Procurement.

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(C) Provide to the Emergency Board, each calendar quarter, copies of each Cost Analysis, Exception, and any other records described in this Subsection (6)(d);

(D) Prepare a request to the Governor for an appropriation and authority necessary for the Authorized Agency to hire personnel and obtain resources necessary to perform the Services that the Authorized Agency procured under this Subsection (6)(d). The request must include a copy of the records that the Authorized Agency provided to the Emergency Board under Subsection (6)(d)(C).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.030, 279B.033 & 279B.036 (OL Ch. 880, § 4a)

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0165

Practices Regarding Electronic Goods Procurement

(1) ORS 279B.025 requires the Department to establish procurement practices that ensure, to the maximum extent economically feasible, Procurement of Goods that may be recycled or reused when discarded.

(2) The Department and Authorized Agencies must procure Electronic Goods in a manner that includes consideration of the impact of the electronic goods upon the environment and public health, in addition to consideration of economic and community interests, in accordance with goals of sustainability pursuant to ORS 184.423. The Department and Authorized Agencies, separately or together, may:

(a) Consult with stakeholders to develop procedures or guidelines for Procurement of Electronic Goods; and

(b) Address policy and procedure decisions including but not limited to: recycling, relationship to Rules for State Surplus Property as set forth in OAR 125-246-0700 through 125-246-0730, Energy Star certifications, promote toxic use reduction, and the use of certain components such as mercury or lead that have detrimental impacts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0255

Competitive Sealed Bidding

(1) See OAR 137-047-0255 and 137-047-0257.

(2) Regardless of OAR 137-047-0255 and 137-047-0257, Authorized Agencies must comply with the following provisions:

(a) Options. An Authorized Agency may use one or more or any combination of the processes described in this Rule.

(b) Public Notice. The Authorized Agency must provide public notice of the Competitive Sealed Bidding Solicitation as set forth in OAR 125-247-0305.

(c) Emerging Small Business. The Invitation to Bid must include the requirement, if applicable, for the awarded Bidder to obtain or subcontract labor, materials, or labor and materials from a supplier registered as an Emerging Small Business.

(d) Revised Rounds of Bidding.

(A) Process. Revised Rounds of Bidding means a process that begins with an initial round of Competitive Sealed Bidding according to OAR 125-247-0255 and may, at the discretion of the Authorized Agency, include successive rounds of Bidding in order for the Agency to gain the best Offer for purposes of Award. An Agency may revise the Solicitation's Specifications, terms and conditions, and pricing structure for successive rounds to best meet the State's needs. Bidders must be allowed adequate time to revise and resubmit their Bids in accordance with the requirements set forth in the newly revised Solicitation Document. At each successive round, the Agency may disregard its scoring of prior Bids and commence new scoring for the new Bids. The Agency must comply with the following procedures for this type of Solicitation:

(B) Revisions. The Agency may reject any Bid, after any round, because the Bid did not meet a minimum score or minimum set of requirements. The Agency may then proceed with a subsequent round that requires additional Bids to be submitted, based on different Specifications, terms and conditions, pricing structure, scoring model, references and set of award criteria, separately or in any combination thereof, in order to best meet the State's interests (Revisions). If any Revision is made by the Agency in any subsequent round, the Agency has the right, in its sole discretion, to permit any Bidder whose Bid was previously rejected to submit a new Bid, if the reason(s) for the rejection of the prior Bid by that Bidder no longer applies. Following clarifications and additional investigations, the Agency may reinstate or disqualify an Bidder at any stage of the evaluation process.

(C) Disclosures. The initial Solicitation Document must disclose that a Revised Rounds of Bidding process will or may be used. The Agency must give notice to all initial Bidders of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and award criteria, separately or in any combination. If the Agency discloses any prices, terms or conditions offered by other Bidders, the Agency must give notice of these disclosures to the initial Bidders.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0260

Competitive Sealed Proposals

(1) See OAR 137-047-0260 and 137-047-0261.

(2) Regardless of OAR 137-047-0260 and 137-047-0261, Authorized Agencies must comply with the following provisions:

(a) An Authorized Agency may use one or more or any combination of the procedures described in ORS 279B.060 and this Rule.

(b) In addition to the requirements in ORS 279B.060(2), the Request for Proposals must include the following:

(A) The form and instructions for submission of Proposals;

(B) A description of the procurement process, including but not limited to: optional process, evaluation, selection, and protest process.

(C) Mandatory preferences, if applicable, and any discretionary preferences, if elected; and

(D) All applicable certifications of compliance with tax laws.

(c) Interviews. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the Request for Proposals for the anticipated interview.

(d) Competitive Range. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(e) The Authorized Agency may continue serial or simultaneous Negotiations until the Agency has determined:

(A) To award the Contract to the eligible Proposer with whom it is currently discussing or negotiating;

(B) To conduct Revised Rounds of Negotiations; or

(C) To cancel the Procurement under ORS 279B.100.

(f) Revised Rounds of Negotiations.

(A) Process and Revisions. After publication of the original Request for Proposals, the Authorized Agency may conduct successive rounds of Proposals achieved through Negotiations to gain the best Proposal for purposes of Award. These Negotiations may concern the price, Specifications, and final terms and conditions, separately or in any combination. The Agency must treat all Proposers fairly. Before the start of each round of Negotiations, the Agency must disclose the parameters of that round of Negotiations. At that time, the Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive round, the Agency may disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Agency may eliminate any Proposal after a round because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a subsequent round that requires additional Proposals based on the Revision(s). If any Revision is made by the Agency in any subsequent round, the Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal no longer applies.

(D) (B) Disclosures. The initial Solicitation Document must disclose that a Revised Rounds of Negotiation process will or may be used. The Agency must give notice to all initial Proposers of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and award criteria, separately or in any combination. If the Agency discloses any prices, terms or conditions offered by other Proposers, the Agency must give notice of these disclosures to the initial Proposers.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

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125-247-0265

Small Procurements

(1) See OAR 137-047-0265.
(2) Regardless of OAR 137-047-0265, a Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement according to OAR 125-246-0630.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0270

Intermediate Procurements

(1) See OAR 137-047-0270.
(2) Regardless of OAR 137-047-0270, Authorized Agencies must comply with the following provisions:

(a) Amendments. If the cumulative value of the original Contract Price and all Amendments exceeds \$150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater, then the Authorized Agency must request and obtain prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(b) Written Solicitation. Authorized Agencies are not required to use a Written Solicitation, unless an Agency's Designated Procurement Officer requires a Written Solicitation, and then the requirements of this Section (2) apply. This Written Solicitation may allow revisions to the Solicitation and opportunity for protests, at the discretion of the Agency.

(c) Documentation. Authorized Agencies must document:

(A) The method used by the Agency; and

(B) Communications between the Agency and prospective Offerors.

(d) Borderline Procurements. If an Authorized Agency's Designated Procurement Officer in good faith estimated that the Procurement would be equal to or less than \$150,000, and learned thereafter that all of the Offers were minimally exceeding \$150,000, this Procurement complies with ORS 279B.075 and this Rule upon the following conditions:

(A) The Designated Procurement Officer must document in the Procurement File the basis for the original estimate under \$150,000 and the process used; and

(B) The Agency must comply with the remainder of ORS 279B.070 and this Rule.

(e) Notice on ORPIN. The Agency must post on ORPIN a notice that it is seeking at least three Offers.

(A) The Notice must provide:

(i) A general description of the Supplies and Services to be acquired;

(ii) Contact information; and

(iii) An adequate time period in accordance with the DAS MWESB Policy.

(B) OAR 125-247-0305 (Public Notice of Solicitation Documents) does not apply to Intermediate Procurements.

(f) Negotiations. An Authorized Agency may negotiate with a Proposer.

(g) Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0275

Sole-Source Procurements

(1) Generally. An Authorized Agency with delegated authority according to OAR 125-246-0170 may award a Contract without a competitive process through a Sole-Source Procurement according to the requirements of ORS 279B.075, this Rule, and the policy of the Department. The Authorized Agency must make a determination of a sole source based upon Written findings of fact that the Supplies and Services are available from only one source.

(2) Findings of Fact. Findings of fact required under OAR 125-247-0275(1) may include:

(a) Compatibility. The efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services from only one source. For example, compatibility may be implicated when: Supplies are required to directly interface with or attach to equipment of the same manufacturer and no other manufacturer's Supplies will correctly interface with existing equipment; or when Services such as maintenance, warranty, project management, or systems integration are required to interface or integrate with existing Supplies and Services.

(b) Exchange of Software or Data. Specific Supplies and Services, which are available from only one source, may be required for the exchange of software or data with other public or private agencies. This finding may be particularly applicable when the Supplies and Services involve assets such as copyrights, patents, trademarks, and trade secrets.

(c) Pilot or Experimental Project. Supplies and Services are for the use in such projects, which may include but are not limited to research and economic development projects.

(d) Other findings that support the conclusion that Supplies and Services are available from only one source may include but are not limited to considerations of: unique design, availability, geographic location, exclusive authorized representative, cost of conversion, and warranty services.

(3) Market Research. ORS 279B.075 requires that the Authorized Agency "determines in writing" that the goods or services are "available from only one source." This means that the Authorized Agency must conduct and document its market research before public notice described in Section (4) or (5).

(4) Contracts up to \$150,000. For all Contracts awarded through Sole-Source Procurements over \$5,000 and not exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN of its determination that the Supplies and Services or class of Supplies and Services are available from only one source.

(b) The public notice must describe the Supplies and Services to be acquired through a Sole-Source Procurement and identify the prospective Contractor and include the date, time and place that protests are due.

(c) The Authorized Agency must give Affected Persons at least seven calendar (7) Days from the date of the public notice of the determination that the Supplies or Services are available from only one source to protest the determination under OAR 125-247-0710. If the Department is conducting the Sole-Source Procurement, then the Department is the Authorized Agency for purposes of this Rule.

(d) The Authorized Agency must obtain the Written approval of that Agency's Designated Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(5) Contracts over \$150,000. For all Contracts exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN in accordance with Subsections (4)(a)-(c); and if the Department is conducting the Sole-Source Procurement, then the Department is the Authorized Agency for purposes of this Rule; and

(b) The Authorized Agency must obtain the Written approval of the Chief Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(6) Negotiation. According to ORS 279B.075 and to the extent reasonably practical, the Authorized Agency must negotiate with the sole source to obtain contract terms advantageous to the Authorized Agency.

(7) Protest. An Affected Person may protest the Authorized Agency's determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 125-247-0710.

(8) Brand Name Requirements. If the findings of fact required under this Rule include a specification of a Brand Name, that specification must be in accordance with ORS 279B.215 and OAR 125-247-0691.

(9) Legal Sufficiency Review. When legal sufficiency review by the Attorney General is required under ORS 291.047, the Authorized Agency must seek this approval.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.075

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0280

Emergency Procurements

(1) An Authorized Agency may award a Contract as an Emergency Procurement under ORS 279B.080. An Authorized Agency has delegated authority to enter into an Emergency Contract according to OAR 125-246-0170.

(2) An Authorized Agency may, in its discretion, enter into a Contract without competitive Solicitation if an Emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must encourage competition

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that is reasonable and appropriate under the Emergency circumstances. However, for the emergency procurement of construction services that are not Public Improvements, see ORS 279B.080(2).

(4) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must, either before or promptly after entering into an Emergency Contract, make and retain in its Procurement File documentation of the nature of the Emergency that includes:

(a) A brief description of the Supplies and Services to be provided under the Contract, together with its cost or anticipated cost;

(b) A brief explanation of how the Contract, in terms of duration or Supplies and Services provided under it, was restricted to the Scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances;

(c) A description of the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and

(d) Documentation of the measures taken under Section (3) to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(5) The head of the Authorized Agency, or a person designated under ORS 279A.075, must authorize the conduct of the emergency procurement, and must review and approve the documentation required by Section (4) of this Rule.

(6) Any Contract awarded under this Rule must be awarded no later than sixty (60) days following the approval of the documentation of the emergency unless the head of the Authorized Agency or Person designated has granted an extension.

(7) Agencies must also comply with OAR 137-045-0070, Emergency Public Contract Exemption, if applicable. The Authorized Agency must maintain a copy of any required report in the Authorized Agency's Emergency Procurement File.

(8) For an Emergency Procurement of construction services that are not Public Improvements, the Authorized Agency must insure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the Procurement, the Authorized Agency must set a solicitation time period that the Authorized Agency determines to be reasonable under the emergency circumstances and may issue Written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity.

(9) 2009 "Go Oregon!" Economic Stimulus Package.

(a) Program. The 2009 "Go Oregon!" Economic Stimulus Package, Enrolled Senate Bill 338, House Bill 5562 and related legislative measures (Program), provides funding and direction to identified Authorized Agencies for deferred maintenance, capital construction, capital renewal, code compliance, safety, renovation, and other construction projects (Projects). The Program's objective is to stimulate Oregon's economy through job growth by providing opportunities to local businesses and certified minority, women and emerging small businesses. The Director of the Department has made a determination of emergency circumstances and documented the nature of the Emergency under the Program (Emergency Determination). Most of the Projects are not Public Improvements as defined in OAR 125-246-0110(127). ORS 279C.320 provides that ORS 279B.080 regulates these Projects.

(b) Application. Sections (2) through (6) of this Rule do not apply to Procurements and Contracts under the Program.

(c) Emergency Documentation. The Emergency Determination documents the nature of the Emergency on behalf of the Authorized Agencies to satisfy the requirement of ORS 279B.080. No further documentation that an Emergency exists is required of the Authorized Agencies.

(d) Authorization. The Designated Procurement Officer, or designee, of the Authorized Agency must authorize Procurements under the Program and may determine whether to excuse the requirement of furnishing a good and sufficient performance bond or payment bond.

(e) Procurement Processes. The Authorized Agencies may conduct expedited Emergency Procurement processes, including but not limited to: informal or formal requests for quotes, invitations to bid, and requests for proposals; special procurements; and direct awards. Any of these processes may be utilized regardless of project value.

(f) Project Documentation. The Authorized Agency must retain in its Procurement File(s) the following documentation of its Emergency Procurements and Contracts under the Program:

(A) Copies of all data requested by the Department;

(B) A brief description of the Project;

(C) A description of how the particular contractor was selected and the measures taken to encourage competition, if reasonable and appropriate under the emergency circumstances.

(D) A statement by the Designated Procurement Officer, or designee, excusing performance and payment bonds for the Project in accordance with ORS 279C.380(4), if applicable.

(g) Timing. The documentation described in Section (9)(f) may occur a reasonable time after the award of the Contract. No documentation is required before the award of the Contract.

(10) Other State Economic Stimulus Programs.

(a) Application. For any other state economic stimulus program that is administered by the Department or an Authorized Agency (State Program), Sections (9)(d) through (g) replace Sections (2) through (6) of this Rule and apply to the State Program on the following condition: the Department or Authorized Agency determines that the State Program is in response to adverse economic circumstances.

(b) Emergency Determination and Documentation. The Director of the Department may make an emergency determination and document the nature of the Emergency on behalf of Authorized Agencies. Regardless of any determination by the Director of the Department, an Authorized Agency may make an emergency determination and document the nature of the Emergency on that Agency's behalf and in accordance with ORS 279B.080.

(11) Federal Economic Stimulus Programs.

(a) Application. For any federal economic stimulus program that is administered by the Department or an Authorized Agency (Federal Program), Sections (9)(d) through (g) replace Sections (2) through (6) of this Rule and apply to the Federal Program upon the following condition: the Department determines that the Federal Program is in response to adverse economic circumstances.

(b) Emergency Determination and Documentation. The Director of the Department may make an emergency determination and document the nature of the Emergency on behalf of Authorized Agencies. Regardless of any determination by the Director of the Department, an Authorized Agency may make an emergency determination and document the nature of the Emergency on that Agency's behalf and in accordance with ORS 279B.080.

(12) Amendment. An Authorized Agency may modify a Contract awarded as an Emergency Procurement if the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency. This modification may be made by change order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080 & 279C.320

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 5-2009(Temp), f. & cert. ef. 2-13-09 thru 8-12-09; DAS 9-2009, f. & cert. ef. 8-11-09; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0285

Special Procurements; Purpose and Application

(1) Generally. An Authorized Agency may award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Purpose. Pursuant to ORS 279B.085, these Rules establish the criteria for procuring Supplies and Services through Special Procurements by the Department and Authorized Agencies. Authorized Agencies must have delegated authority pursuant to OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0287

Special Procurements; Request Procedures

(1) Approval. An Authorized Agency may request approval of its new or amended Special Procurement from the Chief Procurement Officer. The request must describe one or more particular Contracts or class of Contracts and use the designated ORPIN form. A request for a Special Procurement concerns the procurement process only, and the authority to use the Special Procurement is determined under OAR 125-246-0170.

(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Agency has elected to use Special Procurement and how it will benefit the Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

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(A) Is unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Either:

(i) Is reasonably expected to result in substantial cost savings to the Agency or to the public; or

(ii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Agency must be clear and complete, including a description of the Supplies and Services that are the subject of the Special Procurement, provisions for advertisement, a procurement process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The Chief Procurement Officer may require any additional information deemed necessary to evaluate the Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request and completion of the Public Notice required under Section (4) of this Rule.

(4) Public Notice. The Public Notice process and requirements are as follows:

(a) General. The requesting Authorized Agency must give public notice of the approval of its Special Procurement as required under ORS 279B.085(4) and in accordance with this Rule, unless otherwise directed by the Chief Procurement Officer (Public Notice). As a Written condition to approval of the Special Procurement, the Chief Procurement Officer may require that the Department instead of the requesting Agency give the Public Notice.

(b) Content. The Public Notice must at least describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement.

(c) Time Periods.

(A) If the Special Procurement involves one or more Solicitations, then Public Notice of the approval of the proposed Special Procurement must be given at least seven (7) calendar Days before the Award. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to Affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then Public Notice of the approval of the Special Procurement must be given at least seven (7) Days before the commencement of the Special Procurement.

(d) An Agency may request certain information to be withheld from the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only according to an exception under the Public Records Law (ORS 192.410 through 192.505).

(5) Protest. An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must contain a reference to the number of the approved Special Procurement.

(7) Conditions. If the Chief Procurement Officer provides Written approval of the proposed Special Procurement (Approval), the Authorized Agency must award any Contract under the Special Procurement in accordance with the conditions of this Approval and any subsequent amendments to the Approval. The Approval may include conditions, including but not limited to expiration, Public Notice and dollar limitations, and may be revoked at any time by the Chief Procurement Officer.

(8) If an Authorized Agency competitively solicits, it must comply with the process described in the Special Procurement or the Rules for that method of Solicitation according to ORS 279B.055 through 279B.070 and 279A.200 et seq.

(9) Nothing in this Rule exempts the Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(10) All Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

(11) If an Authorized Agency intends to award a Contract through a Special Procurement that calls for competition among prospective contractors, the Authorized Agency must award the Contract to the Offeror the Authorized Agency determines to be the most advantageous to the Authorized Agency.

(12) Reporting. An Authorized Agency must comply with 2012 Laws, Chapter 53, Section 4, including but not limited to:

(a) Application. This Section (12) applies to all Special Procurements advertised or otherwise solicited on or after January 1, 2012.

(b) Records. An Authorized Agency must maintain records about its Special Procurements that enable the Agency to determine and provide to the Chief Procurement Officer at least the following information:

(A) The name of the Agency that conducted each Special Procurement;

(B) The number of Special Procurements the Agency conducted;

(C) The number of contracts awarded through each Special Procurement;

(D) A summary of the reasons that the Agency decided to conduct each Special Procurement;

(E) A descriptive summary of the procurement procedure used to conduct the Special Procurement, noting whether the procedure was competitive or not;

(F) A listing of the number of Offers the Agency received if the Special Procurement procedure was competitive;

(G) The contract price or estimated contract price for each contract awarded through a Special Procurement;

(H) A summary of the protests or other responses to the approval of each Special Procurement that the Agency received; and

(I) A summary of the disposition of the protests or other responses described in Subsection 12(b)(H).

(c) Reports. Authorized Agencies must provide to the Chief Procurement Officer the information in Section 12(b) of this rule.

(A) Form. Agencies must report on a form approved by the Chief Procurement Officer.

(B) Timing. Agencies must deliver regular reports on the approved form to the Chief Procurement Officer no later than the dates announced by the Chief Procurement Officer.

(d) Section (12) of this Rule is effective on the date of the filing of this amended Rule.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0288

Special Procurements; by Rule

(1) Client Placement and Client Health Care Services.

(a) Authorization and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to enter into Written agreements for Client Placement and Client Health Care services, as described in this Rule. When an Authorized Agency determines that a need exists to secure or maintain Client Placement Services or to secure Client Health Care Services, the Authorized Agency may contract subject to the following definitions and conditions of this Section (1).

(A) "Client Placement Services" means securing, enhancing, or continuing the placement of a Client in a structured family-like setting or residential setting operated by a qualified Provider.

(B) "Client Health Care Services" means health care services or provision of incidental or specialized supplies related to the health of a Client. Client Health Care Services include but are not limited to: preventive, diagnostic, therapeutic, behavioral, rehabilitative, maintenance, or palliative care and counseling services, assessment, or procedure with respect to the physical or mental condition, or functional status of a Client, or that affect the structure or function of the body; and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(C) Services that may prevent a placement or placement disruption but that cannot definitively be classified as Client Placement Services by the Authorized Agency are deemed to be Client Placement Services and are subject to the Special Procurement approved under this Rule. This Special Procurement for Client Placement Services may include training only if it is provided directly to the Client, excluding Providers.

(b) Authorized Agencies must execute a Contract or amendment to an existing Contract within 180 days of obtaining the Client Placement Services or Client Health Care Services as defined herein. Should the Authorized Agency fail to execute the Contract within this specified period, then the Authorized Agency may execute the Contract if:

(A) A Written statement of justification that describes the unforeseen or unavoidable circumstances that were reasonably unanticipated and preclude the Authorized Agency from executing the Contract within the initial 180 day period; and

(B) A copy of the Written justification is maintained in the Procurement File.

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(c) The Authorized Agency may not make any payments for Client Placement Services or Client Health Care Services before obtaining all requisite approvals of the Contract.

(d) An Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency elects to use one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency elects to create its own source selection method, it must document the file describing why the alternate method was selected.

(e) The Authorized Agency must ensure that all Procurement personnel responsible for procuring Placement Services or Client Health Care Services are provided training on the conditions and limitations of this Rule.

(f) Contract and Amendment Forms.

(A) Original Forms. Authorized Agencies must use a Contract form and Amendment form (Form) approved by the Chief Procurement Officer when acquiring Client Placement Services or Client Health Care Services according to this Rule. The Chief Procurement Officer may approve the Form by facsimile, email, letter or any other method that provides an objective means to verify its approval. The Authorized Agency must review the approved Form at least every two years.

(B) Revised Forms.

(i) Designated Procurement Officer Approval up to \$150,000. For revised Forms up to a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to a Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(ii) Department of Justice Approval over \$150,000. For revised Forms exceeding a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval. Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(g) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(2) Client Services Source Selection.

(a) An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement Rule.

(b) The Chief Procurement Officer waives the source selection requirements as found in OAR 125-247-0200 for Authorized Agencies to procure Client Services, as defined in OAR 125-246-0110.

(c) The Authorized Agency is urged to solicit for Client Services when there is known competition. Under these circumstances, the Authorized Agency may:

(A.) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency uses one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B.) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency creates its own source selection method, it must document the file describing why the alternate method was selected. This Subsection (2)(c) does not apply to Section (1) above.

(3) Renegotiations of Existing Contracts with Incumbent Contractors.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to renegotiate and amend an existing Contract with an incumbent Contractor within the term of the contract, when market conditions have changed and it is in the best interest of the State.

(b) Process and Criteria. The Authorized Agency may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Authorized Agency must post notice on ORPIN. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047. The Authorized Agency

must meet the following conditions in its Renegotiations with incumbent Contractors:

(A) Favorable Result. The Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the State as the Original Contract and document this in the Procurement File. For example, the Authorized Agency and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the Authorized Agency may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation;

(C) Optional Term or Condition. If a Contractor offered to the Authorized Agency during the original Solicitation a term or condition that was rejected at that time, (for the purpose of this Subsection only, Rejected Term or Condition), the Authorized Agency may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price according to a Rejected Term or Condition without additional consideration from the Authorized Agency and as only an option to the Authorized Agency, then the Authorized Agency may accept the option of a lower price under the Rejected Term or Condition. For example, if the Authorized Agency initially rejected a Contractor's proposed Condition that the price required a minimum order, any renegotiated Contract may not mandate this Condition; but the Authorized Agency may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(D) Market. In order to avoid encouraging favoritism or diminishing competition, the Authorized Agency must research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). The Authorized Agency must document the results of the Market Norm research in the Procurement File. Based upon this information, the Authorized Agency must confirm that, if the Authorized Agency follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the Authorized Agency accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

(4) Advertising Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to purchase media advertising, regardless of dollar value, without competitive bidding, according to OAR 125-246-0170.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) Equipment Repair and Overhaul.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for equipment repair and overhaul, as described in this Rule.

(b) Conditions. An Authorized Agency, having delegated purchasing authority according to OAR 125-246-0170, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(C) The Authorized Agency purchases within the limits and according to the methods in (5)(c) of this Rule.

(c) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special

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Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) Contracts for Price Regulated Items.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of price regulated items, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, regardless of dollar value and without competitive bidding, contract for the direct purchase of Supplies and Services where the rate or price for the Supplies and Services being purchased is established by federal, state, or local regulatory authority.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(7) Investment Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for investment Contracts, including related Contracts arising from or giving rise to investment opportunities (collectively, investment Contracts), as described in this Rule. An Authorized Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by the Authorized Agency when such investment or borrowing is contracted according to duly enacted statute, or constitution.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(8) Food Contracts.

(a) Intent. The intent of this Rule is to provide a method for Authorized Agencies to procure food products, which are available for a limited period of time at "lower than normal" prices (also referred to as "spot buys") (Food Contracts).

(b) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of Food Contracts, and the Authorized Agency must comply with the conditions of this Rule.

(c) Conditions. An Authorized Agency may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(A) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing Mandatory Use Contract or any recent bid and the amount saved exceeds any additional administrative costs incurred to purchase using this Special Procurement;

(B) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes); and

(C) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Mandatory Use Contract.

(d) Documentation. Purchases may only be made under this Special Procurement after the Authorized Agency documents the following in its Procurement File in accordance with OAR 125-246-0556: the Authorized Agency's attempt and method to obtain Quotes from at least three sources; the Written Quote or Bid, if obtained; item Specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six (6) months before the current purchase. When practical, Written Quotes are recommended.

(e) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in

Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN, except when the competitive method involves verbal Quotes for perishable food. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(9) Purchase of Used Personal Property.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule Subject to the provisions of this Rule, an Authorized Agency may purchase used property or equipment without competitive bidding and without obtaining Quotes, if, at the time of purchase, the Agency has determined and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the Authorized Agency purchase. "Used personal property or equipment" generally does not include property or equipment if the Authorized Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) Process and Criteria.

(A) For purchases of used personal property or equipment not exceeding \$150,000, Authorized Agencies having delegated authority according to OAR 125-246-0170, must, where feasible, obtain three Quotes, unless the Authorized Agency has determined and documented that a purchase without obtaining Quotes will result in cost savings to the Authorized Agency and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, the Department must obtain and keep a Written record of the source and amount of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain Quotes.

(C) If the total purchase is estimated to exceed \$150,000, an Authorized Agency must submit a Written request for a Written delegation of authority from the Chief Procurement Officer before making the purchase.

(D) Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(10) Reverse Auctions.

(a) Authority. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule.

(b) Process. A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Authorized Agency as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Authorized Agency must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. Before the Reverse Auction commences, Bidders must be required by the Authorized Agency to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Authorized Agency. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and

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related details, separately or in any combination thereof, will be revealed to the participants. The Authorized Agency may cancel this Solicitation if this Agency determines that it is in this Agency's or the State's best interest. At the end of this Bidding process, the Authorized Agency must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders according to ORS 279B.055(10)(b). This process allows the Authorized Agency to test and determine the suitability of the Supplies and Services before making the Award. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(c) Policy. The Authorized Agency must follow the policy of the Department.

(d) Public Notice.

(A) The Authorized Agency must disclose the Reverse Auction process in the Solicitation Document. The Reverse Auction process must include the manner of giving notices of the price(s) offered, rank(s), score(s), and related details to the initial Bidders.

(B) The Authorized Agency must provide initial notice of this Solicitation through ORPIN.

(C) If the value exceeds \$150,000, the Authorized Agency must issue a Notice of Intent to award at least seven (7) calendar Days before making the Award.

(e) Prequalification. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related Rules.

(f) E-Procurement. The requirements of OAR 125-247-0330 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of this Section (11) take precedence over the more general requirements of OAR 125-247-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0296

Price Agreements and Mandatory Use Contracts

(1) Mandatory Use Contracts, for the purposes of this Rule and including Department Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Agency requirements for volume discounts, standardization among Agencies, and reducing lead time for ordering. A Mandatory Use Contract requires the Authorized Agency to purchase Supplies and Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process according to the requirements of ORS 279ABC and these Rules.

(2) Authorized Agencies may purchase the Supplies and Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) Authorized Agencies must use Mandatory Use Contracts established by the Department unless otherwise specified in the Contract, allowed by law or these Rules, or specifically authorized by the Chief Procurement Officer.

(4) Despite Section (3) above, Authorized Agencies are exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Supplies and Services from another Oregon Public Agency provided that a formal, Written agreement is entered into between the parties;

(b) Personal property for resale through student stores operated by public educational Agencies; and

(c) Emergency purchases declared by an Authorized Agency according to ORS 279B.

(5) Authorized Agencies may be exempted from a Mandatory Use Contract upon a request to and approval by the Chief Procurement Officer.

(6) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0300

Applicability of General Rules to Methods of Source Selection

(1) Generally. These Procurement Process Rules are intended to apply to more than one sourcing method according to ORS 279B.050 through 279B.085 and to specify those methods.

(2) In the event of conflict or ambiguity arising from specific requirements of another Rule in Division 247 and a general Rule in OAR 125-247-0305 through 125-247-0691, the specific requirements of another Rule take precedence over the more general requirements of a Rule under Procurement Process.

(3) If a general Rule in OAR 125-247-0305 through 125-247-0691 is silent regarding its specific application or an ambiguity arises regarding the application of any such Rule to any of the seven sourcing methods of ORS 279B.050 through 279B.085, that Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0261.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0330

E-Procurement

(1) General.

(a) Electronic Processes. An Authorized Agency may conduct all phases of a Procurement, including without limitation, the posting of Electronic Advertisements and the receipt of Electronic Offers, by the following electronic processes:

(i) E-Bidding;

(ii) Reverse Auction; or

(iii) Special Procurement if (i) or (ii) are not appropriate (Electronic Processes). The Authorized Agency must specify in a Solicitation Document, a request for Quotes, or any other Writing that instructs Persons how to participate in the Procurement.

(b) Security Measures. The Authorized Agency must open an Electronic Offer in accordance with electronic security measures in effect at the Authorized Agency at the time of its receipt of the Electronic Offer. Unless the Authorized Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Authorized Agency's use of electronic Signatures must be consistent with applicable statutes and rules. An Authorized Agency must authorize, and may limit the use of Electronic Processes of conducting a Procurement based on the best interests of the Authorized Agency, as determined by the Authorized Agency.

(d) If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize Electronic Offers unless the Authorized Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Authorized Agency must conduct all portions of an electronic Procurement in accordance with these Division 247 Rules, unless otherwise set forth in this Rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement, the Authorized Agency may require potential Contractors to register with the Authorized Agency before the date and time on which the Authorized Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Authorized Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. An Authorized Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Authorized Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Authorized Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Authorized Agency will first receive Electronic Offers, the Authorized Agency must begin to accept

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real time Electronic Offers on ORPIN or other Electronic Procurement System approved by the Chief Procurement Officer (for purposes of this Rule, collectively, ORPIN), and must continue to accept Electronic Offers in accordance with Subsection 5 of this Rule until the date and time specified by the Authorized Agency, after which the Authorized Agency will no longer accept Electronic Offers.

(5) One-Time Receipt of All Electronic Offers. When an Authorized Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Authorized Agency must receive the Electronic Offers in accordance with these Division 247 Rules.

(6) Failure of the E-Procurement System. In the event of a failure of ORPIN that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Authorized Agency may cancel the Procurement in accordance with OAR 125-247-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the ORPIN becomes available.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0575

Debarment of Prospective Offerors

(1) See OAR 137-047-0575.

(2) Regardless of OAR 137-047-0575, the Chief Procurement Officer is the Contracting Agency and acts on behalf of the Director of the Department under ORS 279B.130 and 279B.425.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085, 279B.130
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0600

Offer Evaluation and Award

(1) Authorized Agency Evaluation. The Authorized Agency must evaluate Offers only as set forth in the Solicitation Document, according to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Authorized Agency must not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 125-246-0310 for nonresident Bidders.

(B) Public Printing. The Authorized Agency must, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Authorized Agency determines that one or more Bids are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Authorized Agency determines that one or more Proposals are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(B) Public Printing. The Authorized Agency must for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Authorized Agency must give preference for Recycled Materials as set forth in ORS 279A.125 and OAR 125-246-0322.

(2) Clarification of Bids or Proposals. After the Bid Opening, an Authorized Agency may conduct Discussions with apparent Responsive Offerors for the purpose of clarification and to assure full understanding of the Bids or Proposals. All Bids or Proposals, at the Authorized Agency's sole discretion, needing clarification must be afforded such an opportunity. The Authorized Agency must document clarification of any Bidder's Bid in the Procurement File in accordance with OAR 125-246-0556.

(3) Negotiations Prohibited or Allowed.

(a) Prohibition in Competitive Sealed Bidding. An Authorized Agency must not negotiate with any Bidder in a competitive sealed bidding according to ORS 279B.055 and related Rule. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-247-0805. An Authorized Agency may conduct Discussions in accordance with OAR 125-247-0255.

(b) Allowance in Other Procurement Methods. An Authorized Agency may conduct Discussions or Negotiations with one or more Offerors in Competitive Sealed Proposals, Small Procurements, Intermediate Procurements, Emergency Procurements if applicable, and Special Procurements if applicable, in accordance with ORS 279B.060(7) and (8), OAR 125-247-0260, 125-247-0270, 125-247-0287, and 125-247-0288. To the extent practical, an Authorized Agency must negotiate in Sole-Source Procurements in accordance with OAR 125-247-0275. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-247-0805.

(c) Other Procurements. This Section (3) does not apply to Small Procurements, Emergency Procurements, or Special Procurements which do not use Solicitations.

(4) Award.

(a) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with the Award based on individual line item, group total of certain items, a "market basket" of items representative of the Authorized Agency's expected purchases, or grand total of all items.

(c) Multiple Awards; Bids.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. A multiple Award may be made if the Award to two or more Bidders is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, skills, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be awarded for any Invitation to Bid must not preclude the Authorized Agency from awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Authorized Agency must specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services. This criteria may include consideration and evaluation of the terms and conditions agreed to by the Contractors.

(d) Multiple Awards; Proposals.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, skills, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Proposers that multiple Contracts may be awarded for any Request for Proposals must not preclude the Authorized Agency from awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Authorized Agency must specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services. This criteria may include consideration and evaluation of the terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the Authorized Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Authorized Agency may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Authorized Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or None Offers. An Authorized Agency may award all or no Offers if the evaluation shows an all or no Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

(g) Life Cycle Costing. The Authorized Agency must follow OAR 125-247-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

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125-247-0690

Policy; Contractor Advantage; Services Contract; Exception

(1) As provided in ORS 279B.205 and consistent with ORS 279A.015, specifications must seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying an Agency's needs. Subject to ORS 279B.405, the specification content must be determined in the sole discretion of the Agency.

(2) Contractor Advantage; General.

(a) Policy. As provided in ORS 279B.210, it is the policy of the State of Oregon to encourage the development of clear, precise and accurate Specifications in Solicitations for Public Contracts. To that end, in developing Specifications, Agencies may consult, under contract or otherwise, with technical experts, suppliers, prospective contractors and representatives of the industries with which the Agencies contract, as set forth in ORS 279B.210.

(b) Application. In the event of conflict or ambiguity arising from the general requirements of Section (2) of this Rule and the specific requirements of Section (3) of this Rule, the specific requirements take precedence over the general requirements.

(3) Contractor Advantage; Services Contract; Exception. An Authorized Agency must comply with 2012 Laws, Chapter 53, Section 2, including but not limited to the following:

(a) No Appearance of Contractor Advantage. If an Agency enters into a contract with a contractor to advise or assist the Agency in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials (Solicitation Materials) related to a procurement (Procurement), the Agency may not accept an Offer from that contractor or its affiliate that is related to the Procurement, if a reasonable person would believe that, by giving the advice or assistance, the contractor or affiliate would have or would appear to have an advantage in the Procurement. "Affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a contractor described in this section.

(b) Exception.

(A) Before awarding a contract for the advice or assistance of a contractor described in Subsection (3)(a), the Agency must request an exception from the Chief Procurement Officer, if the Agency wishes to later accept an Offer from the Provider.

(B) The Agency's request for the exception must include sufficient findings of fact and justifications that will enable the Chief Procurement Officer to make an independent judgment.

(C) The Chief Procurement Officer must determine whether:

(i) The Agency needs advice or assistance from a contractor to develop the Solicitation Materials;

(ii) Accepting an Offer from the contractor that gives the advice or assistance is the only practicable way in which the Agency can conduct the Procurement successfully; and

(iii) Approving the exception:

(I) Is unlikely to encourage favoritism in awarding public contracts or to substantially diminish competition for public contracts; and

(II) Is reasonably expected to result in substantial cost savings to the Agency; or the public or otherwise substantially promotes the public interest in a manner that could not be practicably realized by complying with the prohibition described in subsection (3)(a).

(D) If the Chief Procurement Officer approves the Agency's request, the Chief Procurement Officer must prepare written findings and justifications for the approval.

(E) If the Chief Procurement Officer disapproves the Agency's request, the Chief Procurement Officer must:

(i) State the Chief Procurement Officer's reasons for the disapproval in a written notice to the Agency, and

(ii) Indicate whether the disapproval extends only to the Agency's acceptance of an Offer from a contractor described in Subsection (3)(a) or whether the Chief Procurement Officer also disagrees with the Agency's stated need for advice or assistance from a contractor.

(F) The Chief Procurement Officer's approval or disapproval is final.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.205; 279B.210

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0700

Protests and Judicial Review of Special Procurements

(1) See OAR 137-047-0700.

(2) Regardless of OAR 137-047-0700, the Chief Procurement Officer is the Contract Review Authority for the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.400

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0710

Protests and Judicial Review of Sole-Source Procurements

(1) See OAR 137-047-0710.

(2) Regardless of OAR 137-047-0710, the Designated Procurement Officer of the Authorized Agency is the Contract Review Authority if the cumulative value of the Contract and amendments does not exceed \$150,000.00. The Chief Procurement Officer is the Contract Review Authority if the cumulative value of the Contract and amendments exceeds \$150,000.00.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0720

Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations

(1) See OAR 125-247-0720.

(2) Regardless of OAR 137-047-0720, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0731

Protests and Judicial Review of Qualified Products List Decisions

(1) See OAR 137-047-0745.

(2) Regardless of OAR 137-047-0745, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.115

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0740

Protests and Judicial Review of Contract Award

(1) See OAR 137-047-0740.

(2) Regardless of OAR 137-047-0740, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.410 & 270B.415

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0750

Judicial Review of Other Violations

(1) See OAR 137-047-0750.

(2) Regardless of OAR 137-047-0750, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.420

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0760

Review of Prequalification and Debarment Decisions

(1) See OAR 137-047-0745.

(2) Regardless of OAR 137-047-0745, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.425

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0805

Amendments to Contracts and Price Agreements

(1) See OAR 137-047-0800.

(2) Regardless of OAR 137-047-0800, Authorized Agencies must comply with the following provisions:

(a) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Ordering Instruments may be accepted by the action of the Provider in accordance with the terms and conditions of the Ordering Instruments. All Amendments must receive all required approvals before

ADMINISTRATIVE RULES

the Amendments become binding on the Authorized Agency and before any service may be performed or payment made, including but not limited to the Department of Justice legal sufficiency review according to ORS 291.047.

(b) Approval.

(A) Authorized Agencies must obtain prior Written approval of the Amendment by the Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, if the cumulative value of the original Contract Price and all Amendments exceeds \$150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

(B) The approval in subsection (b)(A) is not required if the Authorized Agency disclosed in the Solicitation Document its plans for future Amendments, like phases or other expected developments. The approval in subsection (b)(A) is not required if the Authorized Agency disclosed in the Client Services Contract its plans for future Amendments, like phases or other expected developments. Standard language used commonly in documents without variation (boilerplate) does not disclose the Agency's plans and expectations for future Amendments.

(C) The Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, must determine and document that the proposed Amendment:

(i) Is not a material change of the essential identity or main purpose of the Original Contract; and

(ii) Does not constitute a new undertaking that should result in a new Procurement. The determination and approval must be included in the Procurement File.

(c) Price Agreements. The Department or its delegate may amend a Price Agreement as permitted by the Price Agreement or applicable law.

(d) Intermediate Procurement. See OAR 125-247-0270.

(e) Emergency Procurement. See OAR 125-247-0280.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-247-0810

Termination of Price Agreements

See OAR 137-047-0810.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-248-0100

Application

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 248 apply to:

(a) The screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Authorized Agencies select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and Providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 248 take precedence over the more general requirements of the Rules in Division 246.

(3) The Rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 248 of the Rules specifically addresses matters covered in ORS Chapter 279C.110 through 279C.125.

(4) Delegation of authority for these contracts must be according to OAR 125-246-0170.

(5) The dollar Threshold amounts that are applicable to the Direct Appointment Procedure, OAR 125-248-0200, the Informal Selection Procedure, OAR 125-248-0210, and the Formal Selection Procedure, OAR 125-248-220, are independent from and have no effect on the dollar Threshold amounts that trigger the legal sufficiency review requirement for Agencies under ORS 291.047.

(6) For purposes of these Division 248 Rules, the Department adopts the following Model Public Contract Rules: OAR 137-048-0110, 137-048-0120, 137-048-0130, 137-048-0200, 137-048-0210, 137-048-0220, 137-048-0230, 137-048-0240, 137-048-0250, 137-048-0260, 137-048-0300, 137-048-0310, 137-048-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-248-0100

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Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-248-0300

Contract Form; Prohibited Payment Methodology; Purchase Restrictions

(1) See OAR 137-048-0300.

(2) Contract Forms. The Department must develop and maintain a standard Contract form and an Amendment form, which must be used by the Authorized Agencies in completing all Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services and Related Services Contracts. These forms can be obtained from the Department. Authorized Agencies must review the approved Contract form and Amendment form at least every two years. If upon review the Authorized Agency revises either form, the Authorized Agency must obtain approval from its Designated Procurement Officer and the approval of the Attorney General for legal sufficiency according to ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

125-249-0630

Findings, Notice and Hearing

(1) General. This Rule provides guidance to the Agencies for making a request for an Exemption to the Chief Procurement Officer in accordance with ORS 279C.335 and OAR 125-246-0170(3)(c).

(2) Findings: Required Information. The statutory definition of "Findings" at ORS 279C.330 means the justification for an Agency's conclusion that includes, "but is not limited to," information regarding eight identified areas.

(3) Findings Addressing Cost Savings. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as

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may be deemed appropriate.” Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the “substantial cost savings” requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings must relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the “substantial cost savings” requirement where an Alternative Contracting Method has not been previously used, the Authorized Agency may make a Finding that identifies the project as a “pilot project” under ORS 279C.335(2)(c).

(4) Findings Regarding Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is “unlikely” that the exemption will “encourage favoritism” or “substantially diminish competition” may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) Specificity of Findings.

(a) Method. Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized.

(b) Project(s). The Findings must clearly and generally identify the Project with respect to its defining characteristics. Those characteristics must include at least: Project descriptions, locations, anticipated time periods, anticipated contract values or the range of values, and other significant factors that distinguish the Project(s) from an Authorized Agency’s overall construction program.

(c) Contract. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(d) Basis for an Order. The Chief Procurement Officer relies upon the representations and accuracy of the Authorized Agency’s Findings in subsections (a) and (b), which form the basis for and are incorporated by reference in any subsequent Exemption Order.

(6) Prior Review of Draft Findings. Agencies must submit draft Findings to the Chief Procurement Officer for review and concurrence prior to advertising the public hearing required by ORS 279C.335(5). Agencies must also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

(7) Class Exemptions. In making the findings supporting a class exemption the Authorized Agency must clearly identify the class with respect to its defining characteristics. Those characteristics must include some combination of Project descriptions or locations, time periods, contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from an Authorized Agency’s overall construction program. Classes must not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

(8) Public Hearing. Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, an Authorized Agency must give notice and hold a public hearing as required by ORS 279C.335(5). The hearing must be for the purpose of receiving public comment on the Authorized Agency’s draft Findings.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

Rule Caption: Adopt temporary rules to implement procedures for transferring moneys from the Shared Services Fund.

Adm. Order No.: DAS 4-2012(Temp)

Filed with Sec. of State: 12-14-2012

Certified to be Effective: 12-17-12 thru 6-12-13

Notice Publication Date:

Rules Adopted: 125-180-1000, 125-180-1100, 125-180-1200, 125-180-1300, 125-180-1400, 125-180-1500

Subject: SB 954 (2007) was passed by the Legislature and initiates a payment distribution to Oregon counties providing property tax relief to business firms with eligible Strategic Investment Program (SIP) projects. The purpose of SB 954 is to help reimburse counties for loss of revenues associated with economic development activities to create and retain jobs. The department is seeking temporary rules in order to make payments due to counties that the Oregon Legislative Emergency Board authorized on December 12, 2012.

Rules Coordinator: Janet Chambers—(503) 378-5522

125-180-1000

Purpose

These rules implement procedures for transferring moneys from the Shared Services Fund pursuant to ORS 285C.635 and 285C.639.

Stat. Auth.: ORS 285C.615(7)

Stats. Implemented: ORS 285C.600 - 285C.626, 285C.635 & 285C.639

Hist.: DAS 4-2012(Temp), f. 12-14-12, cert. ef. 12-17-12 thru 6-12-13

125-180-1100

Definitions

(1) “Average Eligible Worker” means the average worker reported by Business Oregon as a new hire or retained employee on a Strategic Investment Program (SIP) project.

(2) “Eligible Project” is a project described in ORS 285C.600(2) for which the Oregon Business Development Commission has reported new hires or retained employees.

Stat. Auth.: ORS 285C.635 & 285C.639

Stats. Implemented:

Hist.: DAS 4-2012(Temp), f. 12-14-12, cert. ef. 12-17-12 thru 6-12-13

125-180-1200

Employment Verification

(1) The Department of Administrative Services may perform a verification of employment associated with Strategic Investment Projects compiled by Business Oregon under ORS 285C.615.

(2) The Department verification process may include determination of project related employment through other Oregon agencies:

- (a) Department of Revenue,
- (b) Employment Department, and
- (c) any other relevant agencies.

(3) Projects are eligible for consideration in the income tax calculation and county fund transfer only to the extent that employment information is verifiable.

Stat. Auth.: ORS 285C.635 & 285C.639

Stats. Implemented:

Hist.: DAS 4-2012(Temp), f. 12-14-12, cert. ef. 12-17-12 thru 6-12-13

125-180-1300

Personal Income Tax Estimate

(1) The personal income tax estimate is derived from:

(a) reported number of workers hired or retained as a result of investment in an eligible project under the Strategic Investment Program ORS 285C.615, and

(b) The Department of Revenue’s annual Oregon Personal Income Tax Statistics (150-101-406) report.

(2) A tax rate is determined based on the reported average pay per average eligible worker.

(3) Labor earnings are multiplied by the project tax rate for an income level equal to that of the wages paid to the average eligible worker.

Stat. Auth.: ORS 285C.635 & 285C.639

Stats. Implemented:

Hist.: DAS 4-2012(Temp), f. 12-14-12, cert. ef. 12-17-12 thru 6-12-13

125-180-1400

Funds Transfer Request Form

Counties with an approved Strategic Investment Project must submit a request for fund transfer, in an Agency approved format, to the Department of Administrative Services not later than April 1 following the completion of the relevant property tax year. The request for fund transfer must be delivered from the county commission chair or designee and shall include (unless otherwise provided in prior requests):

- (1) Qualifying project name(s)
- (2) Original Strategic Investment Program agreement(s), and

ADMINISTRATIVE RULES

(3) Local taxing district distribution by percentage.
Stat. Auth.: ORS 285C.635 & 285C.639
Stats. Implemented:
Hist.: DAS 4-2012(Temp), f. 12-14-12, cert. ef. 12-17-12 thru 6-12-13

125-180-1500

Funds Distribution

(1) The department shall request that the Treasury move funds from the General Fund into the Shared Services Fund in an amount equal to 50% of the estimated personal income taxes paid for verified jobs associated with eligible SIP projects.

(2) The department shall distribute moneys from the Shared Services Fund to the eligible county annually.

(3) Counties shall transfer funds to local taxing districts according to the percentages provided under (1)(c) of the prior rule.

Stat. Auth.: ORS 285C.635 & 285C.639
Stats. Implemented:
Hist.: DAS 4-2012(Temp), f. 12-14-12, cert. ef. 12-17-12 thru 6-12-13

.....
**Department of Administrative Services,
Office of Business Administration
Chapter 121**

Rule Caption: Repeal rules that are no longer needed or are duplicate in Chapter 125.

Adm. Order No.: BAD 1-2012

Filed with Sec. of State: 11-20-2012

Certified to be Effective: 12-1-12

Notice Publication Date: 11-1-12

Rules Repealed: 121-001-0000, 121-001-0005, 121-020-0000

Subject: Appeal of these rules better organize the administrative rules for DAS, eliminating Chapter 121, Office of Business Administration and repealing rules that are no longer needed or will move to Chapter 125.

Rules Coordinator: Janet Chambers—(503) 378-5522

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**Department of Agriculture
Chapter 603**

Rule Caption: Establishes treatment and labeling requirements for firewood imported from outside the Pacific Northwest.

Adm. Order No.: DOA 28-2012

Filed with Sec. of State: 12-3-2012

Certified to be Effective: 12-3-12

Notice Publication Date: 9-1-2012

Rules Adopted: 603-052-1080, 603-052-1090

Subject: The purpose of this proposed rule is to prevent the introduction of wood boring pests and plant diseases in imported firewood. Invasive species including emerald ash borer, Asian longhorned beetle, and sudden oak death can be vectored by firewood. The rule would require that firewood imported from outside the Pacific Northwest (OR, WA, ID) be heat-treated and labeled. The required treatment would be 60° C (140° F) for 60 minutes. Firewood treated in this manner could be labeled as “Approved Pest-Free”. Violators would be subject to civil penalties, ranging from a Notice of Violation to a \$10,000 fine, depending on the severity of the infraction.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1080

Firewood Restrictions To Prevent Transport Of Invasive Species

(1) This rule is established as authorized under ORS 561.510, 570.305 and 570.720 to protect the State of Oregon from the introduction of invasive species, including non-native wood-boring insects and plant diseases, transported on firewood from outside the Pacific Northwest. The requirements set forth in this rule do not apply to any non-firewood product or logs for industrial use.

(2) The following definitions apply to OAR 603-052-1080 and 603-052-1090:

(a) “Approved Pacific Northwest Firewood” is a labeling standard for firewood sold by a firewood producer who complies with the provisions of section (4)(a)(C) of this rule.

(b) “Approved Pest Free” is a labeling standard (i.e., source labeling requirement) for firewood that complies with the provisions of sections (4)(b)(A) of this rule.

(c) “Department” means the Oregon Department of Agriculture.

(d) “Firewood” means any whole or split pieces of wood less than 48” in length or other wood of any tree species cut into a form and size appropriate for use for fuel wood uses, such as home heating or campfires. Compressed wood bricks, pellets, and other processed wood products used for fuel wood uses such as home heating or campfires are excluded from this definition.

(e) “Firewood seller” means any person or business that supplies or sells firewood.

(f) “Invasive Species” means nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state.

(g) “Knowingly” means acting with awareness, deliberateness, or intention.

(h) “Pacific Northwest” means the states of Oregon, Washington, and Idaho.

(i) “Person” means an individual, organization, corporation or partnership, other than the Department, public authority, county, town, city, municipal agency or public corporation.

(j) “Phytosanitary certificate” means an official document issued by an exporting county, state, or country to verify a shipment has been officially inspected and meets the import requirements of the State of Oregon.

(k) “Plant Pest” means a disease, microscopic organism, insect, nematode, arthropod, parasite or any other biotic agent capable of having a significant adverse effect on the environmental quality of Oregon or of causing a significant level of economic damage in Oregon, including but not limited to damage to agricultural, horticultural or forest plants, crops, commodities or products.

(l) “Source” means the state from which the firewood was harvested.

(m) “Untreated Firewood” means any firewood that has not been treated in accordance with the provisions of section (4)(b)(A)(Approved Pest Free) of this rule.

(n) “Violation” means the failure to comply with any requirement of these rules. Each day a violation continues after the time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(3) No person shall transport, by any means, untreated firewood into the State of Oregon, for sale or use within the State from any location outside of the Pacific Northwest.

(4) Restrictions on transport, sale, or possession of untreated firewood within Oregon:

(a) Pacific Northwest-harvested firewood:

(A) Persons who cut and burn firewood in Oregon for personal use are exempt from these documentation, treatment, and labeling requirements.

(B) Firewood harvested and then sold in the Pacific Northwest does not need to be treated or labeled.

(C) Optional labeling for untreated Pacific Northwest Firewood: Sellers of Pacific Northwest Firewood:

(i) May choose to use the “Approved Pacific Northwest Firewood” designation on firewood that has its source wholly within the Pacific Northwest and outside of declared quarantine areas for invasive species (ORS 561.510, 561.560, OAR 603-052-1230). A summary of Oregon’s plant quarantines is available at <http://nationalplantboard.org/laws/index.html>.

(ii) Firewood sellers using the optional “Approved Pacific Northwest Firewood” label shall maintain records that include, at a minimum, the source(s) of the firewood for a minimum of one (1) year. Upon request, such records shall be made available for inspection to the Department.

(iii) Are required to provide to all purchasers (except to the final end-user customer, unless requested), the source of the firewood and the contact name of the seller.

(D) Landowners who occasionally allow or charge a fee for cutting firewood on their land for personal use in Oregon are not considered sellers.

(b) Firewood harvested from outside the Pacific Northwest:

(A) Firewood from outside the Pacific Northwest must be heat treated to a minimum wood core temperature of 60°C (140°F) for at least 60 minutes or equivalent treatment as approved by the Department. Air drying of firewood is insufficient and is not approved by the Department. Post treatment firewood must be stored in a manner to minimize re-infestation.

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(B) Treated firewood meeting the standard in (A) above, whether harvested from the PNW or elsewhere may be labeled as "Approved Pest Free."

(C) Sellers of "Approved Pest Free" firewood shall maintain, for at least two (2) years from the date of treatment, records that document the source of the wood, the treatment method and the volume of firewood treated. Official phytosanitary certificates from a firewood seller's State Department of Agriculture or official equivalent may be used to verify the treatment method and volumes of treated firewood produced. Regulatory officials shall be allowed to inspect such records and the facilities used to treat and store the firewood upon request.

(D) Using an "Approved Pest Free" label fraudulently is subject to civil penalties as described in section (5).

(5) Violation of rule. Violators of this rule will be subject to civil penalties of up to \$10,000 as provided by ORS 561.995 and described in OAR 603-054-0070. Commodities shipped in violation of this rule may be treated, destroyed, or returned to the point of origin without expense or indemnity paid by the state. Civil penalties recovered under this section shall be deposited in the Invasive Species Control Account ORS 570.810.

Stat. Auth.: ORS 570.305, 561.510, 570.720

Stats. Implemented: ORS 570.720

Hist.: DOA 28-2012, f. & cert. ef. 12-3-12

603-052-1090

Civil Penalty Matrix

(1) Magnitude of violation: The commission of prohibited acts specified below has been determined to be a minor, moderate, or major violation.

(a) Minor:

(A) Failure to maintain proper certificates or paperwork as required.

(B) Importing firewood for personal use that does not meet the requirements of this rule from outside the Pacific Northwest.

(b) Moderate: Importing firewood for other than personal use that does not meet the requirements of this rule from outside the Pacific Northwest.

(c) Major:

(A) Knowingly importing infested or infected firewood that does not meet the requirements of this rule from outside the Pacific Northwest.

(B) Knowingly representing untreated or improperly treated firewood as Approved Pest Free firewood.

(C) Tampering with, altering, misrepresenting or falsifying in any manner official documents issued by a plant regulatory official. Providing false information required for issuance of documents. Using falsified documents.

(2) Standard civil penalties will be as follows. The Director may consider extenuating circumstances in assigning a penalty.

	1st Violation	2nd Violation	3rd & Subsequent Violation
Minor	Notice of violation	\$100	\$300
Moderate	\$300	\$900	\$1,800
Major	\$5,000	\$7,500	\$10,000

Stat. Auth.: ORS 570.305, 561.510, 570.720

Stats. Implemented: ORS 570.720

Hist.: DOA 28-2012, f. & cert. ef. 12-3-12

Rule Caption: Establishing a statewide control area for giant reed, *Arundo donax*.

Adm. Order No.: DOA 29-2012

Filed with Sec. of State: 12-12-2012

Certified to be Effective: 12-12-12

Notice Publication Date: 10-1-2012

Rules Adopted: 603-052-1206, 603-052-1209, 603-052-1211

Subject: This rule would establish a statewide control area for a giant reed, *Arundo donax*. Giant reed is an invasive noxious weed in some parts of the world. It is also a promising bio-energy crop because of its high biomass production and it is grown as an ornamental and for woodwind instrument reeds. These rules are designed to allow giant reed to be grown as a biofuel and an ornamental plant while protecting the environment and agricultural, horticultural, and forest industries of the state. PGE proposes to switch their Boardman Power Plant's fuel source from coal to biofuel by 2020. Under this rule, biofuel crops of giant reed would be allowed under permit. A \$2.00/acre assessment for monitoring and a \$100/acre bond to cover eradication would be required. Wild-type giant reed would be phased out of the nursery industry by Dec. 31, 2013 and only variegated varieties would be allowed after that date. All ornamental uses of giant reed

would be terminate if the Department and the state Weed Board list giant reed as a noxious weed.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1206

Definitions

As used in OAR 603-052-1206 to 603-052-1211 unless the context requires otherwise:

(1) "Giant reed" or "giant cane grass" means the plant species *Arundo donax* L. For purposes of this rule the term "giant reed" or "giant cane grass" applies to whole plants, plant parts, rhizomes, harvested plant parts, and seeds. For purposes of this rule, "giant reed" or "giant cane grass" does not include variegated varieties of giant reed as defined in subsection (4) of this section.

(2) "Feral giant reed" means whole plants of the plant species *Arundo donax* growing outside of permitted production areas or as otherwise inconsistent with this rule.

(3) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex the influence of such surface or subsurface water.

(4) "Special Flood Hazard Area" means an area inundated during the 1% annual flood (also known as 100-year flood or a base flood) as determined from the January 2011 version of the Flood Insurance Rate Maps of the Federal Emergency Management Agency (FEMA) available through the Department of Land Conservation and Development at: <http://oregonriskmap.com/index.php?option=com_content&view=category&id=11&Itemid=12>.

(5) "Variegated varieties of giant reed" means horticultural varieties of *Arundo donax* with striped or spotted leaves. Variegated varieties may include but are not limited to varieties marketed as "Peppermint Stick," "Variegata," and "Golden Chain," or other ornamental varieties that can be visually distinguished from "giant reed" or "giant cane grass."

(6) "Wetland" means areas that are naturally inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Stat. Auth.: ORS 570.405

Stats. Implemented: ORS 570.405

Hist.: DOA 29-2012, f. & cert. ef. 12-12-12

603-052-1209

Purpose

Giant reed, *Arundo donax*, is a promising bio-energy crop because of its high biomass yield. It is also grown as an ornamental and as a source of reeds for woodwind instruments. Giant reed is highly invasive in riparian areas in some regions of the United States such as California, Texas, and Florida. It is the intent and purpose of OAR 603-052-1206 to 603-052-1211 to balance goals to develop new agricultural crops and support renewable energy development from agricultural feedstocks while protecting natural resources and preventing the establishment of giant reed in riparian areas where it could cause major negative impacts to the natural resources of the State of Oregon.

Stat. Auth.: ORS 570.405

Stats. Implemented: ORS 570.405

Hist.: DOA 29-2012, f. & cert. ef. 12-12-12

603-052-1211

Control Area

(1) As authorized by ORS 570.405, a statewide control area is established to reduce the risk of uncontrolled spread of giant reed into the environment in order to protect the horticultural, agricultural or forest industries of the state.

(2) Extent of Control Area: All of the State of Oregon.

(3) Commodities Covered: All life stages of giant reed, *Arundo donax*.

(4) Prohibited Acts:

(a) Giant reed is prohibited from being imported, planted, propagated, or grown except as allowed in this rule in sections (5) through (7) below.

(b) Giant reed shall not be planted, grown, or stored in riparian areas, wetlands, or special flood hazard areas (100-year flood plains) or in a 100 ft. buffer beyond the edge of riparian areas, wetlands, or flood hazard areas.

(5) Permit Requirements:

(a) Except as specified in OAR 603-053-1211(7)(b), giant reed shall not be planted or grown in Oregon without a permit from the Oregon Department of Agriculture (ODA).

ADMINISTRATIVE RULES

(b) Applications for permit must be in writing to ODA and include specific locations, detailed maps of the field locations, and any water bodies in the vicinity of all proposed field locations. Applications for a permit to produce giant reed must be sent to: Plant Program Area Director, Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97304 or emailed to: <dhillburn@oda.state.or.us>.

(c) ODA will review the application upon its receipt and share the application information with noxious weed control officials in the county(ies) where production of giant reed is grown or proposed to be grown.

(d) ODA may deny an application or may issue a permit with any conditions as may be necessary to prevent the uncontrolled spread of giant reed or as necessary to protect the horticultural, agricultural or forest industries of the state. Conditions that ODA may require include, but are not limited to, conditions requiring notification to ODA of the dates when giant reed fields are planted and are taken out of production, annual updates on field locations, or any other precautions related to site-specific risk factors presented by a proposed growing location.

(e) Permit holders will be assessed an annual fee of \$2.00 per acre payable to ODA before planting and every twelve months thereafter, to cover the cost of monitoring fields where giant reed is produced and the cost of surveys for feral giant reed in the environment. Monitoring and surveys are necessary to ensure that giant reed has not escaped outside of contracted production areas and is necessary for enforcing the terms of the control area established in this rule.

(f) Any equipment used in giant reed production fields must be cleaned free of soil and plant debris prior to leaving production fields.

(g) Planting stock from outside Oregon must be washed free of soil and must be accompanied by a phytosanitary certificate indicating that the stock has been inspected and found free of soil and harmful pests, diseases, and weeds.

(h) In-state producers of biofuel planting stock are subject to the same requirements as biofuel producers.

(i) Green giant reed must not be transported outside the fields where it is grown unless it is in a covered container or the load is tarped. Harvested giant reed that is conditioned (crushing, chipping, chopping, or shredding) and dried in the field need not be transported in closed containers and such loads need not be tarped (e.g. bales of giant reed).

(6) Bond; Conditions for Ceasing Production of Giant Reed:

(a) Contractors (or growers if there is no contractor) for the production of giant reed for other than ornamental or woodwind reed purposes (see (7) below) must supply a bond or another form of acceptable collateral furnished by a surety company authorized to do business in Oregon in favor of the State of Oregon through its Department of Agriculture. The amount of the bond/collateral will be \$100/acre up to a maximum of \$1,000,000. The permit will not be issued until the Department has received the bond/collateral. The purpose of the bond is to cover any and all costs associated with the detection and eradication of giant reed inside or outside of production fields if the Department determines feral giant reed must be eradicated in order to protect the agricultural, horticultural or forest resources of the State. The bond/collateral must be in place for the duration of permitted production and remain effective for 3 years after production ceases.

(b) The holder of a permit for the production of giant reed that ceases production of giant reed must completely eradicate giant reed in a manner that prevents former giant reed production fields from becoming a source of propagules that could lead to accidental spread of giant reed in the wild.

(c) Any holder of a permit issued by ODA must monitor any and all areas upon which giant reed was produced under permit for at least three years after production ceases to ensure that all giant reed plants are killed and any source of propagules are eradicated. ODA may require additional monitoring time as it determines is necessary to assure complete eradication of giant reed from areas under contract for production.

(d) Any and all costs associated with eradication of giant reed in production fields and adjacent property owned or controlled by the producer after production has ceased is the responsibility of the permit holder.

(e) Oregon State University Research and Extension Centers are exempt from sections (5)(a) and (6)(a) of this rule for the purpose of allowing research related to giant reed production and control.

(7) Conditions for Ornamental and Woodwind Reed Plantings:

Giant reed has been used as an ornamental plant in Oregon for many years. It is also grown as a source for woodwind reeds. Ornamental or woodwind reed plantings could result in feral populations. In order to lower the risk of ornamental or woodwind reed plants becoming feral, giant reed is being phased out of the nursery trade. Variegated varieties such as

“Peppermint Stick,” “Variegata,” and “Golden Chain,” may continue to be grown and sold in Oregon unless ODA and State Weed Board list giant reed as a noxious weed.

(a) After December 31, 2013, only variegated varieties of giant reed may be sold in Oregon for ornamental or woodwind reed purposes.

(b) A permit is not required for ornamental or woodwind reed plantings of variegated varieties of giant reed totaling less than ¼ acre.

(c) Ornamental and woodwind reed plantings of giant reed existing before these rules were adopted will not be considered feral unless they are in Special Flood Hazard Areas or the ODA determines such populations are becoming invasive. Any plantings of giant reed or variegated varieties of giant reed over ¼ acres are subject to the permitting requirements in OAR 603-052-1211(5).

(d) If the ODA and the State Weed Board determine giant reed is a noxious weed, all ornamental uses of giant reed shall terminate and all production will require a permit.

(8) Eradication and Control of Giant Reed:

(a) Except as stated in (7) above, ODA considers giant reed plants detected outside of contracted production fields as feral plants, which shall be eradicated or controlled.

(b) Any person owning or occupying property upon which feral giant reed is detected must contact the ODA within 48 hours of detection.

(c) Upon detection of feral giant reed, ODA may develop a survey, eradication, and monitoring plan to control or eradicate detected feral giant reed. Consistent with its authorities, ODA may develop and conduct appropriate measures to control or eradicate feral giant reed, may enter into a contract for the purpose of controlling or eradicating feral giant reed, or take any measures necessary to control or eradicate feral giant reed consistent with law.

(d) Control or eradication of feral giant reed may be implemented at no cost to a person owning or controlling land within this state upon which feral giant reed is detected. However, ODA may request any person owning or controlling land within this state to control, prevent the spread of, or eradicate feral giant reed, subject to supervision of such activities by ODA.

(e) If ODA is unable to control or eradicate feral giant reed on private property, then consistent with the provision of ORS 570.405(2), any person owning or controlling land within this state must take measures to eliminate or prevent the possibility of spread of feral giant reed to other lands and ownerships. Control measures for feral giant reed must be implemented in a timely manner as determined by ODA. Treatments must provide sufficient levels of control to make progress toward the goal of eradication.

(9) Review:

(a) ODA will conduct a thorough review of these rules after PGE’s test burn (now scheduled for 2014) and before large acreages of giant reed are planted. The best available science, experience with test plots, survey results, and plans for expansion of giant reed production will be taken into consideration when determining whether these rules should be amended.

(b) Before December 31, 2022, the Department will conduct a thorough review of the effectiveness and necessity for this rule. If by that date giant reed has not been declared a noxious weed by ODA and the State Weed Board, the bond/collateral requirement (6)(a) sunsets unless specifically extended via amendment to this rule.

Stat. Auth.: ORS 570.405

Stats. Implemented: ORS 570.405

Hist.: DOA 29-2012, f. & cert. ef. 12-12-12

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

Rule Caption: Amendments to the arc-fault circuit interrupter requirement of the National Electrical Code.

Adm. Order No.: BCD 14-2012(Temp)

Filed with Sec. of State: 11-16-2012

Certified to be Effective: 1-1-13 thru 6-29-13

Notice Publication Date:

Rules Amended: 918-305-0105

Rules Suspended: 918-305-0105(T)

Subject: This rule expands the requirement for arc-fault circuit interrupter (AFCI) protection in dwelling units. The rule also adds an exception to the required AFCI protection for branch circuits supplying one or more outlets serving a single system in a single room of a dwelling unit. This temporary rule will expire on June 29, 2013.

Rules Coordinator: Richard J. Baumann—(503) 373-7559

ADMINISTRATIVE RULES

918-305-0105

Amendments to the Oregon Electrical Specialty Code

(1) The Oregon Electrical Specialty Code is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the Oregon Electrical Specialty Code are placed in this rule, showing the section reference and a descriptive caption. Amendments to the Oregon Electrical Specialty Code are printed in their entirety in Table 1-E.

(2) Effective January 1, 2013 amend Section 210.12(A) Arc-Fault Circuit Interrupter Protection by:

- (a) Adding "alcoves";
- (b) Deleting "hallways"; and
- (c) Adding two exceptions and an informational note.

[Publications referenced are available for review from the agency.]

Stat. Auth.: ORS 479.730, 455.610

Stats. Implemented: ORS 479.730, 455.610

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08; BCD 3-2011, f. 3-11-11, cert. ef. 4-1-11; BCD 5-2012(Temp), f. & cert. ef. 6-7-12 thru 10-31-12; BCD 11-2012(Temp), f. 10-5-12, cert. ef. 1-1-13 thru 6-29-13; BCD 14-2012(Temp), f. 11-16-12, cert. ef. 1-1-13 thru 6-29-13

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

Rule Caption: Adopt federal corrections, technical amendments, and updates in general industry, construction, and maritime activities.

Adm. Order No.: OSHA 7-2012

Filed with Sec. of State: 12-14-2012

Certified to be Effective: 12-14-12

Notice Publication Date: 11-1-12

Rules Amended: 437-002-0005, 437-002-0120, 437-002-0240, 437-003-0001, 437-005-0001, 437-005-0002, 437-005-0003

Subject: This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards published in three Federal Registers.

Federal OSHA updated the references in standards to recognize the 2009 edition of the American National Standard for Industrial Head Protection, and is deleting the 1986 edition of that national consensus standard because it is out of date. These changes were published in the June 22, 2012 Federal Register.

Federal OSHA corrected an editorial instruction printed in the June 22, 2012 Federal Register. This correction was published in the July 23, 2012 Federal Register.

Federal OSHA removed an unnecessary term in Appendix C of Respiratory Protection; restoring inadvertently removed requirements in Mechanical Power Presses; and, corrected a cross reference in two paragraphs in Appendix A to subdivision L of scaffold standards in construction. These changes were published in the August 7, 2012 Federal Register.

Oregon OSHA adopts these corrections/amendments/updates in general industry, construction, and maritime.

Please visit our web site www.orosha.org

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

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0005

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.1, Purpose and scope; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(2) 29 CFR 1910.2, Definitions; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(3) 29 CFR 1910.3, Petitions for the issuance, amendment, or repeal of a standard; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(4) 29 CFR 1910.4, Amendments to this part; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(5) 29 CFR 1910.5, Applicability of standards; published 6/30/93, FR vol. 58, no. 124, p. 35308.

(6) 29 CFR 1910.6, Incorporation by reference; published 6/22/12, FR vol. 77, no. 121, p. 37587.

(7) 29 CFR 1910.7, Definition and requirements for a Nationally Recognized Testing Laboratory; published 5/11/88, FR vol. 53, no. 91, p. 16838.

(8) 29 CFR 1910.9, Compliance duties owed to each employee; published 12/12/08, Federal Register, vol. 73, no. 240, pp. 75568-75589.

These standards are on file at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stat. Implemented: ORS 654.001 - 654.295

Hist.: APD 17-1988, f. & ef. 11-10-88; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 4-2005, f. & cert. ef. 12-14-05; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 1-2010, f. & cert. ef. 2-19-10; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 5-2012, f. & cert. ef. 9-25-12; OSHA 7-2012, f. & cert. ef. 12-14-12

437-002-0120

Adoption by Reference

In addition to, and not in lieu of, any other health and safety codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.132 General requirements. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(2) 29 CFR 1910.133 Eye and face protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(3) 29 CFR 1910.134 Respiratory protection, published 8/7/12, FR vol. 77, no. 152, p. 46948.

(4) 29 CFR 1910.135 Occupational head protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(5) 29 CFR 1910.136 Occupational foot protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(6) 29 CFR 1910.137 Electrical protective equipment, published 1/31/94, FR vol. 59, no. 20, pp. 4435-7.

(7) 29 CFR 1910.138 Hand Protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(8) 29 CFR 1910.139 Respiratory protection for M. tuberculosis. Removed, 12/3/03, FR vol. 68, p. 75776-75780 (OR-OSHA Admin. Order 1-2004, f. 3/26/04, ef. 7/1/04).

(9) Appendices.

Appendix A – References for further information (nonmandatory).

Appendix B – Nonmandatory compliance guidelines for hazard assessment and personal protective equipment selection; amended with OR-OSHA Admin. Order 1-2012, f. and ef. 4/10/12.

These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 9-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2004, f. 3-26-04, cert. ef. 7-1-04; OSHA 5-2004, f. & cert. ef. 11-19-04; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 7-2012, f. & cert. ef. 12-14-12

437-002-0240

Adoption by Reference

In addition to and not in lieu of, any other health and safety codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910 in the Federal Register:

(1) 29 CFR 1910.211 Definitions; published 12/3/74, FR vol. 39, pp. 41846-41848; 3/14/88, FR vol. 53, p. 8353.

(2) 29 CFR 1910.212 General requirements for all machines; published 10/24/78, FR vol. 43, p. 49750.

(3) 29 CFR 1910.213 Woodworking machines; published 2/10/84., FR vol. 49, p. 5323.

(4) Reserved for 29 CFR 1910.214 Cooperage machinery.

(5) 29 CFR 1910.215 Abrasive wheel machinery; published 3/7/96, FR vol. 61, no. 46, p. 9240.

(6) 29 CFR 1910.216 Mills and calendars in the rubber and plastics industries; published 3/7/96, FR vol. 61, no. 46, p. 9240.

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(7) 29 CFR 1910.217 Mechanical power presses; published 8/7/12, FR vol. 77, no. 152, p. 46948.

(8) 29 CFR 1910.218 Forging machines; published 3/7/96, FR vol. 61, no.46, p. 9240.

(9) 29 CFR 1910.219 Mechanical power-transmission apparatus; published 6/8/04, FR vol. 69, p. 31880-31882.

These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 22-1988, f. 12-30-88, ef. 1-1-89; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 4-2004, f. & cert. ef. 9-15-04; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 7-2012, f. & cert. ef. 12-14-12

437-003-0001

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, in the Federal Register:

(1) Subdivision A — GENERAL

(a) 29 CFR 1926.1 Purpose and Scope, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.2 Variances from safety and health standards, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.3 Inspections — right of entry, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.6 Incorporation by reference, published 6/22/12, FR vol. 77, no. 121, p. 37587.

(2) Subdivision B — GENERAL INTERPRETATIONS:

(a) 29 CFR 1926.10 Scope of subpart, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.13 Interpretation of statutory terms, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.14 Federal contracts for 'mixed' types of performance, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.16 Rules of construction, published 4/6/79, FR vol. 44, p. 20940.

(3) Subdivision C — GENERAL SAFETY AND HEALTH PROVISIONS:

(a) 29 CFR 1926.20 General safety and health provisions, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(b) 29 CFR 1926.21 Safety training and education, published 4/6/79, FR vol. 44, p. 20940; amended with AO 6-2012, repealed (b)(6), f. 9/28/12, ef. 4/1/13.

(c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved).

(d) 29 CFR 1926.23 First aid and medical attention, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.24 Fire protection and prevention, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.25 Housekeeping, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.26 Illumination, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.27 Sanitation, published 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.28 Personal protective equipment, published 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.29 Acceptable certifications, published 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 3/7/96, FR vol. 61, no. 46, p. 9249.

(l) 29 CFR 1926.31 (Reserved).

(m) 29 CFR 1926.32 Definitions, published 6/30/93, FR vol. 58, no. 124, p. 35078.

(n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.

(4) Subdivision D — OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS:

(a) 29 CFR 1926.50 Medical services and first aid, published 6/18/98, FR vol. 63, no. 117, p. 33469.

(b) 29 CFR 1926.51 Sanitation, published 6/30/93, FR vol. 58, no. 124, p. 35084.

(c) 29 CFR 1926.52 Occupational noise exposure, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.53 Ionizing radiation, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.54 Nonionizing radiation, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 1/10/97, FR vol. 62, no. 7, p. 1619.

(g) 29 CFR 1926.56 Illumination, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.57 Ventilation, published 1/8/98, FR vol. 63, no. 5, p. 1295.

(i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).

(j) 29 CFR 1926.59 Hazard Communication, published 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1926.60 Methylenedianiline (MDA), published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1926.62 Lead, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

NOTE: Cadmium has been redesignated as §1926.1127.

(n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response

NOTE: Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.

(5) Subdivision E — PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT:

(a) 29 CFR 1926.95 Criteria for personal protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(b) 29 CFR 1926.100 Head protection, published 6/22/12, FR vol. 77, no. 121, p. 37587.

(c) 29 CFR 1926.101 Hearing protection, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.102 Eye and face protection, published 6/30/93, FR vol. 58, no. 124, p. 35160.

(e) 29 CFR 1926.103 Respiratory protection, published 1/8/98, FR vol. 63, no. 5, p. 1297.

NOTE: 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.

(f) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.

(g) 29 CFR 1926.106 Working over or near water, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.107 Definitions applicable to this subpart, published 8/9/94, FR vol. 59, no. 152, p. 40729.

(6) Subdivision F — FIRE PROTECTION AND PREVENTION:

(a) 29 CFR 1926.150 Fire protection, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.151 Fire prevention, published 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.152 Flammable and combustible liquids, published 6/30/93, FR vol. 58, no. 124, p. 35162.

(d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 6/30/93, FR vol. 58, no. 124, p. 35170.

(e) 29 CFR 1926.154 Temporary heating devices, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.155 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.

(7) Subdivision G — SIGNS, SIGNALS, AND BARRICADES:

(a) 29 CFR 1926.200 Accident prevention signs and tags, published 6/30/93, FR vol. 58, no. 124, p. 35173; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(b) 29 CFR 1926.201 Signaling, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(c) 29 CFR 1926.202 Barricades, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

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(d) 29 CFR 1926.203 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(8) Subdivision H — MATERIALS HANDLING, STORAGE, USE AND DISPOSAL:

(a) 29 CFR 1926.250 General requirements for storage, published 6/30/93, FR vol. 58, no. 124, p. 35173.

(b) 29 CFR 1926.251 Rigging equipment for material handling, published 6/30/93, FR vol. 58, no. 124, p. 35173.

(c) 29 CFR 1926.252 Disposal of waste materials, published 4/6/79, FR vol. 44, p. 20940.

(9) Subdivision I — TOOLS — HAND AND POWER:

(a) 29 CFR 1926.300 General requirements, published 3/7/96, FR vol. 61, no. 46, p. 9250.

(b) 29 CFR 1926.301 Hand tools, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.302 Power operated hand tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.

(d) 29 CFR 1926.303 Abrasive wheels and tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.

(e) 29 CFR 1926.304 Woodworking tools, published 3/7/96, FR vol. 61, no. 46, p. 9251.

(f) 29 CFR 1926.305 Jacks - lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.

(10) Subdivision J — WELDING AND CUTTING:

(a) 29 CFR 1926.350 Gas welding and cutting, published 6/30/93, FR vol. 58, no. 124, p. 35179.

(b) 29 CFR 1926.351 Arc welding and cutting, published 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.352 Fire prevention, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 6/30/93, FR vol. 58, no. 124, p. 35179.

(e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 4/6/79, FR vol. 44, p. 20940.

(11) Subdivision K — ELECTRICAL:

(a) 29 CFR 1926.400 Introduction, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(b) 29 CFR 1926.401 (Reserved)

(c) 29 CFR 1926.402 Applicability, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(d) 29 CFR 1926.403 General requirements, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(e) 29 CFR 1926.404 Wiring design and protection, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.

(f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(g) 29 CFR 1926.406 Specific purpose equipment and installations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(h) 29 CFR 1926.407 Hazardous (classified) locations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(i) 29 CFR 1926.408 Special systems, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(j) 29 CFR 1926.409 (Reserved).

(k) 29 CFR 1926.415 (Reserved).

(l) 29 CFR 1926.416 General requirements, published 8/12/96, FR vol. 61, no. 156, p. 41738.

(m) 29 CFR 1926.417 Lockout and tagging of circuits, published 8/12/96, FR vol. 61, no. 156, p. 41739.

(n) 29 CFR 1926.418 (Reserved).

(o) 29 CFR 1926.430 (Reserved).

(p) 29 CFR 1926.431 Maintenance of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(q) 29 CFR 1926.432 Environmental deterioration of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(r) 29 CFR 1926.433 - 29 CFR 1926.440 (Reserved).

(s) 29 CFR 1926.441 Battery locations and battery charging, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(t) 29 CFR 1926.442 - 29 CFR 1926.448 (Reserved)

(u) 29 CFR 1926.449 Definitions applicable to this subpart, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(12) Subdivision L — SCAFFOLDING:

(a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.451 General requirements, published 11/25/96, FR vol. 61, no. 228, p. 59831.

(c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.

(d) 29 CFR 1926.453 Aerial lifts, published 11/25/96, FR vol. 61, no. 228, p. 59832.

(e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.

(f) Appendix A to Subpart L Scaffold Specifications, published 8/7/12, FR vol. 77, no. 152, p. 46948.

(g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.

(h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(j) Appendix E to Subpart L Drawing and illustrations, published 11/25/96, FR vol. 61, no. 228, p. 59832.

(13) Subdivision M — FALL PROTECTION:

(a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.501 Duty to have fall protection, published 8/9/94, FR vol. 59, no. 152, p. 40732-40733; amended with AO 6-2002, f. and ef. 7/19/02.

(c) 29 CFR 1926.502 Fall protection systems criteria and practices, published 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.

(d) 29 CFR 1926.503 Training requirements. REPEALED with AO 6-2002, f. and ef. 7/19/02, replaced with OI.

(e) Appendix A to Subpart M Determining Roof Widths, published 8/9/94, FR vol. 59, no. 152, p. 40738-40742.

(f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.

(g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.

(h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.

(14) Subdivision N — HELICOPTERS, HOISTS, ELEVATORS, AND CONVEYORS:

(a) 29 CFR 1926.550 (Reserved).

(b) 29 CFR 1926.551 Helicopters, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.553 Base-mounted drum hoist, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(e) 29 CFR 1926.554 Overhead hoists, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.555 Conveyors, published 4/6/79, FR vol. 44, p. 20940.

(15) Subdivision O — MOTOR VEHICLES, MECHANIZED EQUIPMENT, AND MARINE OPERATIONS:

(a) 29 CFR 1926.600 Equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.601 Motor vehicles, REPEALED by OR-OSHA Admin. Order 6-2007, f. 9/26/07, ef. 9/26/07.

(c) 29 CFR 1926.602 Material handling equipment, published 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.

(d) 29 CFR 1926.603 Pile driving equipment, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.604 Site clearing, published 7/22/77, FR vol. 42, p. 37674.

(f) 29 CFR 1926.605 Marine operations and equipment, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.606 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.

(16) Subdivision P — EXCAVATIONS:

(a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.

(b) 29 CFR 1926.651 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.

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- (c) 29 CFR 1926.652 Requirements for protective systems, published 10/31/89, FR vol. 54, no. 209, pp. 45961–45962.
- (d) Appendices A–F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962–45991.
- (17) Subdivision Q — CONCRETE AND MASONRY CONSTRUCTION
- (a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (b) 29 CFR 1926.701 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.702 Requirements for equipment and tools, published 6/16/88, FR vol. 53, p. 22612.
- (d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.
- (e) 29 CFR 1926.704 Requirements for precast concrete, published 10/5/89, FR vol. 54, no. 192, p. 41088.
- (f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.
- (18) Subdivision R — STEEL ERECTION:
- (a) 29 CFR 1926.750 Scope, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (b) 29 CFR 1926.751 Definitions, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (d) 29 CFR 1926.753 Hoisting and rigging, published 8/9/10, FR vol. 75, no. 152, pp. 47906–48177.
- (e) 29 CFR 1926.754 Structural steel assembly, published 4/3/06, FR vol. 71, no. 63, p. 16669.
- (f) 29 CFR 1926.755 Column anchorage, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (g) 29 CFR 1926.756 Beams and columns, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (h) 29 CFR 1926.757 Open web steel joists, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (i) 29 CFR 1926.758 Systems-engineered metal buildings, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (j) 29 CFR 1926.759 Falling object protection, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (k) 29 CFR 1926.760 Fall protection, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (l) 29 CFR 1926.761 Training, published 12/12/08, FR vol. 73, no. 240, pp. 75568–75589.
- (m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Nonmandatory Guidelines for Complying with §1926.752(e), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (n) Appendix B to Subpart R Reserved.
- (o) Appendix C to Subpart R Illustrations of bridging terminus points: Nonmandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Nonmandatory Guidelines for Complying with §1926.760(c)(3), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (q) Appendix E to Subpart R Training: Nonmandatory Guidelines for Complying with §1926.761, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (r) Appendix F to Subpart R Perimeter columns: Nonmandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Nonmandatory Guidelines for Complying with §1926.760(d), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with §1926.756(c)(1), published 7/17/01, FR vol. 66, no. 137, p. 37137.
- (19) Subdivision S — UNDERGROUND CONSTRUCTION, CAISSENS, COFFERDAMS, AND COMPRESSED AIR:
- (a) 29 CFR 1926.800 Tunnels and shafts, published 8/9/10, FR vol. 75, no. 152, pp.47906-48177.
- (b) 29 CFR 1926.801 Caissons, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.802 Cofferdams, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.803 Compressed air, published 7/11/86, FR vol. 51, p. 25318.
- (e) 29 CFR 1926.804 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (f) Appendix A to Subpart S Decompression Tables, published 4/6/79, FR vol. 44, p. 20940.
- (20) Subdivision T — DEMOLITION:
- (a) 29 CFR 1926.850 Preparatory operations, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.852 Chutes, published 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.853 Removal of materials through floor openings, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.855 Manual removal of floors, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906–48177.
- (h) 29 CFR 1926.857 Storage, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.858 Removal of steel construction, published 8/9/10, FR vol. 75, no. 152, pp. 47906–48177.
- (j) 29 CFR 1926.859 Mechanical demolition, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.860 Selective demolition by explosives, published 4/6/79, FR vol. 44, p. 20940.
- (21) Subdivision U — BLASTING AND USE OF EXPLOSIVES:
- (a) 29 CFR 1926.900 General provisions, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.901 Blaster qualifications, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.902 Surface transportation of explosives, published 6/30/93, FR vol. 58, no. 124, p. 35311.
- (d) 29 CFR 1926.903 Underground transportation of explosives, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35311.
- (f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35184.
- (g) 29 CFR 1926.906 Initiation of explosive charges — electric blasting, published 6/18/98, FR vol. 63, no. 117, p. 33469.
- (h) 29 CFR 1926.907 Use of safety fuse, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.908 Use of detonating cord, published 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.909 Firing the blast, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.910 Inspection after blasting, published 4/6/79, FR vol. 44, p. 20940.
- (l) 29 CFR 1926.911 Misfires, published 4/6/79, FR vol. 44, p. 20940.
- (m) 29 CFR 1926.912 Underwater blasting, published 4/6/79, FR vol. 44, p. 20940.
- (n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 4/6/79, FR vol. 44, p. 20940.
- (o) 29 CFR 1926.914 Definitions applicable to this subpart, published 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.
- (22) Subdivision V — POWER TRANSMISSION AND DISTRIBUTION:
- (a) 29 CFR 1926.950 General requirements, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.951 Tools and protective equipment, published 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.952 Mechanical equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906–48177.

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- (d) 29 CFR 1926.953 Material handling, published 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.954 Grounding for protection of employees, published 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.955 Overhead lines, published 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.956 Underground lines, published 4/6/79, FR vol. 44, p. 20940.
- (h) 29 CFR 1926.957 Construction in energized substations, published 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.958 External load helicopters, published 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.959 Lineman's body belts, safety straps, and lanyards, published 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.960 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.
- (23) Subdivision W — ROLLOVER PROTECTIVE STRUCTURES: OVERHEAD PROTECTION:
- (a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 7/20/06, FR vol. 71, no. 139, p. 41127..
- (d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/28/06, FR vol. 71, no. 39, p. 9909.
- (24) Subdivision X — STAIRWAYS AND LADDERS:
- (a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.
- (c) 29 CFR 1926.1052 Stairways, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.
- (d) 29 CFR 1926.1053 Ladders, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.
- (e) 29 CFR 1926.1054 (Reserved).
- (f) 29 CFR 1926.1055 (Reserved).
- (g) 29 CFR 1926.1056 (Reserved).
- (h) 29 CFR 1926.1057 (Reserved).
- (i) 29 CFR 1926.1058 (Reserved).
- (j) 29 CFR 1926.1059 (Reserved).
- (k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.
- (25) Subdivision Z — TOXIC AND HAZARDOUS SUBSTANCES:
- (a) 29 CFR 1926.1101 Asbestos, published 1/9/09, FR vol. 74, no. 6, p. 858.
- (b) 29 CFR 1926.1126 Chromium (VI), published; 3/17/10, FR vol. 75, no. 51, pp. 12681-12686.
- (c) 29 CFR 1926.1127 Cadmium, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.
- (d) 29 CFR 1926.1152 Methylene Chloride, published 12/18/97, FR vol. 62, no. 243, p. 66275.
- (26) Subdivision AA — (Reserved).
- (27) Subdivision BB — (Reserved).
- (28) Subdivision CC — Cranes and Derricks in Construction:
- (a) 29 CFR 1926.1400 Scope, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (b) 29 CFR 1926.1401 Definitions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (c) 29 CFR 1926.1402 Ground conditions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (d) 29 CFR 1926.1403 Assembly/Disassembly — selection of manufacturer or employer procedures, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (e) 29 CFR 1926.1404 Assembly/Disassembly — general requirements (applies to all assembly and disassembly operations), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (f) 29 CFR 1926.1405 Disassembly — additional requirements for dismantling of booms and jibs (applies to both the use of manufacturer procedures and employer procedures), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (g) 29 CFR 1926.1406 Assembly/Disassembly — employer procedures — general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (h) 29 CFR 1926.1407 Power line safety (up to 350 kV) — assembly and disassembly, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (i) 29 CFR 1926.1408 Power line safety (up to 350 kV) — equipment operations, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (j) 29 CFR 1926.1409 Power line safety (over 35 kV), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (k) 29 CFR 1926.1410 Power line safety (all voltages) — equipment operations closer than the Table A zone, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (l) 29 CFR 1926.1411 Power line safety — while traveling, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (m) 29 CFR 1926.1412 Inspections, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (n) 29 CFR 1926.1413 Wire rope — inspection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (o) 29 CFR 1926.1414 Wire rope — selection and installation criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (p) 29 CFR 1926.1415 Safety devices, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (q) 29 CFR 1926.1416 Operational aids, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (r) 29 CFR 1926.1417 Operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (s) 29 CFR 1926.1418 Authority to stop operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (t) 29 CFR 1926.1419 Signals — general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (u) 29 CFR 1926.1420 Signals — radio, telephone or other electronic transmission of signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (v) 29 CFR 1926.1421 Signals — voice signals — additional requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (w) 29 CFR 1926.1422 Signals — hand signal chart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (x) 29 CFR 1926.1423 Fall protection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (y) 29 CFR 1926.1424 Work area control, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (z) 29 CFR 1926.1425 Keeping clear of the load, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (aa) 29 CFR 1926.1426 Free fall and controlled load lowering, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (bb) 29 CFR 1926.1427 Operator qualification and certification, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (cc) 29 CFR 1926.1428 Signal person qualifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (dd) 29 CFR 1926.1429 Qualifications of maintenance & repair employees, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (ee) 29 CFR 1926.1430 Training, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (ff) 29 CFR 1926.1431 Hoisting personnel, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (gg) 29 CFR 1926.1432 Multiple-crane/derrick lifts — supplemental requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (hh) 29 CFR 1926.1433 Design, construction and testing, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (ii) 29 CFR 1926.1434 Equipment modifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (jj) 29 CFR 1926.1435 Tower cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (kk) 29 CFR 1926.1436 Derricks, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (ll) 29 CFR 1926.1437 Floating cranes/derricks and land cranes/derricks on barges, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (mm) 29 CFR 1926.1438 Overhead & gantry cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (nn) 29 CFR 1926.1439 Dedicated pile drivers, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.
- (oo) 29 CFR 1926.1440 Sideboom cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

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(pp) 29 CFR 1926.1441 Equipment with a rated hoisting/lifting capacity of 2,000 pounds or less, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(qq) 29 CFR 1926.1442 Severability, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(rr) Appendix A to Subdivision CC of 1926 — Standard Hand Signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ss) Appendix B to Subdivision CC of 1926 — Assembly/Disassembly — Sample Procedures for Minimizing the Risk of Unintended Dangerous Boom Movement, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(tt) Appendix C to Subdivision CC of 1926 — Operator Certification — Written Examination — Technical Knowledge Criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(29) Subdivision DD — Cranes and Derricks Used in Demolition and Underground Construction, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(a) 29 CFR 1926.1500 Scope, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.1501 Cranes and Derricks, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02, cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03, cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 8-2003, f. 12-30-03, cert. ef. 1-1-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 2-2006, f. & cert. ef. 4-28-06; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 5-2006, f. 8-7-06, cert. ef. 1-1-07; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 6-2007, f. & cert. ef. 9-26-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 1-2011, f. & cert. ef. 2-9-11; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 3-2012, f. & cert. ef. 8-20-12; OSHA 5-2012, f. & cert. ef. 9-25-12; OSHA 6-2012, f. 9-28-12, cert. ef. 4-1-13; OSHA 7-2012, f. & cert. ef. 12-14-12

437-005-0001

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1915, in the Federal Register:

(1) Subdivision A:

(a) 29 CFR 1915.1. Purpose and authority, published 4/20/82, Federal Register (FR) vol. 47, p. 16984.

(b) 29 CFR 1915.2. Scope and application, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.3. Responsibility, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.4. Definitions, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.5. Incorporation by reference, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(f) 29 CFR 1915.6. Commercial diving operations, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.7. Competent person, published 7/25/94, FR vol. 59, p. 37856.

(h) 29 CFR 1915.9. Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(2) Subdivision B:

(a) 29 CFR 1915.11. Scope, application and definitions applicable to this Subpart, published 7/25/94, FR vol. 59, p. 37857.

(b) 29 CFR 1915.12. Precautions before entering confined and enclosed spaces and other dangerous atmospheres, published 3/16/95, FR vol. 60, no. 51, p. 14218.

(c) 29 CFR 1915.13. Cleaning and other cold work, published 7/25/94, FR vol. 59, p. 37859.

(d) 29 CFR 1915.14. Hot work, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.15. Maintenance of safe conditions, published 6/22/12, FR vol. 77, no. 121, p. 37587.

(f) 29 CFR 1915.16. Warning signs and labels, published 7/25/94, FR vol. 59, p. 37861.

Appendix A to Subpart B published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

Appendix B to Subpart B published 7/25/94, FR vol. 59, p. 37816.

(3) Subdivision C:

(a) 29 CFR 1915.31. Scope & application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.32. Toxic cleaning solvents, published 5/24/96, FR vol. 61, no. 102, p. 26351.

(c) 29 CFR 1915.33. Chemical paint & preservative remover, published 5/24/96, FR vol. 61, no. 102, p. 26351.

(d) 29 CFR 1915.34. Mechanical paint removers, published 5/24/96, FR vol. 61, no. 102, p. 26351.

(e) 29 CFR 1915.35. Painting, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.36. Flammable liquids, published 4/20/82, FR vol. 47, p. 16984.

(4) Subdivision D:

(a) 29 CFR 1915.51. Ventilation & protection in welding, cutting and heating, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.52. Fire prevention. REMOVED 9/15/04, FR vol. 69, p. 55667.

(c) 29 CFR 1915.53. Welding, cutting and heating of hollow metal containers & structure not covered by 1915.12, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.55. Gas welding & cutting, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.56. Arc welding and cutting, published 4/20/82, FR vol. 47, p. 16984.

(f) 29 CFR 1915.57. Uses of fissionable material in ship repairing and shipbuilding, published 4/20/82, FR vol. 47, p. 16984.

(5) Subdivision E:

(a) 29 CFR 1915.71. Scaffolds or staging, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.72. Ladders, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.73. Guarding of deck openings and edges, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.74. Access to vessels, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.75. Access to and guarding of dry docks and marine railways, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.76. Access to cargo spaces and confined spaces, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.77. Working surfaces, published amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(6) Subdivision F:

(a) 29 CFR 1915.80. Scope, application, definitions and effective dates, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(b) 29 CFR 1915.81. Housekeeping, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(c) 29 CFR 1915.82. Lighting, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(d) 29 CFR 1915.83. Utilities, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(e) 29 CFR 1915.84. Working alone, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(f) 29 CFR 1915.85. Vessel radar and communication systems, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(g) 29 CFR 1915.86. Lifeboats, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(h) 29 CFR 1915.87. Medical services and first aid, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

(i) 29 CFR 1915.88. Sanitation, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.

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- (j) 29 CFR 1915.89 Control of hazardous energy (lockout/tagout), published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (k) 29 CFR 1915.90 Safety color code for marking physical hazards, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (l) 29 CFR 1915.91. Accident prevention signs and tags, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (m) 29 CFR 1915.92. Retention of DOT markings, placards, and labels, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (n) 29 CFR 1915.93. Motor vehicle safety equipment, operation, and maintenance, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (o) 29 CFR 1915.94. Servicing of multi-piece and single-piece rim wheels, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (7) Subdivision G:
- (a) 29 CFR 1915.111. Inspection, published 4/20/ 82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.112. Ropes, chains and slings, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (c) 29 CFR 1915.113. Shackles and hooks, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (d) 29 CFR 1915.114. Chain falls and pull lifts, published 4/20/82, FR vol. 47, p. 16984.
- (e) 29 CFR 1915.115. Hoisting and hauling equipment, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (f) 29 CFR 1915.116. Use of gear, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (g) 29 CFR 1915.117. Qualifications of operators, published 4/20/82, FR vol. 47, p. 16984.
- (h) 29 CFR 1915.118. Tables, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (8) Subdivision H:
- (a) 29 CFR 1915.131. General precautions, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (b) 29 CFR 1915.132. Portable electric tools, published 4/20/82, FR vol. 47, p. 16984.
- (c) 29 CFR 1915.133. Hand tools, published 4/20/ 82, FR vol. 47, p. 16984.
- (d) 29 CFR 1915.134. Abrasive wheels, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (e) 29 CFR 1915.135. Powder actuated fastening tools, published 5/24/96, FR vol. 61, no. 102, p. 26351.
- (f) 29 CFR 1915.136. Internal combustion engines other than ship's equipment, published 4/20/82, FR vol. 47, p. 16984.
- (9) Subdivision I:
- (a) 29 CFR 1915.151. Scope, application and definitions, published 5/24/96, FR vol. 61, no. 102, p. 26352.
- (b) 29 CFR 1915.152. General requirements, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (c) 29 CFR 1915.153. Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (d) 29 CFR 1915.154. Respiratory protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (e) 29 CFR 1915.155. Head protection, published 6/22/12, FR vol. 77, no. 121, p. 37587.
- (f) 29 CFR 1915.156. Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (g) 29 CFR 1915.157. Hand and body protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (h) 29 CFR 1915.158. Lifesaving equipment, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (i) 29 CFR 1915.159. Personal fall arrest systems (PFAS), published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (j) 29 CFR 1915.160. Positioning device systems, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix A to Subpart I, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix B to Subpart I, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (10) Subdivision J:
- (a) 29 CFR 1915.161. Scope and application of subdivision, published 4/20/ 82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.162. Ship's boilers, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (c) 29 CFR 1915.163. Ship's piping systems, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (d) 29 CFR 1915.164. Ship's propulsion machinery, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (e) 29 CFR 1915.165. Ship's decking machinery, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (11) Subdivision K:
- (a) 29 CFR 1915.171. Scope and application of subdivision, published 4/20/ 82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.172. Portable air receiver and other unfired pressure vessels, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.173. Drums and containers, published 4/20/82, FR vol. 47, p. 16984.
- (12) Subdivision L:
- (a) 29 CFR 1915.181. Electrical circuits and distribution boards, published 5/2/11, Federal Register vol. 76, no. 84, p. 24576.
- (13) Subdivisions M–O (Reserved).
- (14) Subdivision P:
- (a) 29 CFR 1915.501. General provisions, published 9/15/04, FR vol. 69, p. 55667.
- (b) 29 CFR 1915.502. Fire safety plan, published 9/15/04, FR vol. 69, p. 55667.
- (c) 29 CFR 1915.503. Precautions for hot work, published 9/15/04, FR vol. 69, p. 55667.
- (d) 29 CFR 1915.504. Fire watches, published 9/15/04, FR vol. 69, p. 55667.
- (e) 29 CFR 1915.505. Fire response, published 10/17/06, FR vol. 71, no. 200, p. 60843.
- (f) 29 CFR 1915.506. Hazards of fixed extinguishing systems on board vessels and vessel sections, published 9/15/04, FR vol. 69, p. 55667.
- (g) 29 CFR 1915.507. Land-side fire protection systems, published 10/17/06, FR vol. 71, no. 200, p. 60843.
- (h) 29 CFR 1915.508. Training, published 9/15/04, FR vol. 69, p. 55667.
- (i) 29 CFR 1915.509. Definitions applicable to this subpart, published 9/15/04, FR vol. 69, p. 55667.
- Appendix A to Subpart P, published 9/15/04, FR vol. 69, p. 55667.
- (15) Subdivision Q–Y (Reserved).
- (16) Subdivision Z:
- (a) 29 CFR 1915.1000. Air Contaminants, published 12/27/11, FR vol. 76, no. 248, p. 80735.
- (b) 29 CFR 1915.1001. Asbestos, published 3/26/12, FR vol. 77, no. 58, p. 17574.
- Appendix A to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.
- Appendix B to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.
- Appendix C to 1915.1001, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- Appendix D to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.
- Appendix E to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.
- Appendix F to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.
- Appendix G to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.
- Appendix H to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.
- Appendix I to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.
- Appendix J to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.
- Appendix K to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.
- Appendix L to 1915.1001, published 8/23/96, FR vol. 61, p. 43454.
- (c) 29 CFR 1915.1002. Coal tar pitch volatiles; interpretation of term, published 6/20/96, FR vol. 61, p. 31427.
- (d) 29 CFR 1915.1003. 13 Carcinogens (4 Nitrobiophenyl, etc.), published 6/20/96, FR vol. 61, p. 31427.
- (e) 29 CFR 1915.1004. alpha Naphthylamine, published 6/20/96, FR vol. 61, p. 31427.
- (f) 29 CFR 1915.1005. (Reserved).
- (g) 29 CFR 1915.1006. Methyl chloromethyl ether, published 6/20/96, FR vol. 61, p. 31427.
- (h) 29 CFR 1915.1007. 3,3'-Dichlorobenzidene (and its salts), published 6/20/96, FR vol. 61, p. 31427.
- (i) 29 CFR 1915.1008. bis Chloromethyl ether, published 6/20/96, FR vol. 61, p. 31427.
- (j) 29 CFR 1915.1009. beta Naphthylamine, published 6/20/96, FR vol. 61, p. 31427.
- (k) 29 CFR 1915.1010. Benzidine, published 6/20/96, FR vol. 61, p. 31427.
- (l) 29 CFR 1915.1011. 4 Aminodiphenyl, published 6/20/96, FR vol. 61, p. 31427.
- (m) 29 CFR 1915.1012. Ethyleneimine, published 6/20/96, FR vol. 61, p. 31427.
- (n) 29 CFR 1915.1013. beta Propiolactone, published 6/20/96, FR vol. 61, p. 31427.
- (o) 29 CFR 1915.1014. 2 Acetylaminofluorene, published 6/20/96, FR vol. 61, p. 31427.
- (p) 29 CFR 1915.1015. 4 Dimethylaminoazobenzene, published 6/20/96, FR vol. 61, p. 31427.
- (q) 29 CFR 1915.1016. N Nitrosodimethylamine, published 6/20/96, FR vol. 61, p. 31427.

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(r) 29 CFR 1915.1017. Vinyl chloride, published 6/20/96, FR vol. 61, p. 31427.

(s) 29 CFR 1915.1018. Inorganic arsenic, published 6/20/96, FR vol. 61, p. 31427.

(t) 29 CFR 1915.1020 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, p. 31427.

(u) 29 CFR 1915.1025. Lead, published 6/20/96, FR vol. 61, p. 31427.

(v) 29 CFR 1915.1026 Chromium (VI), published 3/26/12, FR vol. 77, no. 58, p. 17574.

(w) 29 CFR 1915.1027. Cadmium, published 6/20/96, FR vol. 61, p. 31427.

(x) 29 CFR 1915.1028. Benzene, published 6/20/96, FR vol. 61, p. 31427.

(y) 29 CFR 1915.1030. Bloodborne pathogens, published 6/20/96, FR vol. 61, p. 31427.

(z) 29 CFR 1915.1044. 1,2 dibromo 3 chloropropane, published 6/20/96, FR vol. 61, p. 31427.

(aa) 29 CFR 1915.1045. Acrylonitrile, published 6/20/96, FR vol. 61, p. 31427.

(bb) 29 CFR 1915.1047. Ethylene oxide, published 6/20/96, FR vol. 61, p. 31427.

(cc) 29 CFR 1915.1048. Formaldehyde, published 6/20/96, FR vol. 61, p. 31427.

(dd) 29 CFR 1915.1050. Methylenedianiline, published 6/20/96, FR vol. 61, p. 31427.

(ee) 29 CFR 1915.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619.

(ff) 29 CFR 1915.1120 Access to employee exposure and medical records has been redesignated to §1915.1020.

NOTE: 29 CFR 1915.99, Hazard Communication was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.)

(gg) 29 CFR 1915.1200. Hazard communication, published 6/20/96, FR vol. 61, p. 31427.

(hh) 29 CFR 1915.1450. Occupational exposure to hazardous chemicals in laboratories, published 6/20/96, FR vol. 61, p. 31427.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 19-1993, f. & cert. ef. 12-29-93; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 2-1995, f. & cert. ef. 1-25-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 4-2001, f. & cert. ef. 2-5-01; OSHA 4-2003, f. & cert. ef. 5-6-03; OSHA 8-2004, f. & cert. ef. 12-30-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 1-2007, f. 1-9-07 cert. ef. 1-16-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 3-2011, f. & cert. ef. 11-1-11; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 5-2012, f. & cert. ef. 9-25-12; OSHA 7-2012, f. & cert. ef. 12-14-12

437-005-0002

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1917, in the Federal Register:

(1) Subdivision A:

(a) 29 CFR 1917.1 Scope and applicability, published 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1917.2 Definitions, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(c) 29 CFR 1917.3 Incorporation by reference, published 6/22/12, FR vol. 77, no. 121, p. 37587.

(d) 29 CFR 1917.5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp.75568-75589

(2) Subdivision B:

(a) 29 CFR 1917.11 Housekeeping, published 7/25/97, FR vol. 62, no. 143, p. 40196.

(b) 29 CFR 1917.12 Slippery conditions, published 7/5/83, FR vol. 48, p. 30909.

(c) 29 CFR 1917.13 Slinging, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(d) 29 CFR 1917.14 Stacking of cargo and pallets, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.15 Coopering, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.16 Line handling, published 7/5/83, FR vol. 48, p. 30909.

(g) 29 CFR 1917.17 Railroad facilities, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(h) 29 CFR 1917.18 Log handling, published 7/5/83, FR vol. 48, p. 30909.

(i) 29 CFR 1917.19 Movement of barges and rail cars, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.20 Interference with communications, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(k) 29 CFR 1917.21 Open fires, published 7/5/83, FR vol. 48, p. 30909.

(l) 29 CFR 1917.22 Hazardous cargo (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909.

(m) 29 CFR 1917.23 Hazardous atmospheres and substances (see 1917.2(p)), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(n) 29 CFR 1917.24 Carbon monoxide, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(o) 29 CFR 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives (see 1917.2(p)), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(p) 29 CFR 1917.26 First aid and lifesaving facilities, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(q) 29 CFR 1917.27 Personnel, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(r) 29 CFR 1917.28 Hazard communication (see also §1917.1(a)(2)(vi)), published 7/25/97, FR vol. 62, no. 143, p. 40198.

(s) 29 CFR 1917.29 Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.

(t) 29 CFR 1917.30 Emergency action plans, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(3) Subdivision C:

(a) 29 CFR 1917.41 House falls, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.42 Miscellaneous auxiliary gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.43 Powered industrial trucks, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.44 General rules applicable to vehicles, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1917.45 Cranes and derricks (see also §1917.50), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1917.46 Load indicating devices, published 7/25/97, FR vol. 62, no. 143, p. 40199.

(g) 29 CFR 1917.47 Winches, published 7/5/83, FR vol. 48, p. 30909.

(h) 29 CFR 1917.48 Conveyors, published 7/25/97, FR vol. 62, no. 143, p. 40200.

(i) 29 CFR 1917.49 Spouts, chutes, hoppers, bins, and associated equipment, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.50 Certification of marine terminal material handling devices (see also Mandatory Appendix IV, Part 1918 of this chapter), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(k) 29 CFR 1917.51 Hand tools, published 7/5/83, FR vol. 48, p. 30909.

(4) Subdivision D:

(a) 29 CFR 1917.70 General, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.71 Terminals handling intermodal container or roll on roll off operations, published 12/10/08, FR vol. 73, no. 238, pp. 75246-75290.

(c) 29 CFR 1917.72 (Reserved).

(d) 29 CFR 1917.73 Terminal facilities handling menhaden and similar species of fish (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(5) Subdivision E:

(a) 29 CFR 1917.91 Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(b) 29 CFR 1917.92 Respiratory protection, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.93 Head protection, published 6/22/12, FR vol. 77, no. 121, p. 37587.

(d) 29 CFR 1917.94 Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(e) 29 CFR 1917.95 Other protective measures, published 6/30/00, FR vol. 65, no. 127, p. 40938.

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(f) 29 CFR 1917.96 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(6) Subdivision F:

(a) 29 CFR 1917.111 Maintenance and load limits, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.112 Guarding of edges, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.113 Clearance heights, published 7/5/83, FR vol. 48, p. 30909.

(d) 29 CFR 1917.114 Cargo doors, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.115 Platforms and skids, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.116 Elevators and escalators, published 7/13/84, FR vol. 49, p. 28551.

(g) 29 CFR 1917.117 Manlifts, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(h) 29 CFR 1917.118 Fixed ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(i) 29 CFR 1917.119 Portable ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(j) 29 CFR 1917.120 Fixed stairways, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(k) 29 CFR 1917.121 Spiral stairways, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(l) 29 CFR 1917.122 Employee exits, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(m) 29 CFR 1917.123 Illumination, published 7/25/97, FR vol. 62, no. 143, p. 40201.

(n) 29 CFR 1917.124 Dockboards (car and bridge plates), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(o) 29 CFR 1917.125 Guarding temporary hazards, published 7/5/83, FR vol. 48, p. 30909.

(p) 29 CFR 1917.126 River banks, published 7/25/97, FR vol. 62, no. 143, p. 40201.

(q) 29 CFR 1917.127 Sanitation, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(r) 29 CFR 1917.128 Signs and marking, published 7/5/83, FR vol. 48, p. 30909.

(7) Subdivision G:

(a) 29 CFR 1917.151 Machine guarding, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1917.152 Welding, cutting and heating (hot work) (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.153 Spray painting (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.154 Compressed air, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.155 Air receivers, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.156 Fuel handling and storage, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1917.157 Battery charging and changing, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1917.158 Prohibited operations, published 7/5/83, FR vol. 48, p. 30909.

These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 6-2009, f. & cert. ef. 6-5-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 7-2012, f. & cert. ef. 12-14-12

437-005-0003

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1918, in the Federal Register:

(1) Subdivision A:

(a) 29 CFR 1918.1 Scope and application, published 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1918.2 Definitions, published 6/8/11, Federal Register, vol. 76, no. 110, 33590.

(c) 29 CFR 1918.3 Incorporation by reference, published 6/22/12, FR vol. 77, no. 121, p. 37587.

(d) 29 CFR 1918.5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568–75589.

(2) Subdivision B: 29 CFR 1918.11 Gear certification (see also §§1918.2 and 1918.51), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(3) Subdivision C:

(a) 29 CFR 1918.21 General requirements, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.22 Gangways, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.23 Jacob's ladders, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.24 Fixed and portable ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1918.25 Bridge plates and ramps (see also §1918.86), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.26 Access to barges and river towboats, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(4) Subdivision D:

(a) 29 CFR 1918.31 Hatch coverings, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.32 Stowed cargo and temporary landing surfaces, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.33 Deck loads, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.34 Other decks, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.35 Open hatches, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(f) 29 CFR 1918.36 Weather deck rails, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(g) 29 CFR 1918.37 Barges, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(5) Subdivision E:

(a) 29 CFR 1918.41 Coaming clearances, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.42 Hatch beam and pontoon bridles, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.43 Handling hatch beams and covers, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(6) Subdivision F:

(a) 29 CFR 1918.51 General requirements (see also §1918.11 and Appendix III of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.52 Specific requirements, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.53 Cargo winches, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.54 Rigging gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1918.55 Cranes (see also §1918.11), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(7) Subdivision G:

(a) 29 CFR 1918.61 General (see also Appendix IV of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.62 Miscellaneous auxiliary gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.63 Chutes, gravity conveyors and rollers, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.64 Powered conveyors, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.65 Mechanically powered vehicles used aboard vessels, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.66 Cranes and derricks other than vessel's gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1918.67 Notifying ship's officers before using certain equipment, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1918.68 Grounding, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(i) 29 CFR 1918.69 Tools, published 6/30/00, FR vol. 65, no. 127, p. 40938.

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- (j) 29 CFR 1918.70–1918.80 (Reserved).
- (8) Subdivision H:
- (a) 29 CFR 1918.81 Slings, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (b) 29 CFR 1918.82 Building drafts, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (c) 29 CFR 1918.83 Stowed cargo, tiering and breaking down, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.84 Bulling cargo, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.85 Containerized cargo operations, published 12/10/08, FR vol. 73, no. 238, pp. 75246–75290.
- (f) 29 CFR 1918.86 Roll-on roll-off (Ro-Ro) operations (see also §1918.25), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (g) 29 CFR 1918.87 Ship's cargo elevators, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1918.88 Log operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (i) 29 CFR 1918.89 Handling hazardous cargo (see also §§1918.2 and 1918.99), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (9) Subdivision I:
- (a) 29 CFR 1918.90 Hazard communication (see also §1918.1(b)(4)), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (b) 29 CFR 1918.91 Housekeeping, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (c) 29 CFR 1918.92 Illumination, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.93 Hazardous atmospheres and substances (see also §1918.2(j)), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.94 Ventilation and atmospheric conditions (see also §1918.2), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.95 Sanitation, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.
- (g) 29 CFR 1918.96 Maintenance and repair work in the vicinity of longshoring operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1918.97 First aid and lifesaving facilities (see also Appendix V of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (i) 29 CFR 1918.98 Qualifications of machinery operators and supervisory training, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (j) 29 CFR 1918.99 Retention of DOT markings, placards and labels, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (k) 29 CFR 1918.100 Emergency action plans, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (10) Subdivision J:
- (a) 29 CFR 1918.101 Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350–46361.
- (b) 29 CFR 1918.102 Respiratory protection, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.103 Head protection, published 6/22/12, FR vol. 77, no. 121, p. 37587.
- (d) 29 CFR 1918.104 Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350–46361.
- (e) 29 CFR 1918.105 Other protective measures, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.106 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.
- (11) Appendix I — Cargo Gear Register and Certificates (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (12) Appendix II — Tables for Selected Miscellaneous Auxiliary Gear (Mandatory), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (13) Appendix III — The Mechanics of Conventional Cargo Gear (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (14) Appendix IV — Special Cargo Gear (Mandatory), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (15) Appendix V — Basic Elements of a First Aid Training Program (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.

These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 6-2009, f. & cert. ef. 6-5-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 7-2012, f. & cert. ef. 12-14-12

Rule Caption: Workers' compensation rules governing rulemaking, hearings, and attorney fees.

Adm. Order No.: WCD 7-2012

Filed with Sec. of State: 11-16-2012

Certified to be Effective: 12-28-12

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Rules Amended: 436-001-0003, 436-001-0004, 436-001-0005, 436-001-0009, 436-001-0019, 436-001-0023, 436-001-0170, 436-001-0225, 436-001-0246, 436-001-0410, 436-001-0420, 436-001-0430

Rules Repealed: 436-001-0300

Subject: Revised OAR chapter 436, division 001, "Procedural Rules, Rulemaking, Hearings, and Attorney Fees":

- Revise the definition of "mailed."
- Update the reference to the Model Rules for Rulemaking adopted by the Oregon Department of Justice.
- Provide that an administrative law judge may issue an interim order that is not subject to review by the director.
- Clarify that no new evidence, not just new "medical" evidence, may be admitted or considered at hearing in medical service, medical treatment, and managed care disputes.
- Provide that the director may extend the time frames to file exceptions to a proposed and final order, or to file a response or reply, either on the director's own motion or upon written request by a party that explains the need for the delay.
- Repeal the rule describing the director's process for alternative dispute resolution; the Workers' Compensation Board's mediation program is available to the parties.
- Revise the attorney fee matrix in OAR 436-001-0410 to show the maximum fee and fee ranges as percentages of the adjusted maximum fee under ORS 656.385(1).
- Delete the reference to the director's bulletin for publication of the percentage increase in the maximum attorney fees under ORS 656.262(11).

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-001-0003

Applicability and Purpose of these Rules

(1) OAR 436-001-0005 through 436-001-0009 establish supplemental procedures for rulemaking under ORS chapter 183 and apply to all division rulemaking on or after Jan. 1, 2010.

(2) OAR 436-001-0019 through 436-001-0300 establish supplemental procedures for hearings on matters within the director's jurisdiction, which are matters other than those concerning a claim as defined in ORS 656.704.

(a) In general, the rules of the Workers' Compensation Board in OAR chapter 438 apply to the conduct of hearings, unless these rules provide otherwise.

(b) These rules do not apply to hearings requested under ORS 656.740.

(c) These rules apply to hearings held on or after Dec. 28, 2012.

(3) OAR 436-001-0400 through 436-001-0440 apply to attorney fees awarded by the director under ORS 656.262 and 656.386, and to attorney fees awarded by the director or administrative law judge under ORS 656.385(1).

(a) These rules apply to attorney fees assessed by an order that is issued on or after Dec. 28, 2012.

(b) For attorney fees that are ordered to be paid in reconsideration proceedings under ORS 656.268(6), OAR 436-030-0175 applies.

(4) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704 & 183

Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2006, f. 1-13-06, cert. ef. 1-17-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 3-2012(Temp), f. 6-13-12, cert. ef. 7-1-12 thru 12-27-12; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

ADMINISTRATIVE RULES

436-001-0004

Definitions

(1) The following definitions apply to these rules, unless the context requires otherwise.

(a) "Administrative law judge" means an administrative law judge appointed by the Workers' Compensation Board, as defined in OAR 438-005-0040.

(b) "Administrator" means the administrator of the Workers' Compensation Division or the administrator's designee.

(c) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(d) "Delivered" means physical delivery to the division's Salem office during regular business hours.

(e) "Department" means the Department of Consumer and Business Services.

(f) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(g) "Division" means the department's Workers' Compensation Division.

(h) "Filed" means mailed, faxed, e-mailed, delivered, or otherwise submitted to the division in a method allowable under these rules.

(i) "Final order" means a final, written action of the director.

(j) "Mailed" means addressed to the last known address, with sufficient postage and placed in the custody of the U.S. Postal Service.

(k) "Party" may include, but is not limited to, a worker, an employer, an insurer, a self-insured employer, a managed care organization, a medical provider, or the division.

(l) "Proposed and final order" means an order subject to revision by the director that becomes final unless exceptions are timely filed or the director issues a notice of intent to review the proposed and final order.

(2) Other words and phrases have the same meaning as given in ORS 183.310, where applicable.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, 183

Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0005

Model Rules of Procedure For Rulemaking

The Model Rules for Rulemaking, OAR 137-001-0005 through 137-001-0100, in effect on Jan. 1, 2008, adopted by the Oregon Department of Justice under ORS 183.341, are adopted as the rules of procedure for rulemaking actions of the Workers' Compensation Division.

NOTE: The full text of the Model Rules is available from the Department of Justice, the Workers' Compensation Division, or on the Oregon State Archives website: http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.325 - 183.410

Hist.: WCD 5-1977(Admin)(Temp), f. & ef. 11-7-77; WCD 3-1978(Admin), f. & ef. 3-6-78; WCD 2-1982(Admin), f. 1-20-82, ef. 1-21-82; Renumbered from 436-090-0110 thru 436-090-0180, 5-1-85; WCD 3-1986, f. & ef. 5-15-86; WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 1-2005, f. & cert. ef. 1-14-05; WCD 1-2006, f. 1-13-06, cert. ef. 1-17-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0009

Notice of Division Rulemaking

(1) Except when adopting a temporary rule, the division will give prior public notice of the proposed adoption, amendment, or repeal of any rule by:

(a) Publishing notice of the proposed rulemaking action in the Secretary of State's Oregon Bulletin at least 21 days before the effective date of the rule;

(b) Notifying interested people and organizations on the division's notification lists of proposed rulemaking actions under ORS 183.335; and

(c) Providing notice to legislators as required by ORS 183.335(15).

(2) The division will add a person or organization to its notification list if the person or organization:

(a) Subscribes to the division's e-mail notification service through the division's website at wcd.oregon.gov, or

(b) Requests in writing to receive hard-copy notification and includes the person or organization's full name and mailing address.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.335 & 84.022

Hist.: WCB 16-1975, f. & ef. 10-20-75; WCD 4-1977(Admin)(Temp), f. & ef. 11-7-77; WCD 4-1978(Admin), f. & ef. 3-6-78; Renumbered from 436-090-0505, 5-1-85; WCD 3-1986, f.

& ef. 5-15-86; WCD 9-1992, f. & cert. ef. 5-22-92; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0000, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0019

Requests for Hearing

(1) A request for hearing on a matter within the director's jurisdiction must be filed with the administrator no later than the filing deadline. Filing deadlines will not be extended except as provided in section (7) of this rule.

(2) A request for hearing must be in writing. A party may use the division's Form 2839. A request for hearing must include the following information, as applicable:

(a) The name, address, and phone number of the party making the request;

(b) Whether the party making the request is the worker, insurer, medical provider, employer, any other party, or an attorney on behalf of a party;

(c) The number of the administrative order being appealed;

(d) The worker's name, address, and phone number;

(e) The name, address, and phone number of the worker's attorney, if any;

(f) The date of injury;

(g) The insurer's or self-insured employer's claim number;

(h) The division's (WCD) file number; and

(i) The reason for requesting a hearing.

(3) Requests for hearing may be filed in any of the following ways:

(a) By mail.

(b) By hand-delivery.

(c) By fax, if the document transmitted indicates that it has been delivered by fax, is sent to the correct fax number, and indicates the date the document was sent.

(d) By e-mail to wcd.hearings@state.or.us. If the request for hearing is an attachment to the e-mail, it must be in a format that Microsoft Word 2007® (.docx, .doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.

(e) By using the online form available on the division's website at wcd.oregon.gov.

(4) The requesting party must send a copy of the request to all known parties and their legal representatives, if any.

(5) Timeliness of requests for hearing will be determined under OAR 436-001-0027.

(6) The director will refer timely requests for hearing to the board for a hearing before an administrative law judge. The director may withdraw a matter that has been referred if the request for hearing is premature, if the issues in dispute become moot, or if the director otherwise determines that the matter is not appropriate for hearing at that time.

(7) The director will deny requests for hearing that are filed after the filing deadline. The party may request a limited hearing on the denial of the request for hearing within 30 days after the mailing date of the denial. The request must be filed with the administrator. At the limited hearing, the administrative law judge may consider only whether:

(a) The denied request for hearing was filed timely; or

(b) Good cause existed that prevented the party from timely requesting a hearing on the merits. For the purpose of this rule, "good cause" includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect.

Stat. Auth.: ORS 656.726(4) & 84.013

Stats. Implemented: ORS 656.704

Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0155, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0023

Other Filings and Submissions

(1) Except as provided in section (3) of this rule, any filing, motion, request, document, or correspondence filed or submitted in a matter within the director's jurisdiction must be filed or submitted:

(a) To the division before the dispute is referred to the board;

(b) To the administrative law judge after the dispute is referred to the board but before the administrative law judge issues a proposed and final order; and

(c) To the division after the administrative law judge issues a proposed and final order, unless it is a request for correction of errors in the proposed and final order under OAR 436-001-0246(7).

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(2) A copy of any filing, motion, request, document, or correspondence must be sent to the other parties, or their legal representatives, at the same time it is filed or submitted to the division or administrative law judge.

(3) A party must notify the division and the other parties of any changes in the party's mailing address or legal representation.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704

Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0170

Duties and Powers of the Administrative Law Judge

(1) The administrative law judge may conduct the hearing in any manner, consistent with these rules, that will achieve substantial justice.

(2) Unless provided otherwise by statute or rule and except as stated in section (3) of this rule, any order issued by an administrative law judge regarding a matter within the director's jurisdiction is a proposed and final order subject to review by the director under OAR 436-001-0246.

(3) Where appropriate, the administrative law judge may issue an interim order. An interim order is not subject to review by the director under OAR 436-001-0246.

(4) The administrative law judge may dismiss requests for hearing as provided in OAR 436-001-0296.

(5) Where appropriate, the administrative law judge may remand a dispute to the director for further administrative action.

(6) The administrative law judge may consolidate matters in which there are common parties or common issues of law or fact.

(7) The administrative law judge may separate matters to promote efficient disposition of the matters.

(8) Consolidation of matters under section (6) of this rule or under ORS 656.704(3)(c) is only for the purpose of hearing. The administrative law judge must issue a separate order for matters other than those concerning a claim.

(9) On the motion of a party, the division, or the administrative law judge, the administrative law judge may continue a hearing to allow the presentation of oral or written legal argument by the Department of Justice.

(10) The administrative law judge may send the division a written question regarding which rules or statutes apply to a matter, or regarding the division's interpretation of the rules and statutes. If the administrative law judge sends such a question, the administrative law judge must provide a written summary of the context in which the question arises, provide a reasonable time for the division to respond, and send a copy to all parties.

(11) The administrative law judge may conduct a hearing by telephone if all parties agree.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704

Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0225

Scope of Review/Limitations on the Record

(1) Except for the matters listed in sections (2) and (3), the administrative law judge reviews all matters within the director's jurisdiction de novo, unless otherwise provided by statute or administrative rule.

(2) In medical service and medical treatment disputes under ORS 656.245, 656.247(3)(a), and 656.327, and managed care disputes under ORS 656.260(16), the administrative law judge may modify the director's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. New evidence or issues may not be admitted or considered.

(3) In vocational assistance disputes under ORS 656.340, new evidence may be admitted and considered. Under ORS 656.340(16), the administrative law judge may modify the director's order only if it:

(a) Violates a statute or rule;

(b) Exceeds the director's statutory authority;

(c) Was made upon unlawful procedure; or

(d) Was characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.247, 656.260, 656.283, 656.327, 656.340 & 656.704

Hist.: WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0246

Proposed and Final Orders — Exceptions, Correction, Director Review

(1) Under ORS 656.704(2)(a), a party must seek director review of a proposed and final order before petitioning for judicial review under ORS 183.482.

(2) The parties or the division may initiate director review of a proposed and final order by filing exceptions as follows:

(a) Written exceptions, including any argument, must be filed with the administrator within 30 days of the mailing date of the proposed and final order;

(b) A written response to the exceptions must be filed within 20 days of the date the exceptions were filed;

(c) A written reply to the response, if any, must be filed within 10 days of the date the response was filed.

(3) The director may extend the time periods in section (2) upon a party's written request that explains the need for the delay, or on the director's own motion.

(4) If exceptions are timely filed, the director may issue a final order or an amended proposed and final order, request the administrative law judge to hold further hearing, or remand the matter for further administrative action.

(5) Within 30 days of the mailing date of the proposed and final order, the director may issue a notice of intent to review the proposed and final order, even if no exceptions are filed.

(6) All proposed and final orders must contain language notifying the parties of their right to file exceptions, how to file, and the timeframes.

(7) The administrative law judge may withdraw a proposed and final order for correction of errors within 10 calendar days of the mailing date of the order. The time for filing exceptions begins on the date the corrected proposed and final order is mailed.

(8) If no exceptions are timely filed or if no notice of intent to review is issued, the proposed and final order will become final 30 days after the mailing date of the order.

(9) Any requests for review or requests for reconsideration of a proposed and final order filed with the board or administrative law judge within 30 days of the mailing date of the order will be forwarded to the director and treated as timely exceptions under this rule.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704

Hist.: WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0275, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0410

Attorney fees awarded under ORS 656.385(1)

(1) In cases in which the director or administrative law judge awards a fee under ORS 656.385(1):

(a) The fee must fall within the ranges of the matrix in subsection (1)(d), unless extraordinary circumstances are shown or the parties otherwise agree.

(b) Extraordinary circumstances are not established merely by exceeding eight hours or a benefit of \$6,000.

(c) The matrix in subsection (1)(d) shows the maximum fee and fee ranges as percentages of the maximum fee under ORS 656.385(1), as adjusted annually by the same percentage increase, if any, to the average weekly wage defined in ORS 656.211. Before July 1 of each year the director will publish, in Bulletin 356, the matrix showing the maximum fee and fee ranges as dollar amounts after the annual adjustment to the statutory maximum fee. Dollar amounts will be rounded to the nearest whole dollar. If the average weekly wage does not change or decreases, the maximum attorney fee awarded under ORS 656.385(1) will not be adjusted for that year.

(d) [Table not included. See ED. NOTE.]

(2) For purposes of applying the matrix in medical disputes under ORS 656.245, 656.247, 656.260, and 656.327, the following may be considered in determining the value of the results achieved or the benefit to the worker:

(a) The fee allowed by the medical fee schedule in OAR 436-009 for the medical service at issue.

(b) The overall cost of the medical service at issue.

(3) For purposes of applying the matrix in vocational disputes under ORS 656.340, the value of vocational assistance or a training plan, unless determined to be otherwise, falls within the highest range of the matrix for "benefit achieved." In addition, the following may be considered in determining the value of the results achieved or the benefit to the worker:

ADMINISTRATIVE RULES

- (a) The actual or projected cost of the service at issue.
 - (b) The maximum spending limit in the fee schedule for vocational assistance costs in OAR 436-120-0720 for the service at issue.
- [ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 656.385(1) & 656.726(4)
Stats. Implemented: ORS 656.262, 656.385, 656.388 & 656.704
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; Renumbered from 436-001-0265, WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 3-2012(Temp), f. 6-13-12, cert. ef. 7-1-12 thru 12-27-12; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0420

Attorney fees awarded under ORS 656.262(11)

In cases in which the director awards a fee under ORS 656.262(11):

- (1) OAR 438-015-0110 applies.
- (2) The director may use the matrix in OAR 436-001-0410 as a guide in determining the amount of the fee.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.262
Hist.: WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

436-001-0430

Attorney Fees Awarded under ORS 656.262(12)

The matrix for determining the amount of the attorney fee assessed under ORS 656.262(12) is in OAR 436-060, Appendix "D" (436-060-0400).

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.262
Hist.: WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12

Rule Caption: Workers' compensation rules governing the disability rating standards.

Adm. Order No.: WCD 8-2012

Filed with Sec. of State: 11-26-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 10-1-2012

Rules Amended: 436-035-0002, 436-035-0003, 436-035-0005, 436-035-0007, 436-035-0008, 436-035-0009, 436-035-0011, 436-035-0012, 436-035-0017, 436-035-0018, 436-035-0030, 436-035-0040, 436-035-0110, 436-035-0230, 436-035-0235, 436-035-0255, 436-035-0260, 436-035-0265, 436-035-0340, 436-035-0350, 436-035-0370, 436-035-0380, 436-035-0385, 436-035-0390, 436-035-0395, 436-035-0400, 436-035-0410, 436-035-0420, 436-035-0430, 436-035-0440, 436-035-0450, 436-035-0500

Subject: Revised OAR chapter 436, division 035, "Disability Rating Standards":

- Include additional types of spinal fractures in the definition of irreversible findings.
- Provide that a physician may determine findings of impairment to be invalid based on the physician's medical expertise.
- Clarify that supplemental disability benefits are not considered in the determination of the worker's average weekly wage when calculating work disability.
- Provide discretion regarding using contralateral comparisons in determining the normal range of motion or laxity of an injured joint.
- Specify where the public may find and review copies of the standards referenced in the rules.
- Explain that a job description that the parties agree to may be substituted for descriptions from "Dictionary of Occupational Titles."
- Clarify that the worker's lifting capacity is based on the whole person, not an individual body part.
- Provide that work restrictions, for the purpose of determining adaptability, include the inability to work regularly worked overtime hours.
- Provide that work restrictions, for the purpose of determining adaptability, include the inability to frequently perform activities involving the hand: fine manipulation, squeezing, or grasping.
- Clarify that, for injuries on or after 1/1/2005, the re-evaluation of the work disability may increase, decrease, or affirm the worker's permanent disability award.

- Clarify that sensation loss is only rated for the palmar side of the hand.
- Clarify that no value is allowed for hypersensitivity on the dorsal side of the hand, fingers, or thumb, or for any portion of the forearm or arm.
- Provide values for joint instability of the wrist.
- Clarify that a rotational, lateral, dorsal, or palmar deformity of a digit receives a value for each type of deformity present.
- Provide that when a spinal nerve root or brachial plexus are not injured, valid loss of strength in the arm, forearm, hand, leg, or foot is valued as if the peripheral nerve innervating the muscle(s) demonstrating the decreased strength was impaired.
- Clarify that with motor loss, several additional impairment values are not allowed for the same extremity because these values are included in the motor loss values.
- Provide that toes may receive values for dermatological conditions.
- Remove the requirement that the worker must have a loss of use or function in the lower extremity to receive a value if the worker cannot be on his or her feet for more than two hours in an 8-hour period.
- Clarify that all visual loss is measured with best correction, using the lenses recommended by the worker's physician.
- Provide that enucleation of the eye is rated at 100%.
- Provide that a compression fracture followed by a corpectomy is given a surgical value and the maximum compression fracture value.
- Include in the list of fractures of one or more of the posterior elements of a vertebra that may receive a value: odontoid process.
- Provide that each inferior or superior ramus subject to displacement and deformity in a fractured pelvis is valued at 2%.
- Provide that injuries to the brain or head do not have to be organically based.
- Provide that headaches that are not a direct result of a brain or head injury (e.g., cervicogenic, sensory input issues, etc.) are given a value of 10%.
- Provide that when a spinal cord "class" value is assigned, no additional value is allowed for reduced range of motion because this is already included in the values shown under the "classes."

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-035-0002

Purpose of Rules

These rules establish standards for rating permanent disability under the Workers' Compensation Act. These standards are written to reflect the criteria for rating outlined in ORS chapter 656 and assign values for disabilities that are applied consistently at all levels of the workers' compensation award and appeal process.

Stat. Auth.: ORS 656.726
Stats. Implemented.: ORS 656.005, 656.012, 656.210, 656.212, 656.214, 656.222, 656.225, 656.245, 656.262, 656.267, 656.268, 656.273, 656.726, 656.790
Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 18-1990 (Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0003

Applicability of Rules

- (1) These rules apply to the rating of permanent disability under ORS chapter 656 and to all claims closed on or after the effective date of these rules for workers medically stationary on or after June 7, 1995.
- (2) The rules adopted by WCD Administrative Order 93-056 apply to the rating of permanent disability for workers medically stationary on or after July 1, 1990 but before June 7, 1995, except as otherwise provided in 1995 Oregon Laws, chapter 332.
- (3) The rules adopted by WCD Administrative Order 6-1988 apply to the rating of permanent disability for workers medically stationary before July 1, 1990, except as otherwise provided in 1995 Oregon Laws, chapter 332.
- (4) For the purpose of reconsideration of claim closure under ORS 656.268, the rules in effect on the date of issuance of the appealed notice of closure apply to the rating of permanent disability for workers medically

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stationary after July 1, 1990, except as otherwise provided in 1995 Oregon Laws, chapter 332.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 1-1989(Temp), f. & cert. ef. 1-24-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1991(Temp), f. 9-13-91, cert. ef. 10-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 10-1992(Temp), f. & cert. ef. 6-1-92; WCD 15-1992, f. 11-20-92, cert. ef. 11-27-92; WCD 3-1993(Temp), f. & cert. ef. 6-17-93; WCD 13-1995(Temp), f. & cert. ef. 9-21-95; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 19-1996(Temp), f. & cert. ef. 8-19-1996; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0005

Definitions

As used in OAR 436-035-0001 through 436-035-0500, unless the context requires otherwise:

(1) "Activities of daily living (ADL)" include, but are not limited to, the following personal activities required by an individual for continued well-being: eating/nutrition; self-care and personal hygiene; communication and cognitive functions; and physical activity, e.g., standing, walking, kneeling, hand functions, etc.

(2) "Ankylosis" means a bony fusion, fibrous union, or arthrodesis of a joint. Ankylosis does not include pseudarthrosis or articular arthropathies.

(3) "Combined condition" means a pre-existing condition and a compensable condition contribute to the worker's overall disability or need for treatment.

(4) "Date of issuance" means the mailing date of a notice of closure or Order on Reconsideration under ORS 656.268 and ORS 656.283(6).

(5) "Dictionary of Occupational Titles" or (DOT) means the publication of the same name by the U.S. Department of Labor, Fourth Edition Revised 1991.

(6) "Direct medical sequela" means a condition which originates or stems from an accepted condition that is clearly established medically. Disability from direct medical sequelae is rated under these rules and ORS 656.268(15). For example: The accepted condition is low back strain with herniated disc at L4-5. The worker develops permanent weakness in the leg and foot due to the accepted conditions. The weakness is considered a "direct medical sequela" of the herniated disc.

(7) "Earning capacity" means impairment as modified by age, education, and adaptability.

(8) "Impairment" means a compensable, permanent loss of use or function of a body part or system related to the compensable condition, determined under these rules, OAR 436-010-0280, and ORS 656.726(4)(f).

(9) "Irreversible findings" for the purposes of these rules are:

- Arm
 - Arm angulation
 - Radial head resection
 - Shortening
- Eye
 - Enucleation
 - Lens implant
 - Lensectomy
- Gonadal
 - Loss of gonads resulting in absence of, or an abnormally high, hormone level
- Hand
 - Carpal bone fusion
 - Carpal bone removal
- Kidney
 - Nephrectomy
- Leg
 - Knee angulation
 - Length discrepancy
 - Meniscectomy
 - Patellectomy
- Lung
 - Lobectomy
- Shoulder
 - Acromioclavicular joint resection
 - Clavicle resection
- Spine
 - Compression, spinous process, pedicle, laminae, articular process, odontoid process, and transverse process fractures
 - Discectomy
 - Laminectomy
- Spleen
 - Splenectomy
- Urinary tract diversion
 - Cutaneous ureterostomy without intubation
 - Nephrostomy or intubated ureterostomy
 - Uretero-Intestinal
- Other
 - Amputations/resections
 - Ankylosed/fused joints
 - Displaced pelvic fracture ("healed" with displacement)

- Loss of opposition
- Organ transplants (heart, lung, liver, kidney)
- Prosthetic joint replacements

(10) "Medical arbiter" means a physician under ORS 656.005(12)(b)(A) appointed by the director under OAR 436-010-0330.

(11) "Offset" means to reduce a current permanent partial disability award, or portions of the award, by a prior Oregon workers' compensation permanent partial disability award from a different claim.

(12) "Physician's release" means written notification, provided by the attending physician to the worker and the worker's employer or insurer, releasing the worker to work and describing any limitations the worker has.

(13) "Preponderance of medical evidence" or "opinion" does not necessarily mean the opinion supported by the greater number of documents or greater number of concurrences; rather it means the more probative and more reliable medical opinion based upon factors including, but not limited to, one or more of the following:

- (a) The most accurate history,
- (b) The most objective findings,
- (c) Sound medical principles, or
- (d) Clear and concise reasoning.

(14) "Redetermination" means a re-evaluation of disability under ORS 656.267, 656.268(10), 656.273, and 656.325.

(15) "Regular work" means the job the worker held at the time of injury.

(16) "Scheduled disability" means a compensable permanent loss of use or function that results from injuries to those body parts listed in ORS 656.214(3)(a) through (5).

(17) "Social-vocational factors" means age, education, and adaptability factors under ORS 656.726(4)(f).

(18) "Superimposed condition" means a condition that arises after the compensable injury or disease that contributes to the worker's overall disability or need for treatment but is not the result of the original injury or disease. Disability from a superimposed condition is not rated. For example: The accepted condition is a low back strain. Two months after the injury, the worker becomes pregnant (non-work related). The pregnancy is considered a "superimposed condition."

(19) "Unscheduled disability" means a compensable condition that results in a permanent loss of earning capacity as described in these rules and arising from those losses under OAR 436-035-0330 through 436-035-0450.

(20) "Work disability," for the purposes of determining permanent disability, means the separate factoring of impairment as modified by age, education, and adaptability to perform the job at which the worker was injured.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0007

General Principles

(1) Except for OAR 436-035-0014, a worker is entitled to a value under these rules only for those findings of impairment that are permanent and were caused by the accepted compensable condition and direct medical sequela. Unrelated or noncompensable impairment findings are excluded and are not valued under these rules. Permanent total disability is determined under OAR 436-030-0055.

(2) Permanent disability is rated on the permanent loss of use or function of a body part, area, or system due to a compensable, consequential, or combined condition and any direct medical sequela, and may be modified by the factors of age, education, and adaptability. Except for impairment determined under ORS 656.726(4)(f), the losses, as defined and used in these standards, are the sole criteria for the rating of permanent disability under these rules.

(3) When a new or omitted medical condition has been added to the accepted conditions since the last arrangement of compensation, the extent of permanent disability must be redetermined.

(a) Redetermination includes the rating of the new impairment attributed to the new or omitted medical condition and the re-evaluation of the worker's social-vocational factors. The following applies to claims with a date of injury on or after Jan. 1, 2005:

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(A) When there is a previous work disability award and there is no change in the worker's restrictions but impairment values increase, work disability must be awarded based on the additional impairment.

(B) When there is not a previous work disability award but the new or omitted medical condition creates restrictions that do not allow the worker to return to regular work, then the work disability must be awarded based on any previous and current impairment values.

(b) Impairment values for conditions that are not actually worsened, unchanged, or improved are not redetermined and retain the same impairment values established at the last arrangement of compensation.

(4) Where a worker has a prior award of permanent disability under Oregon workers' compensation law, disability is determined under OAR 436-035-0015 (offset), rather than OAR 436-035-0013, for purposes of determining disability only as it pertains to multiple Oregon workers' compensation claims.

(5) Impairment is established based on objective findings of the attending physician under ORS 656.245(2)(b)(C) and OAR 436-010-0280. On reconsideration, where a medical arbiter is used, impairment is established based on objective findings of the medical arbiter, except where a preponderance of the medical evidence demonstrates that different findings by the attending physician are more accurate and should be used.

(6) Objective findings made by a consulting physician or other medical providers (e.g., occupational or physical therapists) at the time of closure may be used to determine impairment if the worker's attending physician concurs with the findings as prescribed in OAR 436-010-0280.

(7) If there is no measurable impairment under these rules, no award of permanent partial disability is allowed.

(8) Pain is considered in the impairment values in these rules to the extent that it results in valid measurable impairment. For example: The medical provider determines that giveaway weakness is due to pain attributable to the accepted condition or direct medical sequelae. If there is no measurable impairment, no award of permanent disability is allowed for pain. To the extent that pain results in disability greater than that evidenced by the measurable impairment, including the disability due to expected waxing and waning of the worker's condition, this loss of earning capacity is considered and valued under OAR 436-035-0012 and is included in the adaptability factor.

(9) Methods used by the examiner for making findings of impairment are the methods described in these rules and further outlined in Bulletin 239, and are reported by the physician in the form and format required by these rules.

(10) Range of motion is measured using the goniometer, except when measuring spinal range of motion; then an inclinometer must be used. Reproducibility of abnormal motion is used to validate optimum effort.

(a) For obtaining goniometer measurements, center the goniometer on the joint with the base in the neutral position. Have the worker actively move the joint as far as possible in each motion with the arm of the goniometer following the motion. Measure the angle that subtends the arc of motion. To determine ankylosis, measure the deviation from the neutral position.

(b) There are three acceptable methods for measuring spinal range of motion: the simultaneous application of two inclinometers, the single fluid-filled inclinometer, and an electronic device capable of calculating compound joint motion. The examiner must take at least three consecutive measurements of mobility, which must fall within 10% or 5 degrees (whichever is greater) of each other to be considered consistent. The measurements must be repeated up to six times to obtain consecutive measurements that meet these criteria. Inconsistent measurements may be considered invalid and that portion of the examination disqualified. If acute spasm is noted, the worker should be re-examined after the spasm resolves.

(11) Validity is established for findings of impairment under the criteria noted in these rules and further outlined in Bulletin 239, unless the validity criteria for a particular finding is not addressed, or is determined by physician opinion to be medically inappropriate for a particular worker. Upon examination, findings of impairment that are determined to be ratable under these rules are rated unless the physician determines the findings are invalid. When findings are determined invalid, the findings receive a value of zero. If the validity criteria are not met but the physician determines the findings are valid, the physician must provide a written rationale, based on sound medical principles, explaining why the findings are valid. For purposes of this rule, the straight leg raising validity test (SLR) is not the sole criterion used to invalidate lumbar range of motion findings.

(12) Except for contralateral comparison determinations under OAR 436-035-0011(3), loss of opposition determination under OAR 436-035-0040, averaging muscle values under OAR 436-035-0011(8), and impair-

ment determined under ORS 656.726(4)(f), only impairment values listed in these rules are to be used in determining impairment. Prorating or interpolating between the listed values is not allowed. For findings that fall between the listed impairment values, the next higher appropriate value is used for rating.

(13) Values found in these rules consider the loss of use, function, or earning capacity directly associated with the compensable condition. When a worker's impairment findings do not meet the threshold (minimum) findings established in these rules, no value is granted.

(a) Not all surgical procedures result in loss of use, function, or earning capacity. Some surgical procedures improve the use and function of body parts, areas, or systems or ultimately may contribute to an increase in earning capacity. Accordingly, not all surgical procedures receive a value under these rules.

(b) Not all medical conditions or diagnoses result in loss of use, function, or earning capacity. Accordingly, not all medical conditions or diagnoses receive a value under these rules.

(14) Waxing and waning of signs or symptoms related to a worker's compensable medical condition are already contemplated in the values provided in these rules. There is no additional value granted for the varying extent of waxing and waning of the condition. Waxing and waning means there is not an actual worsening of the condition under ORS 656.273.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0008

Calculating Disability Benefits (Dates of Injury prior to 1/1/2005)

(1) Scheduled disability is rated on the permanent loss of use or function of a body part due to an accepted compensable, consequential, or combined condition, or any direct medical sequelae. Except impairment determined under ORS 656.726(4)(f), the losses, as defined and used in these standards, are the sole criteria for the rating of permanent scheduled disability. To calculate the scheduled impairment benefit, use the following steps:

(a) Determine the percent of scheduled impairment using the impairment values found in OAR 436-035-0019 through 436-035-0260, and the applicable procedures within these rules.

(b) Multiply the result in (a) by the maximum degrees, under ORS 656.214, for the injured body part.

(c) Multiply the result from (b) by the statutory dollar rate under ORS 656.214 and illustrated in Bulletin 111.

(d) The result from (c) is the scheduled impairment benefit. If there are multiple extremities with impairment then each is determined and awarded separately, including hearing and vision loss. [Example not included. See ED. NOTE.]

(2) Unscheduled disability is rated on the permanent loss of use or function of a body part, area, or system and due to an accepted compensable, consequential, or combined condition, and any direct medical sequelae, as modified by the factors of age, education, and adaptability. Except for impairment determined under ORS 656.726(4)(f), the losses, as defined and used in these standards, are the sole criteria for the rating of permanent unscheduled disability.

(a) To calculate the unscheduled impairment benefit when the worker returns or is released to regular work according to OAR 436-035-0009(3), use the following steps.

(A) Determine the percent of unscheduled impairment using the impairment values found in OAR 436-035-0019 and 436-035-0330 through 436-035-0450, and the applicable procedures within these rules.

(B) Multiply the result in (A) by the maximum degrees for unscheduled impairment.

(C) Multiply the result in (B) by the statutory dollar rate under ORS 656.214 and illustrated in Bulletin 111.

(D) The result in (C) is the unscheduled impairment benefit. [Example not included. See ED. NOTE.]

(b) To calculate the unscheduled disability benefit when the worker does not return or is not released to regular work according to OAR 436-035-0009(3), use the following steps.

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(A) Determine the percent of unscheduled impairment using the impairment values found in OAR 436-035-0019 and 436-035-0330 through 436-035-0450, and the applicable procedures within these rules.

(B) Determine the social-vocational factor, under OAR 436-035-0012, and add it to (A).

(C) Multiply the result from (B) by the maximum degrees for unscheduled impairment.

(D) Multiply the result from (C) by the statutory dollar rate for unscheduled impairment under ORS 656.214.

(E) The result from (D) is the unscheduled impairment benefit. [Example not included. See ED. NOTE.]

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

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

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0009

Calculating Disability Benefits (Date of Injury on or after 1/1/2005)

(1) Permanent impairment is expressed as a percent of the whole person and the impairment value will not exceed 100% of the whole person.

(2) If the impairment results from injury to more than one extremity, area, or system, the whole person values for each are combined (not added) to arrive at a final impairment value.

(3) Only permanent impairment is rated for those workers with a date of injury prior to January 1, 2006, and who:

(a) Return to and are working at their regular work on the date of issuance;

(b) The attending physician or authorized nurse practitioner releases to regular work and the work is available, but the worker fails or refuses to return to that job; or

(c) The attending physician or authorized nurse practitioner releases to regular work, but the worker's employment is terminated for cause unrelated to the injury.

(4) Only permanent impairment is rated for those workers with a date of injury on or after January 1, 2006, and who have been released or returned to regular work by the attending physician or authorized nurse practitioner.

(5) To calculate the impairment benefit due to the worker, use the following steps:

(a) Determine the percent of impairment under these rules.

(b) Multiply the percent of impairment determined in (a) by 100 per ORS 656.214.

(c) Multiply the result from (b) by the state's average weekly wage at the time of injury as defined by ORS 656.005 and illustrated in Bulletin 111.

(d) The result in (c) is the total impairment benefit, which is paid regardless of the worker's return to work status. In the absence of social-vocational factoring as a result of the worker's return to work status, this is also the permanent partial disability award. [Example not included. See ED. NOTE.]

(6) If the worker has not met the return or release to regular work criteria in section (3) or (4) of this rule, the worker receives both an impairment and work disability benefit, and the total permanent partial disability award is calculated as follows.

(a) Determine the percent of impairment as a whole person (WP) value under these rules.

(b) Determine the social-vocational factor, under OAR 436-035-0012, and add it to (a).

(c) Multiply the result from (b) by 150 per ORS 656.214.

(d) Multiply the result from (c) by worker's average weekly wage as calculated under ORS 656.210.

(A) Supplemental disability is not considered in the determination of the worker's average weekly wage when calculating work disability.

(B) The worker's average weekly wage can be no less than 50% and no more than 133% of the state's average weekly wage at the time of injury when determining work disability benefits.

(e) Add the result from (d) to the impairment benefit value, which would be calculated using the method in section (4) of this rule.

(f) The result from (e) is the permanent partial disability award that would be due the worker. [Example not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06;

WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0011

Determining Percent of Impairment

(1) The total impairment rating for a body part cannot be more than 100% of the body part.

(2) When rating disability the movement in a joint is measured in active degrees of motion. Impairment findings describing lost ranges of motion are converted to retained ranges of motion by subtracting the measured loss from the normal of full ranges established in these rules.

(a) Range of motion values for each direction in a single joint are first added, then combined with other impairment findings. [Example not included. See ED. NOTE.]

(b) Range of motion values for multiple joints in a single body part (e.g., of a finger) are determined by finding the range of motion values for each joint (e.g., MCP, PIP, DIP) and combining those values for an overall loss of range of motion value for that body part. This value is then combined with other impairment values.

(3) The range of motion or laxity (instability) of an injured joint is compared to and valued proportionately to the contralateral joint except when the contralateral joint has a history of injury or disease or when either joint's range of motion is zero degrees or is ankylosed. The strength of an injured extremity, shoulder, or hip may be compared to and valued proportionately to the contralateral body part except when the contralateral body part has a history of injury or disease.

Instability example:

The injured knee is reported to have severe instability of the anterior cruciate ligament. The standards grant an impairment value of 15% for severe instability of the anterior cruciate ligament.

The contralateral knee is reported to have mild instability of the anterior cruciate ligament. The standards grant an impairment value of 5% for mild instability of the anterior cruciate ligament.

A proportion is established by subtracting the contralateral instability of 5% from the 15% for the injured joint which = 10% impairment for the instability.

Strength example:

The injured deltoid muscle is reported to have 3/5 strength. The standards note 3/5 strength = 50%.

The contralateral deltoid muscle is reported to have 4+/5 strength. The standards note 4+/5 strength = 10%.

A proportion is established by subtracting the contralateral strength of 10% from the 50% for the injured arm which = 40%. This percentage is then used to determine the loss of strength for the injured deltoid.

Range of motion examples:

Flexion (knee): 80° retained on injured side, the contralateral joint flexes to 140°.

A proportion is established to determine the expected degrees of flexion since 140° has been established as normal for this worker.

One method of determining this proportion is: $80/140 = X/150$.

X = expected retained range of motion compared to the established norm of 150° upon which flexion is determined under these rules. X, in this case, equals 86°.

86° of retained flexion of the knee is calculated under these rules, after rounding, to 23% impairment.

Extension (knee): 35° retained on injured side, the contralateral joint extends to 15°.

First, find the complement, i.e., $150 - 15 = 135$ (uninjured) and $150 - 35 = 115$ (injured). Next, using the same method as for flexion, $115/135 = X/150$, or, $X = 127.77$. Then, revert back, so, $150 - 127.77 = 22.23$ rounded to 22° for an impairment value of 9%.

(a) If the motion of the injured or contralateral joint exceeds the values for ranges of motion established under these rules, the values established under these rules are maximums used to establish impairment.

(b) When the contralateral joint has a history of injury or disease, the findings of the injured joint are valued based upon the values established under these rules.

(4) Specific impairment findings (e.g., weakness, reduced range of motion, etc.) are awarded in whole number increments. This may require rounding non-whole number percentages and contralateral comparison degrees of motion for given impairment findings before combining with any other applicable impairment value.

(a) Except for subsection (b) of this section, before combining, the sum of the impairment values is rounded to the nearest whole number. For the decimal portion of the number, point 5 and above is rounded up, below point 5 is rounded down. [Example not included. See ED. NOTE.]

(b) When the sum of impairment values is greater than zero and less than 0.5, a value of 1% will be granted. [Example not included. See ED. NOTE.]

(5) If there are impairment findings in two or more body parts in an extremity, the total impairment findings in the distal body part are converted to a value in the most proximal body part under the applicable conversion chart in these rules. This conversion is done prior to combining impair-

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ment values for the most proximal body part. [Example not included. See ED. NOTE.]

(6) Except as otherwise noted in these rules, impairment values to a given body part, area, or system are combined as follows:

(a) The combined value is obtained by inserting the values for A and B into the formula $A + B(1.0 - A)$. The larger of the two numbers is A and the smaller is B. The whole number percentages of impairment are converted to their decimal equivalents (e.g., 12% converts to .12; 3% converts to .03). The resulting percentage is rounded to a whole number as determined in section (1) of this rule. Upon combining the largest two percentages, the resulting percentage is combined with any lesser percentage(s) in descending order using the same formula until all percentages have been combined prior to performing further computations. After the calculations are completed, the decimal result is then converted back to a percentage equivalent. Example: $.12 + .03(1.0 - .12) = .12 + .03(.88) = .12 + .0264 = .1464 = 14.6 = 15$. [Example not included. See ED. NOTE.]

(b) Impairment values for a given body part, area, or system must be combined before combining with other impairment values. If the given body part is an upper or lower extremity, ear(s), or eye(s) then the impairment value is to be converted to a whole person value before combining with other impairment values, except when the date of injury for the claim is prior to Jan. 1, 2005. [Example not included. See ED. NOTE.]

(7) Loss of strength is determined using the modified 0 to 5 international grading system described below. The grade of strength is reported by the physician and assigned a percentage value from the table in subsection (a) of this section. The impairment value of the involved nerve, which supplies (innervates) the weakened muscle, is multiplied by this value. Grades identified as “+” or “-” are considered either a “+” or “-”, respectively.

(a) The grading is valued as follows: [Example not included. See ED. NOTE.]

(b) When a physician reports a loss of strength with muscle action (e.g., flexion, extension, etc.) or when only the affected muscle(s) is identified, anatomy texts or the AMA Guides to the Evaluation of Permanent Impairment may be referenced to identify the specific muscle(s), peripheral nerve(s) or spinal nerve root(s) involved. A copy of the standards referenced in this rule is available for review during regular business hours at the Workers’ Compensation Division, 350 Winter Street NE, Salem OR 97301, 503-947-7810.

(8) For muscles supplied (innervated) by the same nerve, the loss of strength is determined by averaging the percentages of impairment for each involved muscle to arrive at a single percentage of impairment for the involved nerve. [Example not included. See ED. NOTE.]

(9) When multiple nerves have impairment findings found under these rules, these impairment values are first combined for an overall loss of strength value for the body part before combining with other impairment values.

(10) When a joint is ankylosed in more than one direction or plane, the largest ankylosis value is used for rating the loss or only one of the values is used if they are identical. This value is granted in lieu of all other range of motion or ankylosis values for that joint.

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

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

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0012

Social-Vocational Factors (Age/Education/Adaptability)

(1) When a worker does not meet the return/release to regular work requirements under ORS 656.726(4), the factors of age, education, and adaptability are determined under this rule and the final result is the social-vocational factor which is used in the calculation of permanent disability benefits. When the date of injury is prior to Jan. 1, 2005, the worker must have ratable unscheduled impairment under OAR 436-035-0019 or OAR 436-035-0330 through 436-035-0450.

(2) The age factor is based on the worker’s age at the date of issuance and has a value of 0 or +1.

(a) Workers age 40 and above receive a value of + 1.

(b) Workers less than 40 years old receive a value of 0.

(3) The education factor is based on the worker’s formal education and specific vocational preparation (SVP) time at the date of issuance. These two values are determined by sections (4) and (5) of this rule, and are added to give a value from 0 to +5.

(4) A value of a worker’s formal education is given as follows:

(a) Workers who have earned or acquired a high school diploma or general equivalency diploma (GED) are given a neutral value of 0. For pur-

poses of this section, a GED is a certificate issued by any certifying authority or its equivalent.

(b) Workers who have not earned or acquired a high school diploma or a GED certificate are given a value of +1.

(5) A value for a worker’s specific vocational preparation (SVP) time is given based on the job(s) successfully performed by the worker in the five (5) years prior to the date of issuance. The SVP value is determined by identifying these jobs and locating their SVP in the Dictionary of Occupational Titles (DOT) or a specific job analysis. The job with the highest SVP the worker has met is used to assign a value according to the following table: [Table not included. See ED. NOTE.] A copy of the standards referenced in this rule is available for review during regular business hours at the Workers’ Compensation Division, 350 Winter Street NE, Salem OR 97301, 503-947-7810.

(a) For the purposes of this rule, SVP is defined as the amount of time required by a typical worker to acquire the knowledge, skills and abilities needed to perform a specific job.

(b) When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT description(s), one of the following may be substituted for the DOT description(s) if it more accurately describes the job:

(A) A specific job analysis as described under OAR 436-120-0410, which includes the SVP time requirement; or

(B) A job description that the parties agree is an accurate representation of the physical requirements, as well as the tasks and duties, of the worker’s regular job-at-injury.

(c) A worker is presumed to have met the SVP training time after completing employment with one or more employers in that job classification for the time period specified in the table.

(d) A worker meets the SVP for a job after successfully completing an authorized training program, on-the-job training, vocational training, or apprentice training for that job classification. College training organized around a specific vocational objective is considered specific vocational training.

(e) For those workers who have not met the specific vocational preparation training time for any job, a value of +4 is granted.

(6) The values obtained in sections (4) and (5) of this rule are added to arrive at a final value for the education factor.

(7) The adaptability factor is a comparison of the worker’s base functional capacity (BFC) to their maximum residual functional capacity (RFC). The adaptability factor is determined by subsections (8) to (12) of this section, and has a value from +1 to +7.

(8) For purposes of determining adaptability the following definitions apply:

(a) “Base functional capacity” (BFC) means an individual’s demonstrated physical capacity before the date of injury or disease.

(b) “Residual functional capacity” (RFC) means an individual’s remaining ability to perform work-related activities despite medically determinable impairment resulting only from the accepted compensable condition and any direct medical sequela. The worker’s lifting capacity is based on the whole person, not an individual body part, as related to the accepted condition and any direct medical sequela.

(c) “Sedentary restricted” means the worker only has the ability to carry or lift docket, ledgers, small tools and other items weighing less than 10 pounds. A worker is also sedentary restricted if the worker can perform the full range of sedentary activities, but with restrictions.

(d) “Sedentary (S)” means the worker has the ability to occasionally lift or carry docket, ledgers, small tools and other items weighing 10 pounds.

(e) “Sedentary/light (S/L)” means the worker has the ability to do more than sedentary activities, but less than the full range of light activities. A worker is also sedentary/light if the worker can perform the full range of light activities, but with restrictions.

(f) “Light (L)” means the worker has the ability to occasionally lift 20 pounds and can frequently lift or carry objects weighing up to 10 pounds.

(g) “Medium/light (M/L)” means the worker has the ability to do more than light activities, but less than the full range of medium activities. A worker is also medium/light if the worker can perform the full range of medium activities, but with restrictions.

(h) “Medium (M)” means the worker can occasionally lift 50 pounds and can lift or carry objects weighing up to 25 pounds frequently.

(i) “Medium/heavy (M/H)” means the worker has the ability to do more than medium activities, but less than the full range of heavy activities.

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A worker is also medium/heavy if the worker can perform the full range of heavy activities, but with restrictions.

(j) "Heavy (H)" means the worker has the ability to occasionally lift 100 pounds and the ability to frequently lift or carry objects weighing 50 pounds.

(k) "Very Heavy (V/H)" means the worker has the ability to occasionally lift in excess of 100 pounds and the ability to frequently lift or carry objects weighing more than 50 pounds.

(l) "Restrictions" means that, by a preponderance of medical opinion, the worker is permanently limited from:

(A) Sitting, standing, or walking less than two hours at a time; or

(B) Working the same number of hours as were worked at the time of injury, including any regularly worked overtime hours; or

(C) Frequently performing at least one of the following activities: stooping/bending, crouching, crawling, kneeling, twisting, climbing, balancing, reaching, or pushing/pulling; or

(D) Frequently performing at least one of the following activities involving the hand: fine manipulation, squeezing, or grasping.

(m) "Occasionally" means the activity or condition exists up to 1/3 of the time.

(n) "Frequently" means the activity or condition exists up to 2/3 of the time.

(o) "Constantly" means the activity or condition exists 2/3 or more of the time.

(9) Base functional capacity (BFC) is established by using the following classifications: sedentary (S), light (L), medium (M), heavy (H), and very heavy (VH) as defined in section (8) of this rule. The strength classifications are found in the Dictionary of Occupational Titles (DOT). Apply the subsection in this section that most accurately describes the worker's base functional capacity.

(a) The highest strength category of the job(s) successfully performed by the worker in the five (5) years prior to the date of injury.

(A) A combination of DOT codes when they describe the worker's job more accurately.

(B) A specific job analysis, which includes the strength requirements, may be substituted for the DOT description(s) if it most accurately describes the job. If a job analysis determines that the strength requirements are in between strength categories then use the higher strength category.

(C) A job description that the parties agree is an accurate representation of the physical requirements, as well as the tasks and duties, of the worker's regular job-at-injury. If the job description determines that the strength requirements are in between strength categories then use the higher strength category.

(b) A second-level physical capacity evaluation as defined in OAR 436-010-0005 and 436-009-0070(4)(b) performed prior to the date of the on-the-job injury.

(c) For those workers who do not meet the requirements under section (5) of this rule, and who have not had a second-level physical capacity evaluation performed prior to the on-the-job injury or disease, their prior strength is based on the worker's job at the time of injury.

(d) Where a worker's highest prior strength has been reduced as a result of an injury or condition which is not an accepted Oregon workers' compensation claim the base functional capacity is the highest of:

(A) The job at injury; or

(B) A second-level physical capacities evaluation as defined in OAR 436-010-0005 and 436-009-0070(4)(b) performed after the injury or condition which was not an accepted Oregon workers' compensation claim but before the current work related injury.

(10) Residual functional capacity (RFC) is established by using the following classifications: restricted sedentary (RS), sedentary (S), sedentary/light (S/L), light (L), medium/light (M/L), medium (M), medium/heavy (M/H), heavy (H), and very heavy (VH) and restrictions as defined in section (8) of this rule.

(a) Residual functional capacity is evidenced by the attending physician's release unless a preponderance of medical opinion describes a different RFC.

(b) For the purposes of this rule, the other medical opinion must include at least a second-level physical capacity evaluation (PCE) or work capacity evaluation (WCE) as defined in OAR 436-010-0005 and 436-009-0070(4) or a medical evaluation which addresses the worker's capability for lifting, carrying, pushing/pulling, standing, walking, sitting, climbing, balancing, stooping, kneeling, crouching, crawling and reaching. If multiple levels of lifting and carrying are measured, an overall analysis of the worker's lifting and carrying abilities should be provided in order to allow an accurate determination of these abilities. When the worker fails to coop-

erate or complete a residual functional capacity (RFC) evaluation, the evaluation must be rescheduled or the evaluator must estimate the worker's RFC as if the worker had cooperated and used maximal effort.

(11) In comparing the worker's base functional capacity (BFC) to the residual functional capacity (RFC), the values for adaptability to perform a given job are as follows: [Table not included. See ED. NOTE.]

(12) For those workers who have an RFC between two categories and who also have restrictions, the next lower classification is used. (For example, if a worker's RFC is S/L and the worker has restrictions, use S).

(13) When the date of injury is on or after Jan. 1, 2005, determine adaptability by finding the adaptability value for the worker's extent of total impairment on the adaptability scale below; compare this value with the residual functional capacity scale in section (11) of this rule and use the higher of the two values for adaptability.

Adaptability Scale: [Table not included. See ED. NOTE.]

(14) When the date of injury is before Jan. 1, 2005, for those workers who have ratable unscheduled impairment found in rules OAR 436-035-0019 or 436-035-0330 through 436-035-0450, determine adaptability by applying the extent of total unscheduled impairment to the adaptability scale in section (13) of this rule and the residual functional capacity scale in section (11) of this rule and use the higher of the two values for adaptability.

(15) To determine the social-vocational factor value, which represents the total calculation of age, education, and adaptability complete the following steps.

(a) Determine the appropriate value for the age factor using section (2) of this rule.

(b) Determine the appropriate value for the education factor using sections (4) and (5) of this rule.

(c) Add age and education values together.

(d) Determine the appropriate value for the adaptability factor using sections (7) through (14) of this rule.

(e) Multiply the result from step (c) by the value from step (d) for the social-vocational factor value.

(16) Prorating or interpolating between social-vocational values is not allowed. All values must be expressed as whole numbers.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06;

WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0017

Authorized Training Program (ATP)

(1) When a worker ceases to be enrolled and actively engaged in training under ORS 656.268(10) and there is no accepted aggravation in the current open period, one of the following applies:

(a) When the date of injury is prior to January 1, 2005, the worker is entitled to have the amount of unscheduled permanent disability for a compensable condition reevaluated under these rules. The re-evaluation includes impairment, which may increase, decrease, or affirm the worker's permanent disability award; or

(b) When the date of injury is on or after January 1, 2005, the worker's work disability is re-evaluated under these rules. Impairment is not re-evaluated. The re-evaluation of the work disability may increase, decrease, or affirm the worker's permanent disability award.

(2) When a worker ceases to be enrolled and actively engaged in training under ORS 656.268(10) and there is an accepted aggravation in the same open period, permanent partial disability is redetermined under OAR 436-035-0016.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06;

WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0018

Death

If the worker dies due to causes unrelated to the accepted compensable conditions of the claim, the following applies:

(1) When all compensable conditions are medically stationary under OAR 436-030-0035 at the time of death, the following applies:

(a) Impairment findings, reported under OAR 436-010-0280, are rated under these rules.

(b) Impairment findings not reported under OAR 436-010-0280 are determined based on the physician's estimate of those findings regarding impairment due to the worker's compensable condition.

(c) For unscheduled disability with a date of injury prior to January 1, 2005, age, education, and adaptability are determined under OAR 436-035-

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0012 if the findings are documented. If findings for determining adaptability are not documented, the physician estimates the likely residual functional capacity, under OAR 436-035-0012(8)(c) through (o), due to the compensable condition, if the compensable condition is to the hip, shoulder, head, neck, or torso. If the compensable condition is other than the shoulder, hip, head, neck, or torso, adaptability is determined under OAR 436-035-0012 based on the physician's estimated likely impairment.

(d) For disability with a date of injury on or after January 1, 2005, age, education, and adaptability are determined under OAR 436-035-0012 if the findings are documented. If findings for determining adaptability are not documented, the physician estimates the likely residual functional capacity that is due to the compensable condition under OAR 436-035-0012(8)(c) through (o). Using the physician's estimated likely impairment, adaptability is determined under OAR 436-035-0012.

(2) When all compensable conditions are not medically stationary under OAR 436-030-0035 at the time of death, the following applies:

(a) Impairment is established based on the physician's estimate of those findings regarding impairment due to the worker's compensable condition that would still be present when the worker's condition would have become medically stationary. Those findings that are anticipated to have remained at the time of medically stationary status receive a value.

(b) For unscheduled disability with a date of injury prior to January 1, 2005, age, education, and adaptability factors are determined under OAR 436-035-0012. Unless the worker is released to regular work and impairment only is rated, the physician estimates the likely residual functional capacity, under OAR 436-035-0012(8)(c) through (o), due to the compensable condition, that would remain due to the compensable condition, if the compensable condition is to the shoulder, hip, head, neck, or torso. The estimated portion due to the compensable condition receives an adaptability value. If the compensable condition is other than the shoulder, hip, head, neck, or torso, adaptability is determined under OAR 436-035-0012 based on the physician's estimated likely impairment.

(3) In claims where there is a compensable condition that is medically stationary and a compensable condition that is not medically stationary, the conditions are rated under sections (1) and (2) of this rule, respectively. The adaptability factor is determined by comparing the adaptability values from sections (1) and (2) of this rule, and using the higher of the values for adaptability.

(4) If the worker dies due to causes related to the accepted compensable conditions of the claim, death benefits are due under ORS 656.204 and 656.208.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0030

Amputations in the Upper Extremities

1) Loss of the arm at or proximal to the elbow joint is 100% loss of the arm.

(2) Loss of the forearm at or proximal to the wrist joint is 100% loss of the forearm.

(3) Loss of the hand at the carpal bones is 100% loss of the hand.

(4) Loss of all or part of a metacarpal is rated at 10% of the hand.

(5) Amputation or resection (without reattachment) proximal to the head of the proximal phalanx is 100% loss of the thumb. The ratings for other amputation(s) or resection(s) (without reattachment) of the thumb are as follows

(6) Amputation or resection (without reattachment) proximal to the head of the proximal phalanx is 100% loss of the finger. The ratings for other amputation(s) or resection(s) (without reattachment) of the finger are as follows:

(7) Oblique (angled) amputations are rated at the most proximal loss of bone.

(8) When a value is granted under sections (5) and (6) of this rule which includes a joint, no value for range of motion of this joint is granted in addition to the amputation value.

(9) Loss of length in a digit other than amputation or resection without reattachment (e.g., fractures, loss of soft tissue from infection, amputation or resection with reattachment, etc.) is rated by comparing the remaining overall length of the digit to the applicable amputation chart under these rules and rating the overall length equivalency.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCB 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0010, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered

from 436-030-0140; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03, cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0040

Loss of Opposition in Thumb/Finger Amputations

(1) Loss of opposition is rated as a proportionate loss of use of the digits which can no longer be effectively opposed.

(a) For amputations which are not exactly at the joints, adjust the ratings in steps of 5%, increasing as the amputation gets closer to the attachment to the hand, decreasing to zero as it gets closer to the tip.

(b) When the value for loss of opposition is less than 5%, no value is granted.

(2) The following ratings apply to thumb amputations for loss of opposition:

(a) For thumb amputations at the interphalangeal level: [Rating not included. See ED. NOTE.]

(b) For thumb amputations at the metacarpophalangeal level: [Rating not included. See ED. NOTE.]

(3) The following ratings apply to finger amputations for loss of opposition. In every case, the opposing digit is the thumb: For finger amputations at the distal interphalangeal joint: [Rating not included. See ED. NOTE.]

(4) When determining loss of opposition due to loss of length in a digit, other than amputation or resection without reattachment, the value is established by comparing the remaining overall length of the digit to the applicable amputation chart under these rules and rated based on the overall length equivalency.

(5) If the injury is to one digit only and opposition loss is awarded for a second digit, do not convert the two digits to loss in the hand. Conversion to hand can take place only when more than one digit has impairment without considering opposition

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0150; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03, cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0110

Other Upper Extremity Findings

(1) Loss of palmar sensation in the hand, finger(s), or thumb is rated based on the location and quality of the loss, and is measured by the two-point discrimination method.

(a) Sensation is determined by using any instrumentation that allows for measuring the distance between two pin pricks applied at the same time (two-point) and using the following procedure:

(A) With the worker's eyes closed, the examiner touches the tip of the instrument to the digit in the longitudinal axis on the radial or ulnar side.

(B) The worker indicates whether one or two points are felt.

(C) A varied series of one or two points are applied.

(D) Testing is started distally and proceeds proximally to determine the longitudinal level of involvement.

(E) The ends of the testing device are set first at 15 mm apart and the distance is progressively decreased as accurate responses are obtained.

(F) The minimum distance at which the individual can accurately discriminate between one and two point tests in two out of three applications is recorded for each area.

(b) If enough sensitivity remains to distinguish two pin pricks applied at the same time (two point), the following apply: [Rating not included. See ED. NOTE.]

(c) In determining sensation findings for a digit that has been resected or amputated, the value is established by comparing the remaining overall length of the digit to the table in subsection (1)(d) of this rule and rating the length equivalency.

For example: Amputation of 1/2 the middle phalanx of the index finger with total sensory loss extending from the level of amputation to the metacarpophalangeal joint, results in a value for 1/2 the digit or 33%.

(d) Loss of sensation in the finger(s) or thumb is rated as follows: [Rating not included. See ED. NOTE.]

(e) If the level of the loss is less than 1/2 the distal phalanx or falls between the levels in subsection (d) of this section, rate at the next highest (or more proximal) level.

(f) In determining sensation impairment in a digit in which the sensation loss does not extend to the distal end of the digit, the value is established by determining the value for loss from the distal end of the digit to

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the proximal location of the loss, and subtracting the value for loss from the distal end of the digit to the distal location of the loss.

Example: Grade 2 sensation in the index finger between the PIP joint and the MP joint:

Loss from distal end of the finger to the MP joint (proximal location of loss)

25%

Minus loss from distal end of the finger to the PIP joint (distal location of loss)

20%

Equals loss between MP and PIP 5%

(g) Sensation loss on the palmar side of the hand is rated as follows:

[Rating not included. See ED. NOTE.]

(h) Loss of sensation or hypersensitivity on the dorsal side of the hand, fingers or thumb is not considered a loss of function, so no value is allowed.

(i) Sensory loss or hypersensitivity in the forearm or arm is not considered a loss of function, therefore no value is allowed.

(j) When there are multiple losses of palmar sensation in a single body part (e.g., hand, finger(s), or thumb), the impairment values are first combined for an overall loss of sensation value for the individual digit or hand. This value is then combined with other impairment values for that digit or hand prior to conversion.

(k) Hypersensitivity is valued using the above loss of sensation tables. Mild hypersensitivity is valued at the equivalent impairment level as less than normal sensation, moderate hypersensitivity the equivalent of protective sensation loss, and severe hypersensitivity the equivalent of a total loss of sensation.

(1) When there is a loss of use or function due to hypersensitivity and decreased two-point discrimination (i.e., sensation loss), both conditions are rated.

(2) When surgery or an injury results in arm length discrepancies involving the injured arm, the following values are given on the affected arm for the length discrepancy: [Rating not included. See ED. NOTE.]

(3) Joint instability in the finger(s), thumb, hand, or wrist is rated based on the body part affected: [Rating not included. See ED. NOTE.]

(4) Lateral deviation or malalignment of the upper extremity is valued as follows:

(a) Increased lateral deviation at the elbow is determined as follows: [Rating not included. See ED. NOTE.]

(b) Fracture resulting in angulation or malalignment, other than at the elbow, is determined as follows: [Rating not included. See ED. NOTE.]

(c) Rotational, lateral, dorsal, or palmar deformity of the thumb receives a value of 10% of the thumb for each type of deformity.

(d) Rotational, lateral, dorsal, or palmar deformity of a finger receives a value of 10% for the finger for each type of deformity.

(5) Surgery on the upper extremity is valued as follows: [Rating not included. See ED. NOTE.]

(6) Dermatological conditions, including burns, which are limited to the arm, forearm, hand, fingers, or thumb are rated based on the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g., a Class 1 dermatological condition of the thumb is 3% of the thumb, or a Class 1 dermatological condition of the hand is 3% of the hand, or a Class 1 dermatological condition of the arm is 3% of the arm. Contact dermatitis of an upper extremity is rated in this section unless it is an allergic systemic reaction, which is also rated under OAR 436-035-0450. Contact dermatitis for a body part other than the upper or lower extremities is rated under OAR 436-035-0440. Impairments may or may not show signs or symptoms of skin disorder upon examination but are rated under the following classes:

(a) Class 1: 3% for the affected body part if treatment results in no more than minimal limitation in the performance of activities of daily living (ADL), although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the affected body part if intermittent treatments and prescribed examinations are required, and the worker has some limitations in the performance of ADL.

(c) Class 3: 38% for the affected body part if regularly prescribed examinations and continuous treatments are required, and the worker has many limitations in the performance of ADL.

(d) Class 4: 68% for the affected body part if continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of ADL.

(e) Class 5: 90% for the affected body part if continuous prescribed treatment is required. The treatment necessitates having the worker stay home or being permanently admitted to a care facility, and the worker has severe limitations in the performance of ADL.

(7) Vascular dysfunction of the upper extremity is valued based on the affected body part, using the following classification table:

(a) Class 1: 3% for the affected body part if the worker experiences only transient edema; and on physical examination, the findings are limited to the following: loss of pulses, minimal loss of subcutaneous tissue of fingertips, calcification of arteries as detected by radiographic examination, asymptomatic dilation of arteries or veins (not requiring surgery and not resulting in curtailment of activity); or cold intolerance (e.g., Raynaud's phenomenon) which results in a loss of use or function that occurs with exposure to temperatures below freezing (0° centigrade).

(b) Class 2: 15% for the affected body part if the worker experiences intermittent pain with repetitive exertional activity; or there is persistent moderate edema incompletely controlled by elastic supports; or there are signs of vascular damage such as a healed stump of an amputated digit, with evidence of persistent vascular disease, or a healed ulcer; or cold intolerance (e.g., Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 4° centigrade.

(c) Class 3: 35% for the affected body part if the worker experiences intermittent pain with moderate upper extremity usage; or there is marked edema incompletely controlled by elastic supports; or there are signs of vascular damage such as a healed amputation of two or more digits, with evidence of persistent vascular disease, or superficial ulceration; or cold intolerance (e.g., Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 10° centigrade.

(d) Class 4: 63% for the affected body part if the worker experiences intermittent pain upon mild upper extremity usage; or there is marked edema that cannot be controlled by elastic supports; or there are signs of vascular damage such as an amputation at or above the wrist, with evidence of persistent vascular disease, or persistent widespread or deep ulceration involving one extremity; or cold intolerance (e.g., Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 15° centigrade.

(e) Class 5: 88% for the affected body part if the worker experiences constant and severe pain at rest; or there are signs of vascular damage involving more than one extremity such as amputation at or above the wrist, or amputation of all digits involving more than one extremity with evidence of persistent vascular disease, or persistent widespread deep ulceration involving more than one extremity; or cold intolerance such as Raynaud's phenomenon which results in a loss of use or function that occurs on exposure to temperatures below 20° centigrade.

(f) If partial amputation of the affected body part occurs as a result of vascular disease, the impairment values are rated separately.

(8) Neurological dysfunction resulting in cold intolerance in the upper extremity is valued under the affected body part using the same classifications for cold intolerance due to vascular dysfunction in section (7) of this rule.

(9) Injuries to unilateral spinal nerve roots or brachial plexus with resultant loss of strength in the arm, forearm or hand are rated based on the specific nerve root which supplies (innervates) the weakened muscle(s), as described in the following table and modified under OAR 436-035-0011(7):

(a) Spinal nerve root arm impairment; [Rating not included. See ED. NOTE.]

(b) For loss of strength in bilateral extremities, each extremity is rated separately.

(10) When a spinal nerve root or brachial plexus are not injured, valid loss of strength in the arm, forearm or hand is valued as if the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength was impaired, as described in the following table and as modified under OAR 436-035-0011(7). [Rating not included. See ED. NOTE.]

Example 1: A worker suffers a rupture of the biceps tendon. Upon recovery, the attending physician reports 4/5 strength of the biceps. The biceps is innervated by the musculocutaneous nerve which has a 25% impairment value. 4/5 strength, under OAR 436-035-0011(7), is 20%. Final impairment is determined by multiplying 25% by 20% for a final value of 5% impairment of the arm.

Example 2: A worker suffers a laceration of the median nerve below the mid-forearm. Upon recovery, the attending physician reports 3/5 strength in the forearm. The median nerve below the mid-forearm has a 44% impairment value. 3/5 strength, under OAR 436-035-0011(7), is 50%. Final impairment is determined by multiplying 44% by 50% for a final value of 22% impairment of the forearm.

(a) Loss of strength due to an injury in a single finger or thumb receives a value of zero, unless the strength loss is due to a compensable condition that is proximal to the digit.

(b) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(c) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

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(d) When loss of strength is present in the shoulder, refer to OAR 436-035-0330 for determination of the impairment.

(11) For motor loss in any part of an arm that is due to brain or spinal cord damage, impairment is valued as follows:

(a) Class 1: 14% when the involved extremity can be used for self care, grasping, and holding but has difficulty with digital dexterity.

(b) Class 2: 34% when the involved extremity can be used for self care, grasping and holding objects with difficulty, but has no digital dexterity.

(c) Class 3: 55% when the involved extremity can be used but has difficulty with self care activities.

(d) Class 4: 100% when the involved extremity cannot be used for self care.

(e) When a value is granted under this section, additional impairment values are not allowed for strength loss, chronic condition, or reduced range of motion in the same extremity because they are included in the impairment values shown in this section.

(f) For bilateral extremity loss, each extremity is rated separately.

[ED. NOTE: Ratings and Values referenced are available from the agency.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268, 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0530, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-1-9-88; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0220; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0230

Other Lower Extremity Findings

(1) Loss of sensation or hypersensitivity in the leg is not considered disabling except for the plantar surface of the foot and toes, including the great toe, where it is rated as follows:

(a) Toe (in any toe) Foot partial loss of sensation or hypersensitivity 5% total loss of sensation or hypersensitivity 10%

(b) Partial is part of the toe or foot. Total means the entire toe or foot.

(c) Loss of sensation or hypersensitivity in the toes in addition to loss of sensation or hypersensitivity in the foot is rated for the foot only. No additional value is allowed for loss of sensation or hypersensitivity in the toes.

(d) When there are hypersensitivity and sensation loss, both conditions are rated.

(2) The following ratings are for length discrepancies of the injured leg. However, loss of length due to flexion/extension deformities is excluded. The rating is the same whether the length change is a result of an injury to the foot or to the upper leg: [Table not included. See ED. NOTE.]

(3) Valid instability in the ankle or knee substantiated by clinical findings is valued based on the ligament demonstrating the laxity, as described in the table below. The instability value is given even if the ligament itself has not been injured. [Table not included. See ED. NOTE.]

(a) For ankle joint instability to be rated as severe there must be a complete disruption of two or more ligaments. Following are examples of ankle ligaments that may contribute to joint instability:

(A) The lateral collateral ligaments including the anterior talofibular, calcaneofibular, talocalcaneal, posterior talocalcaneal, and the posterior talofibular.

(B) The medial collateral ligaments, or deltoid ligament, including the tibionavicular, calcaneotibial, anterior talotibial, and the posterior talotibial.

(b) For knee joint instability the severity of joint opening is mild at a grade 1 or 1+ (1-5mm), moderate at a grade 2 or 2+ (6-10mm), and severe at a grade 3 or 3+ (>10mm).

(c) Ankle joint instability with additional anterior or posterior instability receives an additional 10%.

(d) When there is a prosthetic knee replacement, instability of the knee is not rated unless the severity of the instability is equivalent to Grade 2 or greater.

(e) Rotary instability in the knee is included in the impairment value(s) of this section.

(f) Multiple instability values in a single joint are combined.

(4) When injury in the ankle or knee/leg results in angulation or malalignment, impairment values are determined under the following:

(a) Varus deformity greater than 15° of the knee/leg is rated at 10% of the leg and of the ankle is rated at 10% of the foot.

(b) Valgus deformity greater than 20° of the knee/leg is rated at 10% of the leg and of the ankle is rated at 10% of the foot.

(c) Tibial shaft fracture resulting in angulation or malalignment (rotational deformity) affects the function of the entire leg and is rated as follows:

Severity	Leg impairment
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Mild: 10°– 14°	17%
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Moderate: 15°– 19°	26%
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Severe: 20°+	26% plus 1% for each additional degree, to 43% maximum
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(d) Injury resulting in a rocker bottom deformity of the foot is valued at 14%.

(5) The following values are for surgery of the toes, foot, or leg:

(a) In the great toe: [Table not included. See ED. NOTE.]

(b) In the second through fifth toes: [Values not included. See ED. NOTE.]

(e) When rating a prosthetic knee replacement, a separate value for meniscectomy(s) or patellectomy for the same knee is not granted.

(f) A meniscectomy is rated as a complete loss unless the record indicates that more than the rim of the meniscus remains.

(6) Dermatological conditions including burns which are limited to the leg, foot, or toes are rated based on the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g., a Class 1 dermatological condition of the foot is 3% of the foot, or a Class 1 dermatological condition of the leg is 3% of the leg. Contact dermatitis is determined under this section unless it is caused by an allergic systemic reaction which is also determined under OAR 436-035-0450. Contact dermatitis for a body part other than the upper or lower extremities is rated under OAR 436-035-0440. Impairments may or may not show signs or symptoms of skin disorder upon examination but are rated according to the following classes:

(a) Class 1: 3% for the leg, foot, or toe if treatment results in no more than minimal limitations in the performance of the activities of daily living (ADL), although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the leg, foot, or toe if intermittent treatments and prescribed examinations are required, and the worker has some limitations in the performance of ADL.

(c) Class 3: 38% for the leg, foot, or toe if regularly prescribed examinations and continuous treatments are required, and the worker has many limitations in the performance of ADL.

(d) Class 4: 68% for the leg, foot, or toe if continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of ADL.

(e) Class 5: 90% for the leg, foot, or toe if continuous prescribed treatment is required. The treatment necessitates having the worker stay home or permanently admitting the worker to a care facility, and the worker has severe limitations in the performance of ADL.

(f) Full thickness skin loss of the heel is valued at 10% of the foot, even when the area is successfully covered with an appropriate skin graft.

(7) The following ratings are for vascular dysfunction of the leg. The impairment values are determined according to the following classifications:

(a) Class 1: 3% when any of the following exist:

(A) Loss of pulses in the foot.

(B) Minimal loss of subcutaneous tissue.

(C) Calcification of the arteries (as revealed by x-ray).

(D) Transient edema.

(b) Class 2: 15% when any of the following exist:

(A) Limping due to intermittent claudication that occurs when walking at least 100 yards.

(B) Vascular damage, as evidenced by a healed painless stump of a single amputated toe, with evidence of chronic vascular dysfunction or a healed ulcer.

(C) Persistent moderate edema which is only partially controlled by support hose.

(c) Class 3: 35% when any of the following exist:

(A) Limping due to intermittent claudication when walking as little as 25 yards and no more than 100 yards.

(B) Vascular damage, as evidenced by healed amputation stumps of two or more toes on one foot, with evidence of chronic vascular dysfunction or persistent superficial ulcers on one leg.

(C) Obvious severe edema which is only partially controlled by support hose.

(d) Class 4: 63% when any of the following exist:

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(A) Limping due to intermittent claudication after walking less than 25 yards.

(B) Intermittent pain in the legs due to intermittent claudication when at rest.

(C) Vascular damage, as evidenced by amputation at or above the ankle on one leg, or amputation of two or more toes on both feet, with evidence of chronic vascular dysfunction or widespread or deep ulcers on one leg.

(D) Obvious severe edema which cannot be controlled with support hose.

(e) Class 5: 88% when either of the following exists:

(A) Constant severe pain due to claudication at rest.

(B) Vascular damage, as evidenced by amputations at or above the ankles of both legs, or amputation of all toes on both feet, with evidence of persistent vascular dysfunction or of persistent, widespread, or deep ulcerations on both legs.

(f) If partial amputation of the lower extremity occurs as a result of vascular dysfunction, the impairment values are rated separately. The amputation value is then combined with the impairment value for the vascular dysfunction.

(8) Injuries to unilateral spinal nerve roots with resultant loss of strength in the leg or foot are rated based on the specific nerve root supplying (innervating) the weakened muscle(s), as described in the following table and modified under OAR 436-035-0011(7). [Values not included. See ED. NOTE.]

(b) Loss of strength in bilateral extremities results in each extremity being rated separately.

(9) When a spinal nerve root or lumbosacral plexus are not injured, valid loss of strength in the leg or foot is valued as if the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength was impaired, as described in the following table and as modified under OAR 436-035-0011(7). [Values not included. See ED. NOTE.]

Example 1: A worker suffers a knee injury requiring surgery. Upon recovery, the attending physician reports 4/5 strength of the quadriceps femoris. The quadriceps femoris is innervated by the femoral nerve which has a 30% impairment value. 4/5 strength, under OAR 436-035-0011(7), is 20%. Final impairment is determined by multiplying 30% by 20% for a final value of 6% impairment of the leg.

Example 2: A worker suffers a laceration of the deep branch of the common peroneal nerve above mid-shin. Upon recovery, the attending physician reports 3/5 strength of the calf. The deep common peroneal above mid-shin has a 28% impairment value. Under OAR 436-035-0011(7), 3/5 strength is 50%. Impairment is determined by multiplying 28% by 50% for a final value of 14% impairment of the foot.

(a) Loss of strength due to an injury in a single toe receives a value of zero, unless the strength loss is due to a compensable condition that is proximal to the digit.

(b) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(c) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

(10) For motor loss to any part of a leg which is due to brain or spinal cord damage, impairment is valued as follows:

(a) Class 1: 23% when the worker can rise to a standing position and can walk but has difficulty with elevations, grades, steps, and distances.

(b) Class 2: 48% when the worker can rise to a standing position and can walk with difficulty but is limited to level surfaces. There is variability as to the distance the worker can walk.

(c) Class 3: 76% when the worker can rise to a standing position and can maintain it with difficulty but cannot walk without assistance.

(d) Class 4: 100% when the worker cannot stand without a prosthesis, the help of others, or mechanical support.

(e) When a value is granted under this section, additional impairment values in the same extremity are not allowed for strength loss, chronic condition, reduced range of motion, or limited ability to walk/stand for two hours or less because they have been included in the impairment values shown in this section.

(f) For bilateral extremity loss, each extremity is rated separately.

(11) If there is a diagnosis of Grade IV chondromalacia, extensive arthritis or extensive degenerative joint disease and one or more of the following are present: secondary strength loss; chronic effusion; varus or valgus deformity less than that specified in section (4) of this rule, then one or more of the following rating values apply:

(a) 5% of the foot for the ankle joint; or

(b) 5% of the leg for the knee joint.

(12) For a diagnosis of degenerative joint disease, chondromalacia, or arthritis which does not meet the criteria noted in section (11) of this rule, the impairment is determined under the chronic condition rule (OAR 436-035-0019) if the criteria in that rule is met.

(13) Other impairment values, e.g., weakness, chronic condition, reduced range of motion, etc., are combined with the value granted in section (11) of this rule.

(14) When the worker cannot be on his or her feet for more than two hours in an 8-hour period, the award is 15% of the leg.

[ED. NOTE: Ratings & Values referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80.; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0532, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0340; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 10-1992(Temp), f. & cert. ef. 6-1-92; WCD 15-1992, f. 11-20-92, cert. ef. 11-27-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0235

Conversion of Lower Extremity Values to Whole Person Values

(1) The tables in this rule are used to convert losses in the lower extremity to a whole person (WP) value for claims with a date of injury on or after January 1, 2005.

(2) The following table is used to convert losses in the great toe to a whole person (WP) value. Impairment in any of the other toes receives a whole person value of 1% for each toe that is injured. [Values not included. See ED. NOTE.]

(3) The following table is used to convert a loss in the foot to a whole person (WP) value. [Values not included. See ED. NOTE.]

(4) The following table is used to convert a loss in the leg to a whole person (WP) value. [Values not included. See ED. NOTE.]

[ED. NOTE: Ratings & Values referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0255

Conversion of Hearing Loss Values to Whole Person Values

(1) The following table is used to convert a loss of hearing in one ear to a whole person (WP) value for claims with a date of injury on or after January 1, 2005: [Table not included. See ED. NOTE.]

(2) The following table is used to convert a loss of hearing in two ears to a whole person (WP) value for claims with a date of injury on or after January 1, 2005: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0260

Visual Loss

(1) Visual loss due to a work-related illness or injury is rated for central visual acuity, integrity of the peripheral visual fields, and ocular motility. For ocular disturbances that cause visual impairment that is not reflected in visual acuity, visual fields or ocular motility refer to section (5) of this rule. Visual loss is measured with best correction, using the lenses recommended by the worker's physician. For lacrimal system disturbances refer to OAR 436-035-0440.

(2) Ratings for loss in central visual acuity are calculated for each eye as follows:

(a) Reports for central visual acuity must be for distance and near acuity.

(b) The ratings for loss of distance acuity are as follows, reported in standard increments of Snellen notation for English and Metric 6: [Ratings not included. See ED. NOTE.]

(c) The ratings for loss of near acuity are as follows: reported in standard increments of Snellen 14/14 notation, Revised Jaeger Standard, or American Point-type notation: [Ratings not included. See ED. NOTE.]

(d) Once the ratings for near and distance acuity are found, add them and divide by two. The value which results is the rating for lost central visual acuity.

(e) If a lens has been removed and a prosthetic lens implanted, an additional 25%, is to be combined (not added) with the percent loss for central visual acuity to determine total central visual acuity, as shown in table (g).

(f) If a lens has been removed and there is no prosthetic lens implanted, an additional 50% is to be combined (not added) with the percent loss for central visual acuity to determine total central visual acuity, as shown in table (g).

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(g) The table below may be substituted for combining central visual acuity and the loss of a lens for a total central visual acuity. The table displays the percent loss of central vision for the range of near and distance acuity combined with lens removal for a total central visual acuity. The upper figure is to be used when the lens is present (as found in (d)), the middle figure is to be used when the lens is absent and a prosthetic lens has been implanted (as found in (e)), and the lower figure is to be used when the lens is absent with no implant (as found in (f)). If near acuity is reported in Revised Jaeger Standard or American Point-type, convert these findings to Near Snellen for rating purposes under (2)(c) of this rule when using this table.

(3) Ratings for loss of visual field are based upon the results of field measurements of each eye separately using the Goldmann perimeter with a III/4e stimulus. The results may be scored in either one of the two following methods:

(a) Using the monocular Esterman Grid, count all the printed dots outside or falling on the line marking the extent of the visual field. The number of dots counted is the percentage of visual field loss; or

(b) A perimetric chart may be used which indicates the extent of retained vision for each of the eight standard 45° meridians out to 90°. The directions and normal extent of each meridian are as follows: [Ratings not included. See ED. NOTE.]

(A) Record the extent of retained peripheral visual field along each of the eight meridians. Add (do not combine) these eight figures. Find the corresponding percentage for the total retained degrees by use of the table below.

(B) For loss of a quarter or half field, first find half the sum of the normal extent of the two boundary meridians. Then add to this figure the extent of each meridian included within the retained field. This results in a figure which may be applied in the chart below.

(C) Visual field loss due to scotoma in areas other than the central visual field is rated by adding the degrees lost within the scotoma along affected meridians and subtracting that amount from the retained peripheral field. That figure is then applied to the chart below.

(4) Ratings for ocular motility impairment resulting in binocular diplopia are determined as follows:

(a) Determine the single highest value of loss for diplopia noted on each of the standard 45° meridians as listed in the following table.

(b) Add the values obtained for each meridian to obtain the total impairment for loss of ocular motility. A total of 100% or more is rated as 100% of the eye. As an example: Diplopia on looking horizontally off center from 30 degrees in a left direction is valued at 10%. Diplopia in the same eye when looking horizontally off center from 21 to 30 degrees in a right direction is valued at 20%. The impairments for diplopia in both ranges are added, so the impairment rating would be 10% plus 20% resulting in a total loss of ocular motility of 30%.

(5) To the extent that stereopsis (depth perception), glare disturbances or monocular diplopia causes visual impairment are not reflected in visual acuity, visual field or ocular motility, the losses for visual acuity, visual fields or ocular motility will be combined with an additional 5% when in the opinion of the physician the impairment is moderate, 10% if the impairment is severe.

(6) The total rating for monocular loss is found by combining (not adding) the ratings for loss of central vision, loss of visual field, and loss of ocular motility and loss for other conditions specified in section (5) of this rule.

(7) The total rating for binocular loss is figured as follows:

- (a) Find the percent of monocular loss for each eye.
- (b) Multiply the percent of loss in the better eye by three.
- (c) Add to that result the percent of loss in the other eye.
- (d) Divide this sum by four. The result is the total percentage of binocular loss.

(e) This method is expressed by the formula

3(A) + B 4

"A" is the percent of loss in the better eye;

"B" is the percent of loss in the other eye.

(8) Use the method (monocular or binocular) which results in the greater impairment rating.

(9) Enucleation of an eye is rated at 100% of an eye.

[ED. NOTE: Formula and Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0575, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0370; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-

98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0265

Conversion of Vision Loss Values to Whole Person Values

(1) The following table is used to convert vision loss in one eye to a whole person (WP) value for claims with a date of injury on or after January 1, 2005: [Table not included. See ED. NOTE.]

(2) The following table is used to convert vision loss in both eyes to a whole person (WP) value for claims with a date of injury on or after January 1, 2005: [Table not included. See ED. NOTE.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0340

Hip

(1) When a preponderance of objective medical evidence supports findings that reduced ranges of motion of the hip do not involve the pelvis or acetabulum, the impairment determination is valued according to OAR 436-035-0220. If the reduced ranges of motion are a residual of pelvic or acetabular involvement, the impairment is determined under this rule.

(2) The following ratings are for loss of forward flexion in the hip joint: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for forward flexion ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(4) The following ratings are for loss of backward extension in the hip joint: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for backward extension ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(6) The following ratings are for loss of abduction in the hip joint: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for abduction ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for loss of adduction in the hip joint: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for adduction ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for loss of internal rotation of the hip joint: [Ratings not included. See ED. NOTE.]

(11) The following ratings are for internal rotation ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(12) The following ratings are for loss of external rotation of the hip joint: [Ratings not included. See ED. NOTE.]

(13) The following ratings are for external rotation ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(14) When two or more ankylosis positions are documented, select the one direction representing the largest impairment. That will be the impairment value for the hip represented by ankylosis.

(15) A value of 13% is determined for a total hip replacement (both femoral and acetabular components involved). If a total hip replacement surgery occurs following an earlier femoral head replacement surgery under OAR 436-035-0230(5), both impairment values are rated.

(16) A value of 5% is awarded for a repeat total hip replacement surgery.

(17) Total value for loss of range of motion is obtained by adding (not combining) the values for each range of motion.

(18) The final value for the hip is obtained by combining (not adding) the values in sections (15), (16) and (17) of this rule.

(19) Healed displaced fractures in the hip may cause leg length discrepancies. Impairment is determined under OAR 436-035-0230.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0481; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0350

General Spinal Findings

(1) The following ratings are for fractured vertebrae:

(a) For a compression fracture of a single vertebral body: [Tables not included. See ED. NOTE.]

(b) A fracture of one or more of the posterior elements of a vertebra (spinous process, pedicles, laminae, articular processes, or transverse

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processes) is valued per vertebra as follows: [Tables not included. See ED. NOTE.]

(2) For the purposes of this section, the cervical, thoracic, and lumbosacral regions are considered separate body parts. Values determined within one body part are first added, then the total impairment value is obtained by combining the different body part values. The following values are for surgical procedures performed on the spine. [Tables not included. See ED. NOTE.]

(3) For injuries that result in loss of strength in the back, refer to OAR 436-035-0330(17) and (18).

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0610, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0490; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91 & cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0370

Pelvis

(1) The following ratings are for a fractured pelvis which heals with displacement and deformity: [Tables not included. See ED. NOTE.] In the acetabulum — Rate only loss of hip motion as in OAR 436-035-0340

(2) A hemipelvectomy receives 25% for the pelvis, and the accompanying loss of the leg is determined under OAR 436-035-0140(1).

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0610, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0510; WCD 2-1991, f. 3-26-91 & cert. ef. 4-1-91; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0380

Cardiovascular System

(1) Impairments of the cardiovascular system are determined based on objective findings that result in the following conditions: valvular heart disease, coronary heart disease, hypertensive cardiovascular disease, cardiomyopathies, pericardial disease, or cardiac arrhythmias. Each of these conditions will be described and quantified. In most circumstances, the physician should observe the patient during exercise testing.

(2) Valvular Heart Disease: Impairment resulting from work related valvular heart disease is rated according to the following classes:

(a) Class 1 (5% Impairment) The worker has evidence by physical examination or laboratory studies of valvular heart disease, but no symptoms in the performance of ordinary daily activities or even upon moderately heavy exertion; and The worker does not require continuous treatment, although prophylactic antibiotics may be recommended at the time of a surgical procedure to reduce the risk of bacterial endocarditis; and The worker remains free of signs of congestive heart failure; and There are no signs of ventricular hypertrophy or dilation, and the severity of the stenosis or regurgitation is estimated to be mild; or In the worker who has recovered from valvular heart surgery, all of the above criteria are met.

(b) Class 2 (20% Impairment) The worker has evidence by physical examination or laboratory studies of valvular heart disease, and there are no symptoms in the performance of ordinary daily activities, but symptoms develop on moderately heavy physical exertion; or

(c) The worker requires moderate dietary adjustment or drugs to prevent symptoms or to remain free of the signs of congestive heart failure or other consequences of valvular heart disease, such as syncope, chest pain and emboli; or

(d) The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation, and the severity of the stenosis or regurgitation is estimated to be moderate, and surgical correction is not feasible or advisable; or

(e) The worker has recovered from valvular heart surgery and meets the above criteria.

(f) Class 3 (40% Impairment) The worker has signs of valvular heart disease and has slight to moderate symptomatic discomfort during the performance of ordinary daily activities; and

(g) Dietary therapy or drugs do not completely control symptoms or prevent congestive heart failure; and

(h) The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation, the severity of the stenosis or regurgitation is estimated to be moderate or severe, and surgical correction is not feasible; or

(i) The worker has recovered from heart valve surgery but continues to have symptoms and signs of congestive heart failure including cardiomegaly.

(j) Class 4 (78% Impairment) The worker has signs by physical examination of valvular heart disease, and symptoms at rest or in the performance of less than ordinary daily activities; and

(k) Dietary therapy and drugs cannot control symptoms or prevent signs of congestive heart failure; and

(l) The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation; and the severity of the stenosis or regurgitation is estimated to be moderate or severe, and surgical correction is not feasible; or

(m) The worker has recovered from valvular heart surgery but continues to have symptoms or signs of congestive heart failure.

(3) Coronary Heart Disease: Impairment resulting from work related coronary heart disease is rated according to the following classes:

(a) Class 1 (5% Impairment) This class of impairment should be reserved for the worker with an equivocal history of angina pectoris on whom coronary angiography is performed, or for a worker on whom coronary angiography is performed for other reasons and in whom is found less than 50% reduction in the cross sectional area of a coronary artery.

(b) Class 2 (20% Impairment) The worker has history of a myocardial infarction or angina pectoris that is documented by appropriate laboratory studies, but at the time of evaluation the worker has no symptoms while performing ordinary daily activities or even moderately heavy physical exertion; and

(c) The worker may require moderate dietary adjustment or medication to prevent angina or to remain free of signs and symptoms of congestive heart failure; and

(d) The worker is able to walk on the treadmill or bicycle ergometer and obtain a heart rate of 90% of his or her predicted maximum heart rate without developing significant ST segment shift, ventricular tachycardia, or hypotension; or

(h) The worker has recovered from coronary artery surgery or angioplasty, remains asymptomatic during ordinary daily activities, and is able to exercise as outlined above. If the worker is taking a beta adrenergic blocking agent, he or she should be able to walk on the treadmill to a level estimated to cause an energy expenditure of at least 10 METS* as a substitute for the heart rate target. *METS is a term that represents the multiples of resting metabolic energy used for any given activity. One MET is 3.5ml/(kg x min).

(i) Class 3 (40% Impairment) The worker has a history of myocardial infarction that is documented by appropriate laboratory studies, or angina pectoris that is documented by changes on a resting or exercise ECG or radioisotope study that are suggestive of ischemia; or

(j) The worker has either a fixed or dynamic focal obstruction of at least 50% of a coronary artery, demonstrated by angiography; and

(k) The worker requires moderate dietary adjustment or drugs to prevent frequent angina or to remain free of symptoms and signs of congestive heart failure, but may develop angina pectoris or symptoms of congestive heart failure after moderately heavy physical exertion; or

(l) The worker has recovered from coronary artery surgery or angioplasty, continues to require treatment, and has the symptoms described above.

(m) Class 4 (78% Impairment) The worker has history of a myocardial infarction that is documented by appropriate laboratory studies or angina pectoris that has been documented by changes of a resting ECG or radioisotope study that are highly suggestive of myocardial ischemia; or

(n) The worker has either fixed or dynamic focal obstruction of at least 50% of one or more coronary arteries, demonstrated by angiography; and

(o) Moderate dietary adjustments or drugs are required to prevent angina or to remain free of symptoms and signs of congestive heart failure, but the worker continues to develop symptoms of angina pectoris or congestive heart failure during ordinary daily activities; or

(p) There are signs or laboratory evidence of cardiac enlargement and abnormal ventricular function; or

(q) The worker has recovered from coronary artery bypass surgery or angioplasty and continues to require treatment and have symptoms as described above.

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(4) Hypertensive Cardiovascular Disease: Impairment resulting from work related hypertensive cardiovascular disease is rated according to the following classes:

(a) Class 1 (5% Impairment) The worker has no symptoms and the diastolic pressures are repeatedly in excess of 90 mm Hg; and

(b) The worker is taking antihypertensive medications but has none of the following abnormalities: (1) abnormal urinalysis or renal function tests; (2) history of hypertensive cerebrovascular disease; (3) evidence of left ventricular hypertrophy; (4) hypertensive vascular abnormalities of the optic fundus, except minimal narrowing of arterioles.

(c) Class 2 (20% Impairment) The worker has no symptoms and the diastolic pressures are repeatedly in excess of 90 mm Hg; and

(d) The worker is taking antihypertensive medication and has any of the following abnormalities: (1) proteinuria and abnormalities of the urinary sediment, but no impairment of renal function as measured by blood urea nitrogen (BUN) and serum creatinine determinations; (2) history of hypertensive cerebrovascular damage; (3) definite hypertensive changes in the retinal arterioles, including crossing defects or old exudates.

(e) Class 3 (40% Impairment) The worker has no symptoms and the diastolic pressure readings are consistently in excess of 90 mm Hg; and

(f) The worker is taking antihypertensive medication and has any of the following abnormalities: (1) diastolic pressure readings usually in excess of 120 mm Hg; (2) proteinuria or abnormalities in the urinary sediment, with evidence of impaired renal function as measured by elevated BUN and serum creatinine, or by creatinine clearance below 50%; (3) hypertensive cerebrovascular damage with permanent neurological residual; (4) left ventricular hypertrophy based on findings of physical examination, ECG, or chest radiograph, but no symptoms, signs or evidence by chest radiograph of congestive heart failure; or (5) retinopathy, with definite hypertensive changes in the arterioles, such as "copper" or "silver wiring," or A-V crossing changes, with or without hemorrhages and exudates.

(g) Class 4 (78% Impairment) The worker has a diastolic pressure consistently in excess of 90 mm Hg; and

(h) The worker is taking antihypertensive medication and has any two of the following abnormalities:

(A) diastolic pressure readings usually in excess of 120 mm Hg;

(B) proteinuria and abnormalities in the urinary sediment, with impaired renal function and evidence of nitrogen retention as measured by elevated BUN and serum creatinine or by creatinine clearance below 50%;

(C) hypertensive cerebrovascular damage with permanent neurological deficits;

(D) left ventricular hypertrophy;

(E) retinopathy as manifested by hypertensive changes in the arterioles, retina, or optic nerve;

(F) history of congestive heart failure; or

(G) The worker has left ventricular hypertrophy with the persistence of congestive heart failure despite digitalis and diuretics.

(5) Cardiomyopathy: Impairment resulting from work related cardiomyopathies is rated according to the following classes:

(a) Class 1 (5% Impairment) The worker is asymptomatic and there is evidence of impaired left ventricular function from physical examination or laboratory studies; and

(b) There is no evidence of congestive heart failure or cardiomegaly from physical examination or laboratory studies.

(c) Class 2 (20% Impairment) The worker is asymptomatic and there is evidence of impaired left ventricular function from physical examination or laboratory studies; and

(d) Moderate dietary adjustment or drug therapy is necessary for the worker to be free of symptoms and signs of congestive heart failure; or

(e) The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the above criteria.

(f) Class 3 (40% Impairment) The worker develops symptoms of congestive heart failure on greater than ordinary daily activities and there is evidence of abnormal ventricular function from physical examination or laboratory studies; and

(g) Moderate dietary restriction or the use of drugs is necessary to minimize the worker's symptoms, or to prevent the appearance of signs of congestive heart failure or evidence of it by laboratory study; OR

(h) The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the criteria described above.

(i) Class 4 (78% Impairment) The worker is symptomatic during ordinary daily activities despite the appropriate use of dietary adjustment and drugs, and there is evidence of abnormal ventricular function from physical examination or laboratory studies; or

(j) There are persistent signs of congestive heart failure despite the use of dietary adjustment and drugs; or

(k) The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the above criteria.

(6) Pericardial Disease: Impairment resulting from work related pericardial disease is rated according to the following classes:

(a) Class 1 (5% Impairment) The worker has no symptoms in the performance of ordinary daily activities or moderately heavy physical exertion, but does have evidence from either physical examination or laboratory studies of pericardial heart disease; and

(b) Continuous treatment is not required, and there are no signs of cardiac enlargement, or of congestion of lungs or other organs; or

(c) In the worker who has had surgical removal of the pericardium, there are no adverse consequences of the surgical removal and the worker meets the criteria above.

(d) Class 2 (20% Impairment) The worker has no symptoms in the performance of ordinary daily activities, but does have evidence from either physical examination or laboratory studies of pericardial heart disease; but

(e) Moderate dietary adjustment or drugs are required to keep the worker free from symptoms and signs of congestive heart failure; or

(f) The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation; or

(g) The worker has recovered from surgery to remove the pericardium and meets the criteria above.

(h) Class 3 (40% Impairment) The worker has symptoms on performance of greater than ordinary daily activities despite dietary or drug therapy, and the worker has evidence from physical examination or laboratory studies, of pericardial heart disease; and

(i) Physical signs are present, or there is laboratory evidence of cardiac chamber enlargement or there is evidence of significant pericardial thickening and calcification; or

(j) The worker has recovered from surgery to remove the pericardium but continues to have the symptoms, signs and laboratory evidence described above.

(k) Class 4 (78% Impairment)

(l) The worker has symptoms on performance of ordinary daily activities in spite of using appropriate dietary restrictions or drugs, and the worker has evidence from physical examination or laboratory studies, of pericardial heart disease; and

(m) The worker has signs or laboratory evidence of congestion of the lungs or other organs; or

(n) The worker has recovered from surgery to remove the pericardium and continues to have symptoms, signs, and laboratory evidence described above.

(7) Arrhythmias: Impairment resulting from work related cardiac arrhythmias* is rated according to the following classes:

(a) Class 1 (5% Impairment) The worker is asymptomatic during ordinary activities and a cardiac arrhythmia is documented by ECG; and

(b) There is no documentation of three or more consecutive ectopic beats or periods of asystole greater than 1.5 seconds, and both the atrial and ventricular rates are maintained between 50 and 100 beats per minute; and

(c) There is no evidence of organic heart disease. * If an arrhythmia is a result of organic heart disease, the arrhythmia should be rated separately and combined with the impairment rating for the organic heart disease.

(d) Class 2 (20% Impairment) The worker is asymptomatic during ordinary daily activities and a cardiac arrhythmia* is documented by ECG; and

(e) Moderate dietary adjustment, or the use of drugs, or an artificial pacemaker, is required to prevent symptoms related to the cardiac arrhythmia; or

(f) The arrhythmia persists and there is organic heart disease.

(g) Class 3 (40% Impairment) The worker has symptoms despite the use of dietary therapy or drugs or of an artificial pacemaker and a cardiac arrhythmia* is documented with ECG; but

(h) The worker is able to lead an active life and the symptoms due to the arrhythmia are limited to infrequent palpitations and episodes of lightheadedness, or other symptoms of temporarily inadequate cardiac output.

(i) Class 4 (78% Impairment) The worker has symptoms due to documented cardiac arrhythmia* that are constant and interfere with ordinary daily activities; or

(j) The worker has frequent symptoms of inadequate cardiac output documented by ECG to be due to frequent episodes of cardiac arrhythmia; or

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(k) The worker continues to have episodes of syncope that are either due to, or have a high probability of being related to, the arrhythmia. To fit into this category of impairment, the symptoms must be present despite the use of dietary therapy, drugs, or artificial pacemakers.

(8) For heart transplants an impairment value of 50% is given. This value is combined with any other findings of impairment of the heart.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, cert. ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0640, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0520; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0385

Respiratory System

(1) For the purpose of this rule, the following definitions apply:

(a) FVC is forced vital capacity.

(b) FEV1 is forced expiratory volume in the first second.

(c) Dco refers to diffusing capacity of carbon monoxide.

(d) VO2 Max is measured exercise capacity.

(2) Lung impairment is rated according to the following classes:

(a) Class 1: 0% for FVC greater than or equal to 80% of predicted, and FEV1 greater than or equal to 80% of predicted, and FEV1/FVC greater than or equal to 70%, and Dco greater than or equal to 80% of predicted; or VO2 Max greater than 25 ml/(kg x min).

(b) Class 2: 18% for FVC between 60% and 79% of predicted, or FEV1 between 60% and 79% of predicted, or FEV1/FVC between 60% and 69%, or Dco between 60% and 79% of predicted, or VO2 Max greater than or equal to 20 ml/(kg x min) and less than or equal to 25 ml/(kg x min).

(c) Class 3: 38% for FVC between 51% and 59% of predicted, or FEV1 between 41% and 59% of predicted, or FEV1/FVC between 41% and 59%, or Dco between 41% and 59% of predicted, or VO2 Max greater than or equal to 15 ml/(kg x min) and less than 20 ml/(kg x min).

(d) Class 4: 75% for FVC less than or equal to 50% of predicted, or FEV1 less than or equal to 40% of predicted, or FEV1/FVC less than or equal to 40%, or Dco less than or equal to 40% of predicted, or VO2 Max less than 15 ml/(kg x min).

(3) Lung cancer: All persons with lung cancers as a result of a compensable industrial injury or occupational disease are to be considered Class 4 impaired at the time of diagnosis. At a re-evaluation, one year after the diagnosis is established, if the person is found to be free of all evidence of tumor, then he or she should be rated under the physiologic parameters in OAR 436-035-0385(2). If there is evidence of tumor, the person is determined to have Class 4 impairment.

(4) Asthma: Reversible obstructive airway disease is rated under the classes of respiratory impairment described in section (2) of this rule. The impairment is based on the best of three successive tests performed at least one week apart at a time when the patient is receiving optimal medical therapy. In addition, a worker may also have impairment determined under OAR 436-035-0450.

(5) Allergic respiratory responses: For workers who have developed an allergic respiratory response to physical, chemical, or biological agents refer to OAR 436-035-0450. Methacholine inhalation testing is permitted at the discretion of the physician. Where methacholine inhalation testing leaves the worker at risk, level of impairment may be based on review of the medical record.

(6) Impairment from air passage defects is determined according to the following classes: [Ratings not included. See ED. NOTE.]

(7) Residual impairment from a lobectomy is valued based on the physiological parameters found under section (2) of this rule.

(8) For injuries that result in impaired ability to speak, the following classes are used to rate the worker's ability to speak in relation to: audibility (ability to speak loudly enough to be heard); intelligibility (ability to articulate well enough to be understood); and functional efficiency (ability to produce a serviceably fast rate of speech and to sustain it over a useful period of time).

(a) Class 1: 4% when speech can be produced with sufficient intensity and articular quality to meet most of the needs of everyday speech communication; some hesitation or slowness of speech may exist; certain phonetic units may be difficult or impossible to produce; listeners may require the speaker to repeat.

(b) Class 2: 9% when speech can be produced with sufficient intensity and articular quality to meet many of the needs of everyday speech communication; speech may be discontinuous, hesitant or slow; can be under-

stood by a stranger but may have many inaccuracies; may have difficulty being heard in loud places.

(c) Class 3: 18% when speech can be produced with sufficient intensity and articular quality to meet some of the needs of everyday speech communication; often consecutive speech can only be sustained for brief periods; can converse with family and friends but may not be understood by strangers; may often be asked to repeat; has difficulty being heard in loud places; voice tires rapidly and tends to become inaudible after a few seconds.

(d) Class 4: 26% when speech can be produced with sufficient intensity and articular quality to meet few of the needs of everyday speech communication; consecutive speech limited to single words or short phrases; speech is labored and impractically slow; can produce some phonetic units but may use approximations that are unintelligible or out of context; may be able to whisper audibly but has no voice.

(e) Class 5: 33% for complete inability to meet the needs of everyday speech communication.

(9) Workers with successful permanent tracheostomy or stoma should be rated at 25% impairment of the respiratory system.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0390

Cranial Nerves/Brain

(1) Impairment of the first cranial nerve (olfactory) resulting in either complete inability to detect odors or alteration of the sense of smell is 3% impairment.

(2) Ratings given for impairment of the second cranial nerve (optic) are rated based on their effects on vision under OAR 436-035-0260.

(3) Ratings given for impairment in the third cranial nerve (oculomotor), fourth cranial nerve (trochlear), and sixth cranial nerve (abducens) are rated based on their effects on ocular motility under OAR 436-035-0260.

(4) Ratings given for impairment of the fifth cranial nerve (trigeminal) are as follows:

(a) For loss or alteration of sensation in the trigeminal distribution on one side: 10%; on both sides: 35%.

(b) The rating given for loss of motor function for each trigeminal Nerve is 5%.

(c) The rating given for loss of motor function of both trigeminal Nerves is determined under OAR 436-035-0385 and 436-035-0420.

(5) Ratings given for impairment of the sixth cranial nerve (abducens) are described in section (3) of this rule.

(6) Ratings given for impairment of the seventh cranial nerve (facial) are as follows:

(a) No rating is given for loss of sensation from impairment of one or both facial nerves.

(b) If impairment of one or both facial nerves results in loss or alteration of the sense of taste, the rating is 3%.

(c) Motor loss on one side of the face due to impairment of the facial nerve is rated at 15% for a complete loss, or 5% for a partial loss.

(d) Motor loss on both sides of the face due to impairment of the facial nerve is rated at 45% for a complete loss, or 20% for a partial loss.

(7) Ratings given for impairment of the eighth cranial nerve (auditory) are determined according to their effects on hearing under OAR 436-035-0250. Other ratings for loss of function most commonly associated with this nerve include the following:

(a) For permanent disturbances resulting in disequilibrium which limits activities the impairment is rated under the following:

(A) Class 1: 8% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living (ADL) are performed without assistance.

(B) Class 2: 23% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living can be performed without assistance, and the worker is unable to operate a motor vehicle.

(C) Class 3: 48% when signs of disequilibrium are present with supporting objective findings and the usual ADL cannot be performed without assistance.

(D) Class 4: 80% when signs of disequilibrium are present with supporting objective findings and the usual ADL cannot be performed without assistance, and confinement to the home or other facility is necessary.

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(b) Tinnitus which by a preponderance of medical opinion requires job modification is valued at 5%. No additional impairment value is allowed for "bilateral" tinnitus.

(8) Ratings given for impairment of the ninth cranial nerve (glossopharyngeal), tenth cranial nerve (vagus), and eleventh cranial nerve (cranial accessory) are as follows:

(a) Impairment of swallowing due to damage to the ninth, tenth, or eleventh cranial nerve is determined under OAR 436-035-0420.

(b) Speech impairment due to damage to the ninth, tenth, or eleventh cranial nerve is rated under the classifications in OAR 436-035-0385(8).

(9) Ratings given for impairment of the twelfth cranial nerve (hypoglossal) are as follows:

(a) No rating is allowed for loss on one side.

(b) Bilateral loss is rated as in section (8) of this rule.

(10) Impairment for injuries to the brain or head is determined based upon a preponderance of medical opinion which applies or describes the following criteria.

(a) The existence and severity of the claimed residuals and impairments must be objectively determined by observation or examination or a preponderance of evidence, and must be within the range reasonably considered to be possible, given the nature of the original injury, based upon a preponderance of medical opinion.

(b) Emotional disturbances which are reactive to other residuals, but which are not directly related to the brain or head injury, such as frustration or depressed mood about memory deficits or work limitations, are not included under these criteria and must be addressed separately.

(c) The distinctions between classes are intended to reflect, at their most fundamental level, the impact of the residuals on two domains: impairment of ADL, and impairment of employment capacity.

(d) Where the residuals from the accepted condition and any direct medical sequelae place the worker between one or more classes, the worker is entitled to be placed in the highest class that describes the worker's impairment. There is no averaging of impairment values when a worker falls between classes.

(e) As used in these rules, episodic neurologic disorder refers to and includes any of the following:

(A) Any type of seizure disorder;

(B) Vestibular disorder, including disturbances of balance or sensorimotor integration;

(C) Neuro-ophthalmologic or oculomotor visual disorder, such as diplopia;

(D) Headaches. [Ratings not included. See ED. NOTE.]

(11) For the purpose of section (10) of this rule, the Rancho Los Amigos-Revised levels are based upon the "Eight States Levels of Cognitive Recovery" developed at the Rancho Los Amigos Hospital and co-authored by Chris Hagen, PhD, Danese Malkumus, M.A., and Patricia Durham, M.S., in 1972. These levels were revised by Danese Malkumus, M.A., and Kathryn Standenip, O.T.R., in 1974, revised by Chris Hagen, PhD, in 1999 to include ten levels, referred to as Rancho-R.

(12) For brain or head injuries that have resulted in the loss of use or function of any upper or lower extremities, a value may be allowed for the affected body part(s). Refer to the appropriate section of these standards for that determination.

(13) Headaches that are not a direct result of a brain or head injury (e.g., cervicogenic, sensory input issues, etc.) are given a value of 10% when they interfere with the activities of daily living, affect the worker's ability to regularly perform work, and require continued prescription medication or therapy. If a value for headaches is granted under section (10) of this rule, the value in this section is not granted because it is included in the impairment value for the episodic neurological disorder.

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

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0645, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0530; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0395

Spinal Cord

(1) The spinal cord is concerned with sensory, motor, and visceral functions. Permanent impairment can result from various disorders affect-

ing these functions. Spinal cord impairment is determined under the following classes:

(a) Class 1: 15% when the worker has spinal cord damage but is able to carry out the activities of daily living independently.

(b) Class 2: 35% when the worker is a paraplegic and requires assistive measures or devices for any of the activities of daily living.

(c) Class 3: 50% when the worker is a quadriplegic and requires assistive measures or devices for any of the activities of daily living.

(d) Class 4: 75% when the worker is a paraplegic or quadriplegic and requires the assistance of another person for any of the activities of daily living.

(e) Class 5: 95% when the worker is a paraplegic or quadriplegic and is dependent in all of the activities of daily living.

(f) When a value is granted under section (1) of this rule, no additional impairment value is allowed for reduced range of motion in the spine because it is included in the impairment values shown in this section.

(2) For spinal cord damage that has resulted in the loss of use or function of body part(s) other than upper and lower extremities, a value is given for other affected body part(s) or organ system(s). Refer to the appropriate section of these standards for that determination and combine with impairment value under this rule.

(3) For spinal cord damage that has resulted in the loss of use or function of any upper or lower extremities, a value is given for the affected body part(s). Refer to the appropriate section of these standards for that determination.

(4) Episodic neurological disorders are determined under OAR 436-035-0390(10).

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 2-2010, f. 5-5-10, cert. ef. 1-1-13

436-035-0400

Mental Illness

(1) Accepted mental disorders resulting in impairment must be diagnosed by a psychiatrist or other mental health professional as provided for in a managed care organization certified under OAR chapter 436, Division 015.

(2) Diagnoses of mental disorders for the purposes of these rules follow the guidelines of the Diagnostic and Statistical Manual of Mental Disorders DSM-IV (1994), published by the American Psychiatric Association. A copy of the standards referenced in this rule is available for review during regular business hours at the Workers' Compensation Division, 350 Winter Street NE, Salem OR 97301, 503-947-7810.

(3) The physician describes permanent changes in mental function in terms of their affect on the worker's activities of daily living (ADLs), as defined in OAR 436-035-0005(1). Additionally, the physician describes the affect on social functioning and deterioration or decompensation in work or work-like settings.

(a) Social functioning refers to an individual's capacity to interact appropriately, communicate effectively, and get along with other individuals.

(b) Deterioration or decompensation in work or work-like settings refers to repeated failure to adapt to stressful circumstances, which causes the individual either to withdraw from that situation or to experience exacerbations with accompanying difficulty in maintaining ADL, social relationships, concentration, persistence, pace, or adaptive behaviors.

(4) Loss of function attributable to permanent worsening of personality disorders may be stated as impairment only if it interferes with the worker's long-term ability to adapt to the ordinary activities and stresses of daily living. Personality disorders are rated as two classes with gradations within each class based on severity:

(a) Class 1: minimal (0%), mild (6%), or moderate (11%) when the worker shows little self-understanding or awareness of the mental illness; some problems with judgment; some problems with controlling personal behavior; some ability to avoid serious problems with social and personal relationships; and some ability to avoid self-harm.

(b) Class 2: minimal (20%), mild (29%), or moderate (38%) when the worker shows considerable loss of self control; an inability to learn from experience; and causes harm to the community or to the self.

(5) Loss of function attributable to permanent symptoms of affective disorders, anxiety disorders, somatoform disorders, and chronic adjustment

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disorders is rated under the following classes, with gradations within each class based on the severity of the symptoms/loss of function:

(a) Class 1: 0% when one or more of the following residual symptoms are noted:

(A) Anxiety symptoms: Require little or no treatment, are in response to a particular stress situation, produce unpleasant tension while the stress lasts, and might limit some activities.

(B) Depressive symptoms: The ADL can be carried out, but the worker might lack ambition, energy, and enthusiasm. There may be such depression-related, mentally-caused physical problems as mild loss of appetite and a general feeling of being unwell.

(C) Phobic symptoms: Phobias the worker already suffers from may come into play, or new phobias may appear in a mild form.

(D) Psychophysiological symptoms: Are temporary and in reaction to specific stress. Digestive problems are typical. Any treatment is for a short time and is not connected with any ongoing treatment. Any physical pathology is temporary and reversible. Conversion symptoms or hysterical symptoms are brief and do not occur very often. They might include some slight and limited physical problems (such as weakness or hoarseness) that quickly respond to treatment.

(b) Class 2: minimal (6%), mild (23%), or moderate (35%) when one or more of the following residual symptoms/loss of functions are noted:

(A) Anxiety symptoms: May require extended treatment. Specific symptoms may include (but are not limited to) startle reactions, indecision because of fear, fear of being alone, and insomnia. There is no loss of intellect or disturbance in thinking, concentration, or memory.

(B) Depressive symptoms: Last for several weeks. There are disturbances in eating and sleeping patterns, loss of interest in usual activities, and moderate retardation of physical activity. There may be thoughts of suicide. Self-care activities and personal hygiene remain good.

(C) Phobic symptoms: Interfere with normal activities to a mild to moderate degree. Typical reactions include (but are not limited to) a desire to remain at home, a refusal to use elevators, a refusal to go into closed rooms, and an obvious reaction of fear when confronted with a situation that involves a superstition.

(D) Psychophysiological symptoms: Require substantial treatment. Frequent and recurring problems with the organs get in the way of common activities. The problems may include (but are not limited to) diarrhea; chest pains; muscle spasms in the arms, legs, or along the backbone; a feeling of being smothered; and hyperventilation. There is no actual pathology in the organs or tissues. Conversion or hysterical symptoms result in periods of loss of physical function that occur more than twice a year, last for several weeks, and need treatment. Symptoms may include (but are not limited to) temporary hoarseness, temporary blindness, temporary weakness in the arms or the legs. These problems continue to return.

(c) Class 3: Minimal (50%), mild (66%), or moderate (81%) when one or more of the following residual symptoms/loss of functions are noted:

(A) Anxiety symptoms: Fear, tension, and apprehension interfere with work or the ADL. Memory and concentration decrease or become unreliable. Long-lasting periods of anxiety keep returning and interfere with personal relationships. The worker needs constant reassurance and comfort from family, friends, and coworkers.

(B) Depressive symptoms: Include an obvious loss of interest in the usual ADL, including eating and self-care. These problems are long-lasting and result in loss of weight and an unkempt appearance. There may be retardation of physical activity, a preoccupation with suicide, and actual attempts at suicide. The worker may be extremely agitated on a frequent or constant basis.

(C) Phobic symptoms: Existing phobias are intensified. In addition, new phobias develop. This results in bizarre and disruptive behavior. In the most serious cases, the worker may become home-bound, or even room-bound. Persons in this state often carry out strange rituals which require them to be isolated or protected.

(D) Psychophysiological symptoms: Include tissue changes in one or more body systems or organs. These may not be reversible. Typical reactions include (but are not limited to) changes in the wall of the intestine that results in constant digestive and elimination problems. Conversion or hysterical symptoms include loss of physical function that occurs often and lasts for weeks or longer. Evidence of physical change follows such events. A symptomatic period (18 months or more) is associated with advanced negative changes in the tissues and organs. These include (but are not limited to) atrophy of muscles in the legs and arms. A common symptom is general flabbiness.

(6) Psychotic disorders are rated based on perception, thinking process, social behavior, and emotional control. Variations in these aspects

of mental function are rated under the following classifications with gradations within each class based on severity:

(a) Class 1: minimal (0%), mild (6%), or moderate (11%) when one or more of the following is established:

(A) Perception: The worker misinterprets conversations or events. It is common for persons with this problem to think others are talking about them or laughing at them.

(B) Thinking process: The worker is absent-minded, forgetful, daydreams too much, thinks slowly, has unusual thoughts that recur, or suffers from an obsession. The worker is aware of these problems and may also show mild problems with judgment. It is also possible that the worker may have little self-understanding or understanding of the problem.

(C) Social behavior: Small problems appear in general behavior, but do not get in the way of social or living activities. Others are not disturbed by them. The worker may be over-reactive or depressed or may neglect self-care and personal hygiene.

(D) Emotional control: The worker may be depressed and have little interest in work or life. The worker may have an extreme feeling of well-being without reason. Controlled and productive activities are possible, but the worker is likely to be irritable and unpredictable.

(b) Class 2: minimal (20%), mild (29%), or moderate (38%) when one or more of the following is established:

(A) Perception: Workers in this state have fairly serious problems in understanding their personal surroundings. They cannot be counted on to understand the difference between daydreams, imagination, and reality. They may have fantasies involving money or power, but they recognize them as fantasies. Because persons in this state are likely to be overly excited or suffering from paranoia, they are also likely to be domineering, peremptory, irritable, or suspicious.

(B) Thinking process: The thinking process is so disturbed that persons in this state might not realize they are having mental problems. The problems might include (but are not limited to) obsessions, blocking, memory loss serious enough to affect work and personal life, confusion, powerful daydreams or long periods of being deeply lost in thought to no set purpose.

(C) Social behavior: Persons in this state can control their social behavior if they are asked to do so. However, if left on their own, their behavior is so bizarre that others may be concerned. Such behavior might include (but is not limited to) over-activity, disarranged clothing, and talk or gestures which neither make sense nor fit the situation.

(D) Emotional control: Persons in this state suffer a serious loss of control over their emotions. They may become extremely angry for little or no reason, they may cry easily, or they may have an extreme feeling of well-being, causing them to talk too much and to little purpose. These behaviors interfere with living and work and cause concern in others.

(c) Class 3: minimal (50%), mild (63%), or moderate (75%) when one or more of the following is established:

(A) Perception: Workers in this state suffer from frequent illusions and hallucinations. Following the demands of these illusions and hallucinations leads to bizarre and disruptive behavior.

(B) Thinking process: Workers in this state suffer from disturbances in thought that are obvious even to a casual observer. These include an inability to communicate clearly because of slurred speech, rambling speech, primitive language, and an absence of the ability to understand the self or the nature of the problem. Such workers also show poor judgment and openly talk about delusions without recognizing them as such.

(C) Social behavior: Persons in this state are a nuisance or a danger to others. Actions might include interfering with work and other activities, shouting, sudden inappropriate bursts of profanity, carelessness about excretory functions, threatening others, and endangering others.

(D) Emotional control: Workers in this state cannot control their personal behavior. They might be very irritable and overactive or so depressed they become suicidal.

(d) Class 4: 90% for workers who usually need to be placed in a hospital or institution. Medication may help them to a certain extent and the following is established:

(A) Perception: Workers become so obsessed with hallucinations, illusions, and delusions that normal self-care is not possible. Bursts of violence may occur.

(B) Thinking process: Communication is either very difficult or impossible. The worker is responding almost entirely to delusions, illusions, and hallucinations. Evidence of disturbed mental processes may include (but are not limited to) severe confusion, incoherence, irrelevance, refusal to speak, the creation of new words or using existing words in a new manner.

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(C) Social behavior: The worker's personal behavior endangers both the worker and others. Poor perceptions, confused thinking, lack of emotional control, and obsessive reaction to hallucinations, illusions, and delusions produce behavior that can result in the worker being inaccessible, suicidal, openly aggressive and assaultive, or even homicidal.

(D) Emotional control: The worker may have either a severe emotional disturbance in which the worker is delirious and uncontrolled or extreme depression in which the worker is silent, hostile, and self-destructive. In either case, lack of control over anger and rage might result in homicidal behavior.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0555, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-065-0540; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0410

Hematopoietic System

(1) Anemia can be impairing when the cardiovascular system cannot compensate for the effects of the anemia. The following values are given for workers who become anemic:

(a) Class 1: 0% when there are no complaints or evidence of disease and the usual activities of daily living can be performed; no blood transfusion is required; and the hemoglobin level is 10-12gm/100ml.

(b) Class 2: 30% when there are complaints or evidence of disease and the usual activities of daily living can be performed with some difficulty; no blood transfusion is required; and the hemoglobin level is 8-10gm/100ml.

(c) Class 3: 70% when there are signs and symptoms of disease and the usual activities of daily living can be performed with difficulty and with varying amounts of assistance from others; blood transfusion of 2 to 3 units is required every 4 to 6 weeks; and the hemoglobin level is 5-8gm/100ml before transfusion.

(d) Class 4: 85% when there are signs and symptoms of disease and the usual activities of daily living cannot be performed without assistance from others; blood transfusion of 2 to 3 units is required every 2 weeks, implying hemolysis of transfused blood; and the hemoglobin level is 5-8gm/100ml before transfusion.

(2) White blood cell system impairments are rated under the following classes:

(a) Class 1: 5% when there are symptoms or signs of leukocyte abnormality and no or infrequent treatment is needed and all or most of the activities of daily living can be performed.

(b) Class 2: 20% when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed but most of the activities of daily living can be performed.

(c) Class 3: 40% when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed and the activities of daily living can be performed with occasional assistance from others.

(d) Class 4: 73% when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed and continuous care is required for activities of daily living.

(3) Splenectomy is given an impairment value of 5%.

(4) Hemorrhagic disorders receive 5% impairment if many activities must be avoided and constant endocrine therapy is needed, or anticoagulant treatment with a vitamin K antagonist is required. Hemorrhagic disorders that stem from damage to other organs or body systems are not rated under this section but are rated based on the impairment of the other organ or body system.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0420

Gastrointestinal and Genitourinary Systems

(1) Impairments in mastication (chewing) and deglutition (swallowing) are determined based on the following criteria:

(a) Diet limited to semi-solid or soft foods — 8%

(b) Diet limited to liquid foods — 25%

(c) Eating requires tube feeding or gastrostomy — 50%

(2) Impairment of the upper digestive tract (esophagus, stomach and duodenum, small intestine, pancreas) is valued under the following classes: [Classes not included. See ED. NOTE.]

(3) Colonic and rectal impairment is rated under the following classes: [Classes not included. See ED. NOTE.]

(6) Biliary tract impairment is determined under the following classes:

(a) Class 1: 5% for an occasional episode of biliary tract dysfunction.

(b) Class 2: 20% for recurrent biliary tract impairment irrespective of treatment.

(c) Class 3: 40% for irreparable obstruction of the bile tract with recurrent cholangitis.

(d) Class 4: 75% for persistent jaundice and progressive liver disease due to obstruction of the common bile duct.

(7) Impairment of the upper urinary tract is determined under the following classes: [Classes not included. See ED. NOTE.]

(8) Impairment of the bladder: When evaluating permanent impairment of the bladder, the status of the upper urinary tract must also be considered. The appropriate impairment values for both are combined under OAR 436-035-0011(5). Impairment of the bladder is determined under the following classes:

(a) Class 1: 5% when the patient has symptoms and signs of bladder disorder requiring intermittent treatment with normal function between episodes of malfunction.

(b) Class 2: 18% when (a) there are symptoms or signs of bladder disorder requiring continuous treatment; OR (b) there is good bladder reflex activity, but no voluntary control.

(c) Class 3: 30% when the bladder has poor reflex activity, that is, there is intermittent dribbling, and no voluntary control.

(d) Class 4: 50% when there is no reflex or voluntary control of the bladder, that is, there is continuous dribbling.

(9) Urethra: When evaluating permanent impairment of the urethra, one must also consider the status of the upper urinary tract and bladder. The values for all parts of the urinary system are combined under OAR 436-035-0011(5). Impairment of the urethra is determined under the following classes:

(a) Class 1: 3% when symptoms and signs of urethral disorder are present that require intermittent therapy for control.

(b) Class 2: 15% when there are symptoms and signs of a urethral disorder that cannot be effectively controlled by treatment.

(10) Penile sexual dysfunction: When evaluating permanent impairment due to sexual dysfunction of the penis, one must also consider the status of the urethra upper urinary tract and bladder. The values for all parts of the system are combined under OAR 436-035-0011(6). Loss or alteration of the gonads is valued under OAR 436-035-0430. Impairment due to sexual dysfunction of the penis is determined under the following classes: [Classes not included. See ED. NOTE.]

(11) Cervix/uterus/vagina: When evaluating permanent impairment of the cervix/uterus/vagina, one must also consider the status of the urethra, upper urinary tract and bladder. The values for all parts of the system are combined under OAR 436-035-0011(5). Loss or alteration of the gonads is valued under OAR 436-035-0430. Impairment of the cervix/uterus/vagina is determined under the following classes: [Classes not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988(Temp), f. 8-22-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0430

Endocrine System

(1) The assessment of permanent impairment from disorders of the hypothalamic-pituitary axis requires evaluation of (1) primary abnormalities related to growth hormone, prolactin, or ADH; (2) secondary abnormalities in other endocrine glands, such as thyroid, adrenal, and gonads, and; (3) structural and functional disorders of the central nervous system caused by anatomic abnormalities of the pituitary. Each disorder must be evaluated separately, using the standards for rating the nervous system, visual system, and mental and behavioral disorders, and the impairments combined. Impairment of the hypothalamic-pituitary axis is determined under the following classes:

(a) Class 1: 5% when controlled effectively with continuous treatment.

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(b) Class 2: 18% when inadequately controlled by treatment.

(c) Class 3: 38% when there are severe symptoms and signs despite treatment.

(2) Impairment of thyroid function results in either hyperthyroidism or hypothyroidism. Hyperthyroidism is not considered to be a cause of permanent impairment, because the hypermetabolic state in practically all patients can be corrected permanently by treatment. After remission of hyperthyroidism, there may be permanent impairment of the visual or cardiovascular systems, which should be evaluated using the appropriate standards for those systems. Hypothyroidism in most instances can be satisfactorily controlled by the administration of thyroid medication. Occasionally, because of associated disease in other organ systems, full hormone replacement may not be possible. Impairment of thyroid function is determined under the following classes:

(a) Class 1: 5% when (a) continuous thyroid therapy is required for correction of the thyroid insufficiency or for maintenance of normal thyroid anatomy; AND (b) the replacement therapy appears adequate based on objective physical or laboratory evidence.

(b) Class 2: 18% when (a) symptoms and signs of thyroid disease are present, or there is anatomic loss or alteration; AND (b) continuous thyroid hormone replacement therapy is required for correction of the confirmed thyroid insufficiency; BUT (c) the presence of a disease process in another body system or systems permits only partial replacement of the thyroid hormone.

(3) Parathyroid: Impairment of parathyroid function results in either hyperparathyroidism or hypoparathyroidism.

(a) In most cases of hyperparathyroidism, surgical treatment results in correction of the primary abnormality, although secondary symptoms and signs may persist, such as renal calculi or renal failure, which should be evaluated under the appropriate standards. If surgery fails, or cannot be done, the patient may require long-term therapy, in which case the permanent impairment may be classified under the following:

(A) Class 1: 5% when symptoms and signs are controlled with medical therapy.

(B) Class 2: 18% when there is persistent mild hypercalcemia, with mild nausea and polyuria.

(C) Class 3: 78% when there is severe hypercalcemia, with nausea and lethargy.

(b) Hypoparathyroidism is a chronic condition of variable severity that requires long-term medical therapy in most cases. The severity determines the degree of permanent impairment under the following:

(A) Class 1: 3% when symptoms and signs controlled with medical therapy.

(B) Class 2: 15% when intermittent hypercalcemia or hypocalcemia, and more frequent symptoms in spite of careful medical attention.

(4) Adrenal cortex: Impairment of the adrenal cortex results in either hypoadrenalism or hyperadrenocorticism.

(a) Hypoadrenalism is a lifelong condition that requires long-term replacement therapy with glucocorticoids or mineralocorticoids for proven hormonal deficiencies. Impairments are rated as follows:

(A) Class 1: 5% when symptoms and signs are controlled with medical therapy.

(B) Class 2: 33% when symptoms and signs are controlled inadequately, usually during the course of acute illnesses.

(C) Class 3: 78% when severe symptoms of adrenal crisis during major illness, usually due to severe glucocorticoid deficiency or sodium depletion.

(b) Hyperadrenocorticism due to the chronic side effects of nonphysiologic doses of glucocorticoids (iatrogenic Cushing's syndrome) is related to dosage and duration of treatment and includes osteoporosis, hypertension, diabetes mellitus and the effects involving catabolism that result in protein myopathy, striae, and easy bruising. Permanent impairment ranges from 5% to 78%, depending on the severity and chronicity of the disease process for which the steroids are given. On the other hand, with diseases of the pituitary-adrenal axis, impairment may be classified based on severity:

(A) Class 1: 5% when minimal, as with hyperadrenocorticism that is surgically correctable by removal of a pituitary or adrenal adenoma.

(B) Class 2: 33% when moderate, as with bilateral hyperplasia that is treated with medical therapy or adrenalectomy.

(C) Class 3: 78% when severe, as with aggressively metastasizing adrenal carcinoma.

(5) Adrenal medulla: Impairment of the adrenal medulla results from pheochromocytoma and is classified as follows:

(a) Class 1: 5% when the duration of hypertension has not led to cardiovascular disease and a benign tumor can be removed surgically.

(b) Class 2: 33% when there is inoperable malignant pheochromocytomas, if signs and symptoms of catecholamine excess can be controlled with blocking agents.

(c) Class 3: 78% when there is wide metastatic malignant pheochromocytomas, in which symptoms of catecholamine excess cannot be controlled.

(6) Pancreas: Impairment of the pancreas results in either diabetes mellitus or in hypoglycemia.

(a) Diabetes mellitus is rated under the following classes:

(A) Class 1: 3% when non-insulin dependent (Type II) diabetes mellitus can be controlled by diet; there may or may not be evidence of diabetic microangiopathy, as indicated by the presence of retinopathy or albuminuria greater than 30 mg/100 ml.

(B) Class 2: 8% when non-insulin dependent (Type II) diabetes mellitus; and satisfactory control of the plasma glucose requires both a restricted diet and hypoglycemic medication, either an oral agent or insulin. Evidence of microangiopathy, as indicated by retinopathy or by albuminuria of greater than 30 mg/100 ml, may or may not be present.

(C) Class 3: 18% when insulin dependent (Type I) diabetes mellitus is present with or without evidence of microangiopathy.

(D) Class 4: 33% when insulin dependent (Type I) diabetes mellitus, and hyperglycemic or hypoglycemic episodes occur frequently in spite of conscientious efforts of both the patient and the attending physician.

(b) Hypoglycemia is rated under the following classes:

(A) Class 1: 0% when surgical removal of an islet-cell adenoma results in complete remission of the symptoms and signs of hypoglycemia, and there are no post-operative sequelae.

(B) Class 2: 28% when signs and symptoms of hypoglycemia are present, with controlled diet and medications and with effects on the performance of activities of daily living.

(7) Gonadal hormones: A patient with anatomic loss or alteration of the gonads that results in a loss or alteration in the ability to produce and regulate the gonadal hormones receives a value of 3% impairment for unilateral loss or alteration and 5% for bilateral loss or alteration. Loss of the cervix/uterus or penile sexual function is valued under OAR 436-035-0420.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0440

Integument and Lacrimal System

(1) If the worker has developed an immunologic reaction to physical, chemical or biological agents, impairment will also be valued under OAR 436-035-0450.

(2) Impairments of the integumentary system may or may not show signs or symptoms of skin disorder upon examination but are rated under the following classes:

(a) Class 1: 3% when with treatment, there is no limitation, or minimal limitation, in the performance of work related activities, although exposure to certain physical or chemical agents might increase limitation temporarily.

(b) Class 2: 15% when intermittent treatment is required and there is mild limitation in the performance of some work related activities.

(c) Class 3: 38% when continuous treatment is required and there is moderate limitation in the performance of many work related activities.

(d) Class 4: 68% when continuous treatment is required, which may include periodic confinement at home or other domicile; and there is moderate to severe limitation in the performance of many work related activities.

(e) Class 5: 90% when continuous treatment is required, which necessitates confinement at home or other domicile; and there is severe limitation in the performance of work related activities.

(3) If either too little or too much tearing results in a worker's being restricted from regular work, and the condition is not an immunological reaction, a value is assigned as follows:

(a) Class 1: 3% when the reaction is a nuisance but does not prevent most regular work-related activities; or

(b) Class 2: 8% when the reaction prevents some regular work-related activities; or

(c) Class 3: 13% when the reaction prevents most regular work-related activities.

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Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726
Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89;
WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91;
WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03;
WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0450

Immune System

(1) When exposure to physical, chemical, or biological agents has resulted in the development of an immunological response, impairment of the immune system is valued as follows:

(a) Class 1: 3% when the reaction is a nuisance but does not prevent most regular work related activities.

(b) Class 2: 8% when the reaction prevents some regular work related activities.

(c) Class 3: 13% when the reaction prevents most regular work related activities.

(2) An allergy is considered to be an immunologic state and is ratable under this rule.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726
Hist.: WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92;
WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

436-035-0500

Rating Standard for Individual Claims

(1) This rule applies to the rating of permanent disability under ORS chapter 656 in individual cases under ORS 656.726(4)(f) which requires the director to determine the rating standard in cases where the director finds that the worker's impairment is not addressed in the disability standards.

(2) Rating standards determined under ORS 656.726(4)(f) will be written into the director's order on reconsideration and will apply solely to the rating of that claim.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.005, 656.214, 656.268, 656.726 & 2007 OL Ch. 270 § 7
Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & ef. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & ef. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. ef. 6-29-93; WCD 5-1993(Temp), Case #164-3064, f. & cert. ef. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #164-3064, f. & cert. ef. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. ef. 5-26-94; WCD 6-1994(Temp), f. & cert. ef. 7-15-94; WCD 8-1994(Temp), f. & cert. ef. 8-31-94; WCD 11-1994(Temp), f. & cert. ef. 11-10-94; WCD 1-1995(Temp), f. & cert. ef. 1-26-95; WCD 2-1995(Temp), f. & cert. ef. 3-2-95; WCD 3-1995(Temp), f. & cert. ef. 4-13-95; WCD 4-1995(Temp), f. & cert. ef. 5-31-95; WCD 5-1995(Temp), f. & cert. ef. 7-11-95; WCD 14-1995(Temp), f. & cert. ef. 10-5-95; WCD 16-1995(Temp), f. & cert. ef. 11-2-95; WCD 19-1995(Temp), f. & cert. ef. 12-7-95; WCD 4-1996(Temp), f. & cert. ef. 2-1-96; WCD 11-1996(Temp), f. & cert. ef. 3-20-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996, f. 8-6-96, cert. ef. 8-7-96; WCD 22-1996(Temp), f. & cert. ef. 10-31-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-1997(Temp), f. & cert. ef. 1-15-97; WCD 3-1997(Temp), f. 3-12-97, cert. ef. 3-13-97; WCD 6-1997(Temp), f. & cert. ef. 5-14-97; WCD 12-1997(Temp), f. & cert. ef. 9-9-97; WCD 4-1998(Temp), f. & cert. ef. 3-31-98 thru 9-26-98; WCD 7-1998(Temp), f. 7-13-98, cert. ef. 7-15-98 thru 1-11-99; WCD 9-1998(Temp), f. & cert. ef. 10-15-98 thru 4-12-99; WCD 1-1999(Temp), f. 1-12-99, cert. ef. 1-15-99 thru 7-13-99; WCD 5-1999(Temp), f. & cert. ef. 4-15-99 thru 10-12-99; WCD 10-1999(Temp), f. & cert. ef. 7-15-99 thru 1-10-2000; WCD 12-1999(Temp), f. 10-14-99, cert. ef. 10-15-99 thru 4-12-00; WCD 1-2000(Temp), f. 1-12-00, cert. ef. 1-14-00 thru 7-12-00; WCD 5-2000(Temp), f. 4-13-00, cert. ef. 4-14-00 thru 10-10-00; WCD 7-2000(Temp), f. 7-14-00, cert. ef. 7-14-00 thru 1-9-01; WCD 8-2000(Temp), f. & cert. ef. 10-13-00 thru 4-10-01; WCD 1-2001(Temp), f. & cert. ef. 1-12-01 thru 7-10-01; WCD 3-2001(Temp), f. & cert. ef. 4-13-01 thru 10-9-01; WCD 6-2001(Temp), f. & cert. ef. 7-13-01 thru 1-8-02; WCD 9-2001(Temp), f. & cert. ef. 10-12-01 thru 4-9-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 5-2002(Temp), f. 4-12-02, cert. ef. 4-15-02 thru 10-11-02; WCD 8-2002(Temp), f. 7-12-02 cert. ef. 7-15-02 thru 1-10-03; WCD 11-2002(Temp), f. 10-11-02, cert. ef. 10-15-02 thru 4-12-03; WCD 1-2003(Temp), f. & cert. ef. 1-15-03 thru 7-13-03; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 4-2003(Temp), f. 4-14-03, cert. ef. 4-15-03 thru 10-11-03; WCD 7-2003(Temp), f. & cert. ef. 7-15-03 thru 1-10-04; WCD 1-2004(Temp), f. & cert. ef. 1-21-04 thru 7-18-04; WCD 5-2004(Temp), f. & cert. ef. 4-19-04 thru 10-15-04; WCD 7-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 3-2005(Temp), f. & cert. ef. 5-13-05 thru 11-8-05; Administrative correction 11-18-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 6-2006(Temp), f. & cert. ef. 7-17-06 thru 1-12-07; Administrative correction 1-16-07; WCD 5-2007(Temp), f. & cert. ef. 6-27-07 thru 12-23-07; WCD 6-2007(Temp), f. & cert. ef. 10-29-07 thru 4-25-08; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 13-2007(Temp), f. & cert. ef. 12-28-07 thru 6-24-08; Administrative correction 7-22-08; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13

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Rule Caption: Workers' compensation rules governing annual reporting requirements for Oregon self-insured employers.

Adm. Order No.: WCD 9-2012

Filed with Sec. of State: 12-7-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-12

Rules Amended: 436-050-0175

Subject: Revised OAR chapter 436, division 050, "Employer/Insurer Coverage Responsibility":

Increases self-insured employers' reporting threshold for individual claims to \$10,000, effective Jan. 1, 2013, to remain consistent with reporting requirements used by the National Council on Compensation Insurance. Before Jan. 1, 2013, reports by self-insured employers were required to aggregate claims with incurred costs of \$5,000 or less, providing aggregate totals for total paid, outstanding reserves, total incurred losses, and number of claims, while claims exceeding \$5,000 were detailed individually.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-050-0175

Annual Reporting Requirements

(1) To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a self-insured employer must file annually with the director an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. A self-insured employer that is not a municipality must make the filing within 120 days of the fiscal year end and a self-insured employer that is a municipality must make the filing within 180 days of the fiscal year end. All financial statements and annual financial reports filed, as required by this section, will be retained by the director for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true and accurate and presents the employer's financial condition and results of operations as of the date of the statement.

(2) Notwithstanding section (1) of this rule, the director may require an employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the employer's financial status.

(3) The self-insured employer must report claim loss data described in Bulletin 209 by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations, and determining deposits.

(a) The report must be certified to be true and accurate by an authorized representative of the self-insured employer, and must include:

(A) A report of losses for each year in the experience rating period. The report must cover all claims incurred during the reporting period and must be valued as of January 1 of the current year. Reports must include:

- (i) Contract medical expenses;
- (ii) Total maximum medical reimbursement amount;
- (iii) Number of claims for which the maximum medical reimbursement amount is claimed;
- (iv) For claims with incurred losses of \$10,000 or less, total paid, outstanding reserves, and total incurred losses;
- (v) Number of claims with incurred losses of \$10,000 or less; and
- (vi) For each claim with incurred losses exceeding \$10,000, worker's name, date of injury, claim number, total paid, outstanding reserves, and total incurred losses. Claims must be listed in alphabetical order.

(B) A report of losses covering the self-insured period prior to the experience rating period. The report must list all open claims and must be valued as of January 1 of the current year. The report must include:

- (i) The worker's name, listed in alphabetical order;
- (ii) Date of injury;
- (iii) Claim number;
- (iv) Total paid;
- (v) Outstanding reserves; and
- (vi) Total incurred losses.

(C) Identification of claims involving catastrophes, Workers with Disabilities Program, permanent total disability or fatal benefits, third party recoveries, and claims where the total incurred has or is expected to exceed the self-insured retention of the self-insured employer's excess insurance policy.

(D) The total annual paid losses for the previous four fiscal years valued as of January 1 of the current year.

(b) Bulletin 209 provides guidelines for self-insured employers and their authorized representatives to use in submitting the required data.

(c) Each self-insured city or county that is exempted from the security deposit requirements under ORS 656.407(3) and OAR 436-050-0185 must, in addition to the above, provide the procedures, methods, and criteria used in the process of determining the amount of their actuarially

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sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported.

(4) Notwithstanding section (3) of this rule, the director may require a self-insured employer to submit claim loss data more frequently if the nature of the self-insured employer's business has changed since the last annual loss report for reasons including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, or incurred claims costs.

(5) If a self-insured employer fails to comply with the requirements of sections (1), (2), (3), or (4) of this rule, the director may impose any or all of the following sanctions:

(a) Require the self-insured employer to increase its deposit and premium assessments by 25%;

(b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;

(c) Assess civil penalties of up to \$250 per day that the information is not provided beyond the deadline; or

(d) Revoke the employer's certification as self-insured.

(6) To ensure each self-insured employer's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the director will perform routine test audits. If a self-insured employer's total claims values are found to be 10 percent or more below the director's determined values, the current experience rating will be recalculated using the director's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth.: ORS 656.407, 656.430, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.407 & 656.430

Hist.: WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 6-2012, f. 10-4-12, cert. ef. 1-1-13; WCD 9-2012, f. 12-7-12, cert. ef. 1-1-13

Rule Caption: Workers' compensation rules governing Workers' Benefit Fund assessments.

Adm. Order No.: WCD 10-2012

Filed with Sec. of State: 12-7-2012

Certified to be Effective: 4-1-13

Notice Publication Date: 11-1-12

Rules Amended: 436-070-0002, 436-070-0003, 436-070-0010

Subject: Revised OAR chapter 436, division 070, "Workers' Benefit Fund Assessment":

Establishes the hourly assessment rate that subject employers and any employers electing to provide workers' compensation coverage for their employees must pay to the Department of Consumer and Business Services for the Workers' Benefit Fund. Effective April 1, 2013, the rate will increase from 2.8 cents to 3.3 cents per hour worked.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-070-0002

Purpose

The purpose of these rules is to:

(1) Prescribe the rate of the Workers' Benefit Fund assessment under ORS 656.506;

(2) Prescribe the manner and intervals in which the assessment rate is to be calculated;

(3) Prescribe the manner and intervals employers are to withhold, file, and remit assessments; and

(4) Prescribe the conditions affecting the adjustment of the assessments as authorized by ORS 656.506.

Stat Auth: ORS 656.506 & 656.726(4)

Stats. Impltd: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0108, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 10-2012, f. 12-7-12, cert. ef. 4-1-13

436-070-0003

Applicability of Rules

(1) These rules are effective April 1, 2013.

(2) These rules govern the Workers' Benefit Fund assessment under ORS 656.506.

(3) These rules apply to all subject employers as defined in ORS 656.005 and any otherwise non-subject employer who elects coverage pursuant to ORS 656.039.

(4) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat Auth: ORS 656.506 & 656.726(4)

Stats. Impltd: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0103, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 10-2012, f. 12-7-12, cert. ef. 4-1-13

436-070-0010

Assessment Rate: Method and Manner of Determining

(1) All subject employers and any employer electing to provide workers' compensation coverage for its employees must pay an assessment rate of 3.3 cents per hour to the Department of Consumer and Business Services, under this rule division and ORS 656.506.

(2) Factors considered in developing the rate include, but are not limited to:

(a) The estimated annual fund expenditures and revenues;

(b) The fund balance requirements;

(c) The estimated annual hours worked per employee;

(d) The estimated number of employees covered by workers' compensation insurance; and

(e) Other records relating to fund expenditures and revenues.

Stat Auth: ORS 656.506 & 656.726(4)

Stats. Impltd: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0120, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 10-2012, f. 12-7-12, cert. ef. 4-1-13

Department of Energy

Chapter 330

Rule Caption: Clarify what constitutes "use" of the tax credit rendering the BETC nontransferable.

Adm. Order No.: DOE 12-2012(Temp)

Filed with Sec. of State: 11-16-2012

Certified to be Effective: 11-16-12 thru 5-14-13

Notice Publication Date:

Rules Amended: 330-090-0140, 330-090-0160

Subject: These temporary rules clarify in ORS 469B.167(3) what constitutes "use" of the tax credit rendering the tax credit nontransferable in the Business Energy Tax Credit (BETC) program. The Oregon Department of Energy is adopting a temporary rule that defines "use" as when the tax credit offsets any portion of the project owner's tax liability.

Applicants need this term clarified in order to make decisions about the transferability of their tax credit prior to the BETC sunset at the end of this year. The Oregon Department of Energy believes a temporary rule is justified due to the approaching first BETC sunset (December 31, 2012) and that applicants' recently requested the department to clarify this term. Without this temporary rule, the transferability of tax credits will be uncertain.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-090-0140

Pass-through Option Facilities

(1) A pass-through Partner may purchase a BETC certificate from an applicant with a facility that is otherwise eligible for the tax credit in return for a cash lump-sum pass through payment equivalent to the net present value of the transferable tax credit. For the purposes of these rules, the net present value of the credit for purposes of the pass through payment is calculated based on the formulas below:

(a) For original preliminary certifications issued on or after January 1, 2010:

(A) For a five year tax credit the net present value is determined by taking the total tax credit amount divided by 1.3579. Tax Credit/1.3579

(B) For a one year tax credit the net present value is determined by taking the tax credit amount divided by 1.0309. Tax Credit/1.0309

(b) For original preliminary certifications issued on or before December 31, 2009:

(A) 50 percent BETC more than \$20,000 in eligible costs — 33.5 percent pass-through rate.

(B) 50 percent BETC \$20,000 or less in eligible costs — 43.5 percent pass-through rate.

(C) 35 percent BETC more than \$20,000 in eligible costs — 25.5 percent pass-through rate.

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(D) 35 percent BETC \$20,000 or less in eligible costs — 30.5 percent pass-through rate.

(E) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits — 87 percent of tax credit amount.

(c) If an applicant elects to use the pass through option, the net present value of the credit (the pass through payment) for a facility is determined by the date the department issues the initial preliminary certification for the project.

(2) An Investor-Owned Utility may choose to become a utility Pass-through Partner under the provisions of this section or participate as a Pass-through Partner under other Provisions of these rules that would apply to any other Pass-through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise the application has been denied.

(D) The application for preliminary certification of the pass-through must include a detailed work plan. The applicant and ODOE must mutually agree upon the work plan and program. The detailed work plan must include:

(i) A copy or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered,

(ii) A not to exceed estimate of the total eligible costs that will be incurred for that calendar year with an estimate of the number of rental dwellings that will be affected, and

(iii) An agreement that upon submitting the complete final certification application the applicant will provide a detailed description of each facility owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each facility's owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each facility including all of the information required in 110-090-0130(11) of these rules.

(A) An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, and the total facility costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies, not to exceed the total eligible costs multiplied by the existing net present value of the tax credit for the pass-through payment as defined in OAR 330-090-0140(1).

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i). A sample selected by the Department of individual weatherization location audit reports will be submitted for at least 15 percent of the facility sites.

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s),

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If costs associated with an individual rental dwelling are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, of costs paid based on canceled

checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by these rules.

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(B) Within 60 days after a complete final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0133(5). The Director will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv);

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment must be a percentage of the cost-effective portion of the energy conservation measures as approved by the Oregon Public Utility Commission, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; including the net present value of the tax credit for the pass through payment as defined in OAR 330-090-0170(1) for the EMCs at that specific site address the IOU may claim; or

(III) Such other payments approved by the Director to pay for ECMs in rental dwellings. This includes a payment for the net present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

(3) If an applicant uses any portion of the tax credit it may not be transferred, in accordance with ORS 469B.167(3). For the purposes of transferring the tax credit, a tax credit is considered used when any portion of the tax credit offsets any portion of the project owner's tax liability.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 1-2010, f. & cert. ef. 1-8-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 12-2012(Temp), f. & cert. ef. 11-16-12 thru 5-14-13

330-090-0160

Sunset of the Business Energy Tax Credit Program

(1) ORS 315.357 contains the sunset of the Business Energy Tax Credit Program. Applicants must meet the deadlines that apply to their project:

(a) Applicants with a preliminary certification that are unable to demonstrate evidence of beginning construction before April 15, 2011 must receive final certification before January 1, 2013. The Director does not guarantee that a complete final certification application received on or after November 1, 2012 will be processed before January 1, 2013.

(b) Applicants with a preliminary certification that are able to demonstrate evidence of beginning construction before April 15, 2011 must file a complete application for final certification on or before the earlier of the expiration of the preliminary certificate or July 1, 2014.

(2) Applicants with a preliminary certification may apply to the department to demonstrate that construction of the facility began before April 15, 2011.

(a) An application must include at least these items:

(A) A brief update on the progress of the facility.

(B) A construction schedule showing the anticipated completion date.

(C) A statement that the facility will be completed as approved in the preliminary certification.

(D) Evidence of beginning construction, including but not limited to:

(i) A copy of an approved building, grading or other permit issued for the facility, dated prior to April 15, 2011.

(ii) Evidence of site-specific construction activity, for the period on or after the later of preliminary certification or building permit approval and before April 15, 2011.

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(iii) Evidence of facility-specific construction activity, for the period on or after preliminary certification and before April 15, 2011.

(b) Evidence of site-specific construction activity may include, but is not limited to:

(A) Paid invoices for completed construction activity.

(B) Timesheets for construction activities linked to the facility site.

(C) Paid rental documentation for construction equipment.

(D) A written report from the project engineer or installer signed under penalties of perjury describing the work that had commenced before April 15, 2011.

(c) Evidence of facility-specific construction activity may include, but is not limited to:

(A) Paid invoices for facility-specific assembly or manufacturing activity.

(B) Timesheets for assembly or manufacturing activities linked to the facility.

(C) A written report from the project engineer or manufacturer signed under penalties of perjury describing the work that had commenced before April 15, 2011.

(d) Applications must be received by the department before October 1, 2012.

(e) The Department will review the provided information and respond to the application within 60 days. As part of its determination, the department may request additional information from the applicant and may perform inspections.

(A) The department will issue a written acceptance letter to applicants who are able to demonstrate evidence of beginning construction. The acceptance letter will state the date by which the applicant must receive final certification to be allowed a credit under ORS 315.354.

(B) The department will issue a letter to applicants who have not provided sufficient evidence of beginning of construction providing reasons for the denial.

(3) Transfer of tax credits issued to an applicant pursuant to OAR 330-90-0133(1)(a)(D). In this section, a transferee means an individual or business that pays the pass-through amount to an applicant that has been issued the tax credit certificate pursuant to 330-0-90-0133(1)(a)(D), and receives a re-issued tax credit certificate in place of the original applicant.

(a) An applicant who has been issued a tax credit certificate pursuant to OAR 330-90-0133(1)(a)(D) may transfer the tax credit to an eligible transferee through the department process provided by these rules, provided the transfer occurs within 12 months of the issuance of the original tax credit certificate.

(b) If an applicant uses any portion of the tax credit it may not be transferred, in accordance with ORS 469B.167(3). For the purposes of transferring the tax credit, a tax credit is considered used when any portion of the tax credit offsets any portion of the project owner's tax liability.

(c) The department will not provide assistance in locating a transferee.

(d) A tax credit certificate may only be re-issued once, upon a transfer from the applicant to the transferee.

(e) A tax credit certificate may be re-issued in the name of the individual or entity transferee only.

(f) The transferee may not claim the credit for a tax year prior to the year in which the transferee pays for the credit.

(g) The applicant holding the tax credit certificate must submit a complete tax credit transfer application and the required fee to the department. The tax credit transfer application must:

(A) Include an affidavit from the applicant holding the tax credit certificate affirming that no portion of the tax credit has been claimed and that the applicant has received a cash payment equal to the present value of the credit from the transferee, as calculated under these rules.

(B) Provide power of attorney to authorize the department to confirm with the Oregon Department of Revenue that no portion of the tax credit has been claimed.

(C) Include the original tax credit certificate issued to the applicant.

(h) Upon compliance with this rule and any other applicable requirements, the department will re-issue the tax credit certificate to the transferee.

Stat. Auth.: ORS 469.040 & 469.165, 469.185-469.225, OL 2011, Ch. 730(HB 3672)

Stats. Implemented: OL 2011, Ch. 730(HB 3672)

Hist.: DOE 10-2011, f. & cert. ef. 11-30-11; DOE 8-2012, f. & cert. ef. 7-10-12; DOE 12-2012(Temp), f. & cert. ef. 11-16-12 thru 5-14-13

Department of Environmental Quality Chapter 340

Rule Caption: Oakridge-Westfir PM2.5 Attainment Plan.

Adm. Order No.: DEQ 7-2012

Filed with Sec. of State: 12-10-2012

Certified to be Effective: 12-10-12

Notice Publication Date: 9-1-12

Rules Amended: 340-200-0040

Subject: The Oregon Environmental Quality Commission adopted an attainment plan that will bring the Oakridge-Westfir non-attainment area into compliance with the PM2.5 National Ambient Air Quality Standard. The attainment plan identifies a number of emission control strategies that will be implemented through city ordinances, state rules and non-regulatory efforts including education and incentives. A mandatory residential wood combustion curtailment program, implemented by LRAPA and the City of Oakridge, is a primary strategy to reduce PM2.5 emissions. If Oakridge-Westfir does not reach attainment by the federal Clean Air Act deadline of December 2014, an additional set of contingency strategies will become effective. These contingency measures include: a stricter opacity limit, revising the current 40% opacity limit to a more restrictive 20% limit, as has been done in some other northwest communities; a stricter green-yellow-red advisory program, with more yellow and red advisory days each winter; and further restrictions on the city woodstove curtailment exemptions (for sole source, economic hardship).

DEQ will submit these amendments and attainment plan to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan under OAR 340-200-0040 as a requirement of the Clean Air Act.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on December 6, 2012.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020, 468A.035 & 468A.070

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. & cert. ef. 2-3-72, ef. 2-15-72; DEQ 54, f. & cert. ef. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & cert. ef. 6-25-79; DEQ 21-1979, f. & cert. ef. 7-2-79; DEQ 22-1980, f. & cert. ef. 9-26-80; DEQ 11-1981, f. & cert. ef. 3-26-81; DEQ 14-1982, f. & cert. ef. 7-21-82; DEQ 21-1982, f. & cert. ef. 10-27-82; DEQ 1-1983, f. & cert. ef. 1-21-83; DEQ 6-1983, f. & cert. ef. 4-18-83; DEQ 18-1984, f. & cert. ef. 10-16-84; DEQ 25-1984, f. & cert. ef. 11-27-84; DEQ 3-1985, f. & cert. ef. 2-1-85; DEQ 12-1985, f. & cert. ef. 9-30-85; DEQ 5-1986, f. & cert. ef. 2-21-86; DEQ 10-1986, f. & cert. ef. 5-9-86; DEQ 20-1986, f. & cert. ef. 11-7-86; DEQ 21-1986, f. & cert. ef. 11-7-86; DEQ 4-1987, f. & cert. ef. 3-2-87; DEQ 5-1987, f. & cert. ef. 3-2-87; DEQ 8-1987, f. & cert. ef. 4-23-87; DEQ 21-1987, f. & cert. ef. 12-16-87; DEQ 31-1988, f. & cert. ef. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. & cert. ef. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ

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15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. & cert. ef. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. & cert. ef. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000, f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. & cert. ef. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. & cert. ef. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. & cert. ef. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. & cert. ef. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. & cert. ef. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert. ef. 12-10-12

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

Adm. Order No.: DEQ 8-2012

Filed with Sec. of State: 12-11-2012

Certified to be Effective: 12-11-12

Notice Publication Date: 8-1-12

Rules Adopted: 340-253-0000, 340-253-0040, 340-253-0060, 340-253-0100, 340-253-0200, 340-253-0250, 340-253-0310, 340-253-0320, 340-253-0330, 340-253-0340, 340-253-0400, 340-253-0450, 340-253-0500, 340-253-0600, 340-253-0630, 340-253-0650, 340-253-1000, 340-253-1010, 340-253-1020, 340-253-1030, 340-253-3000, 340-253-3010, 340-253-3020, 340-253-3030, 340-253-3040, 340-253-3050

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

The Oregon Department of Environmental Quality recommended that HB 2186 be implemented in two phases. The first phase contains the registration, recordkeeping and reporting requirements that serve as the administrative basis of the program. On December 7, 2012, the Oregon Environmental Quality Commission adopted this phase of the program. This first phase focuses on the development of recordkeeping and reporting protocols and systems to keep track of information about Oregon's transportation fuels. The information will help inform decision makers about the feasibility of moving ahead with the next phase of the program.

The goal of the second phase would be to reduce greenhouse gas emissions from Oregon's transportation fuels. Rules for this phase were initially proposed to be adopted and deferred for future implementation; however, DEQ decided to not adopt this part of the rules at this time. If the legislature removes the December 31, 2015 sunset date in HB 2186, then DEQ may propose additional rules for the second phase of the program.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-253-0000

Overview

(1) Context. The Oregon Legislature has found that climate change poses a serious threat to the economic well-being, public health, natural

resources and environment of Oregon, among other findings. Section 1, chapter 907, Oregon Laws 2007. The Oregon Clean Fuels Program will reduce Oregon's contribution to the global levels of greenhouse gas emissions and the impacts of those emissions in Oregon, in concert with other greenhouse gas reduction policies and actions by local governments, other states and the federal government.

(2) Purpose. The purpose of the Oregon Clean Fuels Program is to reduce the average amount of lifecycle greenhouse gas emissions per unit of fuel energy used in Oregon by a minimum of 10 percent below 2010 levels over a 10-year period.

(3) Authority. The 2009 Oregon Legislature adopted House Bill 2186, which was enacted as chapter 754 of Oregon Laws 2009, and authorizes the Environmental Quality Commission to adopt low carbon fuel standards for gasoline, diesel fuel and fuels used as substitutes for gasoline or diesel fuel. Sections 6 to 9 of chapter 754, Oregon Laws 2009 is printed as a note following ORS 468A.270 (2011 Edition). OAR chapter 340 division 253 implements section 6.

(4) Flexible Implementation Approach. This division requires regulated parties, and those parties that choose voluntarily to opt-in to the program, to register, keep records, report the carbon intensity of the fuel they produce or import for use in Oregon, and calculate surpluses and shortfalls against the baseline carbon intensity values. These values are based on the mix of regulated and opt-in fuels that were supplied in Oregon in 2010. While reporting of net carbon balance is required, regulated and opt-in parties are not required to balance surpluses and shortfalls at this time. This flexible implementation approach is designed to put in place only the administrative procedures necessary to implement the program. This approach is intended to minimize the initial costs to regulated parties by not requiring compliance with declining carbon intensity standards. DEQ will utilize the reports and other information to assess, at a minimum, the following factors to make a recommendation to the EQC about the next phase of the program:

(a) The cost and administrative burden of compliance for regulated and opt-in parties;

(b) The benefits of the program to Oregon's economy and environment;

(c) The current and projected availability of lower carbon fuels,

(d) The methodologies to provide exemptions and deferrals necessary to mitigate the cost of complying with the program, in accordance with Section 6(2)(d) of chapter 754, Oregon Laws 2009;

(e) The progress and adoption rates of cleaner fuels and vehicle technologies;

(f) The appropriate methods, based on the latest science, to establish baseline carbon intensity values and declining carbon intensity standards, including methodologies to incorporate land use change and other indirect effects;

(g) The latest information on the policies and legal issues regarding low carbon fuel standards;

(h) The status of federal and other state programs that address the carbon content of transportation fuel;

(i) The costs and administrative capacity of DEQ to implement the program; and

(j) The likely impact on all of the above elements, if declining average carbon intensity standards are implemented in the future.

(5) Construction. This division uses the following construction:

(a) OAR 340-253-#### followed by a bolded title is the number and title of the rule where:

(A) OAR is the acronym for Oregon Administrative Rules;

(B) 340 is the chapter number;

(C) 253 is the division number; and

(D) #### is the unique rule number.

(b) The subunits of a rule are within parenthesis in the following order:

(A) Section. The section is a Hindu-Arabic numeral expressed in sequence as (1), (2), (3) and so forth. Each section has a bold title;

(B) Subsection. The subsection is a lowercase English alphabet character expressed in sequence as (a), (b), (c) and so forth;

(C) Paragraph. The paragraph is an uppercase English alphabet character expressed in sequence as (A), (B), (C) and so forth; and

(D) Subparagraph. The subparagraph is a lowercase Roman numeral expressed in sequence as (i), (ii), (iii) and so forth.

(c) A reference prefaced with the word section, subsection, paragraph or subparagraph is a reference to a subunit within the same rule; and

(d) A reference prefaced with OAR 340-253 is a reference to another rule under the Oregon standards.

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(6) LRAPA. Notwithstanding 340-200-0010(3), the DEQ administers this division in all areas of the State of Oregon.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0040

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Actual PADD 5" means Petroleum Administration for Defense District 5, which includes Oregon, Washington, Arizona, Nevada, Hawaii, California and Alaska.

(2) "Baseline carbon intensity value" is 90.38 gCO₂e per MJ for gasoline and gasoline substitutes and 90.00 gCO₂e per MJ for diesel fuel and diesel substitutes. These values are based on the mix of regulated and opt-in fuels supplied for use as a transportation fuel in Oregon in 2010.

(3) "Biodiesel" has the same meaning as defined under OAR 603-027-0410.

(4) "Biogas" means natural gas that meets the purity requirements under OAR 860-023-0025 and is produced from the breakdown of organic material in the absence of oxygen. Biogas production processes include, but are not limited to, anaerobic digestion, anaerobic decomposition and thermo-chemical decomposition:

(a) Applied to biodegradable biomass materials, such as manure, sewage, municipal solid waste, and waste from energy crops; and

(b) Used to produce landfill gas and digester gas.

(5) "Biogas compressed natural gas" means compressed natural gas consisting solely of compressed biogas.

(6) "Biogas liquefied natural gas" means liquefied natural gas consisting solely of liquefied biogas.

(7) "Biomass" has the same meaning as defined under OAR 603-027-0410.

(8) "Biomass-Based diesel" has the same meaning as defined under OAR 603-027-0410.

(9) "Blendstock" means a component used alone or blended with one or more other components to produce a finished fuel used in a motor vehicle.

(10) "Carbon intensity" means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO₂e per MJ).

(11) "Compressed natural gas" means either biogas or fossil natural gas that meets the standards listed under OAR 860-023-0025 compressed to a pressure greater than ambient pressure.

(12) "Diesel fuel" has the same meaning as defined under OAR 603-027-0410.

(13) "Diesel substitute" means any fuel, other than diesel fuel, that may be used in light-duty or heavy-duty vehicles, and off-road vehicles that typically use diesel as a fuel. Diesel substitutes include but are not limited to liquefied natural gas used in a heavy duty motor vehicle and biodiesel used in a heavy duty motor vehicle.

(14) "Electricity bundled services supplier" means any person or entity that provides charging infrastructure and provides access to vehicles charging under contract with a charging service recipient or charging equipment owner.

(15) "Electric utility" has the same meaning as defined in ORS 757.600.

(16) "Ethanol," or "Denatured fuel ethanol" has the same meaning as defined under OAR 603-027-0410.

(17) "Feedstock" means the material a fuel is made from.

(18) "Finished fuel" means a transportation fuel used directly in a motor vehicle without additional chemical or physical processing.

(19) "Finished hydrogen fuel" means a finished fuel that consists of:

(a) Hydrogen; or

(b) A blend of hydrogen and another fuel.

(20) "Fossil compressed natural gas" means compressed natural gas derived solely from petroleum or fossil sources such as oil fields and coal beds.

(21) "Fossil liquefied natural gas" means liquefied natural gas derived solely from petroleum or fossil sources such as oil fields and coal beds.

(22) "Fuel type" means any unique fuel feedstock and production process combination.

(23) "Gasoline" has the same meaning as defined under OAR 603-027-0410.

(24) "Gasoline substitute" means any fuel, other than gasoline, that may be used in light-duty vehicles that typically use gasoline as a fuel. Gasoline substitutes include but are not limited to electricity used in a light-duty motor vehicle and natural gas used in a light-duty motor vehicle.

(25) "Heavy duty motor vehicle" has the same meaning as defined under OAR 340-256-0010.

(26) "Import" means to bring a product from outside Oregon into Oregon.

(27) "Importer" means the person who owns a product imported from outside Oregon into Oregon:

(a) With respect to any imported liquid product, it means the person who owns the fuel in the stationary storage tank into which the product was first transferred after it was imported into Oregon; or

(b) With respect to any biogas, it means the person who owns the imported product upon receipt at a pipeline in Oregon through which the biogas is delivered in Oregon.

(28) "Large Oregon importer" means any person who imports more than 250,000 gallons of fuel in a given calendar year into Oregon.

(29) "Light-duty motor vehicle" has the same meaning as defined under OAR 340-256-0010.

(30) "Lifecycle greenhouse gas emissions" means the:

(a) Aggregate quantity of greenhouse gas emissions including direct and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels;

(b) Full fuel lifecycle including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the finished fuel by the consumer; and

(c) Mass values for all greenhouse gases as adjusted to account for their relative global warming potential.

(31) "Liquefied natural gas" means biogas or fossil natural gas converted to liquid form.

(32) "Liquefied petroleum gas" or "propane" has the same meaning as defined under OAR 603-027-0395.

(33) "Motor vehicles" has the same meaning as defined under OAR 603-027-0410.

(34) "Natural gas" means a mixture of gaseous hydrocarbons and other compounds from either fossil or biogas sources, with at least 80 percent methane by volume, and typically sold or distributed by utilities such as any utility company regulated by the Oregon Public Utility Commission.

(35) "Opt-in party" means a person who is not a regulated party and who elects to register with DEQ under OAR 340-253-0100(4).

(36) "Oregon producer" means:

(a) With respect to any liquid blendstock or finished fuel, the person who makes the liquid blendstock or finished fuel at the Oregon production facility; or

(b) With respect to any biogas produced in Oregon, the person who refines the gas to pipeline quality.

(37) "Oregon production facility" means a facility located in Oregon that:

(a) Produces any liquid blendstock or finished fuel other than liquefied natural gas; or

(b) Converts, compresses, liquefies, refines, treats or otherwise processes natural gas into compressed natural gas or liquefied natural gas that is ready for use as a transportation fuel in a motor vehicle without further physical or chemical processing.

(38) "OR-GREET" means the Greenhouse gases, Regulated Emissions, and Energy in Transportation (GREET) Argonne National Laboratory model modified and maintained for Oregon. Copies of OR-GREET are available from DEQ upon request.

(39) "Private access fueling facility" means an Oregon fueling facility that restricts access by use of a card or key-activated fuel dispensing device to dispensing fuel to nonretail customers.

(40) "Product transfer document" means an invoice, bill of lading, purchase contract, or any other proof of fuel ownership transfer.

(41) "Public access fueling facility" means an Oregon fueling facility that is not a private access fueling facility.

(42) "Regulated party" means a person identified as a regulated party under OAR 340-253-0310 through 340-253-0340. Regulated parties must comply with the requirements under OAR 340-253-0100.

(43) "Shortfall(s)" means a state in which the carbon intensity of a fuel is higher than the baseline carbon intensity value for gasoline and gasoline substitutes or diesel fuel and diesel substitutes. Shortfalls are expressed in units of metric tons of carbon dioxide equivalent (CO₂e) and are calculated under OAR 340-253-1020.

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(44) "Small Oregon importer" means any person who imports 250,000 gallons or less of fuel in a given calendar year into Oregon.

(45) "Statutory PADD 5" means a portion of Petroleum Administration for Defense District 5, which includes Oregon, Washington, Arizona and Nevada.

(46) "Surplus(es)" means a state in which the carbon intensity of a fuel is lower than the baseline carbon intensity value for gasoline or diesel fuel and their substitutes. Surpluses are expressed in units of metric tons of carbon dioxide equivalent (CO₂e) and are calculated under OAR 340-253-1020.

(47) "Transportation fuel" means any fuel used or intended for use in motor vehicles as defined under OAR 603-027-0410.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0060

Acronyms

The following acronyms apply to this division:

(1) "ASTM" means ASTM International (formerly American Society for Testing and Materials).

(2) "BTU" means British thermal unit.

(3) "DEQ" means Oregon Department of Environmental Quality.

(4) "EQC" means Oregon Environmental Quality Commission.

(5) "gCO₂e" means grams of carbon dioxide equivalent.

(6) "gge" means gasoline gallon equivalents.

(7) "MJ" means megajoule.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0100

Oregon Clean Fuels Program

(1) Applicability.

(a) All regulated parties under section (3) that import or produce, sell, supply or offer for sale in Oregon any regulated fuel, as defined under OAR 340-253-0200, are subject to this rule.

(b) Any person may become an opt-in party by registering with DEQ under section (4) of this rule. All opt-in parties under section (3) that import or produce, sell, supply or offer for sale in Oregon any opt-in fuel, as defined under OAR 340-253-0200, are subject to this rule.

(2) Requirements. Beginning January 1, 2013:

(a) Regulated and opt-in parties, except for small Oregon importers, must register under section (4) of this rule, keep records under section (5) of this rule, and submit reports under sections (6) and (7) of this rule; and

(b) Small Oregon importers must register under section (4) of this rule and are exempt from keeping records under section (5) of this rule and submitting reports under sections (6) and (7) of this rule.

(3) Regulated party or opt-in party. The following rules designate regulated and opt-in parties, by type of fuel:

(a) OAR 340-253-0310 for gasoline, diesel fuel, biodiesel, biomass-based diesel, ethanol, and any other liquid fuel except liquefied natural gas and liquefied petroleum gas;

(b) OAR 340-253-0320 for natural gas including compressed natural gas, liquefied natural gas, biogas and liquefied petroleum gas;

(c) OAR 340-253-0330 for electricity; and

(d) OAR 340-253-0340 for hydrogen fuel or a hydrogen blend.

(4) Registration.

(a) After January 1, 2013, but no later than June 30, 2013, each regulated party must submit a complete application under OAR 340-253-0500 to register with DEQ for each fuel type the party imports or produces, sells, supplies or offers for sale in Oregon on or before July 1, 2013, and that it plans to continue to import or produce, sell, supply or offer for sale in Oregon after July 1, 2013.

(b) Beginning on July 1, 2013, each regulated party must submit a complete application under OAR 340-253-0500 to register with DEQ for each fuel type, on or before the date upon which it begins to import or produce, sell, supply or offer for sale in Oregon such fuel.

(c) To become an opt-in party a person must submit a complete application under OAR 340-253-0500 to register with DEQ.

(5) Records.

(a) Beginning on July 1, 2013, each regulated party must develop and retain all records required under OAR 340-253-0600.

(b) Beginning on the latter of either July 1, 2013, or the date that an opt-in party submits a complete application, as determined by DEQ, under subsection (4)(c) of this rule, each opt-in party must develop and retain all records required under OAR 340-253-0600.

(6) Quarterly report. Beginning on January 1, 2014, each regulated and opt-in party must submit quarterly reports under OAR 340-253-0630. Reports must be submitted to DEQ for:

(a) January through March of each year, by May 31;

(b) April through June of each year, by August 31;

(c) July through September of each year, by November 30; and

(d) October through December of each year, by February 28 of the following year.

(7) Annual report. Each regulated party and opt-in party must submit an annual report each year under OAR 340-253-0650. The report must be submitted to DEQ by April 30 of each year to report for the prior calendar year; except for 2013, when the reporting period is from July 1 through December 31.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0200

Regulated and Opt-in Fuels

(1) Applicability. The transportation fuels listed in this rule are subject to Division 253, unless exempt under OAR 340-253-0250.

(2) Regulated fuels. Regulated fuels means the following transportation fuels or blendstocks:

(a) Gasoline;

(b) Diesel fuel;

(c) Fossil liquefied natural gas that is imported, but not transferred by a natural gas pipeline in Oregon;

(d) A fuel blend containing ethanol;

(e) A fuel blend containing biomass-based diesel or biodiesel;

(f) Ethanol or denatured ethanol, also referred to as E100;

(g) Neat biomass-based diesel and biodiesel, also referred to as B100; and

(h) Any other liquid or non-liquid fuel not listed in section (3) or exempted under OAR 340-253-0250.

(3) Opt-in fuels. Opt-in fuels means the following transportation fuels:

(a) Electricity;

(b) Hydrogen fuel;

(c) Hydrogen blends;

(d) Fossil compressed natural gas;

(e) Fossil liquefied natural gas derived from fuel delivered through a natural gas pipeline;

(f) Biogas compressed natural gas;

(g) Biogas liquefied natural gas; and

(h) Liquefied petroleum gas.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0250

Exempt Fuels and Fuel Uses

(1) Exempt fuels. The following fuels are exempt from the definition of regulated fuels under OAR 340-253-0200(2)(h):

(a) A fuel sold, supplied or offered for sale in Oregon if all providers supply an aggregate volume of less than 360,000 gge per year in Oregon. The party must:

(A) Demonstrate that the exemption applies; and

(B) Obtain exemption approval from DEQ in writing.

(b) A fuel produced from a research, development or demonstration facility as defined under OAR 330-090-0110 if the annual production volume is either 10,000 gallons or less or no more than 50,000 gallons and the fuel producer uses the entire volume for its own motor vehicles. The party must:

(A) Demonstrate that the exemption applies; and

(B) Obtain exemption approval from DEQ in writing.

(2) Exempt fuels based on fuel uses. Fuels are exempt from the definition of regulated fuels under OAR 340-253-0200(2)(h) if:

(a) The fuel is sold, supplied or offered for sale for use in the following motor vehicles:

(A) Aircraft;

(B) Racing activity vehicles under ORS 801.404;

(C) Military tactical vehicles and tactical support equipment;

(D) Railroad locomotives;

(E) Ocean-going vessels defined under OAR 856-010-0003, except for vessel under fishery or recreational endorsement under title 46 United States Code, chapter 121;

(F) Motor vehicles registered as farm vehicles under ORS 805.300;

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- (G) Farm tractors, as defined under ORS 801.265;
- (H) Implements of husbandry, as defined under ORS 801.310; or
- (I) Motor trucks, as defined under ORS 801.355, used primarily to transport logs; and

(b) The regulated or opt-in party documents that the fuel was sold, supplied or offered for sale for use in a motor vehicle listed in subsection (a), as required under OAR 340-253-0600. Documentation that the fuel was transferred through a dedicated source to one of the motor vehicles identified in subsection (a) is sufficient. If not transferred through a dedicated source, all documentation must be on an individual fuel transaction basis.

(3) Fuel possession. Any fuel user or seller may possess any fuel regardless of its carbon intensity value, including but not limited to owners of the motor vehicles listed under subsection (2)(a).

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0310

Regulated Parties for Gasoline, Diesel Fuel, Biodiesel, Biomass-based Diesel and Ethanol and Other Regulated Fuels Except for Liquefied Natural Gas

(1) Applicability. This rule applies to all liquid blendstocks and liquid finished fuels listed under OAR 340-253-0200(2) except liquefied natural gas.

(2) Initial regulated party. The initial regulated party is the Oregon producer, large Oregon importer or small Oregon importer of the fuel.

(3) Recipient notification requirement. Before actual fuel ownership is transferred from one party to another, the recipient of the fuel must notify the transferor of the fuel whether or not the recipient is an Oregon producer, a large Oregon importer, or a small Oregon importer.

(4) Regulated party options and responsibilities for transfers if the recipient is an Oregon producer or large Oregon importer. If the initial regulated party transfers fuel to an Oregon producer or a large Oregon importer, then the transferor and the recipient have the options and responsibilities under this section.

(a) Unless the transferor elects to remain the regulated party under (4)(b):

(A) The recipient is now the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel; and

(ii) Is responsible for surplus and shortfall calculations under OAR 340-253-1020.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate:

(i) The recipient is now the regulated party who must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel; and

(ii) The information required under OAR 340-253-0600.

(C) The transferor is no longer required to comply with the recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel, except for maintaining the product transfer documentation under OAR 340-253-0600.

(b) The transferor and recipient may agree in writing for the transferor to remain the regulated party for the fuel, by the time fuel ownership is transferred. If the transferor elects to remain the regulated party:

(A) The transferor:

(i) Must provide the recipient a product transfer document at the time of transfer that prominently indicates that the transferor elects to remain the regulated party for the fuel;

(ii) The transferor must comply with the recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel; and

(iii) The transferor is responsible for surplus and shortfall calculations under OAR 340-253-1020; and

(B) The recipient must maintain the product transfer documentation under OAR 340-253-0600.

(5) Regulated party options and responsibilities for transfers if the recipient is a small Oregon importer or is not an importer and is not an Oregon producer. If the initial regulated party transfers fuel to a small Oregon importer or a person who is not an importer and not an Oregon producer, then the transferor and the recipient have the options and responsibilities under this section.

(a) The transferor remains the regulated party unless the transferor and the recipient agree that the recipient is the regulated or opt-in party under (b), who:

(A) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel; and

(B) Is responsible for surplus and shortfall calculations under OAR 340-253-1020.

(b) The transferor and recipient may agree in writing for the recipient to become the regulated party for the fuel, by the time fuel ownership is transferred. If the recipient elects to become the regulated party:

(A) The transferor must:

(i) Provide the recipient a product transfer document at the time of transfer that prominently indicates that the recipient elects to become the regulated party for the fuel; and

(ii) Maintain the product transfer documentation under OAR 340-253-0600.

(B) The recipient:

(i) Must comply with the recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel;

(ii) Must maintain the product transfer documentation under OAR 340-253-0600; and

(iii) Is responsible for surplus and shortfall calculations under OAR 340-253-1020.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0320

Regulated Parties and Opt-in Parties for Compressed Natural Gas, Biogas, Liquefied Natural Gas and Liquefied Petroleum Gas

(1) Fossil compressed natural gas. For fossil compressed natural gas, the opt-in party is the owner of the fueling equipment at the facility where the fossil compressed natural gas is dispensed for use in motor vehicles.

(2) Biogas compressed natural gas. For biogas compressed natural gas that is dispensed directly into motor vehicles in Oregon without first being blended with fossil compressed natural gas, the initial opt-in party is the Oregon producer or importer of the biogas.

(3) Fossil liquefied natural gas. For fossil liquefied natural gas:

(a) For fuel that is a regulated fuel under OAR 340-253-0200(2)(c), the initial regulated party is the owner of the liquefied natural gas when it is transferred to the facility where the liquefied natural gas is dispensed for use into motor vehicles; or

(b) For fuel that is an opt-in fuel under OAR 340-253-0200(3)(e), the initial opt-in party is the owner of the liquefied natural gas when it is transferred to the facility where the liquefied natural gas is dispensed for use into motor vehicles.

(4) Biogas liquefied natural gas. For biogas liquefied natural gas that is dispensed directly into motor vehicles in Oregon without first being blended with fossil liquefied natural gas, the initial opt-in party is the Oregon producer or importer of the biogas liquefied natural gas.

(5) Biogas compressed natural gas added to fossil compressed natural gas. For blends of these fuels, the opt-in parties for each of the component fuel types of the blended fuel remains the same as provide in sections (1) through (4).

(6) Biogas liquefied natural gas added to fossil liquefied natural gas. For blends of these fuels, the regulated and opt-in parties for each of the component fuel types of the blended fuel remains the same as provide in sections (1) through (4).

(7) Liquefied petroleum gas. For liquefied petroleum gas, the opt-in party is the owner of the fueling equipment at the facility where the liquefied petroleum gas is dispensed for use into motor vehicles.

(8) Regulated and opt-in party options and responsibilities for transfers of compressed natural gas, biogas, liquefied natural gas and liquefied petroleum gas. The transferor and the recipient have the following options and responsibilities under this section whenever the initial regulated or opt-in party transfers ownership of the fuel.

(a) The transferor remains the regulated or opt-in party unless the transferor and the recipient agree that the recipient is the regulated or opt-in party under (b), who:

(A) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel;

(B) Is responsible for surplus and shortfall calculations under OAR 340-253-1020; and

(C) May generate surpluses under OAR 340-253-1000(4).

(b) The transferor and recipient may agree in writing for the recipient to become the regulated or opt-in party for the fuel, by the time fuel ownership is transferred.

(A) The product transfer document must clearly indicate that the recipient is now the regulated or opt-in party who must comply with the

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registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel;

(B) The recipient:

(i) Is responsible for surplus and shortfall calculations under OAR 340-253-1020; and

(ii) May generate surpluses under OAR 340-253-1000(4).

(C) The transferor is no longer required to comply with the recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel, except for maintaining the product transfer documentation under OAR 340-253-0600.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

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340-253-0330

Opt-in Parties for Electricity

(1) Opt-in party priority and deadlines. Sections (2) through (4) determine the opt-in party who may generate surpluses under OAR 340-253-1000(4) for electricity used as a transportation fuel.

(2) Electricity bundled services supplier. The electricity bundled services supplier must opt in by submitting a complete application to register with DEQ under OAR 340-253-0500 by September 1 of the year prior to the calendar year in which the surpluses will be generated if the electricity bundled services supplier elects to generate surpluses. Upon submitting a complete application, the electricity bundled services supplier becomes the opt-in party until it opts out under OAR 340-253-0500.

(3) Electric Utility. The electric utility may opt in by submitting a complete application to register with DEQ under OAR 340-253-0500 by November 1 of the year prior to the calendar year in which the surpluses will be generated, if the electricity bundled services supplier under section (2) does not opt-in. Upon submitting a complete application, the electric utility becomes the opt-in party for the following calendar year.

(4) Owner or operator of electric-charging equipment. The owner or operator of electric-charging equipment, including residential charging equipment, may opt in by submitting a complete application to register with DEQ under OAR 340-253-0500 by December 1 of the year prior to the calendar year in which the surpluses will be generated, if the electricity bundled services supplier under section (2) and the electric utility under section (3) do not opt-in. Upon submitting a complete application, the owner or operator of electric-charging equipment becomes the opt-in party for the following calendar year.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0340

Opt-in Parties for Hydrogen Fuel or Hydrogen Blends

(1) Initial opt-in party. The initial opt-in party for a volume of finished hydrogen fuel is the Oregon producer or Oregon importer of the finished hydrogen fuel.

(2) Opt-in party options and responsibilities for transfers. The transferor and the recipient have the following options and responsibilities whenever the initial opt-in party transfers ownership of the finished hydrogen fuel:

(a) The transferor remains the opt-in party unless the transferor and the recipient agree that the recipient is the opt-in party under (b), who:

(A) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel;

(B) Is responsible for surplus and shortfall calculations under OAR 340-253-1020; and

(C) May generate surpluses under OAR 340-253-1000(4).

(b) The transferor and recipient may agree in writing for the recipient to be the opt-in party for the fuel, by the time fuel ownership is transferred.

(A) The product transfer document must clearly indicate that the recipient is now the opt-in party who must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel.

(B) The recipient:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel;

(ii) Is responsible for surplus and shortfall calculations under OAR 340-253-1020; and

(iii) May generate surpluses under OAR 340-253-1000(4).

(C) The transferor is no longer required to comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0100 for the fuel, except for maintaining the product transfer documentation under OAR 340-253-0600.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0400

Fuel Carbon Intensity Values

(1) Statewide carbon intensity values.

(a) A regulated or opt-in party must use the statewide average carbon intensity value in Table 1 or 2 under OAR 340-253-3010 or -3020, as applicable, for the following fuels:

(A) Gasoline;

(B) Diesel fuel;

(C) Compressed fossil natural gas derived from natural gas not imported to North America in liquefied form;

(D) Liquefied petroleum gas; and

(E) Electricity, unless an electricity provider meets the conditions under subsection (1)(b) and proposes a different carbon intensity value.

(b) The opt-in party for electricity may propose a carbon intensity value different from the statewide average carbon intensity value if the electricity provider:

(A) Only provides electricity for transportation; and

(B) Is exempt from the definition of public utility under ORS 757.005 (1)(b)(G), and is not regulated by the Oregon Public Utility Commission.

(c) Every three years, DEQ must review the statewide average carbon intensity values in Table 1 or 2 under OAR 340-253-3010 or -3020 and must:

(A) Consider the crude oil and other energy sources, production processes and flaring rates and other considerations that might affect the lifecycle carbon intensity of fuel used in Oregon; and

(B) Propose the EQC revise and update statewide average carbon intensity values in Table 1 or 2 under OAR 340-253-3010 or -3020 if DEQ determines that values should be changed by more than 5 gCO₂e per MJ or 10 percent.

(2) Carbon intensity values for established pathways. Except as provided in section (3), regulated and opt-in parties must use the carbon intensity values for ethanol, biodiesel, biomass-based diesel, liquefied natural gas, biogas compressed natural gas, biogas liquefied natural gas, hydrogen, liquefied petroleum gas and any fossil compressed natural gas produced from natural gas that arrives in North America in liquefied form that best matches each fuel's carbon intensity, as listed in Table 1 or 2 under OAR 340-253-3010 or -3020, as applicable.

(3) Individual carbon intensity values.

(a) Directed by DEQ. A regulated or opt-in party must obtain an individual carbon intensity value for a fuel, if DEQ:

(A) Determines the fuel's carbon intensity is not adequately represented by any of the carbon intensity values for established pathways in Table 1 or 2 under OAR 340-253-3010 or -3020; and

(B) Directs the regulated or opt-in party to obtain an individual carbon intensity value under OAR 340-253-0450.

(b) Election of the party. A regulated or opt-in party may propose an individual carbon intensity value for a fuel if:

(A) The fuel's carbon intensity, when compared to the carbon intensity value for the most similar fuel type in Table 1 or 2 under OAR 340-253-3010 or -3020, as applicable, changes by at least 5.0 gCO₂e per MJ or 10 percent;

(B) The party has the capacity and intent to provide more than one million gge per year of the fuel in Oregon unless all providers of that fuel type supply less than one million gge per year in total; and

(C) The party applies for and obtains DEQ approval under OAR 340-253-0450.

(c) New fuel or feedstock. A regulated or opt-in party must obtain approval for an individual carbon intensity value under OAR 340-253-0450 for any fuel not included in Table 1 or 2 under OAR 340-253-3010 or -3020 and for any fuel made from a feedstock not represented in a carbon intensity value in Table 1 or 2 under OAR 340-253-3010 or -3020. The party must submit a modification to the original registration under OAR 340-253-0500(5) within 30 days,

(d) Process change notification. The regulated or opt-in party must notify DEQ and obtain approval for an individual carbon intensity value under OAR 340-253-0450 for any changes to the fuel production process, if the fuel's carbon intensity value changes by more than 5.0 gCO₂e per MJ or 10 percent. The party must submit a modification to the original registration under OAR 340-253-0500(5) within 30 days.

(4) OR-GREET. The regulated or opt-in party must calculate all carbon intensity values using the approved version of OR-GREET, or a DEQ-approved comparable model for any fuel that cannot be modeled with OR-

ADMINISTRATIVE RULES

GREET. Any variations from the approved version of OR-GREET must be documented as described under OAR 340-253-0450(1) and submitted to DEQ for approval.

(5) Calculation requirements. When a regulated or opt-in party calculates a carbon intensity value of:

(a) Fuels made from biomass feedstock, the party may assume that the combustion and growing components of the fuel's lifecycle greenhouse gas emissions have net zero lifecycle carbon dioxide emissions.

(b) Fuels made from petroleum feedstock, including waste petroleum feedstock, the party may not assume that the combustion of the fuel has net zero carbon dioxide emissions.

(c) Fuels made from waste feedstock, the party may assume that the lifecycle greenhouse gas emissions analysis of the carbon intensity value begins when the original product becomes waste.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0450

Approval for Individual Carbon Intensity Values

(1) Individual carbon intensity value approval. The regulated or opt-in party may not use an individual carbon intensity value without written DEQ approval under this rule. Individual carbon intensity values are not available for the fuels listed under OAR 340-253-0400(1)(a).

(a) OR-GREET input modifications. The regulated or opt-in party may propose a modification to inputs into the OR-GREET model that more accurately reflect the specific carbon intensity of the fuel.

(b) OR-GREET model modifications. The regulated or opt-in party may propose modifications to the OR-GREET model. The proposal for an individual carbon intensity value must include:

(A) Inputs used to generate the carbon intensity values under OAR 340-253-0400; and

(B) All modified parameters used to generate the new fuel carbon intensity value.

(c) Non-OR-GREET modifications. The regulated or opt-in party may propose modifications based on any lifecycle assessment model other than OR-GREET. The proposal for an individual carbon intensity value must include:

(A) Inputs used to generate the carbon intensity values under OAR 340-253-0400; and

(B) All parameters used to generate the new fuel carbon intensity value.

(2) Reliability. The regulated or opt-in party must supply documentation necessary for DEQ to determine that the method used to calculate the individual carbon intensity value under section (1) is reliable and at least comparable to the approved version of OR-GREET.

(3) Modification submittal. The regulated or opt-in party must submit all documentation for the proposed modifications under this rule including all:

- (a) Supporting data;
- (b) Calculations;
- (c) Flow diagrams;
- (d) Equipment description;
- (e) Maps; and
- (f) Any other information DEQ may need to verify the fuel type and the method for calculating the proposed individual carbon intensity value.

(4) Review process. DEQ must determine whether the proposal is complete within 15 workdays after receipt of any modification submitted under section (3):

(a) If DEQ determines the proposal is incomplete, DEQ must notify the regulated or opt-in party and identify the deficiencies. DEQ has 15 workdays to determine if the supplemental submittal is complete, or to notify the party and identify the continued deficiencies.

(b) If DEQ determines the proposal is complete, DEQ must:
(A) Publish the application on the Oregon Clean Fuels Program web-site; and
(B) Approve or deny an individual carbon intensity value under section (5) or (6).

(5) DEQ approval. A regulated or opt-in party may use an individual carbon intensity value upon receiving written approval from DEQ. DEQ will propose to incorporate all associated parameters and fuel-related information of a DEQ-approved individual carbon intensity value into Table 1 or 2 under OAR 340-253-3010 or -3020, as applicable, in a future rule-making.

(6) DEQ denial. If DEQ determines the proposal for an individual carbon intensity value is not complete or adequately documented to establish

its reliability, DEQ must deny the modification proposal, notify the party which carbon intensity value to use and identify the basis for the denial.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0500

Registration

(1) Registration information. To register, a regulated or opt-in party must submit the following to DEQ:

(a) Company identification, including a physical and mailing address, phone number, e-mail address and a contact name.

(b) The fuel type(s) that will be sold, supplied or offered for sale in Oregon.

(c) The producer of the fuel, including its physical address and a contact name, for each fuel type.

(d) The regulated or opt-in party's proposed carbon intensity value for each fuel type. The proposed carbon intensity value must be:

(A) A statewide carbon intensity value for any fuel listed under OAR 340-253-0400(1);

(B) An individual carbon intensity value listed in Table 1 or 2 under OAR 340-253-3010 or -3020; or

(C) A proposal to obtain a new individual carbon intensity value under OAR 340-253-0450.

(e) Other information requested by DEQ related to registration.

(2) Completeness of submittal. DEQ must review the information submitted under section (1) to determine if the submission is complete.

(a) If DEQ determines the submission is incomplete, DEQ must notify the party of the information needed to complete the submission. The party must provide the requested information within 30 calendar days from the date on the request.

(b) If DEQ determines the submission is complete, DEQ must notify the party in writing of the completeness determination.

(c) If DEQ does not notify the party in writing of the completeness determination within 30 calendar days of receipt of the registration application, the application is automatically deemed complete.

(3) Determination of carbon intensity values. DEQ must review the proposed carbon intensity values to determine if they are accurate. DEQ must review proposed carbon intensity values as follows:

(a) For a proposed carbon intensity value listed in Table 1 or 2 under OAR 340-253-3010 or -3020, DEQ must review whether the fuel type accurately matches the fuel and fuel production process of the proposed carbon intensity value listed.

(b) For a proposed individual carbon intensity value, DEQ must approve the carbon intensity value or notify the party which carbon intensity value to use under OAR 340-253-0450.

(4) Registration approval. DEQ must notify the party in writing of its registration approval. The notification must include confirmation of the carbon intensity value for each fuel type to be used in calculating surpluses and shortfalls under OAR 340-253-1020.

(5) Modifications to registration.

(a) The party must submit an amended registration to DEQ within 30 days of any change occurring to information described in section (1), including any change that would result in a different carbon intensity value.

(b) DEQ may require a party to submit an amended registration based on new information that DEQ obtains from any source.

(6) Opting out. To opt-out, an opt-in party must notify DEQ in writing. Regulated parties may not opt-out.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0600

Records

(1) Records. Each regulated and opt-in party must retain the following records for at least five years:

(a) Copies of all data and reports submitted to DEQ;

(b) Records of each fuel transaction made including:

(A) Volume of fuel;

(i) In gallons for liquid fuels including gasoline, diesel fuel, ethanol, biomass-based diesel, liquefied natural gas and liquefied petroleum gas;

(ii) In standard cubic feet for compressed natural gas;

(iii) In kilowatt-hours for electricity; and

(iv) In kilograms for hydrogen fuel.

(B) Names of the transferor and recipient;

(C) Whether the compliance obligation was transferred from the transferor to the recipient or retained;

ADMINISTRATIVE RULES

- (D) Carbon intensity of the fuel;
- (E) Producer of the fuel;
- (F) Invoice date;
- (G) Unique transaction identification such as a bill of lading number;
- (H) Product transfer documents;
- (I) Exempt status documentation under OAR 340-253-0250, if fuel is excluded from surplus and shortfall calculations under OAR 340-253-1010; and

(J) For fuel that is exported outside Oregon, where the party is the exporter of record.

(c) Records used to document how a fuel is transported or conveyed to Oregon, if not produced in Oregon;

(d) Records used to calculate the carbon intensity of the fuel;

(e) Records used to calculate surpluses and shortfalls; and

(f) Other records used to determine compliance with the Oregon Clean Fuels Program.

(2) Review. All data, records and calculations used by a regulated or opt-in party to comply with the Oregon Clean Fuels Program are subject to verification by DEQ. The party must provide records retained under section (1) within 60 calendar days after the date DEQ requests a review of the records, unless otherwise specified.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0630

Quarterly Reports

Quarterly reports must include the following information, in a format provided or approved by DEQ:

(1) For each fuel type sold, supplied or offered for sale in Oregon:

(a) The total volume; and

(b) Carbon intensity.

(2) Surpluses and shortfalls as calculated under OAR 340-253-1020, including the;

(a) Amount of surpluses and shortfalls generated during the quarter; and

(b) Quarterly and year-to-date net balance calculations under OAR 340-253-1030 for gasoline and gasoline substitutes and diesel and diesel substitutes.

(3) The volumes of any exempt fuels or fuels transferred to exempt users under OAR 340-253-0250; and

(4) Volumes exported outside Oregon.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-0650

Annual Reports

Annual reports must include the following information, in a format provided or approved by DEQ:

(1) Company name of the regulated or opt-in party;

(2) Signature of a responsible official representing the regulated or opt-in party and certifying that the report is accurate to the best of the official's knowledge;

(3) For each fuel type sold, supplied or offered for sale during the calendar year:

(a) The total volume; and

(b) Carbon intensity.

(4) Surpluses or shortfalls as calculated under OAR 340-253-1020, including the;

(a) Amount of surpluses and shortfalls carried over from the previous year; and

(b) Amount of surpluses and shortfalls generated during the year.

(5) Net balance calculations under OAR 340-253-1030 for gasoline and gasoline substitutes and diesel and diesel substitutes;

(6) The volumes of any exempt fuels or fuels transferred to exempt users under OAR 340-253-0250; and

(7) Volumes exported outside Oregon.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-1000

Surplus and Shortfall Basics

(1) Carbon intensity values.

(a) Except as provided in subsection (b), when calculating carbon intensity values, the regulated or opt-in party must use the DEQ carbon intensity value approved under OAR 340-253-0500.

(b) If the regulated or opt-in party has submitted a complete registration under OAR 340-253-0500 and DEQ has not approved the proposed carbon intensity value or has not determined that a different carbon intensity value more accurately reflects the fuel type, the party must use the carbon intensity value proposed in its registration.

(2) Fuel quantities. When calculating and reporting fuel quantities, the regulated or opt-in party must:

(a) Use energy units in MJ. To convert other energy units to MJ, the party must multiply the unit by the corresponding energy density under Table 3 under OAR 340-253-3030, and use the BTU-to-MJ conversion factor of 1,055 J per BTU.

(b) Express quantities to the nearest whole unit applicable for that quantity such as gallons, standard cubic feet, kilowatt-hours or pounds.

(3) Metric tons of CO₂ equivalent. When reporting surpluses and shortfalls, the regulated or opt-in party must express quantities to the nearest whole metric ton of carbon dioxide equivalent.

(4) Surplus generation. A party generates a clean fuel surplus when:

(a) The carbon intensity of a fuel identified under OAR 340-253-1010 is lower than the corresponding baseline carbon intensity value for gasoline and gasoline substitutes or diesel fuel and diesel substitutes;

(b) The party has a DEQ-approved carbon intensity value; and

(c) The party demonstrates that the fuel is:

(A) Biodiesel, ethanol, or any other liquid fuel other than liquefied natural gas delivered to a public or private access fueling facility in Oregon;

(B) Electricity used in Oregon to charge a motor vehicle; or

(C) Compressed or liquefied natural gas, hydrogen fuel or liquefied petroleum gas dispensed in Oregon for use in a motor vehicle.

(5) Shortfall generation. A party generates a clean fuel shortfall when:

(a) The carbon intensity of a fuel identified under OAR 340-253-1010 is higher than the corresponding baseline carbon intensity value for gasoline and gasoline substitutes or diesel fuel and diesel substitutes; and

(b) The fuel is imported to Oregon or produced by an Oregon producer for use in Oregon for use in a motor vehicle.

(6) Nature of surpluses. Clean fuel surpluses are a regulatory instrument and do not constitute personal property, instruments, securities or any other form of property. Surpluses are not credits and may not be used to meet any compliance obligations other than as specified in this division.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-1010

Fuels to include in surplus and shortfall calculation

(1) Fuels included. A regulated or opt-in party must calculate surpluses and shortfalls for all regulated and opt-in fuels under OAR 340-253-0200 that are not otherwise exempt under OAR 340-253-0250, excluding fuels that are exported outside Oregon.

(2) Fuels excluded. Except as provided in section (3), the regulated or opt-in party may not include fuels excluded under OAR 340-253-0250 in surplus and shortfall calculations.

(3) Fuels sold to exempt users. The regulated or opt-in party may include or exclude fuel sold to an exempt user under OAR 340-253-0250 from the surpluses and shortfalls calculations.

(a) If the party includes the fuel, the party must include all fuel volumes listed on an invoice or all fuels included in a single or simultaneous delivery of fuel, regardless of how many invoices are used.

(b) If the party excludes the fuel, the party must document and report all excluded fuels under OAR 340-253-0600 through 340-253-0650.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-1020

Calculating Surpluses or Shortfalls

(1) The regulated or opt-in party must calculate surpluses and shortfalls for each fuel type included under 340-253-1010 using the surplus and shortfall basics under OAR 340-253-1020 to calculate the following:

(a) Energy in MJ by multiplying the amount of fuel by the energy density of the fuel in Table 3 under OAR 340-253-3030;

(b) Adjusted energy in MJ by multiplying the energy in MJ from (1)(a) by the energy economy ratio of the fuel using Table 4 or 5 under OAR 340-253-3040 or -3050 for gasoline and gasoline substitutes or diesel fuel and diesel substitutes;

(c) Carbon intensity difference by subtracting the fuel's carbon intensity value from the corresponding baseline carbon intensity value for gasoline and gasoline substitutes or diesel fuel and diesel substitutes

ADMINISTRATIVE RULES

(d) Grams of carbon dioxide equivalent by multiplying the adjusted energy in MJ's in (1)(b) by the carbon intensity difference in (1)(c); and

(e) Metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent in (1)(c) by 1,000,000.

(2) If the fuel has a carbon intensity:

(a) Higher than the corresponding baseline carbon intensity value for gasoline and gasoline substitutes or diesel fuel and diesel substitutes, the absolute value of the metric tons of carbon dioxide equivalent under subsection (1)(e) is a shortfall.

(b) Lower than the corresponding baseline carbon intensity value for gasoline and gasoline substitutes or diesel fuel and diesel substitutes, the absolute value of the metric tons of carbon dioxide equivalent under subsection (1)(e) is a surplus.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-1030

Net Balance Calculation

A regulated or opt-in party must calculate the net balance at the end of the reporting period using the following formula: Net balance = SurplusesGenerated + SurplusesForward - ShortfallsGenerated - ShortfallsForward where:

(1) SurplusesGenerated is the total surpluses generated using calculations under OAR 340-253-1020;

(2) SurplusesForward is the surpluses carried forward from the previous reporting period;

(3) ShortfallsGenerated is the total shortfalls generated using calculations under OAR 340-253-1020; and

(4) ShortfallsForward is the shortfall carried forward from the previous reporting period.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-3000

Tables used for the Oregon Clean Fuels Program

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-3010

Table 1 — Oregon Carbon Intensity Lookup Table for Gasoline and Gasoline Substitutes

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-3020

Table 2 — Oregon Carbon Intensity Lookup Table for Diesel Fuel and Diesel Substitutes

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-3030

Table 3 — Oregon Energy Densities of Fuels

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-3040

Table 4 — Oregon Energy Economy Ratios for Fuel used in Light-Duty Applications

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

340-253-3050

Table 5 — Oregon Energy Economy Ratios for Fuel Used in Heavy-Duty Applications

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12

Rule Caption: Title V operating permit fee increases authorized in statute.

Adm. Order No.: DEQ 9-2012

Filed with Sec. of State: 12-11-2012

Certified to be Effective: 12-11-12

Notice Publication Date: 3-1-12

Rules Amended: 340-220-0030, 340-220-0040, 340-220-0050

Subject: The Oregon Environmental Quality Commission adopted revisions to Oregon's Title V permitting program. This rulemaking increases the Title V operating permit fees by the change in the Consumer Price Index authorized by federal and state law. The fee increases are necessary to cover the reasonable costs associated with DEQ's operation of Oregon's Title V program.

The amendments to the Title V operating permits increase base fees under OAR 340-220-0030, emission fees under OAR 340-220-0040 and specific activity fees under OAR 340-220-0050. These fee increases affect the 2012 and 2013 invoice years for the 2012-13 and 2013-14 operating periods. DEQ calculated the estimated fees for the 2013 invoice year using the 2011 change in the CPI and for the 2014 invoice year using the 2012 change in the CPI.

Rules Coordinator: Maggie Vandehey — (503) 229-6878

340-220-0030

Annual Base Fee

(1) DEQ will assess an annual base fee of \$7,466 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2012 to November 14, 2013.

(2) DEQ will assess an annual base fee of \$7,657 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2013 to November 14, 2014, and for each annual period thereafter.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. & cert. ef. 7-1-01; DEQ 7-2001, f. & cert. ef. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 9-2012, f. & cert. ef. 12-11-12

340-220-0040

Emission Fee

(1) DEQ will assess an emission fee of \$ 57.90 per ton of each regulated pollutant emitted during calendar year 2012 and for each calendar year thereafter to each source subject to the Oregon Title V Operating Permit Program.

(2) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. & cert. ef. 7-1-01; DEQ 7-2001, f. & cert. ef. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 9-2012, f. & cert. ef. 12-11-12

340-220-0050

Specific Activity Fees

(1) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of January 1, 2012 to December 31, 2012 as follows:

(a) Existing source permit revisions:

(A) Administrative* — \$455;

(B) Simple — \$1,820;

ADMINISTRATIVE RULES

(5) "Criteria Pollutant" means any of the six pollutants set out by the Clean Air Act (sulfur oxides, particulate matter, ozone, carbon monoxide, nitrogen dioxide, and lead) for which the EPA has promulgated standards in 40 CFR 50.4 through 50.12 (July, 1993).

(6) "Eugene-Springfield UGB" means the area within the bounds beginning at the Willamette River at a point due east from the intersection of East Beacon Road and River Loop No.1; thence southerly along the Willamette River to the intersection with Belt Line Road; thence easterly along Belt Line Road approximately one-half mile to the intersection with Delta Highway; thence northwesterly and then northerly along Delta Highway and on a line north from the Delta Highway to the intersection with the McKenzie River; thence generally southerly and easterly along the McKenzie River approximately eleven miles to the intersection with Marcola Road; thence southwesterly along Marcola Road to the intersection with 42nd Street; thence southerly along 42nd Street to the intersection with the northern branch of US Highway 126; thence easterly along US Highway 126 to the intersection with 52nd Street; thence north along 52nd Street to the intersection with High Banks Road; thence easterly along High Banks Road to the intersection with 58th Street; thence south along 58th Street to the intersection with Thurston Road; thence easterly along Thurston Road to the intersection with the western boundary of Section 36, T17S, R2W; thence south to the southwest corner of Section 36, T17S, R2W; thence west to the Springfield City Limits; thence following the Springfield City Limits southwesterly to the intersection with the western boundary of Section 2, T18S, R2W; thence on a line southwest to the Private Logging Road approximately one-half mile away; thence southeasterly along the Private Logging Road to the intersection with Wallace Creek; thence southwesterly along Wallace Creek to the confluence with the Middle Fork of the Willamette River; thence generally northwesterly along the Middle Fork of the Willamette River approximately seven and one-half miles to the intersection with the northern boundary of Section 11, T18S, R3W; thence west to the northwest corner of Section 10, T18S, R3W; thence south to the intersection with 30th Avenue; thence westerly along 30th Avenue to the intersection with the Eugene City Limits; thence following the Eugene City Limits first southerly then westerly then northerly and finally westerly to the intersection with the northern boundary of Section 5, T18S, R4W; thence west to the intersection with Greenhill Road; thence north along Greenhill Road to the intersection with Barger Drive; thence east along Barger Drive to the intersection with the Eugene City Limits (Ohio Street); thence following the Eugene City Limits first north then east then north then east then south then east to the intersection with Jansen Drive; thence east along Jansen Drive to the intersection with Belt Line Road; thence northeasterly along Belt Line Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection with Clear Lake Road; thence west along Clear Lake Road to the intersection with the western boundary of Section 9, T17S, R4W; thence north to the intersection with Airport Road; thence east along Airport Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection East Enid Road; thence east along East Enid Road to the intersection with Prairie Road; thence southerly along Prairie Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with the Southern Pacific Railroad Line; thence southeasterly along the Southern Pacific Railroad Line to the intersection with Irving Road; thence east along Irving Road to the intersection with Kalmia Road; thence northerly along Kalmia Road to the intersection with Hyacinth Road; thence northerly along Hyacinth Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with Spring Creek; thence northerly along Spring Creek to the intersection with River Road; thence northerly along River Road to the intersection with East Beacon Drive; thence following East Beacon Drive first east then south then east to the intersection with River Loop No.1; thence on a line due east to the Willamette River and the point of beginning.

(7) "Grants Pass CBD" means the area within the City of Grants Pass enclosed by "B" Street on the north, 8th Street to the east, "M" Street on the south, and 5th Street to the west.

(8) Grants Pass Control Area means the area of the state beginning at the northeast corner of Section 35, T35S, R5W; thence south to the southeast corner of Section 11, T37S, R5W; thence west to the southwest corner of Section 9, T37S, R6W; thence north to the northwest corner of Section 33, T35S, R6W; thence east to the point of beginning.

(9) "Grants Pass UGB" as shown on the Plan and Zoning maps for the City of Grants Pass as of Feb. 1, 1988 is the area within the bounds beginning at the NW corner of Sec. 7, T36S, R5W; thence south to the SW corner of Sec. 7; thence west along the southern boundary of Sec. 12, T36S, R5W approx. 2000 feet; thence south approx. 100 feet to the northern right

of way of the Southern Pacific Railroad Line (SPRR Line); thence southeasterly along said right of way approx. 800 feet; thence south approx. 400 feet; thence west approx. 1100 feet; thence south approx. 700 feet to the intersection with the Hillside Canal; thence west approx. 100 feet; thence south approx. 550 feet to the intersection with Upper River Road; thence southeasterly along Upper River Road and continuing east along Old Upper River Road approx. 700 feet; thence south approx. 1550 feet; thence west approx. 350 feet; thence south approx. 250 feet; thence west approx. 1000 feet; thence south approx. 600 feet to the north end of Roguela Lane; thence east approx. 400 feet; thence south approx. 1400 feet to the intersection with Lower River Road; thence west along Lower River Road approx. 1400 feet; thence south approx. 1350 feet; thence west approx. 25 feet; thence south approx. 1200 feet to the south bank of the Rogue River; thence northwesterly along said bank approx. 2800 feet; thence on a line southwesterly and parallel to Parkhill Place approx. 600 feet; thence northwesterly at a 90 degree angle approximately 300 feet to the intersection with Parkhill Place; thence southwesterly along Parkhill Place approx. 250 feet; thence on a line southeasterly forming a 90 degree angle approximately 300 feet to a point even with Leonard Road; thence west approx. 1500 feet along Leonard Road; thence north approx. 200 feet; thence west to the west side of Schroeder Lane; thence north approx. 150 feet; thence west approx. 200 feet; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 450 feet; thence north approx. 300 feet; thence east approx. 150 feet; thence north approx. 400 feet; thence west approx. 500 feet; thence south approx. 300 feet; thence west to the intersection with Coutant Lane; thence south along Coutant Lane to the intersection with Leonard Road; thence west along Leonard Road to the intersection with Buena Vista Lane; thence north along the west side of Buena Vista Lane approx. 200 feet; thence west approx. 150 feet; thence north approx. 150 feet; thence west approx. 200 feet; thence north approx. 400 feet; thence west approx. 600 feet to the intersection with the western boundary of Sec. 23, T36S, R6W; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 300 feet; thence north approx. 600 feet to the intersection with Darneille Lane; thence northwesterly along Darneille Lane approx. 200 feet; thence west approx. 300 feet; thence south approx. 600 feet to the intersection with Leonard Road; thence west along Leonard Road approx. 700 feet; thence south approx. 1350 feet; thence east approx. 1400 feet to the intersection with Darneille Lane; thence south along Darneille Lane approx. 600 feet; thence west approx. 300 feet; thence south to the intersection with Redwood Avenue; thence east along Redwood Avenue to the intersection with Hubbard Lane and the western boundary of Sec. 23, T36S, R6W; thence south along Hubbard Lane approx. 1850 feet; thence west approx. 1350 feet; thence south to the south side of U.S. Highway 199; thence westerly along U.S. 199 approx. 1600 feet to the intersection with the north-south midpoint of Sec. 27, T36S, R6W; thence south approx. 2200 feet; thence east approx. 1400 feet; thence north approx. 1000 feet; thence east approx. 300 feet; thence north approx. 250 feet to the intersection with the Highline Canal; thence northerly along the Highline Canal approx. 900 feet; thence east to the intersection with Hubbard Lane; thence north along Hubbard Lane approximately 600 feet; thence east approx. 200 feet; thence north approx. 400 feet to a point even with Canal Avenue; thence east approx. 550 feet; thence north to the south side of U.S. 199; thence easterly along the southern edge of U.S. 199 to the intersection with Willow Lane; thence south along Willow Lane to the intersection with Demaray Drive; thence easterly along Demaray Drive and continuing along the southern edge of U.S. 199 to the intersection with Dowell Road; thence south along Dowell Road approx. 550 feet; thence easterly approx. 750 feet; thence north to the intersection with the South Canal; thence easterly along the South Canal to the intersection with Schutzwahl Lane; thence south approx. 1300 feet to a point even with West Harbeck Road; thence east approx. 2000 feet to the intersection with Allen Creek; thence southerly along Allen Creek approx. 1400 feet to a point even with Denton Trail to the west; thence west to the intersection with Highline Canal; thence southerly along Highline Canal to the intersection with the southern boundary of Sec. 25, T36S, R6W; thence east to the intersection with Allen Creek; thence southerly along Allen Creek to the intersection with the western boundary of Sec. 31, T36S, R5W; thence south to the SW corner of Sec. 31; thence east to the intersection with Williams Highway; thence southeasterly along Williams Highway approx. 1300 feet; thence east approx. 200 feet; thence north approx. 400 feet; thence east approx. 700 feet; thence north to the intersection with Espey Road; thence west along Espey Road approx. 150 feet; thence north approx. 600 feet; thence east approx. 300 feet; thence north approx. 2000 feet; thence west approx. 2100 feet; thence north approx. 1350 feet; thence east approx. 800 feet; thence north approx. 2800 feet to the east-west midline of Sec. 30, T36S,

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R5W; thence on a line due NE approx. 600 feet; thence north approx. 100 feet; thence east approx. 600 feet; thence north approx. 100 feet to the intersection with Highline Canal; thence easterly along Highline Canal approx. 1300 feet; thence south approx. 100 feet; thence east to the intersection with Harbeck Road; thence north along Harbeck Road to the intersection with Highline Canal; thence easterly along Highline Canal to a point approx. 250 feet beyond Skyway Road; thence south to the intersection with Skyway Road; thence east to the intersection with Highline Canal; thence southeasterly along Highline Canal approx. 1200 feet; thence on a line due SW to the intersection with Bluebell Lane; thence southerly along Bluebell Lane approx. 150 feet; thence east to the intersection with Sky Crest Drive; thence southerly along Sky Crest Drive to the intersection with Harper Loop; thence southeasterly along Harper Loop to the intersection with the east-west midline of Sec. 29, T36S, R5W; thence east approx. 400 feet; thence south approx. 1300 feet to a point even with Troll View Road to the east; thence east to the intersection with Hamilton Lane; thence north along Hamilton Lane to the intersection with the Highline Canal; thence northeasterly along the Highline Canal to the northern boundary of Sec. 28, T36S, R5W; thence east approx. 1350 feet to the transmission line; thence north to the intersection with Fruitdale Drive; thence southwesterly along Fruitdale Drive approx. 700 feet; thence north to the northern edge of U.S. 199; thence easterly along the northern edge of U.S. 199 approx. 50 feet; thence north to the north bank of the Rogue River; thence northeasterly along the north bank of the Rogue River approx. 2100 feet to a point even with Ament Road; thence north to Ament Road and following Ament Road to U.S. Interstate Highway 5 (U.S. I-5); thence continuing north to the 1200 foot contour line; thence following the 1200 foot contour line northwesterly approx. 7100 feet to the city limits and a point even with Savage Street to the west; thence north following the city limits approx. 400 feet; thence west to the intersection with Beacon Street; thence north along Beacon Street and the city limits approx. 250 feet; thence east along the city limits approx. 700 feet; thence north along the city limits approx. 2200 feet; thence southwesterly along the city limits approximately 800 feet to the intersection with the 1400 foot contour line; thence northerly and northwesterly along the 1400 foot contour line approx. 900 feet to the intersection with the northern boundary of Sec. 9, T36S, R5W; thence west along said boundary approx. 100 feet to the NW corner of Sec. 9; thence south along the western boundary of Sec. 9 approx. 700 feet; thence west approx. 1400 feet; thence north approx. 2400 feet; thence west approx. 1350 feet; thence north approx. 1100 feet to the city limits; thence following the city limits first west approx. 1550 feet, then south approx. 800 feet, then west approx. 200 feet, then south approx. 200 feet, then east approx. 200 feet, then south approx. 300 feet, and finally westerly approx. 1200 feet to the intersection with the western boundary of Sec. 5, T36S, R5W; thence south along said boundary to the northern side of Vine Avenue; thence northwesterly along the northern side of Vine Avenue approx. 3150 feet to the intersection with the west fork of Gilbert Creek; thence north to the intersection with the southern right of way of U.S. I-5; thence northwesterly along said right of way approx. 1600 feet; thence south to the intersection with Old Highland Avenue; thence northwesterly along Highland Avenue approx. 650 feet; thence west approx. 350 feet; thence south approx. 1400 feet; thence east approx. 700 feet; thence south approx. 1000 feet; thence on a line SW approx. 800 feet; thence south approx. 1400 feet to the intersection with the northern boundary of Sec. 7, T36S, R5W; thence west to the NW corner of Sec. 7, the point of beginning.

(10) Klamath Falls Control Area means the area of the state beginning at the northeast corner of Section 8, T38S, R10E, thence south to the southeast corner of Section 5, T40S, R10E; thence west to the southwest corner of Section 3, T40S, R8E; thence north to the northwest corner of Section 10, T38S, R8E; thence east to the point of beginning.

(11) "Klamath Falls Nonattainment Area" means the area of the state beginning at the northwest corner of Section 31, T37S, R9E; thence east approximately two miles to the northeast corner of Section 32; thence south approximately four miles to the southeast corner of Section 17, T38S, R9E; thence east approximately one mile to the southwest corner of Section 15; thence north approximately one mile to the northwest corner of Section 15; thence east approximately 2 miles to the northeast corner of Section 14; thence south approximately one mile to the northwest corner of Section 24; thence east approximately one mile to the northeast corner of Section 24; thence south approximately three miles to the southeast corner of Section 36; thence east approximately four miles to the northeast corner of Section 3, T39S, R10E; thence south approximately three miles to the southeast corner of Section 15; thence west approximately two miles to the southwest corner of Section 16; thence south approximately two miles to the southeast corner of Section 29; thence west approximately five miles to the southwest

corner of Section 27, T39S, R9E; thence north approximately one mile to the northeast corner of Section 27; thence west approximately four miles to the southwest corner of Section 24, T39S, R8E; thence north approximately two miles to the northeast corner of Section 13; thence west approximately one mile to the southwest corner of Section 11; thence north approximately four miles to the northwest corner of Section 26, T38S, R8E; thence west one mile to the southwest corner of Section 22; thence north approximately one mile to the northwest corner of Section 22; thence west approximately one mile to the southwest corner of Section 16; thence north approximately one mile to the northeast corner of Section 16; thence west approximately one mile to the southwest corner of Section 8; thence north approximately two miles to the northwest corner of Section 5; thence east to the northeast corner of Section 1; thence north approximately one mile to the point of beginning.

(12) "Klamath Falls UGB" means the area within the bounds beginning at the southeast corner of Section 36, Township 38 South, Range 9 East; thence northerly approximately 4500 feet; thence westerly approximately 1/4 mile; thence northerly approximately 3/4 mile into Section 25, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 24, T38S, R9E; thence westerly approximately 1/2 mile to the southeast corner of Section 23, T38S, R9E; thence northerly approximately 1/2 mile; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 14, T38S, R9E; thence generally northwesterly along the 5000 foot elevation contour line approximately 3/4 mile; thence westerly 1 mile; thence north to the intersection with the northern boundary of Section 15, T38S, R9E; thence west 1/4 mile along the northern boundary of Section 15, T38S, R9E; thence generally southeasterly following the 4800 foot elevation contour line around the old Oregon Institute of Technology Campus to meet with the westerly line of Old Fort Road in Section 22, T38S, R9E; thence southwesterly along the westerly line of Old Fort Road approximately 1 and 1/4 miles to Section 27, T38S, R9E; thence west approximately 1/4 mile; thence southwesterly approximately 1/2 mile to the intersection with Section 27, T38S, R9E; thence westerly approximately 1/2 mile to intersect with the Klamath Falls City Limits at the northerly line of Loma Linda Drive in Section 28, T38S, R9E; thence northwesterly along Loma Linda Drive approximately 1/4 mile; thence southwesterly approximately 1/8 mile to the Klamath Falls City Limits; thence northerly along the Klamath Falls City Limits approximately 1 mile into Section 21, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1 mile into Section 17, T38S, R9E; thence westerly approximately 3/4 mile into Section 17, T38S, R9E; thence northerly approximately 1/4 mile; thence westerly approximately 1 mile to the west boundary of Highway 97 in Section 18, T38S, R9E; thence southeasterly along the western boundary of Highway 97 approximately 1/2 mile; thence southwesterly away from Highway 97; thence southeasterly to the intersection with Klamath Falls City Limits at Front Street; thence westerly approximately 1/4 mile to the western boundary of Section 19, T38S, R9E; thence southerly approximately 1 and 1/4 miles along the western boundary of Section 19, T38S, R9E and the Klamath Falls City Limits to the south shore line of Klamath Lake; thence northwesterly along the south shore line of Klamath Lake approximately 1 and 1/4 miles across Section 25, T38S, R9E and Section 26, T38S, R9E; thence westerly approximately 1/2 mile along Section 26, T38S, R9E; thence southerly approximately 1/2 mile to Section 27, T38S, R9E to the intersection with eastern boundary of Orindale Draw, thence southerly along the eastern boundary of Orindale Draw approximately 1 and 1/4 miles into Section 35, T38S, R9E; thence southerly approximately 1/2 mile into Section 2, T39S, R8E; thence easterly approximately 1/4 mile; thence northerly approximately 1/4 mile to the southeast corner of Section 35, T38S, R8E and the Klamath Falls City Limits; thence easterly approximately 1/2 mile to the northern boundary of Section 1, T38S, R8E; thence southeasterly approximately 1/2 mile to Orindale Road; thence north 500 feet along the west side of an easement; thence easterly approximately 1 and 1/4 miles through Section 1, T38S, R8E to the western boundary of Section 6, T39S, R9E; thence southerly approximately 3/4 mile to the southwest corner of Section 6, T39S, R9E; thence easterly approximately 1/8 mile to the western boundary of Highway 97; thence southwesterly along the Highway 97 right-of-way approximately 1/4 mile; thence westerly approximately 1/2 mile to Agate Street in Section 7, T39S, R8E; thence northerly approximately 1/4 mile; thence westerly approximately 3/4 mile to Orindale Road in Section 12, T39S, R8E; thence northerly approximately 1/4 mile into Section 1, T39S, R8E; thence westerly approximately 3/4 mile to the Section 2, T39S, R8E boundary line; thence southerly approximately 3/4 mile along the Section 2, T39S, R8E boundary line to the northwest corner of Section 12, T39S, R8E; thence westerly

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approximately 1/8 mile into Section 11, T39S, R8E; thence southerly approximately 1/8 mile; thence northeasterly approximately 3/4 mile to the southern boundary of Section 12, T39S, R8E at Balsam Drive; thence southerly approximately 1/4 mile into Section 12, T39S, R8E; thence easterly approximately 1/4 mile to Orindale Road; thence southeasterly approximately 500 feet to Highway 66; thence southwesterly approximately 1/2 mile along the boundary of Highway 66 to Holiday Road; thence southerly approximately 1/2 mile into Section 13, T39S, R8E; thence northeasterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/4 mile along the eastern boundary of Section 13, T39S, R8E; thence westerly approximately 1/4 mile to Weyerhaeuser Road; thence northerly approximately 1/8 mile; thence easterly approximately 1/8 mile; thence northerly approximately 1/8 mile; thence westerly approximately 1/8 mile to Farrier Avenue; thence northerly approximately 1/4 mile; thence easterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/8 mile along the eastern boundary of Section 13, T39S, R8E; thence easterly approximately 1/4 mile along the northern section line of Section 18, T39S, R8E; thence southerly approximately 1/4 mile; thence easterly approximately 1/2 mile to the boundary of Highway 97; thence southerly approximately 1/3 mile to the Burlington Northern Right-of-Way; thence northeasterly approximately 1 and 1/3 miles along the high water line of the Klamath River to the Southside Bypass in Section 8, T39S, R9E; thence southeasterly along the Southside Bypass to the Southern Pacific Right-of-Way in Section 9, T39S, R9E; thence southerly approximately 1/2 mile along the Southern Pacific Right-of-Way; thence southwesterly approximately 1/4 mile along the Midland Highway; thence southeasterly approximately 1/4 mile to the old railroad spur; thence easterly 1/4 mile along the old railroad spur; thence southerly approximately 1/4 mile in Section 16, T39S, R9E; thence westerly approximately 1/3 mile; thence southerly approximately 1/4 mile; thence easterly approximately 1/16 mile in Section 21, T39S, R9E; thence southerly approximately 1/8 mile to the Lost River Diversion Channel; thence southeasterly approximately 1/4 mile along the northern boundary of the Lost River Diversion Channel; thence easterly approximately 3/4 mile along Joe Wright Road into Section 22, T39S, R9E; thence southeasterly approximately 1/8 mile on the eastern boundary of the Southern Pacific Right-of-Way; thence southeasterly approximately 1 mile along the western boundary of the Southern Pacific Right-of-Way across Section 22, T39S, R9E and Section 27, T39S, R9E to a point 440 yards south of the northern boundary of Section 27, T39S, R9E; thence easterly to Kingsley Field; thence southeasterly approximately 3/4 mile to the southern boundary of Section 26, T39S, R9E; thence east approximately 1/2 mile along the southern boundary of Section 26, T39S, R9E to a pond; thence north-northwesterly for 1/2 mile following the Klamath Falls City Limits; thence north 840 feet; thence east 1155 feet to Homedale Road; thence north along Homedale Road to a point 1/4 mile north of the southern boundary of Section 23, T39S, R9E; thence west 1/4 mile; thence north 1 mile to the Southside Bypass in Section 14, T39S, R9E; thence east 1/2 mile along the Southside Bypass to the eastern boundary of Section 14, T39S, R9E; thence north 1/2 mile; thence east 900 feet into Section 13, T39S, R9E; thence north 1320 feet along the USBR 1-C 1-A to the southern boundary of Section 12, T39S, R9E; thence north 500 feet to the USBR A Canal; thence southeasterly 700 feet along the southern border of the USBR A Canal back into Section 13, T39S, R9E; thence southeast 1600 feet to the northwest parcel corner of an easement for the Enterprise Irrigation District; thence east-northeast 2200 feet to the eastern boundary of Section 13, T39S, R9E; thence north to the southeast corner of Section 12, T39S, R9E; thence along the Enterprise Irrigation Canal approximately 1/2 mile to Booth Road; thence east 1/2 mile to Vale Road; thence north 1 mile to a point in Section 6, T39S, R10E that is approximately 1700 feet north of the southern boundary of Section 6, T39S, R10E; thence west approximately 500 feet; thence south approximately 850 feet; thence west approximately 200 feet; thence north approximately 900 feet; thence west approximately 1600 feet to the western boundary of Section 6, T39S, R10E; thence north approximately 1/2 mile to the southeast corner of Section 36, T38S, R9E, the point of beginning.

(13) "LaGrande UGB" means the area within the bounds beginning at the point where U.S. Interstate 84 (I-84) intersects Section 31, Township 2 South, Range 38 East; thence east along I-84 to the Union County Fairgrounds; thence north and then east on a line encompassing the Union County Fairgrounds to the intersection with Cedar Street; thence further east approximately 500 feet, encompassing two (2) residential properties; thence on a line south to the intersection with the northern bank of the Grande Ronde River; thence westerly along the northern bank of the Grande Ronde River to the intersection with the western edge of Mount

Glenn Road and Riverside Park; thence north along the western edge of Mount Glenn Road and Riverside Park to the intersection with Fruitdale Road; thence east along Fruitdale Road and the northern boundary of Riverside Park to the eastern boundary of Riverside Park; thence south along the eastern boundary of Riverside Park to the north bank of the Grande Ronde River; thence on a line southeast to the intersection with the northern edge of I-84; thence easterly along the northern edge of I-84 to May Street; thence easterly along May Street to the intersection with State Highway 82; thence northeasterly along State Highway 82 to the a point approximately 1/4 mile from the eastern edge of Section 4, T3S, R38E; thence south to the intersection with Section 9, T3S, R38E, and the southern edge of Buchanan Avenue; thence west along the southern edge of Buchanan Avenue to the intersection with the northern edge of I-84; thence on a line south to the southern edge of I-84; thence southeasterly along the southern edge of I-84 approximately 2500 feet; thence on a line due west approximately 1400 feet; thence on a line due south to the intersection with the Union Pacific Railroad Line; thence southeasterly along the Union Pacific Railroad Line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with U.S. Highway 30; thence southeast along U.S. Highway 30 to the intersection with the western boundary of Section 15, T3S, R38E; thence on a line west following existing property boundaries approximately 2900 feet; thence on a line north following existing property boundaries approximately 250 feet; thence on a line east following existing property boundaries approximately 650 feet; thence north on a line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with 20th Avenue; thence south along 20th Avenue to the intersection with Foothill Road; thence southeasterly along Foothill Road approximately 2900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line south following existing property boundaries approximately 1250 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north following existing property boundaries approximately 450 feet to the intersection with the southernmost part of the La Grande City Limits; thence westerly and northwesterly along the southernmost part of the La Grande City Limits approximately 1100 feet to the intersection with the 3000 foot elevation contour line; thence westerly following the 3000 foot elevation contour line and existing property boundaries approximately 2200 feet; thence on a line north following existing property boundaries approximately 1900 feet; thence on a line west following existing property boundaries approximately 500 feet; thence on a line north to the La Grande City Limits; thence west along the La Grande City Limits and following existing property boundaries approximately 650 feet; thence on a line south following existing property boundaries approximately 900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north to the intersection with the La Grande City Limits; thence west along the southern boundary of the La Grande City Limits to the intersection with the western boundary of the La Grande City Limits; thence north along the western boundary of the La Grande City Limits and following existing property lines approximately 500 feet; thence on a line west following existing property boundaries approximately 200 feet; thence on a line north following existing property boundaries approximately 700 feet; thence east to the first 3000 foot elevation contour line west of the La Grande City Limits; thence northerly following that 3000 foot elevation contour line to the intersection with Deal Canyon Road; thence easterly along Deal Canyon Road to the intersection with the western boundary of the La Grande City Limits; thence northerly along the western boundary of the La Grande City Limits to the intersection with U.S. Highway 30; thence northwesterly along U.S. Highway 30 and following existing property boundaries approximately 1400 feet; thence on a line west to the intersection with the western boundary of Section 6, T3S, R38E; thence north along the western boundaries of Section 6, T3S, R38E and Section 31, T2S, R38E to the point of beginning.

(14) "Lakeview UGB" means the area beginning at the corner common to sections 21, 22, 27, and 28, T39S, R20E; thence north on the section line between section 21 and 22 to the section corner common to section 15, 16, 21, and 22; thence west along the section line between section 21 and 16 to the section corner common to sections 16, 17, 20, and 21; thence north along the section line between section 16 and 17 approximately 3550 feet to the east branch of Thomas Creek; thence northwesterly along the east branch of Thomas Creek to the center line of Highway 140; thence east along the center line of Highway 140 to the section corner common to sections 8, 9, 16, and 17, T39S, R20E; thence north along the section line between sections 8 and 9 to the section corner common to sections 4, 5, 8, and 9, T39S, R20E; thence north along the section line between section 4 and 5 to the section corner common to section 4 and 5,

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T39S, R20E and sections 32 and 33, T38S, R20E; thence east along the section line between sections 4 and 33 to the section corner common to sections 3 and 4, T39S, R20E and sections 33 and 34, T38S, R20E; thence south along the eastern boundary of section 4 approximately 4,1318.6 feet; thence S 89 degrees, 11 minutes W 288.28 feet to the east right of way line of the old Paisley/Lakeview Highway; thence S 21 degrees, 53 minutes E along the eastern right of way of the old Paisley/Lakeview Highway 288.4 feet; thence S 78 degrees, 45 minutes W 1375 feet; thence S 3 degrees, 6 minutes, and 30 seconds W 200 feet; thence S 77 degrees, 45 minutes W 136 feet to the east right of way line of U.S. Highway 395; thence southeasterly along the east right of way line of U.S. Highway 395 53.5 feet; thence N 77 degrees, 45 minutes E 195.6 feet; thence S 38 degrees, 45 minutes E 56.8 feet; thence S 51 degrees, 15 minutes W 186.1 feet to the east right of way of U.S. Highway 395; thence southeast along the eastern right of way line of U.S. Highway 395 2310 feet; thence N 76 degrees, 19 minutes 544.7 feet; thence S 13 degrees, 23 minutes, 21 seconds E 400 feet; thence N 63 degrees, 13 minutes E 243.6 feet to the western line of the old American Forest Products Logging Road; thence southeast along the old American Forest Products Logging Road to the western line of the northeast quadrant of the northwest quadrant of section 10, T39S, R20E; thence southeast to a point on the south line of the northeast quadrant of the northwest quadrant of Section 10, T39S, R20E (this point also bears N 89 degrees, 33 minutes E 230 feet from the center line of U.S. Highway 395); thence south on a line parallel to the east right of way line of U.S. Highway 395 to the south line of the northwest quadrant of section 10, T39S, R20E; thence south 491 feet to the east right of way of U.S. Highway 395; thence southeasterly following the east right of way of U.S. Highway 395 255 feet to the south line of the northeast quadrant of the northeast quadrant of the southwest quadrant of section 10, T39S, R20E; thence east along that south line to the center line of section 10, T39S, R20E; thence continuing east along the same south line to the eastern boundary of section 10, T39S, R20E; thence south along the eastern boundary of section 10 to the section corner common to sections 10, 11, 14, and 15, T39S, R20E; thence south along the section line between sections 14 and 15 to the section corner common to sections 14, 15, 22, and 23, T39S, R20E; thence west along the section line between sections 15 and 22 to the northwest corner of the northeast quadrant of the northeast quadrant of section 22, T39S, R20E; thence south along the eastern line of the western half of the eastern half of section 22 to the southern boundary of section 22, T39S, R20E; thence west along the southern boundary of section 22 to the point of beginning.

(15) "Maintenance Area" means any area that was formerly nonattainment for a criteria pollutant but has since met EPA promulgated standards and has had a maintenance plan to stay within the standards approved by the EPA pursuant to 40 CFR 51.110 (July, 1993).

(16) "Medford-Ashland Air Quality Maintenance Area" (AQMA) means the area defined as beginning at a point approximately two and quarter miles northeast of the town of Eagle Point, Jackson County, Oregon at the northeast corner of Section 36, Township 35 South, Range 1 West (T35S, R1W); thence South along the Willamette Meridian to the southeast corner of Section 25, T37S, R1W; thence southeast along a line to the southeast corner of Section 9, T39S, R2E; thence south-southeast along line to the southeast corner of Section 22, T39S, R2E; thence South to the southeast corner of Section 27, T39S, R2E; thence southwest along a line to the southeast corner of Section 33, T39S, R2E; thence West to the southwest corner of Section 31, T39S, R2E; thence northwest along a line to the northwest corner of Section 36, T39S, R1E; thence West to the southwest corner of Section 26, T39S, R1E; thence northwest along a line to the southeast corner of Section 7, T39S, R1E; thence West to the southwest corner of Section 12, T39S, R1W, T39S, R1W; thence northwest along a line to southwest corner of Section 20, T38S, R1W; thence West to the southwest corner of Section 24, T38S, R2W; thence northwest along a line to the southwest corner of Section 4, T38S, R2W; thence West to the southwest corner of Section 6, T38S, R2W; thence northwest along a line to the southwest corner of Section 31, T37S, R2W; thence North and East along the Rogue River to the north boundary of Section 32, T35S, R1W; thence East along a line to the point of beginning.

(17) "Medford-Ashland CBD" means the area beginning at the intersection of Crater Lake Highway (Highway 62) south on Biddle Road to the intersection of Fourth Street, west on Fourth Street to the intersection with Riverside Avenue (Highway 99), south on Riverside Avenue to the intersection with Tenth Street, west on Tenth Street to the intersection with Oakdale Avenue, north on Oakdale Avenue to the intersection with Fourth Street, east on Fourth Street to the intersection with Central Avenue, north on Central Avenue to the intersection with Court Street, north on Court Street to the intersection with Crater Lake Highway (Highway 62) and east

on Crater Lake Highway to the point of beginning, with extensions along McAndrews Road east from Biddle Road to Crater Lake Avenue, and along Jackson Street east from Biddle Road to Crater Lake Avenue.

NOTE: This definition also marks the area where indirect sources are required to have indirect source construction permits in the Medford area. See OAR 340-254-0040.

(18) "Medford UGB" means the area beginning at the line separating Range 1 West and Range 2 West at a point approximately 1/4 mile south of the northwest corner of Section 31, T36S, R1W; thence west approximately 1/2 mile; thence south to the north bank of Bear Creek; thence west to the south bank of Bear Creek; thence south to the intersection with the Medford Corporate Boundary; thence following the Medford Corporate Boundary west and southwesterly to the intersection with Merriman Road; thence northwesterly along Merriman Road to the intersection with the eastern boundary of Section 10, T36S, R2W; thence south along said boundary line approximately 3/4 mile; thence west approximately 1/3 mile; thence south to the intersection with the Hopkins Canal; thence east along the Hopkins Canal approximately 200 feet; thence south to Rossanely Drive; thence east along Rossanely Drive approximately 200 feet; thence south approximately 1200 feet; thence west approximately 700 feet; thence south approximately 1400 feet; thence east approximately 1400 feet; thence north approximately 100 feet; thence east approximately 700 feet; thence south to Finley Lane; thence west to the end of Finley Lane; thence approximately 1200 feet; thence west approximately 1300 feet; thence north approximately 150 feet; thence west approximately 500 feet; thence south to Highway 238; thence west along Highway 238 approximately 250 feet; thence south approximately 1250 feet to a point even with the end of Renault Avenue to the east; thence east approximately 2200 feet; thence south approximately 1100 feet to a point even with Sunset Court to the east; thence east to and along Sunset Court to the first (nameless) road to the south; thence approximately 850 feet; thence west approximately 600 feet; thence south to Stewart Avenue; thence west along Stewart Avenue approximately 750 feet; thence south approximately 1100 feet; thence west approximately 100 feet; thence south approximately 800 feet; thence east approximately 800 feet; thence south approximately 1000 feet; thence west approximately 350 feet to a point even with the north-south connector street between Sunset Drive and South Stage Road; thence south to and along said connecting road and continuing along South Stage Road to Fairlane Road; thence south to the end of Fairlane Road and extending beyond it approximately 250 feet; thence east approximately 250 feet; thence south approximately 250 feet to the intersection with Judy Way; thence east on Judy Way to Griffin Creek Road; thence north on Griffin Creek Road to South Stage Road; thence east on South Stage Road to Orchard Home Drive; thence north on Orchard Home Drive approximately 800 feet; thence east to Columbus Avenue; thence south along Columbus Avenue to South Stage Road; thence east along South Stage Road to the first road to the north after Sunnyview Lane; thence north approximately 300 feet; thence east approximately 300 feet; thence north approximately 700 feet; thence east to King's Highway; thence north along King's Highway to Experiment Station Road; thence east along Experiment Station Road to Marsh Lane; thence east along Marsh Lane to the northern boundary of Section 6, T38S, R1W; thence east along said boundary approximately 1100 feet; thence north approximately 1200 feet; thence east approximately 1/3 mile; thence north approximately 400 feet; thence east approximately 1000 feet to a drainage ditch; thence following the drainage ditch southeasterly approximately 500 feet; thence east to the eastern boundary of Section 31, T37S, R1W; thence south along said boundary approximately 1900 feet; thence east to and along the loop off of Rogue Valley Boulevard, following that loop to the Southern Pacific Railroad Line (SPRR); thence following SPRR approximately 500 feet; thence south to South Stage Road; thence east along South Stage Road to SPRR; thence southeasterly along SPRR to the intersection with the west fork of Bear Creek; thence north-easterly along the west fork of Bear Creek to the intersection with U.S. Highway 99; thence southeasterly along U.S. Highway 99 approximately 250 feet; thence east approximately 1600 feet; thence south to East Glenwood Road; thence east along East Glenwood Road approximately 1250 feet; thence north approximately 1/2 mile; thence west approximately 250 feet; thence north approximately 1/2 mile to the Medford City Limits; thence east along the city limits to Phoenix Road; thence south along Phoenix Road to Coal Mine Road; thence east along Coal Mine Road approximately 9/10 mile to the western boundary of Section 35, T37S, R1W; thence north to the midpoint of the western boundary of Section 35, T37S, R1W; thence west approximately 800 feet; thence north approximately 1700 feet to the intersection with Barnett Road; thence easterly along Barnett Road to the southeast corner of Section 27, T37S, R1W; thence north along the eastern boundary line of said section approximately

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1/2 mile to the intersection with the 1800 foot contour line; thence east to the intersection with Cherry Lane; thence following Cherry Lane southeasterly and then northerly to the intersection with Hillcrest Road; thence east along Hillcrest Road to the southeast corner of Section 23, T37S, R1W; thence north to the northeast corner of Section 23, T37S, R1W; thence west to the midpoint of the northern boundary of Section 22; T37S, R1W; thence north to the midpoint of Section 15, T37S, R1W; thence west to the midpoint of the western boundary of Section 15, T37S, R1W; thence south along said boundary approximately 600 feet; thence west approximately 1200 feet; thence north approximately 600 feet; thence west to Foothill Road; thence north along Foothill Road to a point approximately 500 feet north of Butte Road; thence west approximately 300 feet; thence south approximately 250 feet; thence west on a line parallel to and approximately 250 feet north of Butte Road to the eastern boundary of Section 8, T37S, R1W; thence north approximately 2200 feet; thence west approximately 1800 feet; thence north approximately 2000 feet; thence west approximately 500 feet; thence north to Coker Butte Road; thence east along Coker Butte Road approximately 550 feet; thence north approximately 1250 feet; thence west to U.S. Highway 62; thence north approximately 3000 feet; thence east approximately 400 feet to the 1340 foot contour line; thence north approximately 800 feet; thence west approximately 200 feet; thence north approximately 250 feet to East Vilas Road; thence east along East Vilas Road approximately 450 feet; thence north approximately 2000 feet to a point approximately 150 feet north of Swanson Creek; thence east approximately 600 feet; thence north approximately 850 feet; thence west approximately 750 feet; thence north approximately 650 feet; thence west approximately 2100 feet; thence on a line southeast approximately 600 feet; thence east approximately 450 feet; thence south approximately 1600 feet; thence west approximately 2000 feet to the continuance of the private logging road north of East Vilas Road; thence south along said logging road approximately 850 feet; thence west approximately 750 feet; thence south approximately 150 feet; thence west approximately 550 feet to Peace Lane; thence north along Peace Lane approximately 100 feet; thence west approximately 350 feet; thence north approximately 950 feet; thence west approximately 1000 feet to the western boundary of Section 31, T36S, R1W; thence north approximately 1300 feet along said boundary to the point of beginning.

(19) "Nonattainment Area" means any area that has been designated as not meeting the standards established by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR 51.52 (July, 1993) for any criteria pollutant.

(20) "O3" means Ozone.

(21) "Oakridge UGB" means the area enclosed by the following: Beginning at the northwest corner of Section 17, T21S, R3E and the city limits; thence south along the western boundary of Section 17, T21S, R3E along the city limits approximately 800 feet; thence southwestward following the city limits approximately 750 feet; thence west along the city limits approximately 450 feet; thence northwesterly along the city limits approximately 450 feet; thence on a line south along the city limits approximately 250 feet; thence on a line east along the city limits approximately 100 feet; thence southwestward along the city limits approximately 200 feet; thence on a line east along the city limits approximately 400 feet; thence on a line south along the city limits to the channel of the Willamette River Middle Fork; thence south-easterly up the Willamette River Middle Fork along the city limits approximately 7200 feet; thence exiting the Willamette River Middle Fork with the city limits in a northerly manner and forming a rough semicircle with a diameter of approximately one-half mile before rejoining the Willamette River Middle Fork; thence diverging from the city limits upon rejoining the Willamette River Middle Fork and moving southeasterly approximately 5600 feet up the Willamette River Middle Fork to a point on the river even with the point where Salmon Creek Road intersects with U.S. Highway 58; thence on a line east from the channel of the Willamette River Middle Fork across the intersection of Salmon Creek Road and U.S. Highway 58 to the intersection with the Southern Pacific Railroad Line; thence northerly along the Southern Pacific Railroad Line to the intersection with the northern boundary of Section 22, T21S, R3E; thence west along the northern boundary of Section 22, T21S, R3E to the intersection with Salmon Creek Road; thence on a line north to the intersection with the Southern Pacific Railroad Line; thence east along the Southern Pacific Railroad Line approximately 600 feet; thence on a line north to the intersection with High Prairie Road; thence on a line west approximately 400 feet; thence on a line north to the intersection with the northern boundary of Section 15, T21S, R3E; thence west along the northern boundary of Section 15, T21S, R3E to the intersection with the southeastern corner of Section 9, T21S, R3E; thence north along the eastern

boundary of Section 9, T21S, R3E approximately 1300 feet; thence on a line west approximately 1100 feet; thence on a line south to the intersection with West Oak Road; thence northwesterly along West Oak Road approximately 2000 feet; thence on a line south to the intersection with the northern boundary line of the city limits; thence westerly and northwesterly approximately 8000 feet along the city limits to the point of beginning.

(22) "Particulate Matter" has the meaning given that term in OAR 340-200-0020(82).

(23) PM10: has the meaning given that term in OAR 340-200-0020(90).

(24) "PM2.5" has the meaning given that term in OAR 340-200-0020(91).

(25) "Portland AQMA" means the area within the bounds beginning at the point starting on the Oregon-Washington state line in the Columbia River at the confluence with the Willamette River, thence east up the Columbia River to the confluence with the Sandy River, thence southerly and easterly up the Sandy River to the point where the Sandy River intersects the Clackamas County-Multnomah County line, thence west along the Clackamas County-Multnomah County line to the point where the Clackamas County-Multnomah County line is intersected by H. Johnson Road (242nd), thence south along H. Johnson Road to the intersection with Kelso Road (Boring Highway), thence west along Kelso Road to the intersection with Deep Creek Road (232nd), thence south along Deep Creek Road to the point of intersection with Deep Creek, thence southeasterly along Deep Creek to the confluence with Clackamas River, thence easterly along the Clackamas River to the confluence with Clear Creek, thence southerly along Clear Creek to the point where Clear Creek intersects Springwater Road then to Forsythe Road, thence easterly along Forsythe Road to the intersection with Bradley Road, thence south along Bradley Road to the intersection with Redland Road, thence west along Redland Road to the intersection with Ferguson Road, thence south along Ferguson Road to the intersection with Thayler Road, thence west along Thayler Road to the intersection with Beaver Creek Road, thence southeast along Beaver Creek Road to the intersection with Henrici Road, thence west along Henrici Road to the intersection with State Highway 213 (Mollala Avenue), thence southeast along State Highway 213 to the point of intersection with Beaver Creek, thence westerly down Beaver Creek to the confluence with the Willamette River, thence southerly and westerly up the Willamette River to the point where the Willamette River intersects the Clackamas County-Yamhill County line, thence north along the Clackamas County-Yamhill County line to the point where it intersects the Washington County-Yamhill County line, thence west and north along the Washington County-Yamhill County line to the point where it is intersected by Mount Richmond Road, thence northeast along Mount Richmond Road to the intersection with Patton Valley Road, thence easterly and northerly along Patton Valley Road to the intersection with Tualatin Valley State Highway, thence northerly along Tualatin Valley State Highway to the intersection with State Highway 47, thence northerly along State Highway 47 to the intersection with Dilley Road, thence northwesterly and northerly along Dilley Road to the intersection with Stringtown Road, thence westerly and northwesterly along Stringtown Road to the intersection with Gales Creek Road, thence northwesterly along Gales Creek Road to the intersection with Timmerman Road, thence northerly along Timmerman Road to the intersection with Wilson River Highway, thence west and southwestward along Wilson River Highway to the intersection with Narup Road, thence north along Narup Road to the intersection with Cedar Canyon Road, thence westerly and northerly along Cedar Canyon Road to the intersection with Banks Road, thence west along Banks Road to the intersection with Hahn Road, thence northerly and westerly along Hahn Road to the intersection with Mountindale Road, thence southeasterly along Mountindale Road to the intersection with Glencoe Road, thence east-southeasterly along Glencoe Road to the intersection with Jackson Quarry Road, thence north-northeasterly along Jackson Quarry Road to the intersection with Helvetia Road, thence easterly and southerly along Helvetia Road to the intersection with Bishop Road, thence southerly along Bishop Road to the intersection with Phillips Road, thence easterly along Phillips Road to the intersection with the Burlington Northern Railroad Track, thence north-easterly along the Burlington Northern Railroad Line to the intersection with Rock Creek Road, thence east-southeasterly along Rock Creek Road to the intersection with Old Cornelius Pass Road, thence northeasterly along Old Cornelius Pass Road to the intersection with Skyline Boulevard, thence easterly and southerly along Skyline Boulevard to the intersection with Newberry Road, thence northeasterly along Newberry Road to the intersection with State Highway 30 (St. Helens Road), thence northeast on a line over land across State Highway 30 to the Multnomah Channel, thence

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east-southeasterly up the Multnomah Channel to the diffuence with the Willamette River, thence north-northeasterly down the Willamette River to the confluence with the Columbia River and the Oregon-Washington state line (the point of beginning).

(26) "Portland Metropolitan Service District Boundary" or "Portland Metro" means the boundary surrounding the urban growth boundaries of the cities within the Greater Portland Metropolitan Area. It is defined in the Oregon Revised Statutes (ORS) 268.125 (1989).

(27) "Portland Vehicle Inspection Area" means the area of the state included within the following census tracts, block groups, and blocks as used in the 1990 Federal Census. In Multnomah County, the following tracts, block groups, and blocks are included: Tracts 1, 2, 3.01, 3.02, 4.01, 4.02, 5.01, 5.02, 6.01, 6.02, 7.01, 7.02, 8.01, 8.02, 9.01, 9.02, 10, 11.01, 11.02, 12.01, 12.02, 13.01, 13.02, 14, 15, 16.01, 16.02, 17.01, 17.02, 18.01, 18.02, 19, 20, 21, 22.01, 22.02, 23.01, 23.02, 24.01, 24.02, 25.01, 25.02, 26, 27.01, 27.02, 28.01, 28.02, 29.01, 29.02, 29.03, 30, 31, 32, 33.01, 33.02, 34.01, 34.02, 35.01, 35.02, 36.01, 36.02, 36.03, 37.01, 37.02, 38.01, 38.02, 38.03, 39.01, 39.02, 40.01, 40.02, 41.01, 41.02, 42, 43, 44, 45, 46.01, 46.02, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60.01, 60.02, 61, 62, 63, 64.01, 64.02, 65.01, 65.02, 66.01, 66.02, 67.01, 67.02, 68.01, 68.02, 69, 70, 71, 72.01, 72.02, 73, 74, 75, 76, 77, 78, 79, 80.01, 80.02, 81, 82.01, 82.02, 83.01, 83.02, 84, 85, 86, 87, 88, 89, 90, 91, 92.01, 92.02, 93, 94, 95, 96.01, 96.02, 97.01, 97.02, 98.01, 98.02, 99.01, 99.02, 99.03, 100, 101, 102, 103.01, 103.02, 104.02, 104.04, 104.05, 104.06, 104.07; Block Groups 1, 2 of Tract 105; Blocks 360, 361, 362 of Tract 105; that portion of Blocks 357, 399 of Tract 105 beginning at the intersection of the Oregon-Washington State Line ("State Line") and the northeast corner of Block Group 1 of Tract 105, thence east along the State Line to the intersection of the State Line and the eastern edge of Section 26, Township 1 North, Range 4 East, thence south along the section line to the centerline of State Highway 100 to the intersection of State Highway 100 and the western edge of Block Group 2 of Tract 105. In Clackamas County, the following tracts, block groups, and blocks are included: Tracts 201, 202, 203.01, 203.02, 204.01, 204.02, 205.01, 205.02, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216.01, 216.02, 217, 218, 219, 220, 221.01, 221.02, 222.02, 223, 224, 225, 226, 227.01, 227.02, 228, 229, 230, 231, 232, 233, 234.01, 234.02, 235, 236, 237; Block Groups 1, 2 of Tract 241; Block Groups 1, 2, 3, 4 of Tract 242; Block Groups 1, 2 of Tract 243.02. In Yamhill County, the following tract is included: Tract 301, except those areas in Tract 301 that lie within the Newberg City Limits defined as of July 12, 1996, and the following blocks within Tract 301: 102B, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121D, 122B, 122C, 123, 126, and 127B. In Washington County the following tracts, block groups, and blocks are included: Tracts 301, 302, 303, 304.01, 304.02, 305.01, 305.02, 306, 307, 308.01, 308.02, 309, 310.03, 310.04, 310.05, 310.06, 311, 312, 313, 314.01, 314.02, 315.01, 315.04, 315.05, 315.06, 315.07, 315.08, 316.03, 316.04, 316.05, 316.06, 316.07, 317.02, 317.03, 317.04, 318.01, 318.02, 318.03, 319.01, 319.03, 319.04, 320, 321.01, 321.02, 322, 323, 324.02, 324.03, 324.04, 325, 326.01, 326.02, 328, 329, 330, 331, 332, 333; Block Groups 1, 2 of Tract 327; Block Group 1 of Tract 334; Block Group 2 of Tract 335; Block Group 1 of Tract 336. In Columbia County the following tracts, block groups, and blocks are included: Tract 9710.98; Block Groups 2, 3 of Tract 9709.98; Blocks 146B, 148, 152 of Tract 9709.98.

(28) "Rogue Basin" means the area bounded by the following line: Beginning at the NE corner of T32S, R2E, W.M., thence south along range line 2E to the SE corner of T39S; thence west along township line 39S to the NE corner of T40S, R7W; thence south to the SE corner of T40S, R7W; thence west to the SE corner of T40S, R9W; thence north on range line 9W to the NE corner of T39S, R9W; thence east to the NE corner of T39S, R8W; thence north on range line 8W to the SE corner of Section 1, T33S, R8W on the Josephine-Douglas County line; thence east on the Josephine-Douglas and Jackson-Douglas County lines to the NE corner of T32S, R1W; thence east along township line 32S to the NE corner of T32S, R2E to the point of beginning.

(29) "Salem-Keizer Area Transportation Study" or "SKATS" means the area within the bounds beginning at the intersection of U.S. Interstate Highway 5 (I-5) with Battle Creek Road SE and Wiltsey Road, south along I-5 to the intersection with the western boundary of Section 24, T8S, R3W; thence due south on a line to the intersection with Delaney Road; thence easterly along Delaney Road to the intersection with Sunnyside Road; thence north along Sunnyside Road to the intersection with Hylo Road SE; thence west along Hylo Road SE to the intersection with Liberty Road; thence north along Liberty Road to the intersection with Cole Road; thence west along Cole Road to the intersection with Bates Road; thence northerly and easterly along Bates Road to the intersection with Jory Hill Road;

thence west along Jory Hill Road to the intersection with Stone Hill Avenue; thence north along Stone Hill Avenue to the intersection with Vita Springs Road; thence westerly along Vita Springs Road to the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where the western boundary of Section 30, T7S, R3W intersects the Southern Pacific Railroad Line; thence westerly along the Southern Pacific Railroad Line to the intersection with State Highway 51; thence northeasterly along State Highway 51 to the intersection with Oak Grove Road; thence northerly along Oak Grove Road to the intersection with State Highway 22; thence west on State Highway 22 to the intersection with Oak Grove Road; thence north along Oak Grove Road to the intersection with Orchard Heights Road; thence east and north along Orchard Heights Road to the intersection with Eagle Crest Drive; thence northerly along Eagle Crest Drive to the intersection with Hunt Road; thence north along Hunt Road to the intersection with Fourth Road; thence east along Fourth Road to the intersection with Spring Valley Road; thence north along Spring Valley to the intersection with Oak Knoll Road; thence east along Oak Knoll Road to the intersection with Wallace Road; thence south along Wallace Road to the intersection with Lincoln Road; thence east along Lincoln Road on a line to the intersection with the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where Simon Street starts on the East Bank; thence east and south along Simon Street to the intersection with Salmon; thence east along Salmon to the intersection with Ravena Drive; thence southerly and easterly along Ravena Drive to the intersection with Wheatland Road; thence northerly along Wheatland Road to the intersection with Brooklake Road; thence southeast along Brooklake Road to the intersection with 65th Avenue; thence south along 65th Avenue to the intersection with Labish Road; thence east along Labish Road to the intersection with the West Branch of the Little Pudding River; thence southerly along the West Branch of the Little Pudding River to the intersection with Sunnyview Road; thence east along Sunnyview Road to the intersection with 63rd Avenue; thence south along 63rd Avenue to the intersection with State Street; thence east along State Street to the intersection with 62nd Avenue; thence south along 62nd Avenue to the intersection with Deer Park Drive; thence southwest along Deer Park Drive to the intersection with Santiam Highway 22; thence southeast along Santiam Highway 22 to the point where it intersects the Salem Urban Growth Boundary (SUGB); thence following the southeast boundary of the SUGB generally southerly and westerly to the intersection with Wiltsey Road; thence west along Wiltsey Road to the intersection with I-5 (the point of beginning).

(30) "UGB" means Urban Growth Boundary.

(31) "Umpqua Basin" means the area bounded by the following line: Beginning at the SW corner of Section 2, T19S, R9W, on the Douglas-Lane County lines and extending due south to the SW corner of Section 14, T32S, R9W, on the Douglas-Curry County lines, thence easterly on the Douglas-Curry and Douglas-Josephine County lines to the intersection of the Douglas, Josephine, and Jackson County lines; thence easterly on the Douglas-Jackson County line to the intersection of the Umpqua National Forest boundary on the NW corner of Section 32, T32S, R3W; thence northerly on the Umpqua National Forest boundary to the NE corner of Section 36, T25S, R2W; thence west to the NW corner of Section 36, T25S, R4W; thence north to the Douglas-Lane County line; thence westerly on the Douglas-Lane County line to the starting point.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0500; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 10-2012, f. & cert. ef. 12-11-12

340-225-0090

Requirements for Demonstrating a Net Air Quality Benefit

Demonstrations of net air quality benefit for offsets must include the following:

(1) Ozone areas (VOC and NOx emissions). For sources capable of impacting a designated ozone nonattainment or maintenance area;

(a) Offsets for VOC and NOx are required if the source will be located within the designated area or within the Ozone Precursor Distance.

(b) The amount and location of offsets must be determined in accordance with this subsection:

(A) For new or modified sources locating within a designated nonattainment area, the offset ratio is 1.1:1. These offsets must come from with-

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in either the same designated nonattainment area as the new or modified source or another ozone nonattainment area (with equal or higher nonattainment classification) that contributes to a violation of the NAAQS in the same designated nonattainment area as the new or modified source.

(B) For new or modified sources locating within a designated maintenance area, the offset ratio is 1.1:1. These offsets may come from within either the designated area or the ozone precursor distance.

(C) For new or modified sources locating outside the designated area, but within the ozone precursor distance, the offset ratio is 1:1. These offsets may come from within either the designated area or the ozone precursor distance.

(D) Offsets from outside the designated area but within the Ozone Precursor Distance must be from sources affecting the designated area in a comparable manner to the proposed emissions increase. Methods for determining offsets are described in the Ozone Precursor Offsets definition (OAR 340-225-0020(11)).

(c) In lieu of obtaining offsets, the owner or operator may obtain an allocation at the rate of 1:1 from a growth allowance, if available, in an applicable maintenance plan.

(d) Sources within or affecting the Medford Ozone Maintenance Area are exempt from the requirement for NO_x offsets relating to ozone formation.

(e) Sources within or affecting the Salem Ozone Maintenance Area are exempt from the requirement for VOC and NO_x offsets relating to ozone formation.

(2) Non-Ozone areas (PM_{2.5}, PM₁₀, SO₂, CO, NO_x, and Lead emissions):

(a) For a source locating within a designated nonattainment area, the owner or operator must comply with paragraphs (A) through (E) of this subsection:

(A) Obtain offsets from within the same designated nonattainment area for the nonattainment pollutant(s);

(B) Except as provided in paragraphs (C) of this subsection, provide a minimum of 1:1 offsets for each nonattainment pollutant and precursor with emission increases over the Netting Basis;

(C) For PM_{2.5}; inter-pollutant offsets are allowed as follows:

(i) 1 ton of direct PM_{2.5} may be used to offset 40 tons of SO₂;

(ii) 1 ton of direct PM_{2.5} may be used to offset 100 tons of NO_x;

(iii) 40 tons of SO₂ may be used to offset 1 ton of direct PM_{2.5};

(iv) 100 tons of NO_x may be used to offset 1 ton of direct PM_{2.5}.

(D) Except as provided in section (7) of this rule, provide a net air quality benefit within the designated nonattainment area. "Net Air Quality Benefit" means:

(i) Offsets obtained result in a reduction in concentration at a majority of the modeled receptors and the emission increases from the proposed source or modification will result in less than a significant impact level increase at all modeled receptors; or

(ii) For a small scale local energy project and any infrastructure related to that project located in the same area, a reduction of the nonattainment pollutant emissions equal to the ratio specified in this subsection, provided that the proposed major source or major modification would not cause or contribute to a violation of the national ambient air quality standard or otherwise pose a material threat to compliance with air quality standards in the nonattainment area.

(E) Provide offsets sufficient to demonstrate reasonable further progress toward achieving the NAAQS.

(b) For a source locating outside a designated nonattainment area but causing a significant air quality impact on the area, the owner or operator must provide offsets sufficient to reduce the modeled impacts below the significant air quality impact level (OAR 340-200-0020) at all receptors within the designated nonattainment area. These offsets may come from within or outside the designated nonattainment area. This requirement only applies to the emissions remaining after first deducting the offsets obtained in accordance with section (7) of this rule.

(c) For a source locating inside or causing a significant air quality impact on a designated maintenance area, the owner or operator must either provide offsets sufficient to reduce modeled impacts below the significant air quality impact level (OAR 340-200-0020) at all receptors within the designated maintenance area or obtain an allocation from an available growth allowance as allowed by an applicable maintenance plan. These offsets may come from within or outside the designated maintenance area. This requirement only applies to the emissions remaining after first deducting the offsets obtained in accordance with section (7) of this rule.

(A) Medford-Ashland AQMA: Proposed new major PM₁₀ sources or major PM₁₀ modifications locating within the AQMA that are required to

provide emission offsets under OAR 340-224-0060(2)(a) must provide reductions in PM₁₀ emissions equal to 1.2 times the emissions increase over the netting basis from the new or modified source, and must provide a net air quality benefit within the AQMA. "Net Air Quality Benefit" means:

(i) A reduction in concentration at a majority of the modeled receptors and less than a significant impact level increase at all modeled receptors; or

(ii) For a small scale local energy project and any infrastructure related to that project located in the same area, a reduction of the maintenance pollutant emissions equal to the ratio specified in this paragraph, provided that the proposed major source or major modification would not cause or contribute to a violation of the national ambient air quality standard or otherwise pose a material threat to compliance with air quality standards in the maintenance area.

(B) Medford-Ashland AQMA: Proposed new major PM₁₀ sources or major PM₁₀ modifications located outside the Medford-Ashland AQMA that cause a significant air quality impact on the AQMA must provide reductions in PM₁₀ emissions sufficient to reduce modeled impacts below the significant air quality impact level (OAR 340-200-0020) at all receptors within the AQMA.

(3) Except as provided in paragraph (2)(a)(C) of this rule, the emission reductions used as offsets must be of the same type of pollutant as the emissions from the new source or modification. Sources of PM₁₀ must be offset with particulate in the same size range.

(4) The emission reductions used as offsets must be contemporaneous, that is, the reductions must take effect before the time of startup but not more than two years before the submission of a complete permit application for the new source or modification. This time limitation may be extended through banking, as provided for in OAR 340 division 268, Emission Reduction Credit Banking. In the case of replacement facilities, the DEQ may allow simultaneous operation of the old and new facilities during the startup period of the new facility, if net emissions are not increased during that time period. Any emission reductions must be federally enforceable at the time of the issuance of the permit.

(5) Offsets required under this rule must meet the requirements of Emissions Reduction Credits in OAR 340 division 268.

(6) Emission reductions used as offsets must be equivalent in terms of short term, seasonal, and yearly time periods to mitigate the effects of the proposed emissions.

(7) Offsets obtained in accordance with OAR 340-240-0550 and 340-240-0560 for sources locating within or causing significant air quality impact on the Klamath Falls PM_{2.5} nonattainment or PM₁₀ maintenance areas are exempt from the requirements of paragraph (2)(a)(E) and sub-sections (2)(b) and (2)(c) of this rule provided that the proposed major source or major modification would not cause or contribute to a new violation of the national ambient air quality standard. This exemption only applies to the direct PM_{2.5} or PM₁₀ offsets obtained from residential wood-fired devices in accordance with 340-240-0550 and 340-240-0560. Any remaining emissions from the source that are offset by emission reductions from other sources are subject to the requirements of paragraph (2)(a)(E) or sub-sections (2)(b) or (2)(c) of this rule, as applicable.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0260; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1970; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0111; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-224-0090 & 340-240-0260; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-6-03; Administrative correction 11-10-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 10-2010(Temp), f. 8-31-10, cert. ef. 9-1-10 thru 2-28-11; Administrative correction, 3-29-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0010

Purpose

The purpose of this division is to address the air quality control needs of the Medford-Ashland AQMA and Grants Pass UGB (OAR 340-240-0100 through 340-240-0270), the La Grande UGB (340-240-0300 through 340-240-0360), the Lakeview UGB (340-240-0400 through 340-240-0440), and the Klamath Falls Nonattainment Area (340-240-0500 through 340-240-0630).

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

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Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0005; DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0030

Definitions

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

(1) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(2) "Air Conveying System" means an air moving device, such as a fan or blower, associated ductwork, and a cyclone or other collection device, the purpose of which is to move material from one point to another by entrainment in a moving airstream.

(3) "Average Operating Opacity" means the opacity of emissions determined using EPA Method 9 on any three days within a 12-month period which are separated from each other by at least 30 days; a violation of the average operating opacity limitation is judged to have occurred if the opacity of emissions on each of the three days is greater than the specified average operating opacity limitation.

(4) "Charcoal Producing Plant" means an industrial operation which uses the destructive distillation of wood to obtain the fixed carbon in the wood.

(5) "Collection Efficiency" means the overall performance of the air cleaning device in terms of ratio of weight of material collected to total weight of input to the collector.

(6) "Department" means Department of Environmental Quality.

(7) "Design Criteria" means the numerical as well as verbal description of the basis of design, including but not necessarily limited to design flow rates, temperatures, humidities, contaminant descriptions in terms of types and chemical species, mass emission rates, concentrations, and specification of desired results in terms of final emission rates and concentrations, and scopes of vendor supplies and owner-supplied equipment and utilities, and a description of any operational controls.

(8) "Domestic Waste" means combustible household waste, other than wet garbage, such as paper, cardboard, leaves, yard clippings, wood, or similar materials generated in a dwelling housing four (4) families or less, or on the real property on which the dwelling is situated.

(9) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions.

(10) "Emission" means a release into the outdoor atmosphere of air contaminants.

(11) "EPA Method 9" means the method for Visual Determination of the Opacity of Emissions From Stationary Sources described as Method (average of 24 consecutive observations) in the Department Source Sampling Manual (January, 1992).

(12) "Facility" means an identifiable piece of process equipment. A stationary source may be comprised of one or more pollutant-emitting facilities.

(13) "Fireplace" is defined in OAR 340-262-0450

(14) "Fuel Burning Equipment" means a device that burns a solid, liquid, or gaseous fuel, the principal purpose of which is to produce heat or power by indirect heat transfer. All stationary gas turbines are considered Fuel Burning Equipment. Marine installations and internal combustion engines are not considered Fuel Burning Equipment.

(15) "Fuel Moisture Content By Weight Greater Than 20 Percent" means bark, hogged wood waste, or other wood with an average moisture content of more than 20 percent by weight on a wet basis as used for fuel in the normal operation of a wood-fired veneer dryer as measured by ASTM D4442-84 during compliance source testing.

(16) "Fuel Moisture Content By Weight Less Than 20 Percent" means pulverized ply trim, sanderdust, or other wood with an average moisture content of 20 percent or less by weight on a wet basis as used for fuel in the normal operation of a wood-fired veneer dryer as measured by ASTM D4442-84 during compliance source testing.

(17) "Fugitive Emissions" means dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof not easily given to measurement, collection and treatment by conventional pollution control methods.

(18) "Grants Pass Urban Growth Area" and "Grants Pass Area" means the area within the Grants Pass Urban Growth Boundary as shown on the Plan and Zoning Maps for the City of Grants Pass as of 1 February 1988.

(19) "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

(20) "Klamath Falls Nonattainment Area" means the area as defined in OAR 340-204-0010.

(21) "La Grande Urban Growth Area" means the area within the La Grande Urban Growth Boundary as shown on the Plan and Zoning Maps for the City of La Grande as of 1 October 1991.

(22) "Lakeview Urban Growth Area" means the area within the Lakeview Urban Growth Boundary as shown on the Plan and Zoning Maps for the Town of Lakeview as of 25 October 1993.

(23) "Liquefied petroleum gas" has the meaning given by the American Society for Testing and Materials in ASTM D1835-82, "Standard Specification for Liquid Petroleum Gases."

(24) "Lowest Achievable Emission Rate" or "LAER" is defined in OAR 340-200-0020.

(25) "Maximum Opacity" means the opacity as determined by EPA Method 9 (average of 24 consecutive observations).

(26) "Medford-Ashland Air Quality Maintenance Area" (AQMA) means the area defined as beginning at a point approximately two and quarter miles northeast of the town of Eagle Point, Jackson County, Oregon at the northeast corner of Section 36, Township 35 South, Range 1 West (T35S, R1W); thence South along the Willamette Meridian to the southeast corner of Section 25, T37S, R1W; thence southeast along a line to the southeast corner of Section 9, T39S, R2E; thence south-southeast along line to the southeast corner of Section 22, T39S, R2E; thence South to the southeast corner of Section 27, T39S, R2E; thence southwest along a line to the southeast corner of Section 33, T39S, R2E; thence West to the southwest corner of Section 31, T39S, R2E; thence northwest along a line to the northwest corner of Section 36, T39S, R1E; thence West to the southwest corner of Section 26, T39S, R1E; thence northwest along a line to the southeast corner of Section 7, T39S, R1E; thence West to the southwest corner of Section 12, T39S, R1W, T39S, R1W; thence northwest along a line to southwest corner of Section 20, T38S, R1W; thence West to the southwest corner of Section 24, T38S, R2W; thence northwest along a line to the southwest corner of Section 4, T38S, R2W; thence West to the southwest corner of Section 6, T38S, R2W; thence northwest along a line to the southwest corner of Section 31, T37S, R2W; thence North and East along the Rogue River to the north boundary of Section 32, T35S, R1W; thence East along a line to the point of beginning.

(27) "Modified Source" means any source with a major modification as defined in OAR 340-200-0020.

(28) "Natural gas" means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal component is methane.

(29) "New Source" means any source not in existence prior to April 7, 1978 or any source not having a Permit as of April 7, 1978.

(30) "Odor" means that property of an air contaminant that affects the sense of smell.

(31) "Offset" is defined in OAR 340-200-0020.

(32) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with the Department's Source Sampling Manual (January, 1992). Unless otherwise specified by rule, opacity must be measured in accordance with EPA Method 9. For all standards, the minimum observation period must be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g. 3 minutes in any one hour) consist of the total duration of all readings during the observation period that exceed the opacity percentage in the standard, whether or not the readings are consecutive. Alternatives to EPA Method 9, such as a continuous opacity monitoring system (COMS), alternate Method 1 (LIDAR), or EPA Methods 22, or 203, may be used if approved in advance by the DEQ, in accordance with the Source Sampling Manual.

(33) "Open Burning" means burning conducted in such a manner that combustion air and combustion products may not be effectively controlled including, but not limited to, burning conducted in open outdoor fires, burn barrels, and backyard incinerators.

(34) "Particleboard" means matformed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binders.

(35) "Particulate Matter" means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured in accordance with the Department Source Sampling Manual. Particulate matter emission determinations must consist of the average of three separate consecutive runs. For sources tested using DEQ Method 5 or DEQ Method 7, each run must have a minimum sampling time of one hour, a maximum sampling

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time of eight hours, and a minimum sampling volume of 31.8 dscf. For sources tested using DEQ Method 8, each run must have a minimum sampling time of 15 minutes and must collect a minimum particulate sample of 100 mg. Wood waste boilers and charcoal producing plants must be tested with DEQ Method 5; veneer dryers, wood particle dryers, fiber dryers and press/cooling vents must be tested with DEQ Method 7; and air conveying systems must be tested with DEQ Method 8 (January, 1992).

(36) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(37) "Press/Cooling Vent" means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

(38) "Rebuilt Boiler" means a physical change after April 29, 1988, to a wood-waste boiler or its air-contaminant emission control system which is not considered a "modified source" and for which the fixed, depreciable capital cost of added or replacement components equals or exceeds fifty percent of the fixed depreciable cost of a new component which has the same productive capacity

(39) "Refuse" means unwanted material.

(40) "Refuse burning equipment" means a device designed to reduce the volume of solid, liquid, or gaseous refuse by combustion.

(41) "Wood Fuel-Fired Device" means a device or appliance designed for wood fuel combustion, including cordwood stoves, wood stoves and fireplace stove inserts, fireplaces, wood fuel-fired cook stoves, pellet stoves and combination fuel furnaces or boilers, which burn wood fuels.

(42) "Source" means any structure, building, facility, equipment, installation or operation, or combination thereof, which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person, or by persons under common control.

(43) "Standard Conditions" means a temperature of 68° Fahrenheit (20° Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 Kilograms per square centimeter).

(44) "Standard cubic foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from fuel or refuse burning, "standard cubic foot" also implies adjustment of gas volume to that which would result at a concentration of 12% carbon dioxide or 50% excess air.

(45) "Veneer" means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

(46) "Veneer Dryer" means equipment in which veneer is dried.

(47) "Wood-fired Veneer Dryer" means a veneer dryer which is directly heated by the products of combustion of wood fuel in addition to or exclusive of steam or natural gas or propane combustion.

(48) "Wigwam Fired Burner" means a burner which consists of a single combustion chamber, has the general features of a truncated cone, and is used for the incineration of wastes.

(49) "Wood Waste Boiler" means equipment which uses indirect heat transfer from the products of combustion of wood waste to provide heat or power.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 9-1979, f. & ef. 5-3-79; DEQ 3-1980, f. & ef. 1-28-80; DEQ 14-1981, f. & ef. 5-6-81; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0010; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0500

Applicability

OAR 340-240-0500 through 340-240-0630 apply in the Klamath Falls Nonattainment Area beginning January 1, 2013.

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0510

Opacity Standard

(1) Except as provided in section (2) of this rule, no person conducting a commercial or industrial activity may cause or permit the emission of any air contaminant into the atmosphere from any stationary source including fuel or refuse burning equipment, that exhibits equal to or greater than 20% opacity for a period or periods aggregating more than three minutes in any one hour.

(2) Exceptions to section (1) of this rule:

(a) This rule does not apply to fugitive emissions.

(b) This rule does not apply where the presence of uncombined water is the only reason for failure of any source to meet the requirements of this rule.

(c) For wood-fired boilers that were constructed or installed prior to June 1, 1970 and not modified since that time, visible emissions during grate cleaning operations must not equal or exceed 40% opacity for a period or periods aggregating more than three minutes in any one hour.

(A) Beginning June 30, 2013, this exception will only apply if the owner or operator conducts the grate cleaning in accordance with a grate cleaning plan that has been approved by DEQ.

(B) The owner or operator must prepare a grate cleaning plan in consultation with DEQ and submit the plan to DEQ by June 1, 2013.

(3) Opacity is determined in accordance with EPA Method 9 of Appendix A to 40 CFR Part 60 or a continuous opacity monitoring system (COMS) installed and operated in accordance with Performance Specification 1 of Appendix B to 40 CFR Part 60.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0520

Control of Fugitive Emissions

(1) All sawmills, plywood mills and veneer manufacturing plants, particleboard and hardboard plants, asphalt plants, rock crushers, animal feed manufacturers, and other major industrial facilities as identified by the DEQ, must prepare and implement site-specific plans for the control of fugitive emissions. The plan must be submitted to the DEQ for approval in accordance with paragraph (5) below.

(2) Fugitive emission-control plans must identify reasonable measures to prevent particulate matter from becoming airborne, and avoid the migration of material onto the public road system. Such reasonable measures may include, but are not limited to the following:

(a) Paving all roads and areas on which vehicular traffic occurs at the facility;

(b) Scheduled application of water, or other suitable chemicals on unpaved roads, log storage or sorting yards, materials stockpiles, and other surfaces which can create airborne dust. Dust suppressant material must not adversely affect water quality;

(c) Periodic sweeping or cleaning of paved roads and other areas as necessary to prevent migration of material onto the public road system;

(d) Full or partial enclosure of materials stockpiled or other best management practices in cases where application of oil, water, or chemicals are not sufficient to prevent particulate matter from becoming airborne;

(e) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;

(f) Adequate containment during sandblasting or other similar operations;

(g) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne; and

(h) Procedures for the prompt removal of earth or other material from paved streets.

(3) Reasonable measures may include landscaping and using vegetation to reduce the migration of material onto public and private roadways or from becoming airborne.

(4) The facility owner or operator must supervise and control fugitive emissions and material that may become airborne caused by the activity of outside contractors delivering or removing materials at the site.

(5) For existing sources, the site-specific fugitive emissions control plan must be submitted to the DEQ by July 1, 2013. For sources that obtain their initial permit after December 14, 2012, the site-specific fugitive emission control plan must be submitted within 60 days after permit issuance. For portable sources that move into the nonattainment area after December 14, 2012, the site-specific fugitive emission control plan must be submitted with the relocation notification. Unless otherwise notified by the DEQ, the

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fugitive emission control plan will be approved by default within 30 days after the plan is submitted to the DEQ. The DEQ may request revisions to the plan at any time if fugitive emissions are not adequately controlled as demonstrated by visible emissions.

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468A.025
Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0530

Requirement for Operation and Maintenance Plans

(1) With the exception of basic and general permit holders, a permit holder must prepare and implement Operation and Maintenance Plans for non-fugitive sources of particulate matter.

(2) The purposes of the operation and maintenance plans are to:

(a) Reduce the number of upsets and breakdowns in particulate control equipment;

(b) Reduce the duration of upsets and downtimes; and

(c) Improve the efficiency of control equipment during normal operations.

(3) The operation and maintenance plans should consider, but not be limited to, the following:

(a) Personnel training in operation and maintenance;

(b) Preventative maintenance procedures, schedule and records;

(c) Logging of the occurrence and duration of all upsets, breakdowns and malfunctions which result in excessive emissions;

(d) Routine follow-up evaluation of upsets to identify the cause of the problem and changes needed to prevent a recurrence;

(e) Periodic source testing of pollution control units as required by the permit;

(f) Inspection of internal wear points of pollution control equipment during scheduled shutdowns; and

(g) Inventory of key spare parts.

(4) Existing sources must submit an Operation and Maintenance Plan to the DEQ by July 1, 2013. Sources obtaining an initial permit after December 14, 2012 must submit the Operation and Maintenance Plan within 60 days of permit issuance. The DEQ will notify sources within 30 days of plan submittal only if the Operation and Maintenance Plan is not approved. The DEQ may request revisions to the plan at any time if plans are not sufficient.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468.020 & 468A.025
Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0540

Compliance Schedule for Existing Industrial Sources

(1) Except as provided in sections (2) and (3) of this rule, compliance with applicable requirements of OAR 340-240-0500 through 340-240-0540 for a source that is built and located in the Klamath Falls Nonattainment Area prior to December 14, 2012 must be demonstrated by the owner or operator of the source as expeditiously as possible, but in no case later than the following schedule:

(a) No later than June 15, 2013, the owner or operator must submit Design Criteria and a Notice of Intent to Construct for emission-control systems for complying with OAR 340-240-0510 through 340-240-0540 for DEQ review and approval; If the DEQ disapproves the Design Criteria, the owner or operator must revise the Design Criteria to meet the DEQ's objections and submit the revised Design Criteria to the DEQ no later than one month after receiving the DEQ's disapproval;

(b) No later than three months after receiving the DEQ's approval of the Design Criteria, the owner or operator must submit to the DEQ copies of purchase orders for any emission-control devices;

(c) No later than eight months after receiving the DEQ's approval of the Design Criteria, the owner or operator must submit to the DEQ vendor drawings as approved for construction of any emission-control devices and specifications of any other major equipment in the emission-control system in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(d) No later than nine months after receiving the DEQ's approval of the Design Criteria, the owner or operator must begin construction of any emission-control devices;

(e) No later than fourteen months after receiving the DEQ's approval of Design Criteria, the owner or operator must complete construction in accordance with the Design Criteria;

(f) No later than October 15, 2014, the owner or operator must demonstrate compliance with the applicable requirements identified in OAR 340-240-0500 through 0540. Compliance with 340-240-0510 must be demonstrated by conducting a source test. Compliance with 340-240-0520 and 0530 must be demonstrated by implementing the approved plans.

(2) Section (1) of this rule does not apply if the owner or operator of the source has demonstrated by September 15, 2014 that the source is capable of being operated and is operated in continuous compliance with applicable requirements of OAR 340-240-0500 through 340-240-0540 and the DEQ has agreed with the demonstration in writing. The DEQ may grant an extension until April 15, 2015 for a source to demonstrate compliance under this section. The applicable requirements will be incorporated in the Permit issued to the source.

(3) The DEQ may adjust the schedule specified in subsections (1)(a) through (e) of this rule if necessary to ensure timely compliance with subsection (1)(f) of this rule or if necessary to conform to an existing compliance schedule with an earlier compliance demonstration date.

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468A.025
Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0550

Requirements for New Sources When Using Residential Wood Fuel-Fired Device Offsets

(1) All new or modified sources subject to OAR 340-224-0050 or 340-224-0060 may opt to use wood fuel-fired device emission reductions from within the nonattainment or maintenance area to satisfy the offset requirements of 340-225-0090(2):

(a) Offsets for decommissioning fireplaces and non-certified woodstoves (including fireplace inserts) are obtained at a ratio of at least 1:1 (i.e., one ton of emission reductions from fireplaces and non-certified woodstoves offsets one ton of emissions from a proposed new or modified industrial point source proposed to be located inside or impacting the non-attainment area or maintenance area);

(b) Offsets must be obtained from within the Klamath Falls Nonattainment Area and Maintenance Area; and

(c) The emission reductions offsets must be approved by the DEQ and comply with OAR 340-240-0560.

(2) The net air quality benefit analysis specified in OAR 340-225-0090(2)(a)(E) is not applicable to offsets meeting the criteria in (a) through (c) of section (1) of this rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468.020 & 468A.025
Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0560

Real and Permanent PM2.5 and PM10 Offsets

(1) Annual emissions reductions offsets (PM2.5 and PM10) are determined as follows:

(a) For fireplaces, the emission reductions offsets for decommissioning the fireplace and replacing it with a:

(A) Certified fireplace insert is 0.02 tons for each replaced device;

(B) Pellet stove insert is 0.03 tons for each replaced device; or

(C) Alternative non-wood burning heating system is 0.04 tons for each replaced device.

NOTE: As used in this rule, "Certified" includes catalytic and non-catalytic designs, unless otherwise specified.

(b) For non-certified fireplace inserts, the emission reduction for replacing the heating device with a:

(A) Certified fireplace insert is 0.02 tons for each replaced device;

(B) Pellet stove is 0.04 tons for each replaced device; or

(C) Alternative non-wood burning heating system is 0.04 tons for each replaced device

(c) For conventional (non-certified) woodstoves, the emission reduction for replacing the heating device with a:

(A) Certified woodstove (including both catalytic and non-catalytic designs) or certified fireplace insert is 0.03 tons for each replaced device; or

(B) Pellet stove is 0.05 tons for each replaced device; or

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(C) Alternative non-wood burning heating system is 0.06 tons for each replaced device

(d) For certified woodstoves (including both catalytic and non-catalytic designs), the emission reduction for replacing the heating device with a:

(A) Pellet stove is 0.03 tons for each replaced device; or

(B) Alternative non-wood burning heating system is 0.04 tons for each replaced device

(2) For the emission reductions identified in section (1) to be considered permanent, the person responsible for taking credit for the emission reductions must obtain and maintain the following records for at least 5 years from the date that the proposed industrial point source commences operation:

(a) The address of the residence where the emission reduction occurred;

(b) The date that the emission reduction was achieved;

(c) Purchase and installation records for certified woodstoves, certified inserts, or alternative non-wood burning heating systems;

(d) Records for permanently decommissioning fireplaces, if applicable; and

(e) Disposal records for non-certified woodstoves or fireplace inserts removed.

(3) The records identified in section (2) may be provided by a third party authorized and monitored by the DEQ to procure the emission reductions identified in section (1).

(4) All emission reductions must be achieved prior to startup of the proposed source using the emission reductions as offsets in the permitting action specified in OAR 340-224-0050 or 340-224-0060.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0570

Applicability

OAR 340-240-0570 through 340-240-0630 apply to the Klamath Falls Nonattainment Area for PM_{2.5} should the area not achieve attainment by the applicable attainment date established pursuant to 42 U.S.C. 7502(a)(2).

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.480

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0580

Existing Industrial Sources Control Efficiency

The owner or operator of an Oregon Title V Operating Permit program source, as defined in OAR 340-200-0020 may not remove or modify existing control devices unless the new control device has the same or better PM_{2.5} control efficiency as the old device.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.480

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0610

Continuous Monitoring for Industrial Sources

(1) The owner or operator of an Oregon Title V Operating Permit program source, as defined in OAR 340-200-0020 must install and operate instrumentation for measuring and recording emissions or the parameters that affect the emission of particulate matter from wood-fired boilers by June 1, 2015, to ensure that the sources and the air pollution control equipment are operated at all times at their full efficiency and effectiveness so that the emission of particulate matter is kept at the lowest practicable level. Continuous monitoring equipment and operation must be in accordance with the Department's Continuous Monitoring Manual.

(2) At a minimum, the monitoring required under paragraph (1) of this section must include:

(a) Continuous monitoring of control device parameters for any wood-fired boiler.

(b) Continuous monitoring of opacity for any wood-fired boiler not controlled by a wet scrubber.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0620

Contingency Measures: New Industrial Sources

New industrial sources must comply with OAR 340-240-0570 through 340-240-0610 immediately upon receiving an Air Contaminant Discharge Permit or an Oregon Title V Operating Permit.

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-240-0630

Contingency Enhanced Curtailment of Use of Solid Fuel Burning Devices and Fireplaces

(1) Beginning on November 1 of each year and continuing through and including February 28 of the following year, no fireplace, as defined by OAR 340-262-0450, may emit more than 5.1 grams per kilogram of particulate emissions. A fireplace shall be deemed in compliance with this emission standard if it has been certified either in accordance with ASTM international standard test method E2558 or by the DEQ pursuant to 340-262-0500. A fireplace that is not certified as described in this rule shall be presumed not to comply with this rule.

(2) The DEQ may approve exemptions from compliance with section (1) of this rule on days when the DEQ or the Klamath County Health Department has issued a local Klamath Falls Advisory Call indicating that it is a good ventilation day (a "green day") that are also state holidays or days that the county has designated as a "special occasion day". Any person who wishes to receive such an exemption must file an exemption application with the DEQ and the DEQ must have approved the exemption request prior to the green day.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.010 - 468A.025

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-262-1000

Wood Burning Contingency Measures for PM_{2.5} Nonattainment Areas

(1) Applicability

This rule applies to any area classified as a nonattainment area for PM_{2.5} that does not achieve attainment by the applicable Clean Air Act deadline.

(2) No owner of a residential solid fuel burning device shall allow the appliance to burn creating opacity greater than 20% opacity for more than three minutes in any 60-minute period including startup time.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.020, 468A.025 & 468A.460 - 468A.515

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

340-264-0040

Exemptions, Statewide

Except for the provisions contained in OAR 340-264-0050 and 340-264-0060, this Division does not apply to:

(1) Recreational fires and ceremonial fires, for which a fire is appropriate.

(2) Barbecue equipment used in connection with any residence.

(3) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or a hazard to public health or safety, or for instruction of employees in the methods of fire fighting, which in the opinion of the public agency is necessary. Every effort will be made by the public agency to conduct this burning during good smoke dispersal conditions and specifically avoiding periods during Air Pollution Advisories. The agency will adjust its schedule for setting such fires for better smoke dispersal if necessary. Open burning fires otherwise exempt from the requirements of this division are still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(4) Agricultural open burning pursuant to ORS 468A.020. Agricultural open burning is still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(5) Open field burning, propane flaming, and stack and pile burning in the Willamette Valley between the crests of the Cascade and Coast

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Ranges pursuant to OAR chapter 340, division 266, Rules for Field Burning.

(6) Slash burning on forest land or within one-eighth mile of forest land permitted under the Oregon Smoke Management Program regulated by the Department of Forestry pursuant to ORS 477.515.

(7) Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction.

(8) Fires set for the purpose of disposal of dry tumbleweed plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off, and rolled about, by the wind.

(9) Agricultural burning for disease or pest control when the fire is set or authorized in writing by the Department of Agriculture.

(10) When caused by an authorized representative of the Department of Agriculture, open burning of carcasses of animals that have died or been destroyed because of an animal disease emergency.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468, 468A & 477

Stats. Implemented: ORS 468A.025

Hist.: DEQ 123, f. & ef. 10-20-76; DEQ 23-1979, f. & ef. 7-5-79; DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0035; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 10-2012, f. & cert. ef. 12-11-12

340-264-0078

Open Burning Control Areas

Generally, areas around the more densely populated locations in the state and valleys or basins that restrict atmospheric ventilation are designated "Open Burning Control Areas". The practice of open burning may be more restrictive in open burning control areas than in other areas of the state. The specific open burning restrictions associated with these open burning control areas are listed in OAR 340-264-0100 through 340-264-0170 by county. The general locations of open burning control areas are depicted in Figures 2 through 5. The open burning control areas of the state are defined as follows:

(1) All areas in or within three miles of the incorporated city limit of all cities with a population of 4,000 or more.

(2) The Coos Bay Open Burning Control Area is located in Coos County with boundaries as generally depicted in Figure 3 of this rule. The area is enclosed by a line beginning at a point approximately 4-1/2 miles WNW of the City of North Bend, at the intersection of the north boundary of T25S, R13W, and the coastline of the Pacific Ocean; thence east to the NE corner of T25S, R12W; thence south to the SE corner of T26S, R12W; thence west to the intersection of the south boundary of T26S, R14W and the coastline of the Pacific Ocean, thence northerly and easterly along the coastline of the Pacific Ocean to its intersection with the north boundary of T25S, R13W, the point of beginning.

(3) The Rogue Basin Open Burning Control Area is located in Jackson and Josephine Counties with boundaries as generally depicted in Figure 4. The area is enclosed by a line beginning at a point approximately 4-1/2 miles NE of the City of Shady Cove at the NE corner of T34S, R1W, Willamette Meridian, thence south along the Willamette Meridian to the SW corner of T37S, R1W; thence east to the NE corner of T38S, R1E; thence south to the SE corner of T38S, R1E; thence east to the NE corner of T39S, R2E; thence south to the SE corner of T39S, R2E; thence west to the SW corner of T39S, R1E; thence NW along a line to the NW corner of T39S, R1W; thence west to the SW corner of T38S, R2W; thence north to the SW corner of T36S, R2W; thence west to the SW corner of T36S, R4W; thence south to the SE corner of T37S, R5W; thence west to the SW corner of T37S, R6W; thence north to the NW corner of T36S, R6W; thence east to the SW corner of T35S, R1W; thence north to the NW corner of T34S, R1W; thence east to the point of beginning.

(4) The Umpqua Basin Open Burning Control Area is located in Douglas County with boundaries as generally depicted in Figure 5. The area is enclosed by a line beginning at a point approximately four miles ENE of the City of Oakland, Douglas County, at the NE corner of T25S, R5W, Willamette Meridian, thence south to the SE corner of T25S, R5W; thence east to the NE corner of T26S, R4W; thence south to the SE corner of T27S, R4W; thence west to the SE corner of T27S, R5W; thence south to the SE corner of T30S, R5W; thence west to the SW corner of T30S, R6W; thence north to the NW corner of T29S, R6W; thence west to the SW corner of T28S, R7W thence north to the NW corner of T27S, R7W; thence east to the NE corner of T27S, R7W; thence north to the NW corner of T26, R6W; thence east to the NE corner of T26S, R6W; thence north to the NW corner of T25S, R5W; thence east to the point of beginning.

(5) The boundaries of the Willamette Valley Open Burning Control Area are generally depicted in Figures 1 and 2. The area includes all of Benton, Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Lane County east of Range 7 West.

(6) The Klamath Basin Open Burning Control Area is located in Klamath County with boundaries generally depicted in Figure 6. The area is enclosed by a line beginning at the corner common to northwest corner of Section 31, Township 37 South, Range 9 East of the Willamette Meridian and southwest corner of Section 30 T37S, R9E W.M.; thence east approximately two miles to the northeast corner of Section 32; thence south approximately four miles to the southeast corner of Section 17, T38S, R9E W.M.; thence east approximately one mile to the southwest corner of Section 15; thence north approximately one mile to the northwest corner of Section 15; thence east approximately 2 miles to the northeast corner of Section 14; thence south approximately one mile to the northwest corner of section 24; thence east approximately one mile to the northeast corner of Section 24; thence south approximately three miles to the southeast corner of Section 36; thence east approximately four miles to the northeast corner of Section 3, T39S, R10E W.M.; thence south approximately three miles to the southeast corner of Section 15; thence west approximately two miles to the southwest corner of Section 16; thence south approximately two miles to the southeast corner of Section 29; thence west approximately five miles to the southwest corner of Section 27, T39S, R9E; thence north approximately one mile to the northeast corner of Section 27; thence west approximately four miles to the southwest corner of Section 24, T39S R8E; thence north approximately two miles to the northeast corner of Section 13; thence west approximately one mile to the southwest corner of Section 11; thence north approximately four miles to the northwest corner of Section 26 T38S, R8E; thence west one mile to the southwest corner of Section 22; thence north approximately one mile to the northwest corner of Section 22; thence west approximately one mile to the southwest corner of Section 16; thence north approximately one mile to the northeast corner of Section 16; thence west approximately one mile to the southwest corner of Section 8; thence north approximately two miles to the northwest corner of Section 5; thence east to the northeast corner of Section 1; thence north approximately one mile to the point of beginning.

(7) "Special Open Burning Control Areas" are established around cities within the Willamette Valley Open Burning Control Area. The boundaries of these special open burning control areas are determined as follows:

(a) Any area in or within three miles of the boundary of any city of more than 1,000 but less than 45,000 population;

(b) Any area in or within six miles of the boundary of any city of 45,000 or more population;

(c) Any area between areas established by this rule where the boundaries are separated by three miles or less;

(d) Whenever two or more cities have a common boundary, the total population of these cities will determine the applicability of subsection (a) or (b) of this section and the municipal boundaries of each of the cities must be used to determine the limit of the special open burning control area.

(8) A domestic burning ban area around the Portland metropolitan area is generally depicted in Figure 1A. This area encompasses parts of the special control area in Clackamas, Multnomah and Washington Counties. Specific boundaries are listed in OAR 340-264-0120(5), 340-264-0130(5) and 340-264-0140(5). Domestic burning is prohibited in this area except as allowed pursuant to 340-264-0180.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0115; DEQ 21-2000, f. & cert. ef. 12-15-00, Renumbered from 340-264-0200; DEQ 10-2012, f. & cert. ef. 12-11-12

340-264-0080

County Listing of Specific Open Burning Rules

Except as otherwise provided, in addition to the general requirements and prohibitions listed in OAR 340-264-0050 and 340-264-0060, specific prohibitions of Agricultural, Commercial, Construction, Demolition, Domestic, and Industrial open burning are listed in separate rules for each county. The following list identifies the rule containing prohibitions of specific types of open burning applicable to a given county:

(1) Baker County — OAR 340-264-0100.

(2) Benton County — OAR 340-264-0110.

(3) Clackamas County — OAR 340-264-0120.

(4) Clatsop County — OAR 340-264-0100.

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- (5) Columbia County — OAR 340-264-0150.
- (6) Coos County — OAR 340-264-0170.
- (7) Crook County — OAR 340-264-0100.
- (8) Curry County — OAR 340-264-0100.
- (9) Deschutes County — OAR 340-264-0100.
- (10) Douglas County — OAR 340-264-0170.
- (11) Gilliam County — OAR 340-264-0100.
- (12) Grant County — OAR 340-264-0100.
- (13) Harney County — OAR 340-264-0100.
- (14) Hood River County — OAR 340-264-0100.
- (15) Jackson County — OAR 340-264-0170.
- (16) Jefferson County — OAR 340-264-0100.
- (17) Josephine County — OAR 340-264-0170.
- (18) Klamath County — OAR 340-264-0175.
- (19) Lake County — OAR 340-264-0100.
- (20) Lane County — OAR 340-264-0160.
- (21) Lincoln County — OAR 340-264-0100.
- (22) Linn County — OAR 340-264-0110.
- (23) Malheur County — OAR 340-264-0100.
- (24) Marion County — OAR 340-264-0110.
- (25) Morrow County — OAR 340-264-0100.
- (26) Multnomah County — OAR 340-264-0130.
- (27) Polk County — OAR 340-264-0110.
- (28) Sherman County — OAR 340-264-0100.
- (29) Tillamook County — OAR 340-264-0100.
- (30) Umatilla County — OAR 340-264-0100.
- (31) Union County — OAR 340-264-0100.
- (32) Wallowa County — OAR 340-264-0100.
- (33) Wasco County — OAR 340-264-0100.
- (34) Washington County — OAR 340-264-0140.
- (35) Wheeler County — OAR 340-264-0100.
- (36) Yamhill County — OAR 340-264-0110.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented ORS 468A.025

Hist.: DEQ 123, f. & ef. 10-20-76; DEQ 23-1979, f. & ef. 7-5-79; DEQ 1-1981(Temp), f. & ef. 1-9-81; DEQ 7-1981(Temp), f. & ef. 2-17-81; DEQ 8-1981(Temp), f. & ef. 3-13-81; DEQ 27-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0045; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 10-2012, f. & cert. ef. 12-11-12

340-264-0100

Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties

Open burning requirements for the counties of Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler:

(1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.

(2) Agricultural open burning is allowed subject to OAR 340-264-0050(5) and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(3) Commercial open burning:

(a) Commercial open burning is prohibited within Lincoln County except as provided in OAR 340-264-0180.

(b) Commercial open burning is allowed outside of open burning control areas subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. Commercial open burning, unless authorized pursuant to 340-264-0180, is prohibited within three miles of the corporate city limits of the following open burning control areas. In addition, commercial open burning is prohibited in any area meeting the test in 340-264-0078(1):

- (c) In Baker County, the City of Baker City;
- (d) In Clatsop County, the Cities of Astoria, Seaside and Warrenton;
- (e) In Crook County, the City of Prineville;
- (f) In Curry County, the City of Brookings;
- (g) In Deschutes County, the Cities of Bend and Redmond;
- (h) In Hood River County, the City of Hood River;
- (i) In Jefferson County, the City of Madras;
- (j) In Malheur County, the City of Ontario;
- (k) In Tillamook County, the City of Tillamook;
- (l) In Umatilla County, the Cities of Hermiston, Milton-Freewater and

Pendleton;

(m) In Union County, the City of La Grande;

(n) In Wasco County, the City of The Dalles.

(4) Construction and Demolition open burning outside of an open burning control area is allowed subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, OAR 340-264-0050, 340-264-0060, and 340-264-0070. Construction and Demolition open burning, unless authorized pursuant to 340-264-0180, is prohibited within three miles of the corporate city limits of the following open burning control areas. In addition, construction and demolition burning is prohibited in any area meeting the standard in 340-264-0078(1):

- (a) In Baker County, the City of Baker City;
- (b) In Clatsop County, the Cities of Astoria, Seaside and Warrenton;
- (c) In Crook County, the City of Prineville;
- (d) In Curry County, the City of Brookings;
- (e) In Deschutes County, the Cities of Bend and Redmond;
- (f) In Hood River County, the City of Hood River;
- (g) In Jefferson County, the City of Madras;
- (h) In Lincoln County, the Cities of Lincoln City and Newport;
- (i) In Malheur County, the City of Ontario;
- (j) In Tillamook County, the City of Tillamook;
- (k) In Umatilla County, the Cities of Hermiston, Milton-Freewater

and Pendleton;

(l) In Union County, the City of La Grande;

(m) In Wasco County, the City of The Dalles.

(5) Domestic open burning is allowed subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, and OAR 340-264-0050, 340-264-0060 and 340-264-0070.

(6) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Plan is prohibited, except as provided in OAR 340-264-0180.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0055; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 10-2012, f. & cert. ef. 12-11-12

340-264-0175

Klamath County

Open burning requirements for Klamath County:

(1) Open burning control areas: The Klamath Basin open burning control area as generally described in OAR 340-264-0078(6) and depicted in Figure 6 is located in Klamath County;

(2) Industrial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.

(3) Agricultural open burning is allowed subject to OAR 340-264-0050(5) and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(4) Commercial open burning is prohibited within the Klamath Basin open burning control areas and within three miles of the corporate city limits of other areas that meet the standard in OAR 340-264-0078(1), unless authorized pursuant to 340-264-0180. Commercial open burning is allowed in all other areas of this county subject to 340-264-0050, 340-264-0060 and 340-264-0070 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(5) Construction and Demolition open burning is prohibited within the Klamath Basin open burning control areas and within three miles of the corporate city limits of other areas that meet the standard within OAR 340-264-0078(1), unless authorized pursuant to 340-264-0180. Construction and Demolition open burning is allowed in other areas of these counties subject to 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(6) Domestic open burning is allowed subject to OAR 340-264-0050, 340-264-0060, 340-264-0070 and section (7) of this rule, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(7) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

[ED. NOTE: The figures referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 10-2012, f. & cert. ef. 12-11-12

ADMINISTRATIVE RULES

Rule Caption: Clean Water State Revolving Fund program rules that regulate awarding financial assistance to public agencies.

Adm. Order No.: DEQ 11-2012

Filed with Sec. of State: 12-14-2012

Certified to be Effective: 12-14-12

Notice Publication Date: 8-1-12

Rules Adopted: 340-054-0011, 340-054-0026, 340-054-0027, 340-054-0036, 340-054-0056

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

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

Subject: This rulemaking amended the Clean Water State Revolving Fund administrative rules. In Oregon, DEQ administers this loan program under the federal Clean Water State Revolving Fund program authorized by Title VI of the Clean Water Act.

The amendments update current Clean Water State Revolving Fund administrative rule language and clarify processes to improve financial assistance to public agencies for water quality improvement projects. Amendments included:

- Providing flexibility to project eligibility for all types of water quality improvement projects
- Revising the project application scoring system and ranking criteria to ensure projects funded provide the most benefits possible for water quality
- Eliminating the expedited loan reserve
- Revising the definition of small community
- Increasing the small community loan reserve
- Reducing the annual fee on all current loans for two years
- Reducing interest rates for all loans based on community population and median household income
- Awarding principal forgiveness priority to small communities with less than median household income

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-054-0005

Purpose

(1) These rules, OAR 340-054-0005 to 340-054-0108, establish procedures and requirements for the funding of projects and activities that enhance, protect or restore water quality through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund.

(2) The purpose of this division is to:

(a) Assist a public agency to obtain financing for a project that enhances, protects or restores water quality.

(b) Ensure the loan application and funding processes, procedures and requirements are clear.

(c) Promote loan affordability by offering below-market interest rates.

(d) Ensure perpetuity of the CWSRF for reliability of project funding.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.425

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0010

Definitions

The following definitions apply to this division of rules:

(1) “Act” means the American Recovery and Reinvestment Act of 2009, Public Law 111-5, signed into law on February 17, 2009.

(2) “Applicant” means a public agency that has applied for a CWSRF loan under this division.

(3) “Borrower” means a public agency that has signed a CWSRF loan agreement with the department.

(4) “Change order” means a written order and supporting information from a borrower to a borrower’s contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

(5) “Checklist of application requirements” means a list, provided by the department, of all documents that must be submitted with an application to the department under this division.

(6) “Clean Water Act” or “CWA” means the federal Water Pollution Control Act, 33 U.S.C. §1251 - §1387.

(7) “Clean Water State Revolving Fund” or “CWSRF” means the Water Pollution Control Revolving Fund established under ORS 468.427.

(8) “Collector sewer” means the portion of a public wastewater system installed primarily to receive wastewater directly from individual residences and other individual public or private structures.

(9) “Construction” means the erection, installation, expansion or improvement of a wastewater or stormwater facility, nonpoint source control activity or estuary management project, and includes the demolition of an obsolete facility.

(10) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.

(11) “Default” means the failure to pay principal, interest or annual fees, or to comply with other CWSRF loan terms or provisions, and includes the filing of bankruptcy or other written admission of an inability to satisfy a borrower’s obligations under a CWSRF loan.

(12) “Department” means the Oregon Department of Environmental Quality.

(13) “Design” means the preparation of engineering drawings and specifications for the proposed construction, and may include pre-design activities.

(14) “EPA” means the U.S. Environmental Protection Agency.

(15) “Estuary management” means the implementation of actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.

(16) “Local community loan” means a loan used by a public agency to establish a local financial program that will fund an eligible nonpoint source control or estuary management activity.

(17) “Maintenance” means regularly scheduled work performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a wastewater or stormwater facility, nonpoint source control or estuary management project.

(18) “Natural infrastructure” means the use of natural form and ecosystem function to restore or augment the intended water quality benefits of a project.

(19) “Nonpoint source” has the meaning given in ORS 468B.005.

(20) “Nonpoint source control” means implementation of a nonpoint source control activity under section 319 of the Clean Water Act and 40 CFR §35.3115(b) that is included in the department’s current Oregon Nonpoint Source Control Program Plan.

(21) “Operation” means the control of wastewater collection system pumping stations and wastewater facility treatment unit processes, the control of equipment and processes of stormwater facilities, nonpoint source control and estuary management projects, and the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these facilities and projects.

(22) Planning.

(a) “Planning” means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for the provision of a wastewater or stormwater facility, nonpoint source control or estuary management project intended to remediate an existing or anticipated water pollution problem.

(b) “Planning” does not mean the preparation of detailed bid documents for construction.

(23) “Point source” has the meaning given in ORS 468B.005.

(24) “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

(25) “Project” means the activities or tasks identified in a loan application or a loan agreement for which a borrower may expend or obligate funds.

(26) “Public agency” has the meaning given in ORS 468.423.

(27) Replacement.

(a) “Replacement” means expenditures for obtaining and installing equipment, accessories or appurtenances necessary for the ongoing operation during the design or useful life, if longer, of a wastewater or stormwater facility, nonpoint source control or estuary management project to maintain a facility or project for the purpose it was designed and constructed.

(b) “Replacement” does not mean the replacement of a facility or project at the end of its useful life.

(28) “Small community” means a public agency serving a population of 10,000 or less.

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(29) "Sponsorship option" means the department's financing mechanism that allows a public agency with the authority to finance and implement a wastewater facility project and an eligible nonpoint source control or estuary management activity to be financed through one CWSRF loan.

(30) "Stormwater" means water runoff from a precipitation event, snowmelt runoff, and surface runoff and drainage.

(31) "Sustainability" means the long term reliability and viability of finance, operations, environmental performance or technology, or the use of natural infrastructure.

(32) "Wastewater" has the meaning given for "sewage" in ORS 468B.005.

(33) "Wastewater collection system" means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a wastewater treatment facility.

(34) "Wastewater facility" means a wastewater collection system or wastewater treatment facility.

(35) "Wastewater reuse" means a project that uses recycled water, as defined in OAR 340-055-0010, or effluent from a commercial or industrial process that is suitable for a direct beneficial purpose or a controlled use.

(36) "Wastewater treatment facility" means a publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.

(37) "Water quality standards" means the surface water standards established in OAR 340-041 and the minimum groundwater protection requirements established in OAR 340-040.

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

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.423

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0011

Authorized Fund Uses

The department will use the CWSRF only to:

(1) Offer loans to eligible borrowers identified in the Intended Use Plan developed pursuant to OAR 340-054-0025.

(2) Fund loan reserves specified in OAR 340-054-0036.

(3) Purchase bonds or acquire other debt obligations.

(4) Pay CWSRF program administration costs to the extent allowed by federal law and state statute.

(5) Earn interest on fund accounts.

(6) Establish reserves for bonds issued by the state for use by the fund.

(7) Pay principal and interest of bond obligations sold to benefit the fund.

Stat. Auth.: ORS 468.020 and ORS 468.440

Stats. Implemented: ORS 468.423 to ORS 468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0015

Eligible Projects and Activities

A public agency may apply for a CWSRF loan up to 100 percent of a water quality project and project related costs including, but not limited to, the following:

(1) Planning for wastewater facilities, nonpoint source control or estuary management projects including supplements or updates.

(2) Wastewater treatment facilities.

(3) Reserve capacity for a wastewater treatment or disposal facility that serves a population not to exceed a 20-year population projection, and for a wastewater collection system, or any portion thereof, not to exceed a 50-year population projection.

(4) Facilities related to solids treatment, disposal, resource recovery, or management.

(5) Interceptors, force mains and pumping stations.

(6) Identification and correction of the intrusion of groundwater into a collector sewer or interceptor sewer (infiltration) and the direct flow of water other than wastewater or groundwater into a collector or interceptor sewer (inflow).

(7) Replacement or repair of interceptor or collector sewers necessary to maintain the structural integrity and function of the sewer.

(8) Overflow correction of a sewer designed as both a sanitary and stormwater sewer (combined sewer), if required to protect sensitive estuarine waters or to comply with department water quality statutes, rules or permits, provided the project is the most cost effective alternative.

(9) New collector sewers required to correct documented water quality violations of state statutes, administrative rules or permit conditions or to serve an area with a documented health hazard due to failing onsite wastewater treatment systems or other wastewater disposal practices resulting in discharge of inadequately treated wastes.

(10) Stormwater facilities, systems or projects, including, but not limited to, engineered or natural facilities to treat, convey or control stormwater discharge, and source controls intended to improve water quality or reduce stormwater volume.

(11) Estuary management activities that address environmental quality directly related to water quality.

(12) Nonpoint source control activities that address environmental quality directly related to water quality.

(13) Wastewater reuse projects.

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0022

Loan Application Requirements

(1) Application submittal. The department will notify interested parties at least annually of the opportunity to submit applications for a CWSRF loan. An eligible public agency may submit to the department a CWSRF loan application at any time.

(2) Consideration for funding. The department will consider an applicant for funding only if its project is included in the Intended Use Plan and all application requirements in this division are met.

(3) All CWSRF loans. An applicant must submit the following to the department:

(a) A complete application on the applicable form provided by the department.

(b) Documents specified in the checklist of application requirements provided by the department.

(c) Audited financial statements for the three years prior to the application date and the applicant's current budget, unless waived in writing by the department.

(d) Evidence the applicant has the authority to undertake the project including, but not limited to, evidence of a loan approval resolution or similar authorization for signing a loan agreement and establishing a loan reserve account.

(e) Evidence the applicant has authority to collect and pledge the revenue offered as repayment for a CWSRF loan, repay a loan and, where applicable, the ability to ensure ongoing operation and maintenance of the proposed wastewater or stormwater facility, nonpoint source control or estuary management project. The department may require the following criteria to be met for a revenue-secured loan described under OAR 340-054-0065(2):

(A) An applicant's revenue stream is not at risk from undue dependence upon a limited portion of the system's customer base or a pattern of delinquent payment from that portion of the system's customer base, and

(B) An applicant must have the ability to collect from delinquent customers.

(f) Pre-award compliance review report or other evidence as determined by the department to show compliance with federal nondiscrimination requirements.

(g) For projects serving two or more public agencies, the executed inter-agency agreements, contracts or other legally binding instruments necessary for financing, construction and operation of the proposed project. The documents must be satisfactory to the department for determining an adequate pledge of security.

(h) Evidence of resolution, ordinance or other authorization approving bonds secured by sewer or other revenue sources if required by the department.

(i) Official statement of recently issued bonds if required by the department.

(j) Any other information requested by the department as necessary to complete the loan application.

(4) Local community loan. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF local community loan must submit the following to the department:

(a) A description of how the project will implement a nonpoint source control activity or estuary management effort.

(b) A projected cash flow statement based on anticipated number of local loans, their repayment schedule, amount and timing of department disbursement and amount and timing of repayments to the department.

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(c) Unless waived by the department, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(d) Unless waived by the department, demonstration of compliance with applicable federal environmental cross-cutting authorities.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) In accordance with OAR 340-052, department approved plans and specifications for the project as applicable.

(g) An environmental determination obtained from the department for a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support the department's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(h) If an applicant does not obtain an environmental determination as specified in subsection (4)(g) of this section, an applicant may submit to the department, and the department may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that accepted by the other agency.

(B) The other agency's determination must have been made within the previous five years.

(C) The federal environmental cross-cutting authorities have been met and documented.

(5) All design or construction loans. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF design or construction loan must submit the following to the department:

(a) Unless waived by the department, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(b) Unless waived by the department, demonstration of compliance with applicable federal environmental cross-cutting authorities for a construction project.

(c) An environmental determination obtained from the department for a construction project of a treatment works as defined in the CWA § 212, including a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support the department's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(d) If an applicant does not obtain an environmental determination as specified in subsection (5)(c) of this section, an applicant may submit to the department, and the department may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that accepted by the other agency.

(B) The other agency's determination must have been made within the previous five years.

(C) The federal environmental cross-cutting authorities have been met and documented.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) In accordance with OAR 340-052 and for a construction-only loan, department approved plans and specifications for the project as applicable.

(g) If the estimated cost of a project is in excess of \$10 million, a value engineering study satisfactory to the department, prior to construction beginning. The study must be a specialized cost control technique specifically applicable to the wastewater treatment facility design identifying cost savings that can be made without sacrificing project reliability or efficiency.

(6) Design or construction loan for a point source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant apply-

ing for a CWSRF design or construction loan for a point source project must submit the following to the department:

(a) An engineered planning document in the form of either a facility plan or project pre-design report that provides a comprehensive evaluation of environmental factors, engineering alternatives and financial considerations affecting the project area. This document must adequately describe the effectiveness and suitability of the proposed project to address the identified water quality problem. An applicant must have this document reviewed and approved by the department prior to signing a design or construction loan.

(b) Evidence of a sewer use ordinance or equivalent authority that prohibits:

(A) New connections from inflow sources into the wastewater collection system, and

(B) Wastewater introduced into the wastewater collection system containing toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety, adversely affecting the project or precluding the selection of the most cost-effective alternative for the project.

(c) When a public agency applies for a wastewater facility construction loan that includes a sponsorship option, complete information about the nonpoint source control or estuary management activity on the applicable application form. The department will only consider a sponsorship option if a nonpoint source control or estuary management activity is included as part of the entire project scope.

(7) Design or construction loan for a nonpoint source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a nonpoint source project must submit to the department an engineered planning report. The report must define the water quality problem and specify actions an applicant will implement to correct the problem.

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.429 & 468.439

Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0025

Intended Use Plan and Project Priority List

(1) IUP development. The department will annually develop and submit an IUP to EPA as described in the CWA § 606 and 40 CFR §35.3150, and will update the IUP as specified in section (2) of this rule. The IUP will describe how the department proposes to fund projects through the CWSRF and will include a project priority list that numerically ranks all eligible applications received.

(2) IUP update.

(a) Except as specified in subsection (2)(b) of this section, the department will update the annual IUP and project priority list at least every four months or when the department receives five eligible applications, whichever timeframe is shorter, and will submit the updated plan to EPA.

(b) If the department does not receive an eligible application during a four month period and determines the project priority list does not need to be updated, the department will not update the IUP.

(3) IUP public notice. The department will provide public notice and an opportunity for the public to comment on a proposed draft IUP.

(a) The department will notify all new applicants of their project application ranking on the project priority list when an annual IUP is developed and updated.

(b) The department will provide 30 days for public comments on a proposed draft IUP.

(c) An applicant may request the department to reevaluate their project application's score and ranking on the proposed project priority list or to make other changes to an IUP during the public comment period.

(d) The department will consider and respond to all comments submitted during the public comment period before finalizing an IUP.

(4) Project priority list development. The department will include an eligible project under OAR 340-054-0015 on the project priority list if an applicant submits a completed application on a department approved form.

(5) Project priority list ranking. The department will numerically rank all eligible proposed project applications based on the point sum from the criteria specified in Table 1 under OAR 340-054-0026 and Table 2 under OAR 340-054-0027.

(a) Except as specified in subsection (5)(b) of this section, the department will evaluate each criterion in Table 1 under OAR 340-054-0026 and Table 2 under OAR 340-054-0027 on a point scale from one to five as follows:

(A) One point = No or very low likelihood

(B) Two points = Low or in some minor way

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- (C) Three points = Moderate to significant likelihood
- (D) Four points = High likelihood
- (E) Five points = Very high likelihood

(b) The department will evaluate criteria 1C, 1D, 2B, 2C, 2D, 2E, and 3D in OAR 340-054-0026 and criterion 5 in OAR 340-054-0027 by doubling the point scale specified in subsection (5)(a) of this section.

- (6) Application removal from the project priority list.

(a) The department may retain an applicant's ranked project on the project priority list in an IUP for up to 36 months while an applicant pursues all applicable CWSRF financing requirements specified in this division.

(b) After the department initially includes a ranked project on the project priority list, an applicant must submit to the department an annual written project status report to remain on the project priority list.

(c) The department may provide one six-month extension to an applicant requesting to remain on the project priority list beyond the 36-month limit. An applicant requesting an extension must submit to the department a written project status report on the applicant's project progress and an updated time frame indicating when all CWSRF financing requirements will be completed.

(d) The department will remove a project from the project priority list upon written notice to an applicant if:

(A) An applicant does not submit an annual written project status report as required in subsection (6)(b) of this section;

(B) An applicant does not request a six-month extension beyond the 36-month limit and submit the project status report as required in subsection (6)(c) of this section;

(C) The department determines the project scope changed from the original ranked application;

(D) The department determines a project does not meet eligibility requirements;

(E) An applicant does not require CWSRF financing; or

(F) An applicant requests to be removed from the project priority list.

(e) If the department removes a project from the project priority list as specified in paragraph (6)(d)(A through C) of this section, an applicant may resubmit to the department a loan application for an eligible project that the department will evaluate in accordance with section (5) of this rule.

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0026

Table 1: CWSRF Project Ranking Criteria for Non-planning Loans

[Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 468.020, 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0027

Table 2: CWSRF Project Ranking Criteria for Planning Loans

(1) Will the scope of the planning effort include more than one water quality benefit, pollutant or restoration effort?

(2) Will the scope of the planning effort include sustainability?

(3) Will the scope of the planning effort take advantage of an opportunity with respect to timing, finances, partnership or other advantageous opportunity?

(4) Will the scope of the planning effort include financial, managerial or technical capability aspects of the project?

(5) Will the scope of the planning effort include integrating natural infrastructure and built systems?

(6) Will the scope of the planning effort demonstrate applicant cost effectiveness by considering three or more project alternatives such as optimizing an existing facility, regional partnership or consolidation?

Stat. Auth.: ORS 468.020, 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0036

Reserves, CWSRF General Fund and Project Funding

(1) Allocation to reserves and CWSRF general fund. The department will allocate available CWSRF funds in a state fiscal year first to the small community, planning and green project reserves, and then to the CWSRF general fund based on the following amounts:

(a) A maximum of 25 percent of the total available CWSRF funds to the small community reserve.

(b) A maximum of \$3 million to the planning reserve.

(c) An amount at least equal to the minimum required by the current capitalization grant to the green project reserve.

(d) Remaining amount of funds not allocated to the reserves specified in this section to the CWSRF general fund.

(2) Project funding increase.

(a) The department will offer a funding increase based on the original project priority list ranking to a borrower for an existing project loan before offering funding to a loan applicant for a new project loan if:

(A) Funding is available in the CWSRF; and

(B) A borrower submits a written request to the department for additional funding, has legal authority to borrow and financial capability to repay the increased loan amount.

(b) The department will award a funding increase to a borrower in an amount specified in section (3) of this rule by increasing the amount of the existing loan or executing an additional loan at the current interest rate.

(3) Project funding allocation.

(a) During a state fiscal year the department will assign a project to an appropriate reserve, to the CWSRF general fund or to both, and will allocate an amount to a borrower in project priority list rank order based on availability of funds that:

(A) Is not more than the greater of \$2.5 million or 15 percent of the total available CWSRF funds in a state fiscal year. The department may allocate additional funds above this limit if funds are available after allocating this limit to all borrowers who request project funding in a state fiscal year.

(B) Is not more than the greater of \$750,000 or 25 percent of the small community reserve, until all eligible small community requests have been allocated.

(C) Is not more than \$250,000 of the planning reserve.

(D) Only finances the portion of a project funded under the green project reserve that the department determines to meet federal requirements for green infrastructure, water or energy efficiency improvement, or other environmentally innovative activities as defined by current EPA requirements.

(b) During a state fiscal year the department will allocate funding for a new design or construction project loan from the CWSRF general fund if the project is not funded from a reserve.

(c) The department will allocate in project priority list rank order available funding from the CWSRF general fund for a small community or planning project that was not allocated from their respective reserves, or allocated less than the total loan amount requested.

(4) Reallocation of reserve funds.

(a) If small community reserve or planning reserve funds remain on March 1 of a state fiscal year, the department will reallocate in project priority list rank order remaining funds to a borrower who requests additional funding for an existing project currently funded under these reserves. If funds remain after this reallocation, the department will move these funds to the CWSRF general fund.

(b) The department will not reallocate funds remaining in the green project reserve to the CWSRF general fund.

(5) Sponsorship option allocation. The department will determine the total amount of CWSRF funds to be allocated at the reduced interest rate through the sponsorship option in each state fiscal year.

Stat. Auth.: ORS 468.020, 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0056

CWSRF Loan Use Conditions

(1) Clean Water Act plans. The department will only provide a loan to a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(2) Refinancing a long-term loan. The department will not provide a loan that will be used for refinancing a long-term loan or other debt obligations.

(3) Refinancing an interim loan. The department may provide a loan to refinance an interim loan or self-generated funds used to pay department approved project costs if the borrower:

(a) Provides the department with a written notice of intent to apply for long-term financing;

(b) Wants to proceed with the project using interim financing or self-generated funds; and

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(c) Agrees to proceed at its own risk whether or not the CWSRF is available to provide long-term financing.

(4) Interim financing. The department may provide short-term, construction period financing for an eligible project if the following conditions are met:

(a) Liquidity of the CWSRF fund is sufficient to provide financing without adversely affecting the amount and timing of disbursements needed by prior obligations;

(b) The borrower has a legally enforceable obligation for long-term project financing satisfactory to the department; and

(c) The loan agreement for interim financing will stipulate the department is not obligated to provide long-term financing for the project.

Stat. Auth.: ORS 468.020, 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0060

Loan Agreement and Conditions

The department will include conditions in a loan agreement that are applicable to the type of project being financed, including, but not limited to, the following:

(1) Timely use of loan funding. The department may cancel a loan agreement if a borrower fails to take reasonable steps to begin using loan proceeds within two years after signing a loan agreement.

(2) Accounting. A borrower must maintain all CWSRF project accounts as separate accounts and must use accounting, audit and fiscal procedures that conform to Generally Accepted Governmental Accounting Standards and the requirements of the Governmental Accounting Standards Board.

(3) Records. A borrower must retain project files and records for three years after project performance affirmative certification or project completion as determined by the department or such longer period as may be required by applicable state or federal law. A borrower must also retain financial files and records for three years after the loan is repaid in full.

(4) Wage requirements.

(a) A borrower for a construction project of a treatment works as defined in the CWA § 212, including a nonpoint source pollution (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212, must comply with the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 to 3144 and 3146 or the prevailing wage rate requirements for public works projects under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540, whichever is higher.

(b) A borrower for a project not specified in subsection (4)(a) of this section must comply with the prevailing wage rate requirements under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540.

(5) Debarment and suspension. A borrower must ensure compliance with Subpart C of 2 CFR 18, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 CFR 1532, Responsibilities of Participants Regarding Transactions.

(6) Engineering documents. If a borrower uses CWSRF financing for the construction of a wastewater facility subject to OAR 340-052, it must submit to the department plans and specifications, operation and maintenance manuals, inspection and certification of proper construction, and any other applicable documentation required by OAR 340-052.

(7) Inspections and progress reports.

(a) A borrower must have a qualified inspector under the direction of a registered civil, mechanical or electrical engineer, as appropriate, conduct on-going inspections during the construction phase of a wastewater facility subject to OAR 340-052 to ensure the project complies with approved plans and specifications. The department or its representative may enter property owned or controlled by the borrower to conduct interim inspections and may require progress reports sufficient to determine compliance with approved plans and specifications and with other loan agreement provisions.

(b) The department may request review and analysis of construction plans from relevant agencies or offices to ensure the project plans not subject to department review under OAR 340-052 support the successful implementation and completion of the project. A borrower must allow inspections by appropriately qualified persons during project construction or implementation to ensure the project as constructed conforms to project plans and other provisions of the loan agreement.

(8) Loan amendments.

(a) The department will not require a loan amendment for changes in project work that are consistent with project objectives and within the loan scope and funding level.

(b) The department will execute a loan amendment if:

(A) The department awards a borrower an increase in the original approved loan amount at any time during the project;

(B) The borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all loan proceeds; or

(C) The department determines a borrower must meet additional federal or state requirements for CWSRF financing.

(9) Change orders. The department may approve or reject a change order based on the loan eligibility of the project modification and on engineering value in accordance with OAR 340-052-0015. A borrower must submit a change order to the department for engineering and financial review:

(a) When any change order is executed, and

(b) Prior to executing any change order that exceeds \$100,000 or will alter project performance.

(10) Project performance certification for a wastewater facility. A borrower must submit to the department, within a timeframe specified by the department, project performance documents to verify if the facility meets performance and operational requirements and specifications which the project was planned, designed and built to achieve. The documents may include, but are not limited to, construction certification, performance evaluation report or performance certification.

(11) Eligible construction costs. The department will disburse loan funds for construction costs limited to work that complies with plans, specifications, change orders and addenda reviewed or approved by the department.

(12) Adjustments. The department may at any time review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction or other discrepancies.

(13) Contract and bid documents. A borrower must submit a copy of the awarded contract and bid documents to the department, including a tabulation of all bids received.

(14) Audit.

(a) If requested by the department, a borrower must submit audited financial statements to the department each year until the loan is repaid.

(b) If federal funds are disbursed as loan proceeds, a borrower must comply with the federal requirements of the Single Audit Act Amendments of 1984, 31 U.S.C. §§7501-7507 (1994) as amended by Pub. L. 104-156, §§ 1-3, 110 Stat. 1397 (1996), and Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-profit Organizations.

(15) Default remedies. A loan agreement must provide adequate remedies for the department to enforce the terms of the agreement. Upon default by a borrower, the department may proceed with one or more of the following:

(a) Pursue any remedy available to it against the borrower.

(b) Appoint a receiver at the expense of the borrower to operate the facility that generates the pledged revenues.

(c) Set and collect utility rates and charges pledged as security for the loan.

(d) Withhold any amounts otherwise due to the borrower from the State of Oregon and direct such funds be applied to the debt service and fees due on the CWSRF loan. If the department finds the loan to the borrower is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation.

(e) Declare all or any part of the indebtedness immediately due and payable.

(16) Release. A borrower must release and discharge the department, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the loan, subject only to exceptions previously agreed upon in a written contract between the department and the borrower.

(17) Effect of document approval or certification.

(a) The department's review and approval of facilities plans, design drawings and specifications, or any other documents by or for the department does not relieve a borrower of responsibility to properly plan, design, build and effectively operate and maintain a wastewater or stormwater facility, nonpoint source control or estuary management project as required by law, regulations, permits and good management practices.

(b) The department may not be held responsible for:

(A) Any project costs or any losses or damages resulting from defects in plans, design drawings and specifications, or other sub-agreement documents.

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(B) Verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(18) Reservation of rights.

(a) A borrower is not prohibited from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing project work; and

(b) The department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under OAR Chapter 340 is not affected by this rule.

(19) Other provisions and documentation. The department may include other provisions in a CWSRF loan agreement necessary to meet the Clean Water Act and ORS 468.423 to 468.440, and require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative Correction; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 2-2008, f. & cert. ef. 2-27-08; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0065

Loan Terms and Interest Rates

(1) Loan types. A CWSRF loan must be one of the following:

(a) A loan secured by a general obligation bond or other full faith and credit obligation of a borrower that is supported by the borrower's unlimited ad valorem taxing power.

(b) A loan secured by a bond or other obligation of a borrower that is not subject to appropriation and meets the requirements specified in section (2) of this rule.

(c) A revenue secured loan that meets the requirements specified in section (2) of this rule.

(d) An alternative loan that meets the requirements specified in section (3) of this rule.

(2) Revenue secured loans. A revenue secured loan offered by the department must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged by the borrower to the department. The obligation to pay must include a pledge of security acceptable to the department.

(b) Include a rate provision that requires the borrower to impose and collect revenues sufficient to pay:

(A) All expenses of operation, maintenance and replacement of a wastewater or stormwater facility, nonpoint source control or estuary management project.

(B) All debt service.

(C) All other financial obligations including, but not limited to, contributions to reserve accounts imposed in connection with prior lien obligations.

(D) An amount equal to the coverage requirements of the loan. This requirement is the product of the coverage factor times the debt service due in that year on the CWSRF loan. The coverage factor used must correspond to the coverage factor and reserve percentage selected by the borrower from subsection (2)(d) of this section.

(c) Include a debt service reserve provision requiring the borrower to maintain a pledged reserve dedicated to the CWSRF loan payment and that meets the following requirements:

(A) The debt service reserve must be maintained in an amount at least equal to the product of the reserve percentage listed in subsection (2)(d) of this section times one half the average annual debt service during the repayment period based on the repayment schedule or revised repayment schedule in the loan agreement. The reserve percentage selected from subsection (2)(d) of this section must correspond to the coverage factor selected for the CWSRF loan.

(B) A loan reserve may be funded with the borrower's cash, a letter of credit, repayment guaranty or other third party commitment to advance funds that is satisfactory to the department. If the department determines reserve funding imposes an undue hardship on the borrower, the department may allow reserves to be funded with CWSRF loan proceeds.

(d) Comply with the one of the following coverage factors (net income to debt service) and reserve percentages (percentage of one-half the average annual debt service):

(A) 1.05:1-100 percent

(B) 1.15:1-75 percent

(C) 1.25:1-50 percent

(D) 1.35:1-25 percent

(e) Include a requirement for the borrower to conduct a periodic rate review and adjustment of rates, if necessary, to ensure estimated revenues in subsequent years are sufficient.

(f) Include a requirement that if revenues fail to achieve the required rate level, the borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. The department may determine that failure to adjust rates does not constitute a default if the borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system that generates the revenues.

(g) Include a requirement that if the reserve account is depleted for any reason, the borrower must take prompt action to restore the reserve to the required minimum amount.

(h) Include a requirement restricting additional debt appropriate to the financial condition of the borrower.

(i) Prohibit the borrower from selling, transferring or encumbering any financial or fixed asset of the utility system that produces the pledged revenues if the borrower is in violation of a CWSRF loan requirement, or if such sale, transfer or encumbrance may cause a violation of a CWSRF loan requirement.

(3) Alternative loans. The department may authorize an alternative loan for a reasonable alternative financing method if the borrower demonstrates to the department's satisfaction that:

(a) Borrowing money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection (1)(a), (b) or (c) of this rule is unduly burdensome or costly to the borrower.

(b) The alternative loan has a credit quality substantially equal to, or better than, the revenue secured loan credit quality to the borrower. The department may consult with a financial advisor and may charge the borrower reasonable consultation costs to determine if an alternative loan meets the credit quality requirement.

(4) Interest rates.

(a) Effective date. The interest rates as specified in this section are effective for all loan agreements executed on or after January 1, 2013.

(b) Base rate. The department will determine the base rate used in computing the interest rates on all direct loans for a quarter based on the weekly average of state and local government bond interest rates for the preceding quarter. This base rate will be the "state and local bonds" entry reported in "Selected Interest Rates, H.15" posted by the Federal Reserve from the "Bond Buyer Index" for general obligation bonds (20 years to maturity, mixed quality).

(c) Planning loans. The interest rate for a planning loan will be equal to 25 percent of the base rate.

(d) Local community loans. The interest rate for a local community loan will be equal to 50 percent of the base rate.

(e) All other direct loans. Except as provided in OAR 340-054-0065(10), the department will provide the following interest rates for all other CWSRF loans:

(A) 25 percent of the base rate, with a maximum repayment period of 5 years.

(B) 30 percent of the base rate for small communities with less than statewide median household income or 45 percent for all other borrowers, with a maximum repayment period of 10 years.

(C) 35 percent of the base rate for small communities with less than statewide median household income or 50 percent for all other borrowers, with a maximum repayment period of 15 years.

(D) 40 percent of the base rate for small communities with less than statewide median household income or 55 percent for all other borrowers, with a maximum repayment period of 20 years.

(f) Sponsorship option. When a sponsorship option is implemented within the scope of a construction loan, the department:

(A) Will calculate the debt service on the wastewater facility project based on subsection (4)(e) of this rule;

(B) Will calculate the debt service on a combined sponsorship loan by reducing the interest rate so the debt service on the sponsorship loan equals the debt service as calculated in subsection (4)(f)(A) of this rule; and

(C) May not reduce the resulting interest rate below one percent.

(g) Bond proceeds for direct loans. The department may use bond proceeds that are matching funds for federal capitalization grants to fund direct loans at the interest rates listed in this section. This subsection will not be affected by any change in the source of repayment for matching bonds.

(5) Interest accrual and payment period. Interest accrual begins when the department makes the first CWSRF loan disbursement to a borrower. A

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borrower must include all outstanding accrued interest with each loan repayment.

(6) Annual loan fee.

(a) Except as provided in subsections (6)(b) and (6)(c) of this section, a borrower must pay the department an annual loan fee of 0.5 percent on the unpaid loan balance specified in the payment schedule in its loan agreement. This annual loan fee is in addition to any other payments a borrower is required to make under its loan agreement.

(b) From January 1, 2013 through December 31, 2014, the annual loan fee will be 0.25 percent on the unpaid loan balance.

(c) The department will not charge a borrower any annual loan fee for a planning loan.

(7) Commencement of loan repayment. A borrower must begin its loan principal and interest repayments within one year of the date the facility is operationally complete and ready for the purpose it was planned, designed, and built or the project is completed, as determined by the department.

(8) Loan term.

(a) A borrower must fully repay a loan in accordance with a schedule determined by the department. The department will consider the useful life of the assets financed when determining a schedule, and the repayment term for:

(A) A planning loan will not exceed five years.

(B) A local community loan will not exceed ten years.

(C) All other loans will not exceed 20 years after project completion.

(b) The department will allow prepayments at any time without penalty on all CWSRF loans except as specified in section (10) of this rule.

(9) Minor variations in loan terms. The department may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(10) Leveraged loans.

(a) The department may fund loans with bond proceeds through a leveraged loan program under the following terms and conditions:

(A) Interest rates will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates will be fixed at 65 percent of the base rate.

(B) Loan fees will be in accordance with section (6) of this rule.

(C) Notwithstanding other provisions of this rule, the department may make changes to the terms and conditions of a leveraged CWSRF loan to make it marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.

(b) Bond issuance and related transaction costs will be paid out of bond proceeds to the extent permitted by law.

(11) Additional subsidization. The department must provide additional subsidization to the minimum extent required by the current federal fiscal year capitalization grant. Additional subsidization will be in the form of principal forgiveness in accordance with the criteria established in this section. A loan with principal forgiveness is subject to standard interest rates, fees, and loan terms as defined in this rule.

(a) Principal forgiveness priority. The department will offer principal forgiveness to a project based on original project priority list rank order and in the following priority to a:

(A) Small community with less than statewide median household income for an increase to a current planning loan and then to a new planning loan.

(B) Small community with less than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan.

(C) Small community with equal to or more than statewide median household income for an increase to a current planning, design or construction loan and then to a new planning, design or construction loan.

(D) Community other than a small community with less than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan; and then to a

(E) Community other than a small community with equal to or more than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan.

(b) Principal forgiveness ineligibility. A project funded under the sponsorship option is not eligible for principal forgiveness.

(c) Principal forgiveness for a point source project. The department will base eligibility and the amount of principal forgiveness for a point source project on a community's median household income (MHI). The MHI used to calculate the level of principal forgiveness is based on the most recent and available income data provided by the U.S. Census Bureau.

The department may use sub-data such as census tract, block tract data or an income survey approved by the department as a basis for calculating an applicant's or borrower's MHI.

(A) Determining principal forgiveness eligibility.

(i) An applicant's or borrower's MHI is multiplied by an affordability index and then the result is divided by twelve if its MHI is less than the statewide MHI. The result of this calculation yields an affordability rate expressed in dollars per month. The department will use the affordability rate to determine the maximum amount of principal forgiveness an applicant or borrower is eligible for. An applicant or borrower must submit and obtain written department approval for its projected sewer rate that reflects the additional costs of the proposed project.

(ii) The affordability index is used to calculate the affordability rate. The affordability index of 1.25 percent is the department's standard factor representing the percentage of a household's income necessary to cover the cost of sewer service. This factor is adjusted semi-annually for inflation based on the Portland, Oregon consumer price index as listed by the Oregon Employment Department.

(iii) Calculating the affordability rate (AR): $AR = (\text{Applicant's MHI} \times \text{affordability index}) / 12$

(iv) If the affordability rate (in cost per month) is less than the projected sewer rate (in cost per month), then an applicant or borrower is eligible for principal forgiveness.

(B) Principal forgiveness amount. The maximum amount of principal forgiveness is the amount required to reduce the projected sewer rate to a level equal to the calculated affordability rate. The total amount of principal forgiveness the department will offer to a point source project must not exceed 75 percent of the loan amount or \$1 million, whichever is less.

(d) Principal forgiveness for a nonpoint source control or an estuary management project. The total amount of principal forgiveness the department will offer to a nonpoint source control or estuary management project must not exceed 30 percent of the loan amount or \$1 million, whichever is less.

(e) Principal forgiveness for a planning project. The total amount of principal forgiveness the department will offer to a planning project must not exceed 30 percent of the loan amount.

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0100

Implementation within the Clean Water State Revolving Fund Program

(1) OAR 340-054-0100 through 340-054-0108 prescribe the use of Act funds through the CWSRF program when such funds are available to the department.

(2) When Act funds are available to the department, the department must award these funds to public agencies in accordance with the Act and the requirements of the CWSRF.

(3) All requirements for projects funded under the Act not specifically addressed in OAR 340-054-0100 through 340-054-0108 are subject to 340-054-0005 through 340-054-0065.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0102

Project Eligibility under the Act

(1) Eligibility for funding under the Act is the same as prescribed in OAR 340-054-0015 except planning, as defined in 340-054-0010(22), is not eligible.

(2) The acquisition of land for any purpose, or the development or purchase of an easement are not eligible under the Act.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0104

Use of Funds, Intended Use Plan Under the Act

(1) Funding purpose. Notwithstanding OAR 340-054-0011, funding provided under the Act may be used only for the following CWSRF purposes:

(a) To make loans, or purchase bonds;

ADMINISTRATIVE RULES

(b) To pay CWSRF program administration costs to the extent allowed by federal law;

(c) To earn interest on fund accounts.

(2) Loan increases. Notwithstanding OAR 340-054-0036, the department will only provide loan increases using Act funding to loans funded by the Act and only to the extent consistent with OAR 340-054-0106.

(3) Existing loan agreement. A borrower with a loan agreement executed prior to October 1, 2008 is not eligible to receive funding under the Act for a project as described and funded under that existing loan agreement.

(4) Loan reserve. Notwithstanding OAR 340-054-0036, the required reserve of any individual loan cannot be funded with CWSRF loan proceeds provided from the Act.

(5) Intended Use Plan.

(a) A project must be listed in the IUP to be eligible for funding under the Act.

(b) Notwithstanding OAR 340-054-0025(3)(b), the department must provide at least 14 days for public comments on a proposed draft IUP.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0106

Allocation of Act Funds

Notwithstanding OAR 340-054-0036, funds made available by the Act must be allocated as follows:

(1) Funding of applicants. Funds will be offered to an applicant on the project priority list in rank order, subject to eligibility. A project is not eligible unless all required documentation is complete and appropriate environmental review, including any required notice and opportunity for public comment, has been completed at the time the department finalizes the intended use plan.

(2) Applicant's funding limit. The department will determine the amount of funding to be provided to an applicant, but the amount of any loan may not exceed \$5 million per applicant, except as provided in section (3) of this rule.

(3) Allocation of remaining funds. If there are no applicants on the project priority list eligible for a loan under the Act, a borrower that has received partial funding under the Act may be allocated additional funding. The department may allocate the remaining funds to a borrower based on rank order not to exceed 25 percent of the remaining funds or \$2 million, whichever is greater.

(4) Green project reserve. The department must establish a green project reserve with 20 percent of the funding received under the Act for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. If the department determines and certifies there are insufficient eligible projects for funding under this reserve, the reserve may be allocated to other eligible projects under the Act.

(5) Funding categories. Funds available under the Act may not be used to establish a small community reserve or a planning reserve.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 11-2012, f. & cert. ef. 12-14-12

340-054-0108

Financial Terms

Notwithstanding OAR 340-054-0065, the following financial terms apply to any loan funded under the Act.

(1) Interest rates. The department may provide a loan at a zero percent interest rate.

(2) Principal forgiveness.

(a) A loan made by the department to a public agency serving a population of 5,000 or less must include 75 percent principal forgiveness on the total amount borrowed.

(b) A loan made by the department to a public agency serving a population greater than 5,000 must include 50 percent principal forgiveness on the total amount borrowed.

(c) Principal forgiveness is granted upon execution of the loan agreement.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 11-2012, f. & cert. ef. 12-14-12

Department of Fish and Wildlife Chapter 635

Rule Caption: Season Opening for the Ocean Commercial Dungeness Crab Fishery Delayed.

Adm. Order No.: DFW 146-2012(Temp)

Filed with Sec. of State: 12-11-2012

Certified to be Effective: 12-12-12 thru 6-9-13

Notice Publication Date:

Rules Amended: 635-005-0465

Rules Suspended: 635-005-0465(T)

Subject: This amended rule delays the opening of the 2012 commercial ocean Dungeness crab fishing season from December 16 until December 31, 2012 in accordance with the Tri-State Memorandum-of-Understanding and Preseason Testing Protocol.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0465

Closed Season in Pacific Ocean and Columbia River

(1) It is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through December 30.

(2) The season opening for the commercial Ocean Dungeness crab fishery may be delayed in one or more fishing zones based on the results of crab quality testing. The Pre-season Testing Protocol for the Tri-State Coastal Dungeness crab Commercial Fishery (hereafter, "Tri-State Protocol") specifies the process for establishing fishing zones (section VI) and coordinating the opening of the fishery in Washington, Oregon, and California north of Point Arena (sections IV and V). Therefore, the following sections of the Tri-State Protocol (Revised August, 2011) are hereby incorporated into Oregon Administrative Rule by reference:

(a) Section IV – Season Opening Criteria.

(b) Section V – Test Fishing and Process for Setting the Season Opening Date.

(c) Section VI – Procedure for Establishing Fishing Zones.

(3) It is *unlawful* to land, receive or buy, Dungeness crab in the first thirty days of the ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the ocean Dungeness crab fishery. In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the ocean Dungeness crab fishery refers to the fishery in that zone for the purposes of this rule.

(4) In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the transfer of a permit from one vessel to another is suspended from the earliest season opening date through thirty days after the latest season opening date, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

(5) Upon a determination by the Department that catch in Oregon's ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-

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2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; Administrative correction 4-24-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; Renumbered from 635-005-0045, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 145-2012(Temp), f. 11-14-12, cert. ef. 12-1-12 thru 12-31-12; DFW 146-2012(Temp), f. 12-11-12, cert. ef. 12-12-12 thru 6-9-12

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

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

Adm. Order No.: SSP 35-2012(Temp)

Filed with Sec. of State: 11-30-2012

Certified to be Effective: 12-1-12 thru 5-30-13

Notice Publication Date:

Rules Amended: 461-135-1102

Subject: OAR 461-135-1102 about effective dates for the Oregon Health Plan OPU program is being amended to allow recipients from the Family Health Insurance Assistance Program (FHIAP) to transition into OHP Standard if they are notified by FHIAP that their FHIAP subsidy will end on or after November 30, 2012, determined by FHIAP to be eligible for OHP Standard; and, agree to move to OHP Standard. Without this rule amendment, approximately 800 individuals would lose their FHIAP subsidy due to budget constraints, requiring them to choose between loss of their current health coverage or paying the full premium to continue their health coverage.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1102

OHP-OPU; Effective Dates for the Program

(1) Effective July 1, 2004, the OHP-OPU program is closed to new applicants other than an *OHP Reservation List Applicant* permitted under OAR 461-135-1125. Except as provided in sections (2) to (3) of this rule, a new applicant is an individual with a *date of request* (see 461-115-0030) after June 30, 2004. A new applicant cannot be found eligible for the OHP-OPU program.

(2) An individual is not a new applicant if the Department determines that the individual is continuously eligible for medical assistance as follows:

(a) The individual is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, or after that date pursuant to subsections (b) to (e) of this section, and the Department determines that the individual continues after that date to meet the eligibility requirements for the OHP-OPU program.

(b) The individual is eligible for and receiving benefits under the CAWEM program on June 30, 2004, and is eligible for the CAWEM program based on the OHP-OPU program, and the Department determines that the individual continues to meet the eligibility requirements for the OHP-OPU program except for citizenship or alien status requirements.

(c) The eligibility of the individual ends under the BCCM, CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or SAC program, or the related CAWEM program; or because the individual has left the custody of the Oregon Youth Authority (OYA); and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program.

(d) The individual is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program.

(e) The Department determines that the individual was continuously eligible for the OHP-OPU program on or after June 30, 2004 under subsections (a) to (d) of this section.

(3) An individual who is not continuously eligible under section (2) of this rule is not a new applicant if the individual:

(a) Has eligibility end under the BCCM, CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or SAC program, or the related CAWEM program; because the individual has left the custody of the OYA; or is a child in the custody of the Department whose eligibility for Medicaid ends due to the child's age;

(b) Established a *date of request* prior to the eligibility ending date in subsection (a) of this section; and

(c) Meets the eligibility requirements for the OHP-OPU program or the related CAWEM program within 45 days of the *date of request*.

(4) An individual who is not continuously eligible under section (2) of this rule is not a new applicant if the individual is a Family Health Insurance Assistance Program (FHIAP) recipient who:

(a) Is notified by FHIAP that the recipient's subsidy will end on or after November 30, 2012 due to budget shortfalls;

(b) Is determined by FHIAP to be eligible for OHP-OPU; and

(c) Indicates to FHIAP that the recipient agrees to move to OHP-OPU.

(5) Except as provided in section (2) of this rule, an individual who loses eligibility for a medical assistance program and applies or reapplies for medical assistance is treated as a new applicant for purposes of the OHP-OPU program.

(6) The Department intends that effective July 1, 2004, all other rules related to application, certification, recertification, or eligibility for the OHP-OPU program be applied and construed to achieve the purpose of this rule and that in the event of any ambiguity this rule controls.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 414.712 & 414.826

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 414.712, 414.826, 414.831, 414.839, 420.014 & 420.054

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 10-2010(Temp), f. & cert. ef. 4-21-10 thru 10-18-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 35-2012(Temp), f. 11-30-12, cert. ef. 12-1-12 thru 5-30-13

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

Rule Caption: Adult Protective Services — House Bill 4084.

Adm. Order No.: SPD 15-2012

Filed with Sec. of State: 11-28-2012

Certified to be Effective: 11-28-12

Notice Publication Date: 11-1-2012

Rules Adopted: 411-020-0123, 411-020-0126

Rules Amended: 411-020-0002, 411-020-0030, 411-020-0085

Rules Repealed: 411-020-0002(T), 411-020-0030(T), 411-020-0085(T), 411-020-0123(T), 411-020-0126(T)

Subject: The Department of Human Services is permanently updating the adult protective services rules in OAR chapter 411, division 020 to immediately implement provisions of House Bill 4084 (2012), including changes to the way confidential information is handled and how medical or financial records need to be obtained during the course of an adult protective services investigation.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-020-0002

Definitions

(1) "Abuse" means any of the following:

(a) PHYSICAL ABUSE.

(A) Physical abuse includes:

(i) The use of physical force that may result in bodily injury, physical pain, or impairment; or

(ii) Any physical injury to an adult caused by other than accidental means.

(B) For purposes of this section, conduct that may be considered physical abuse includes but is not limited to:

(i) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(ii) The use of force-feeding or physical punishment.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

(b) NEGLECT. Neglect including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical health and emotional well-being of an adult that creates a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity. The expectation for care, supervision, or services may exist as a result of an assumed responsibility or a legal or contractual agreement,

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including but not limited to where an individual has a fiduciary responsibility to assure the continuation of necessary care.

(B) Failure of an individual who is responsible to provide care or services to make a reasonable effort to protect an adult from abuse.

(C) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) ABANDONMENT. Abandonment including desertion or willful forsaking of an adult for any period of time by an individual who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(d) VERBAL OR EMOTIONAL ABUSE.

(A) Verbal or emotional abuse includes threatening significant physical harm or threatening or causing significant emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this section:

(i) Conduct that may be considered verbal or emotional abuse includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend.

(ii) The emotional harm that may result from verbal or emotional abuse includes but is not limited to anguish, distress, fear, unreasonable emotional discomfort, loss of personal dignity, or loss of autonomy.

(e) FINANCIAL EXPLOITATION. Financial exploitation including:

(A) Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

(f) SEXUAL ABUSE. Sexual abuse including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Sexual harassment or sexual exploitation of an adult or inappropriately exposing an adult to, or making an adult the subject of, sexually explicit material or language;

(C) Any sexual contact between an employee or volunteer of a facility or caregiver and an adult served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between an adult and a caregiver who is the spouse or domestic partner of the adult;

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(E) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(g) INVOLUNTARY SECLUSION. Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement or restriction of an adult to his or her room or a specific area; or

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

(B) In a facility, emergency or short-term, monitored separation from other residents may be permitted if used for a limited period of time when:

(i) Used as part of the care plan after other interventions have been attempted;

(ii) Used as a de-escalating intervention until the facility can evaluate the behavior and develop care plan interventions to meet the resident's needs; or

(iii) The resident needs to be secluded from certain areas of the facility when their presence in that specified area would pose a risk to health or safety.

(h) WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.

(A) A wrongful use of a physical or chemical restraint includes situations where:

(i) A licensed health professional has not conducted a thorough assessment prior to implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated prior to the use of the restraint; or

(iii) The restraint is used for convenience or discipline.

(B) Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) "Adult" means an older adult, an individual with a physical disability who is 18 years of age or older, or a resident of a Department licensed residential care facility, assisted living facility, or adult foster home.

(3) "APS" means adult protective services.

(4) "APS Risk Management" means the process by which adult protective services continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(5) "Area Agency on Aging (AAA)" means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.

(6) "At-risk" means there is reason to believe injury, hazard, damage, or loss may occur.

(7) "Community Based Care Facility" means an assisted living facility, residential care facility, adult foster home, or registered room and board facility.

(8) "Conclusion" means:

(a) For the purposes of a facility investigation, a determination by the adult protective services worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing; and

(b) For the purposes of a community investigation or self-neglect assessment, a determination by the adult protective services worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(9) "Conservatorship" means that a court has issued an order appointing and investing an individual with the power and duty of managing the property of another individual.

(10) "Department" means the Department of Human Services. The term "Department" is synonymous with "Division (SPD)".

(11) "Evidence" for the purpose of these rules, means material gathered, examined, or produced during the course of an adult protective services investigation. Evidence includes but is not limited to witness statements, documentation, photographs, and relevant physical evidence.

(12) "Financial Institution" has the meaning given that term in ORS 192.583.

(13) "Financial Records" has the meaning given that term in ORS 192.583.

(14) "Guardianship" means a court has issued an order appointing and investing an individual with the power and duty of managing the care, comfort, or maintenance of an incapacitated adult.

(15) "Health Care Provider" has the meaning given that term in ORS 192.556.

(16) "Imminent Danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(17) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(18) "Informed Choice" means the individual has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(19) "Law Enforcement Agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police;

(d) Any district attorney; or

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(e) The Oregon Department of Justice.

(20) "Licensed Care Facility" means a facility licensed by the Department, including nursing facilities, assisted living facilities, residential care facilities, and adult foster homes.

(21) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(22) "Mandatory Reporter" for the purpose of these rules, means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If an individual is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any individual living in a nursing facility or an older adult in any setting has suffered abuse or neglect, the mandatory reporter must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or 441.615 to 441.695 and OAR 411-085-0005, 411-085-0360, and 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the individual, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any individual living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;

(C) Employee of the Department, county health department, community mental health program, community developmental disabilities program, or a nursing facility, or an individual who contracts to provide services to a nursing facility;

(D) Peace officer;

(E) Clergy;

(F) Licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(G) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;

(H) Senior center employee;

(I) Information and referral or outreach worker;

(J) Area Agency on Aging employee;

(K) Firefighter;

(L) Emergency Medical Technician;

(M) Psychologist;

(N) Licensee of an adult foster home or an employee of the licensee; and

(O) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident.

(23) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that coordinates and collaborates for allegations of adult abuse and self-neglect. The team may consist of personnel of law enforcement, the local district attorney office, local Department or Area Agency on Aging offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.

(24) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the multidisciplinary team.

(25) "Older Adult" for the purpose of these rules, means any individual 65 years of age or older.

(26) "Physical Disability" for the purpose of these rules, means any physical or cognitive condition such as brain injury and dementia that significantly interferes with an adult's ability to protect his or her self from harm or neglect. (See OAR 411-020-0015, Eligibility)

(27) "Protected Health Information" has the meaning given that term in ORS 192.556.

(28) "Relevant" means tending to prove or disprove the allegation at hand.

(29) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(30) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.

(31) "Risk Assessment" means the process by which an individual is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support

system, and other relevant factors are also evaluated to determine their impact on the individual's ability to become or remain safe.

(32) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(33) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(34) "Serious Risk of Harm" means that without intervention the individual is likely to incur substantial injury or loss.

(35) "Services" as used in the definition of abuse includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.

(36) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(37) "These Rules" mean the rules in OAR chapter 411, division 020.

(38) "Undue Influence" means the process by which an individual uses his or her role and power to exploit the trust, dependency, and fear of another individual and to deceptively gain control over the decision making of the second individual.

(39) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(40) "Wrongdoing" means:

(a) For the purposes of a facility investigation, an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim; and

(b) For the purposes of a community investigation, an action or inaction that meets the definition of abuse, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 OL Ch. 70

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SSD 5-1995, f. 5-31-95, cert. ef. 6-1-95; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12

411-020-0030

Confidentiality

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain individuals and information obtained as a result of an APS intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential except for disclosure of the conclusion under OAR 411-020-0100(6) and may be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names may be released without the consent of the individual named except as provided in section (5) of this rule.

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings shall be made available to the general public upon request. On these types of complaints, information regarding the identity of the complainant, the reported victim, all witnesses, and the protected health information of any party shall remain confidential, unless release is specifically authorized by the affected individual or otherwise dictated by judicial process.

(4) The Department shall make the protective services report and underlying investigatory materials available to the protection and advocacy system designated by ORS 192.517 when the reported victim is an individual with a disability or mental illness as identified by 192.517.

(5) Where the Department deems it is appropriate for the purpose of furthering a protective service, or when necessary to prevent or treat abuse, or when deemed to be in the best interest of a reported victim, the names of the reported victim, witnesses (other than the complainant except as expressly permitted below), any investigative report, and any records compiled during the course of an investigation, may be made available to:

(a) Any law enforcement agency, to which the name of the complainant may also be made available;

(b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the individual who practices there;

(c) A public agency that licenses or certifies an individual that has abused or is alleged to have abused an older adult;

(d) The Long Term Care Ombudsman;

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(e) Any governmental or private non-profit agency providing adult protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090, including any federal law enforcement agency that has jurisdiction to investigate or prosecute for abuse defined in these rules, including but not limited to the Federal Bureau of Investigation (FBI), the Federal Trade Commission, or the U.S. Postal Inspection Service;

(f) An MDT as described in OAR 411-020-0025;

(g) A court, pursuant to court order, to which the name of the complainant may also be made available as required by the court order; or

(h) An administrative law judge in an administrative proceeding when necessary to provide protective services, investigate, prevent, or treat abuse of an older adult or when in the best interest of an older adult.

(6) Recipients of information disclosed under section (4) of this rule must maintain the confidentiality of the information as required by Oregon statute unless superseded by other state or federal law.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.070, 410.150, 411.116, 441.630 – 441.695, 443.769, & 2012 OL Ch. 70
Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12

411-020-0085

Law Enforcement Notification

(1) The Department shall immediately notify law enforcement if any of the following conditions exist and proceed collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(a) There is reasonable cause to believe a crime has been committed;

(b) Access to the reportedly abused individual is denied and legal assistance is needed in gaining access;

(c) The situation presents a credible danger to the Department worker or others and police escort is advisable;

(d) Forensic photographic or other evidence is needed; or

(e) As required under OAR 411-020-0123 or 411-020-0126.

(2) Written notice, regardless of any verbal notice given, shall be provided to law enforcement for all instances when the Department finds that there is reasonable cause to believe a crime has been committed.

(3) When the local Department or AAA office notifies a law enforcement agency of suspected crime committed against a reported victim, the local office must track the progress as reported from the law enforcement agency on the investigation and the district attorney's office on the prosecution of the crime.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765 & 443.767
Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500 & 443.767
Hist.: SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12

411-020-0123

Accessing Protected Health Information and Records

Protected health information from a health care provider may be obtained in the course of an APS investigation either from a mandatory reporter performing that reporter's duties required by Oregon statute or as follows:

(1) **DISCLOSURE BY HEALTH CARE PROVIDER.** A health care provider may disclose, in accordance with 45 CFR 164.512(j), protected health information to APS to prevent or lessen a serious and imminent threat to the health or safety of a person or the public if the health care provider, in good faith, believes that the disclosure is necessary to prevent or lessen the threat. APS may request protected health information in the course of a self-neglect assessment or abuse investigation under this provision to prevent or lessen a serious and imminent threat.

(2) **COMMUNITY ABUSE INVESTIGATION.** In the course of an APS investigation into abuse in a community-based setting where the process under section (1) does not apply or is declined by the health care provider:

(a) **CONSENT BY REPORTED VICTIM.** APS may obtain a reported victim's protected health information for an APS investigation with that reported victim's consent.

(b) **DECLINED CONSENT.** If a reported victim is able to make an informed choice and declines to consent to APS obtaining protected health information, APS may not obtain the reported victim's protected health information beyond the information a mandatory reporter is required to disclose.

(c) **REPORTED VICTIM INCAPABLE OF CONSENT.** If a reported victim is an older adult and does not have the ability to make an informed choice to consent to APS obtaining the reported victim's protected health information, and the reported victim does not have a fiduciary or legal representative that can consent to APS accessing the reported victim's protected health information, or when the fiduciary or legal representative is a reported perpetrator and refuses to consent to APS accessing the reported victim's protected health information, then the following procedure must be followed in order for APS to obtain the protected health information:

(A) APS must request that the appropriate law enforcement agency submit a written request to the health care provider to allow the law enforcement agency to inspect and copy, or otherwise obtain, the protected health information.

(B) APS shall inform the law enforcement agency that the written request must state that an investigation into abuse is being conducted under ORS 124.070 (elder abuse) or ORS 441.650 (nursing facility resident abuse).

(3) **HEALTH CARE PROVIDER NOTICE.** In investigations where APS is seeking disclosure of protected health information by a health care provider under sections (1) or (2) of this rule, APS shall inform the health care provider, either directly or through the law enforcement agency requesting the information, that the health care provider is required, in accordance with 45 CFR 164.512(c)(2), to promptly inform the individual to whom the protected health information pertains that information has been or shall be disclosed, unless:

(a) The health care provider, in the exercise of their professional judgment, believes that informing the individual may place the individual at risk of serious harm; or

(b) The health care provider would be informing a personal representative of the individual and the health care provider reasonably believes that the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the health care provider in the exercise of their professional judgment.

(4) **LICENSED CARE FACILITY INVESTIGATIONS.** In the course of an APS investigation into abuse in a licensed care facility:

(a) **OBTAINING RESIDENT RECORDS MAINTAINED BY A LICENSED CARE FACILITY.** Licensed care facilities must provide APS access to all resident and facility records, including protected health information, maintained by the facility as required by their respective Oregon Administrative Rules.

(b) **DISCLOSURE BY HEALTH CARE PROVIDER.** A health care provider, such as a hospital, a medical office, or a provider other than a licensed care facility, may disclose, in accordance with 45 CFR 164.512(d), a reported victim's protected health information to APS as a health oversight agency for purposes of oversight of that facility, including oversight through investigation of complaints of abuse of residents in such facility. APS shall inform the health care provider of its authority as a health oversight agency and that such disclosures are permitted in accordance with 45 CFR 164.512(d).

(c) **HEALTH CARE PROVIDER REFUSAL TO DISCLOSE.** If a health care provider refuses to disclose protected health information to APS as a health oversight agency, APS may follow the procedure set forth in section (2)(c) of this rule if the reported victim is an older adult.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765 & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767 & 2012 OL Ch. 70
Hist.: SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12

411-020-0126

Accessing Financial Records

(1) Financial records may be obtained from a financial institution in the course of an APS investigation into alleged abuse.

(2) **DEFAULT STANDARD.** APS may not request financial records from a financial institution unless one of the following exceptions applies and the corresponding procedures are followed:

(a) **CUSTOMER AUTHORIZATION.** APS may request and receive financial records from a financial institution when the customer authorizes such disclosure in accordance with ORS 192.593. The authorization must:

(A) Be in writing, signed, and dated by the customer;

(B) Identify with detail the records authorized to be disclosed;

(C) Name the Department or Area Agency on Aging to whom disclosure is authorized;

(D) Contain notice to the customer that the customer may revoke such authorization at any time in writing; and

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(E) Inform the customer as to the reason for such request and disclosure.

(b) FINANCIAL INSTITUTION INITIATES CONTACT. Where a financial institution initiates contact with APS or a law enforcement agency regarding suspected financial exploitation, the financial institution may share financial records with APS or the law enforcement agency and is not otherwise precluded from communicating with and disclosing financial records to APS or the law enforcement agency.

(c) CUSTOMER INCAPABLE OF AUTHORIZING. If a financial institution has not initiated contact with APS or a law enforcement agency and the reported victim does not have the ability to make an informed choice to consent to APS obtaining the reported victim's financial records; or a fiduciary or legal representative who is a reported perpetrator refuses to authorize disclosure; or the account is jointly held by a reported perpetrator as well as the reported victim and the reported perpetrator refuses to authorize disclosure of the reported victim's financial records, these procedures must be followed:

(A) APS shall work with the appropriate law enforcement agency to obtain a subpoena issued by a court or on behalf of a grand jury to request financial records of the reported victim.

(B) APS shall:

(i) Confirm to the law enforcement agency that an investigation under ORS 124.070 (elder abuse, including older adult residents in a community based care facility) or under ORS 441.650 (abuse of a nursing facility resident) is open and that the individual about whom financial records are sought is the alleged victim in the abuse investigation.

(ii) Provide or work with the law enforcement agency to obtain the name and social security number of the individual about whom financial records are sought.

(C) A financial institution, before making disclosures pursuant to a subpoena described in this section, may require reimbursement for the production of records, in accordance with ORS 192.602.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765 & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 192.586, 192.600, 192.602, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767 & 2012 OL Ch. 70
Hist.: SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Remove “comments” from mandatory disqualifier language.

Adm. Order No.: DPSST 26-2012(Temp)

Filed with Sec. of State: 12-14-2012

Certified to be Effective: 12-14-12 thru 6-12-13

Notice Publication Date:

Rules Amended: 259-008-0070

Subject: A number of questions have been raised about the intent of the “comment” language found in this rule. The comments were adopted with a goal of adding clarity, but have instead created confusion in the legal interpretation of the rules. It is the recommendation of legal counsel to remove the comments. The comment language was removed from the discretionary disqualifying language through the permanent rulemaking process effective October 23, 2012, however, the comment language in the mandatory disqualifying language was overlooked.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-008-0070

Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

Definitions

(2) For purposes of this rule, the following definitions apply:

(a) “Denial” or “Deny” means the refusal to grant a certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) “Discretionary Disqualifying Misconduct” means misconduct identified in OAR 259-008-0070(4).

(c) “Revocation” or “Revoke” means to withdraw the certification of a public safety professional or instructor for mandatory grounds or discre-

tionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (9) of this rule.

Grounds for Mandatory Denial or Revocation of Certification

(3) Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor:

(a) The Department must deny or revoke the certification of any public safety professional or instructor after written notice and hearing, based upon a finding that:

(A) The public safety professional or instructor has been discharged for cause from employment as a public safety professional or instructor. For purposes of this rule, “discharged for cause,” means an employer-initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.

(i) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(iii) Gross Misconduct: means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety professional or instructor that remedial measures have been unable to correct; or

(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.

(B) The public safety professional or instructor has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(C) The public safety professional or instructor has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

(D) The public safety professional or instructor has been convicted in this state of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:

162.075 (False swearing);
162.085 (Unsworn falsification);
162.145 (Escape in the third degree);
162.175 (Unauthorized departure);
162.195 (Failure to appear in the second degree);
162.235 (Obstructing governmental or judicial administration);
162.247 (Interfering with a peace officer);
162.257 (Interfering with a firefighter or emergency medical technician);
162.295 (Tampering with physical evidence);
162.305 (Tampering with public records);
162.315 (Resisting arrest);
162.335 (Compounding);
162.365 (Criminal impersonation);
162.369 (Possession of false law enforcement identification);
162.375 (Initiating a false report);
162.385 (Giving false information to a peace officer for a citation or arrest warrant);
162.415 (Official misconduct in the first degree);
163.200 (Criminal mistreatment in the second degree);
163.454 (Custodial sexual misconduct in the second degree);
163.687 (Encouraging child sexual abuse in the third degree);
163.732 (Stalking);
164.045 (Theft in the second degree);
164.085 (Theft by deception);
164.095 (Theft by receiving);
164.125 (Theft of services);
164.235 (Possession of a burglary tool or theft device);
164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment);
165.007 (Forgery in the second degree);
165.017 (Criminal possession of a forged instrument in the second degree);
165.037 (Criminal simulation);
165.042 (Fraudulently obtaining a signature);
165.047 (Unlawfully using slugs);
165.055 (Fraudulent use of a credit card);

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165.065 (Negotiating a bad check);
165.080 (Falsifying business records);
165.095 (Misapplication of entrusted property);
165.100 (Issuing a false financial statement);
165.102 (Obtain execution of documents by deception);
165.825 (Sale of drugged horse);
166.065(1)(b) (Harassment);
166.155 (Intimidation in the second degree);
166.270 (Possession of weapons by certain felons);
166.350 (Unlawful possession of armor-piercing ammunition);
166.416 (Providing false information in connection with a transfer of a firearm);
166.418 (Improperly transferring a firearm);
166.470 (Limitations and conditions for sales of firearms);
167.007 (Prostitution);
167.075 (Exhibiting an obscene performance to a minor);
167.080 (Displaying obscene materials to minors);
167.132 (Possession of gambling records in the second degree);
167.147 (Possession of a gambling device);
167.222 (Frequenting a place where controlled substances are used);
167.262 (Adult using minor in commission of controlled substance offense);
167.320 (Animal abuse in the first degree);
167.330 (Animal neglect in the first degree);
167.332 (Prohibition against possession of domestic animal);
167.333 (Sexual assault of animal);
167.337 (Interfering with law enforcement animal);
167.355 (Involvement in animal fighting);
167.370 (Participation in dogfighting);
167.431 (Participation in cockfighting);
167.820 (Concealing the birth of an infant);
475.525 (Sale of drug paraphernalia);
475.840 (Manufacture or deliver a controlled substance);
475.860 (Unlawful delivery of marijuana);
475.864 (Unlawful possession of marijuana);
475.906 (Distribution of controlled substance to minors);
475.910 (Application of controlled substance to the body of another person);
475.912 (Unlawful delivery of imitation controlled substance);
475.914 (Unlawful acts, registrant delivering or dispensing controlled substance);
475.916 (Prohibited acts involving records and fraud);
475.918 (Falsifying drug test results);
475.920 (Providing drug test falsification equipment);
475.950 (Failure to report precursor substances transaction);
475.955 (Failure to report missing precursor substances);
475.960 (Illegally selling drug equipment);
475.965 (Providing false information on precursor substances report or record);
475.969 (Unlawful possession of phosphorus);
475.971 (Unlawful possession of anhydrous ammonia);
475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropranolamine; unlawful distribution);
475.975 (Unlawful possession of iodine in its elemental form);
475.976 (Unlawful possession of iodine matrix);
807.520 (False swearing to receive license);
807.620 (Giving false information to police officer);

Any offense involving any acts of domestic violence as defined in ORS 135.230.

(b) The Department must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless the Department, or the Board, has previously reviewed the conviction and approved the public safety professional or instructor for certification under a prior set of standards.

Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional or Instructor:

(a) The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor has engaged in conduct that fails to meet the applicable minimum standards as described in subsection (b), minimum training or the terms and conditions established under ORS 181.640;

(C) The public safety professional or instructor has engaged in conduct that resulted in the conviction of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; or

(D) A public safety professional failed to attend at least one session with a mental health professional within six months after the public safety professional was involved in using deadly physical force, as required by ORS 181.789.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

97.931 (Registration of Salesperson for Endowment Care Cemeteries, Pre-construction Sales and Prearrangement Sales) — Category V;
97.933 (Certification of Provider of Prearrangement or Preconstruction) — Category V;
97.937 (Deposit of Trust Funds made by Endowment Care Cemeteries) — Category V;
97.941 (Prearrangement or Preconstruction Trust Fund Deposits) — Category V;
97.990(4) (Maintaining a Nuisance) — Category V;
162.405 (Official Misconduct in the Second Degree) — Category III;
162.425 (Misuse of Confidential Information) — Category III;
162.455 (Interfering with Legislative Operations) — Category V;
162.465 (Unlawful Legislative Lobbying) — Category I;
163.160 (Assault in the Fourth Degree) — Category II;
163.187 (Strangulation) — Category II;
163.190 (Menacing) — Category II;
163.195 (Recklessly Endangering Another Person) — Category IV;
163.212 (Unlawful Use of Stun Gun, Tear Gas or Mace in the Second Degree) — Category IV;
163.415 (Sexual Abuse in the Third Degree) — Category II;
163.435 (Contributing to the Sexual Delinquency of a Minor) — Category II;
163.445 (Sexual Misconduct) — Category II;
163.465 (Public Indecency) — Category II;
163.467 (Private Indecency) — Category II;
163.545 (Child Neglect in the Second Degree) — Category IV;
163.693 (Failure to Report Child Pornography) — Category IV;
163.575 (Endangering the Welfare of a Minor) — Category III;
163.700 (Invasion of Personal Privacy) — Category II;
163.709 (Unlawful Directing of Light from a Laser Pointer) — Category IV;
164.043 (Theft in the Third Degree) — Category V;
164.132 (Unlawful Distribution of Cable Equipment) — Category V;
164.140 (Criminal Possession of Rented or Leased Personal Property) — Category V;
164.162 (Mail Theft or Receipt of Stolen Mail) — Category I;
164.243 (Criminal Trespass in the Second Degree by a Guest) — Category V;
164.245 (Criminal Trespass in the Second Degree) — Category V;
164.255 (Criminal Trespass in the First Degree) — Category V;
164.265 (Criminal Trespass While in Possession of a Firearm) — Category IV;
164.272 (Unlawful Entry into a Motor Vehicle) — Category V;
164.278 (Criminal Trespass at Sports Event) — Category V;
164.335 (Reckless Burning) — Category IV;
164.345 (Criminal Mischief in the Third Degree) — Category V;
164.354 (Criminal Mischief in the Second Degree) — Category V;
164.373 (Tampering with Cable Television Equipment) — Category V;
164.377 (Computer Crime) — Category V;
164.775 (Deposit of Trash Within 100 Yards of Water) — Category V;
164.785 (Placing Offensive Substances in waters/on highways or property) — Category IV;
164.805 (Offensive Littering) — Category V;
164.813 (Unlawful Cutting and Transporting of Special Forest Products) — Category V;
164.815 (Unlawful Transport of Hay) — Category V;
164.825 (Cutting and Transport of Coniferous Trees without Permit/Bill of Sale) — Category V;
164.845 (FTA on Summons for ORS 164.813 or 164.825) — Category V;
164.863 (Unlawful Transport of Meat Animal Carcasses) — Category V;
164.865 (Unlawful Sound Recording) — Category V;
164.875 (Unlawful Video Tape Recording) — Category V;
164.887 (Interference with Agricultural Operations) — Category II;
165.107 (Failing to Maintain a Metal Purchase Record) — Category V;
165.109 (Failing to Maintain a Cedar Purchase Record) — Category V;

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165.540 (Obtaining Contents of Communications) — Category V;
165.555 (Unlawful Telephone Solicitation) — Category V;
165.570 (Improper Use of Emergency Reporting System) — Category IV;
165.572 (Interference with Making a Report) — Category II;
165.577 (Cellular Counterfeiting in the Third Degree) — Category I;
165.805 (Misrepresentation of Age by a Minor) — Category I;
166.025 (Disorderly Conduct in the Second Degree) — Category IV;
166.027 (Disorderly Conduct in the First Degree) — Category IV;
166.075 (Abuse of Venerated Objects) — Category II;
166.076 (Abuse of a Memorial to the Dead) — Category II;
166.090 (Telephonic Harassment) — Category II;
166.095 (Misconduct with Emergency Telephone Calls) — Category IV;
166.155 (Intimidation in the Second Degree) — Category II;
166.180 (Negligently Wounding Another) — Category IV;
166.190 (Pointing a Firearm at Another) — Category IV;
166.240 (Carrying a Concealed Weapon) — Category V;
166.250 (Unlawful Possession of a Firearm) — Category V;
166.320 (Setting of a Springgun or Shotgun) — Category IV;
166.385 (Possession of Hoax Destructive Device) — Category IV;
166.425 (Unlawful Purchase of Firearm) — Category I;
166.427 (Register of Transfers of Used Firearms) — Category V;
166.480 (Sale or Gift of Explosives to Children) — Category IV;
166.635 (Discharging Weapon or Throwing Object at Trains) — Category IV;
166.638 (Discharging Weapon Across Airport Operational Surfaces) — Category IV;
166.645 (Hunting in Cemeteries) — Category V;
166.649 (Throwing Object off Overpass in the Second Degree) — Category IV;
167.122 (Unlawful Gambling in the Second Degree) — Category V;
167.312 (Research and Animal Interference) — Category II;
167.315 (Animal Abuse in the Second Degree) — Category IV;
167.325 (Animal Neglect in the Second Degree) — Category IV;
167.340 (Animal Abandonment) — Category V;
167.351 (Trading in Nonambulatory Livestock) — Category V;
167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) — Category IV;
167.385 (Unauthorized Use of Livestock Animal) — Category II;
167.388 (Interference with Livestock Production) — Category II;
167.390 (Commerce in Fur of Domestic Cats and Dogs) — Category V;
167.502 (Sale of Certain Items at Unused Property Market) — Category V;
167.506 (Record Keeping Requirements) — Category V;
167.808 (Unlawful Possession of Inhalants) — Category IV;
167.810 (Creating a Hazard) — Category IV;
167.822 (Improper Repair Vehicle Inflatable Restraint System) — Category IV;
411.320 (Disclosure and Use of Public Assistance Records) — Category II;
468.922 (Unlawful disposal, storage or treatment of hazardous waste in the second degree) — Category V;
468.929 (Unlawful transport of hazardous waste in the second degree) — Category V;
468.936 (Unlawful Air Pollution in the Second Degree) — Category V;
468.943 (Unlawful Water Pollution in the Second Degree) — Category V;
468.956 (Refusal to Produce Material Subpoenaed by the Commission) — Category V;
471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) — Category IV;
Chapter 496 – 498 (When treated as a misdemeanor crime) — Category based on the elements of the specific crime;
609.341 (Permit Requirement for Keeping of Exotic Animals; Breeding of Animals) — Category V;
609.405 (Requirement for Destroying Dog or Cat) — Category V;
609.505 (Unlawfully Obtaining Dog or Cat) — Category V;
609.520(c) (Animal Dealer Failing to Turn Over Dog or Cat) — Category V;
609.805 (Misrepresentation of Pedigree; Mutilation of Certificate or Proof of Pedigree) — Category I;
609.990(3)(a) (Violation of ORS 609.098 — Maintaining a Dangerous Dog) — Category IV;
717.200 to 717.320 (Any violation) — Category V;
803.225 (Failure to Designate Replica..Vehicle in Title or Registration Application) — Category I;
807.430 (Misuse of Identification Card) — Category I;
807.510 (Transfer of documents for the purpose of misrepresentation) — Category I;
807.530 (False Application for License) — Category I;
807.570 (Failure to Carry or Present License) — Category V;
807.580 (Using Invalid License) — Category I;
807.590 (Permitting Misuse of License) — Category I;
807.600 (Using Another's License) — Category I;
811.060 (Vehicular Assault of Bicyclist or Pedestrian) — Category V;
811.140 (Reckless Driving) — Category IV;
811.172 (Improperly Disposing of Human Waste) — Category V;
811.182 (Criminal Driving While Suspended or Revoked) — Category V;
811.231 (Reckless Endangerment of Highway Workers) — Category IV;
811.540 (Fleeing or Attempt to Elude a Police Officer) — Category IV;
811.700 (Failure to Perform Duties of Driver when Property is Damaged) — Category V;
811.740 (False Accident Report) — Category I; and
813.010 (Driving Under the Influence of Intoxicants) — Category IV.
830.035(2) (Fleeing; Attempts to Elude) — Category IV;
830.053 (False or Fraudulent Report of Theft of Boat) — Category I;
830.315(1) (Reckless Operation) — Category IV;
830.325 (Operation a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) — Category IV;
830.383 (Person Required to Remedy Especially Hazardous Condition) — Category V;
830.460(2) (Prohibited Activities — Operating a Vessel that Fails to Comply with Equipment Requirements) — Category V;
830.460(3) (Prohibited Activities — Operating a Vessel without Liability Protection) — Category V;
830.475(1) (Failure to Perform the Duties of an Operator at Accident) — Category V;
830.730 (False Information) — Category I;

830.909 (Abandoning Boat, Floating Home, or Boathouse) — Category V;
830.955(1) (Prohibition of Installation of Submersible Polystyrene Device) — Category V;
830.992 (Purchase of a Boat or Equipment from which Hull or Component Identification Number Removed) — Category V;
830.994 (Operates a Boat in Violation of a Court Order) — Category;

Initial Periods of Ineligibility

(d) Upon determination to proceed with the denial or revocation of a public safety professional's or instructor's certification based on discretionary disqualifying misconduct identified in subsection (a), an initial minimum period of ineligibility to apply for certification will be determined based upon the category of misconduct (i.e., Dishonesty, Disregard for Rights of Others, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

(e) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility for discretionary disqualifying misconduct identified in subsection (a) from the time frame identified below for each category of discretionary disqualifying misconduct:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

Eligibility to Reapply; Ineligibility Periods

(5) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for:

- (a) Mandatory grounds identified in section (3) of this rule; or
- (b) Discretionary Disqualifying Misconduct identified in section (4) of this rule that is determined to be a Category I lifetime disqualifier.

(6) Eligibility to reapply for certification:

(a) In determining the initial minimum period of ineligibility within any category for discretionary disqualifying misconduct listed in section (4) of this rule, the Board will take into consideration any mitigating or aggravating factors, subject to the provisions of section (9) of this rule.

(b) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(c) Any subsequent eligibility to apply for certification will be determined by the Board, after Policy Committee review, subject to the provisions of section (11) of this rule.

Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct

(7) In determining whether to take action on a conviction, the Department must use the following guidelines:

(a) In making a decision on a discretionary denial or revocation, the Department will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety officers adopted in 2001.

(b) The Department will not take action on a conviction constituting discretionary disqualifying misconduct that occurred prior to January 1, 2001. However, the Department may consider such conviction as evidence that a public safety professional or instructor does not meet the established moral fitness guidelines.

(c) The Department may take action on any conviction constituting discretionary disqualifying misconduct that occurred after January 1, 2001.

(d) The Board may reconsider any mandatory conviction which subsequently becomes a conviction constituting discretionary disqualifying misconduct, upon the request of the public safety professional or instructor.

(e) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.

(f) The Department will not take action against a public safety professional, instructor, or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.

(g) The Department may take action against a public safety professional, instructor, or agency for failing to report, after January 1, 2003, any conviction that constitutes discretionary disqualifying misconduct.

Procedure for Denial or Revocation of a Certificate

(8) Scope of Revocation. Whenever the Department revokes the certification of any public safety professional or instructor under the provisions of OAR 259-008-0070, the revocation will encompass all public safety certificates, except fire certification(s), the Department has issued to that person.

(9) Denial and Revocation Procedure.

(a) Agency Initiated Review: When the entity utilizing a public safety professional or instructor requests that a public safety professional's or

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instructor's certification be denied or revoked, it must submit in writing to the Department the reason for the requested denial or revocation and all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the public safety professional's or instructor's certification be denied or revoked.

(c) Department Staff Review: When the Department receives information, from any source, that a public safety professional or instructor may not meet the established standards for Oregon public safety professionals or instructors, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.

(C) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through a Policy Committee.

(D) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(E) In misconduct cases in which there has been an arbitrator's opinion related to the public safety professional's or instructor's employment, the Department will proceed as follows:

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the department will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Policy Committees and Board will consider mitigating and aggravating circumstances, including, but not limited to, the following:

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire; and

(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;

(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;

(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;

(E) Whether the misconduct involved domestic violence;

(F) Whether the public safety professional or instructor self-reported the misconduct;

(G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;

(H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor; and

(I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the public safety professional or instructor.

(f) Contested Case Notice:

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules or Procedures adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the public safety professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

(g) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(B) A party who has been served with the "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file a written request for hearing with the Department.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672.

(i) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j) Proposed and Final Orders:

(A) In cases in which a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.

(B) Department-proposed amendments to a proposed order issued by an Administrative Law Judge in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order can be issued.

(k) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a public safety professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification, under the terms and conditions outlined in the stipulated order.

Appeals, Reapplication, and Eligibility Determinations

(10) Appeal Procedure. A public safety professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

(11) Reapplication Process.

(a) Any public safety professional or instructor whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.

(b) Any public safety professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until after the maximum initial period of ineligibility identified in (4) of this rule has been satisfied.

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(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and a Policy Committee has recommended that a public safety professional's or instructor's eligibility to apply for public safety or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section 9(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The public safety professional or instructor is employed or utilized by a public safety agency; and

(D) All requirements for certification have been met.

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664

Hist.: 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 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 6-2000, f. & cert. ef. 9-29-00; BPSST 14-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-02; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 7-2003, f. & cert. ef. 4-11-03; DPSST 7-2004, f. & cert. ef. 4-23-04; DPSST 10-2006, f. & cert. ef. 7-6-06; DPSST 16-2008, f. & cert. ef. 10-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 11-2011, f. & cert. ef. 7-1-11; DPSST 11-2012, f. & cert. ef. 4-24-12; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 22-2012, f. & cert. ef. 10-23-12; DPSST 26-2012(Temp), f. & cert. ef. 12-14-12 thru 6-12-13

Department of State Lands Chapter 141

Rule Caption: Adopts Provisions to Implement 2012 Legislation Related to Expiration of Reports and an Independent Review.

Adm. Order No.: DSL 6-2012

Filed with Sec. of State: 12-13-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 11-1-12

Rules Amended: 141-090-0005, 141-090-0010, 141-090-0015, 141-090-0020, 141-090-0025, 141-090-0030, 141-090-0032, 141-090-0035, 141-090-0040, 141-090-0045, 141-090-0050, 141-090-0055

Subject: Legislation in 2012 was enacted to allow landowners to request an independent review of a wetland delineation report when there is a disagreement with a Department decision and to request a five-year extension of a recently expired delineation. This rulemaking effort addresses this 2012 legislation. Additionally, relatively minor technical and housekeeping revisions are proposed.

Rules Coordinator: Tiana Teeters—(503) 986-5239

141-090-0005

Purpose

The purpose of these rules is to establish standards and procedures by which the Department of State Lands makes jurisdictional determinations of wetlands and other waters of this state. These rules also establish minimum standards for wetland delineation reports submitted to the Department for review and the procedures for Department review and approval.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0010

Applicability

(1) These rules establish the standards and procedures used by the Department of State Lands to identify waters of this state that are subject to

regulation and authorization requirements of the Removal-Fill Law (ORS 196.800 to 196.990).

(2) These rules are supplemental to administrative rules for issuance and enforcement of removal and fill authorizations (OAR 141-085; OAR 141-0102); rules pertaining to wetland conservation plans and local wetlands inventories (OAR 141-086; OAR 141-120); rules pertaining to the identification of significant wetlands (OAR 141-086); rules pertaining to General Authorizations (OAR 141-089); rules pertaining to General Permits (OAR 141-093) and rules pertaining to Oregon Scenic Waterways (OAR 141-100).

(3) Agencies such as the U.S. Army Corps of Engineers (Corps of Engineers) and the Natural Resources Conservation Service (NRCS) have separate regulatory authority over waters of the United States and separate jurisdictional determination procedures.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0015

Policy

(1) It is the policy of the State of Oregon that the protection, conservation and best use of the water resources of this state are matters of the utmost public concern (ORS 196.805) and that the state use a single definition of wetlands and a single, uniform methodology of delineating wetland boundaries (ORS 196.672).

(2) In accord with these policies the Department shall, to the greatest extent possible:

(a) Provide a clear process for making, modifying or reissuing jurisdictional determinations, including wetland boundary delineations;

(b) Make jurisdictional determinations using the best available science, technical guidance and documents;

(c) Use sound professional judgment in interpreting maps, aerial photographs, environmental data and other relevant documents;

(d) Provide jurisdictional determinations that improve the level of regulatory certainty for landowners and developers and that help ensure that fill or removal of material in waters of this state does not occur without a required removal or fill permit; and

(e) Encourage landowners and developers to utilize wetland delineation reports at the earliest stage of site development planning in order to incorporate measures to avoid and minimize impacts to wetlands and other waters and thus prevent unnecessary regulatory delays.

(3) Because wetlands and other waters of this state can be affected over time by both natural changes and human activities, jurisdictional determinations are not valid for an indefinite period of time.

(4) The Director of the Department of State Lands shall designate employees responsible for making jurisdictional determinations as described in these rules.

(5) Final authority for determining the adequacy of the procedures, methods, application of technical documents, interpretation and analysis of maps and data, and conclusions regarding the identification of waters of this state and jurisdictional determinations rests with the Department except as described in Oregon Laws 2012, c. 108, § 2, and except when the Department's determination is reviewed by a court of competent jurisdiction.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0020

Definitions

For the purpose of these rules:

(1) "Agent" means a business partner, attorney or any individual who is legally authorized to represent the landowner's interests.

(2) "Applicant" means a person who has applied to the Department for a wetland delineation report approval, a jurisdictional determination and a removal or fill authorization.

(3) "Authorization Application" means the written application for an authorization to place fill in or remove material from waters of this state as required by OAR 141-085, 141-089, 141-0100 and 141-0102.

(4) "Basis of Jurisdictional Determination" means a summary statement of the criteria and indicators that support the Department's jurisdictional determination.

(5) "Change in Circumstances" means a change in site conditions that fundamentally alters the hydrology or substrate to the extent that the "normal circumstances" of waters of this state are changed. The change in cir-

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cumstances may be due to alterations on a site or alterations offsite that affect the site sufficiently to enlarge, reduce, or change the status or geographic extent of a jurisdictional water. A change in circumstances includes, but is not limited to, a dike breach or drainage system failure that restores former hydrologic conditions to a site, placement of fill material, or a water source diversion.

(6) "Consultant" means a private individual or firm whose business is to provide professional services to the public.

(7) "Delineation" means a determination of wetland presence that includes marking the wetland boundaries on the ground and on a detailed map prepared by professional land survey or similar accurate methods.

(8) "Determination" means a decision that a site may, does, is unlikely to, or does not contain waters of this state, including wetlands. A determination does not include the precise location or boundaries of any wetlands or waterways determined to be present.

(9) "Director" means the Director of the Department of State Lands or his or her designate.

(10) "Department" means the Oregon Department of State Lands, including the Director.

(11) "Final Order" means a final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency statement, including a "preliminary jurisdictional determination," and does not preclude further agency consideration of the subject matter of the final order.

(12) "Global Positioning System" (GPS) means a navigation system which consists of a network of satellites and earth receiver stations which allows a person to determine, via a receiver, their respective position in latitude, longitude, and altitude.

(13) "Indicator" means soil characteristics, vegetation, hydrology evidence or other field data that indicate, by their presence or absence, the existence of certain environmental conditions. Indicators are used with other information, mapped or anecdotal, to determine the state's jurisdiction over waters of this state.

(14) "Jurisdictional Determination" (JD) means a written decision by the Department that waters of this state subject to regulation and authorization requirements of OAR 141-085, 141-089, 141-0100 and 141-0102 are present or not present on a land parcel. The JD may include a delineation of the geographic boundaries of the water area subject to state jurisdiction. For example, a JD may include the location of a wetland boundary or the location of the ordinary high water line of a waterway. A JD may, but does not necessarily, include a determination that a particular activity in a water of this state is subject to authorization requirements. The decision record includes the basis of the jurisdictional determination and is a final order subject to reconsideration according to the provisions in 141-090-0050.

(15) "Landowner" means the legal owner of the parcel(s) for which a JD is requested or made.

(16) "Local Wetlands Inventory" (LWI) means a wetland inventory map and supporting data that is conducted according to the requirements in OAR 141-086 and has been approved by the Department.

(17) "Manual" means the 1987 U.S. Army *Corps of Engineers Wetlands Delineation Manual* including the two regional supplements that cover Oregon: Arid West and Western Mountains, Valleys, and Coast, and applicable guidance (see OAR 141-090-0030) all of which is hereby incorporated by reference. The public may obtain a copy of the manual from the Department's website.

(18) "National Wetlands Inventory" (NWI) means the wetlands inventory prepared by the U.S. Fish and Wildlife Service.

(19) "New Information" means data, reports, photographs, observations or similar information that is provided to or obtained by the Department after the Department has issued a jurisdictional determination or issued an authorization.

(20) "Non-wetland" means an area that does not meet the wetland definition and criteria.

(21) "Normal Circumstances" means the hydrology, soil and vegetative conditions that are naturally present, regardless of whether or not the soil or hydrology has been recently altered or the natural vegetation has been removed or altered. "Normal circumstances" includes a consideration of the permanence of any change to the site; for example, if several feet of fill material are placed on a wetland the new "normal circumstances" may be non-wetland. In such a situation, the Department may determine if the placement of fill material required a fill permit.

(22) "Offsite Determination" means a determination by the Department or any other person that is conducted without a site visit using maps, aerial photographs, observations from adjacent areas, or interviews with persons familiar with the site. An offsite determination is considered

to be a Preliminary Jurisdictional Determination (PJD) unless otherwise stated in writing by the Department.

(23) "Onsite Determination" means a determination by the Department or any other person that includes a site visit to collect relevant data. An onsite determination may be either a PJD or a JD.

(24) "Other Waters" means waters of this state other than wetlands.

(25) "Person" means an individual, corporation, firm, partnership, estate, association, body of government or other legal entity.

(26) "Preliminary Jurisdictional Determination" (PJD) means an advisory determination issued orally or in writing stating that wetlands or other waters of this state are present or not present on a parcel of land. Because a PJD is advisory in nature it has no specified duration or expiration and is not subject to appeal. PJDs include all wetland determinations by any person other than the Department, and also include wetlands mapped on the NWI or on an LWI.

(27) "Primary Contact" means the person or firm designated by the landowner, agent or applicant to serve as the Department's contact for the purpose of the review and approval of a wetland delineation report.

(28) "Removal-Fill Law" means ORS 196.800 through 196.990 and rules adopted thereunder relating to the filling and/or the removal of material in waters of this state.

(29) "Report" means a wetland delineation report.

(30) "Sample Plot" means an area on a parcel of land within which environmental data (e.g., soils, hydrology and vegetation) are collected that is representative of that area and documented on a wetland determination data form.

(31) "Site-specific methods" means what the field investigator actually did in order to conduct the wetland determination or delineation and prepare the wetland delineation report; for example, the offsite resources actually consulted, why certain portions of a study area were or were not selected for field sampling, actual plot sizes for vegetation sampling, and explanation of best professional judgment relied upon. A generic description of methods the field investigator generally employs is not site-specific.

(32) "Study Area" means the area that was investigated for the presence of waters of this state (e.g., usually a portion of a tax lot(s), parcel or other legally defined geographic area).

(33) "Waters of this state" means all natural waterways, all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605. (ORS 196.800(14) and OAR 141-085-0010 and 141-085-0015).

(34) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (ORS 196.800(16) and OAR 141-085-0010).

(35) "Wetland Boundary" means a line marked on the ground and on a map that identifies the boundary line between wetlands and non-wetlands.

(36) "Wetland Delineation Report" means a written document that contains the methods, data, conclusions and maps used to determine if wetlands and other waters of this state are present on a land parcel and, if so, describes and maps their location and geographic extent. A wetland determination report documenting wetland presence or absence is included within this definition.

(37) "Wetland Map" means a map included in a Wetland Delineation Report or provided with a JD by the Department that shows the parcel(s) and/or study area(s) investigated and the location, size and boundaries of any wetlands and other waters.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 - 196.990, 196.600 - 196.665, 196.668 - 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0025

Procedures for Determinations Conducted Entirely by the Department

(1) The Department shall make a determination (PJD or JD) according to the procedures in this section.

(2) The Department may make a determination for a number of reasons, including but not limited to:

(a) A written request from any person (e.g., a landowner or their agent) requesting a determination for a particular parcel or parcels;

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(b) A Wetland Land Use Notice from a local government as required by ORS 196.676;

(c) A site development notice from a local government;

(d) A request from a local government or other government entity acting in its capacity to conduct site assessments for project or planning purposes;

(e) A removal-fill authorization application, request for a pre-application meeting or a compliance investigation;

(f) A request to review and approve a wetland delineation report (see additional requirements and procedures in OAR 141-090-0030, 141-090-0032 and 141-090-0035); or

(g) In conjunction with its authority and responsibilities under ORS 196.600 to 196.962, 196.800 to 196.990 and any applicable rules of the Department.

(3) The Department may prioritize the completion of determinations based upon the availability of staff and budget resources.

(4) A request to the Department to provide a wetland determination apart from an authorization application, wetland delineation report submittal or local government notice shall include:

(a) A written request on a form provided by the Department;

(b) Landowner/agent permission to conduct a site visit if an onsite determination is desired;

(c) Landowner or agent name, company or agency, mailing address and phone number;

(d) A location map such as a city map showing the precise parcel location with respect to nearest streets and parcel address, if any;

(e) A detailed site map such as a tax map or hand drawn parcel map showing, as appropriate, such features as the location of streets, roads, buildings, streams, and area of any planned development or fill or excavation, if known; and

(f) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers).

(5) A request for a determination may include additional helpful information, such as:

(a) A large scale topographic map of the site (e.g., 1 inch = 50 feet);

(b) A large scale aerial photograph of the site; or

(c) Photographs of the site.

(6) A wetland determination request as described in section (4) and (5) of this rule may not be used to obtain agency review and approval of a wetland delineation report (see OAR 141-090-0032 and 141-090-0040).

(7) The Department will review the information provided with the request along with other available maps and information and provide a PJD or a JD.

(8) The Department may request additional information and may conduct a site visit to ensure an accurate determination. The Department shall contact the applicant or primary contact prior to conducting a site visit.

(9) An onsite determination conducted by the Department to make a JD or PJD shall include at a minimum:

(a) A location map showing the location of the parcel(s) with respect to major roads;

(b) A parcel map showing property boundaries;

(c) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers);

(d) The NWI map or, if available, the LWI map with the site located;

(e) The county soil survey map with site located and soil type(s) mapped on the site identified;

(f) A sketch map showing the approximate location of any waters of this state on the parcel(s);

(g) At least one data form (or equivalent notes) documenting any wetlands identified or possible wetlands determined not to meet wetland criteria; and

(h) Conclusions and recommendations regarding additional requirements (e.g., the need for a delineation or permit), as appropriate to the determination request and the situation.

(10) After review of the information and the site visit, if conducted, the Department may:

(a) Provide a written PJD or JD in accordance with section (11) of this rule; or

(b) Provide a written PJD and recommend that the landowner, agent or applicant obtain a wetland determination and delineation that meets the requirements in OAR 141-090-0030 and 141-090-0035.

(11) A written PJD or JD by the Department shall include at a minimum:

(a) A letter or form addressed to the applicant, landowner or agent that includes the location of the parcel(s) investigated, a file number for future

reference, and the expiration date of the JD, or a response on or attached to a wetland land use notice form or other site development notice submitted by a local government;

(b) Comments regarding the precision or use of the PJD or JD, as appropriate;

(c) Additional requirements or recommendations, such as the need for a wetland delineation;

(d) A determination of the requirements or exemptions in accordance with OAR 141-085, 141-089, 141-093, 141-0100 and 141-0102 that apply to any waters of this state identified on the parcel(s) and/or the proposed activity, if the information provided to or obtained by the Department is sufficient to make such determination; and

(e) A map or reference to a map showing the parcel(s) investigated and the approximate location of any waters of this state identified on the parcel(s), unless the information provided to or obtained by the Department is not sufficient to make or refer to such a map.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0030

Technical Requirements

(1) Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers *Wetlands Delineation Manual* (“the manual”), including regional supplements and applicable guidance, and any supporting technical or guidance documents issued by the Department.

(2) The jurisdictional limits of other waters (e.g., streams, estuaries) are described in OAR 141-085-0515.

(3) In addition to the requirements in this section, wetland delineation reports submitted to the Department for review and approval shall meet the standards and requirements in OAR 141-090-0035.

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

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0032

Fees for Wetland Delineation Report Review

(1) Any person submitting a wetland delineation report to the Department for review and approval must pay to the Department a non-refundable fee in the amount as determined under ORS 196.818(4). A request for reissuance of an expiring report is not subject to an additional fee.

(2) If the person submitting a report withdraws the report from agency review after it has been submitted and the fee paid, or if the Department withdraws the report according to OAR 141-090-0040(3)(d), any resubmittal is subject to a new fee.

(3) If a person wishes to change information in or expand the geographic area covered by a report that is pending initial review by the Department, a revised report may replace the previous report in its entirety, without incurring an additional fee. This provision does not apply to changes requested by the Department.

(4) A report that has been rejected by the Department per OAR 141-090-0040(3)(f) may be revised and resubmitted along with an additional nonrefundable fee of \$100.00.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0035

Standards and Requirements for Wetland Delineation Reports Submitted to the Department

(1) Report Submittal: All wetland delineation reports (“reports”) submitted to the Department for review, approval and a JD shall meet the technical requirements in OAR 141-090-0030 as well as the minimum standards and requirements in this rule. Reports must conform to the report format provided by the Department.

(2) All wetlands and other waters on the parcel or study area shall be included; the Department will determine whether or not they are “waters of this state” subject to jurisdiction under OAR 141-085, 141-089, 141-093, 141-100 and 141-102.

(3) All report text, maps, aerial photographs, ground photographs, and data forms must be legible.

(4) Reports must be submitted as:

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(a) Paper hard copies, reproduced in color as applicable, unbound and, with the exception of photographs, must copy legibly on a black and white copier; or

(b) Digital single PDF files with minimum resolution of 300 dpi and searchable text for the text portion of the report.

(5) Submitting Geographic Information System (GIS) data is optional but recommended for reports covering large study areas and must conform to the GIS format provided by the Department.

(6) All submittals must include a fully completed and signed "Wetland Delineation Report Cover Form" (current form provided by the Department).

(7) Field Methods: The field investigation methods and level of detail required for making and documenting a PJD or JD and mapping wetlands and other waters of this state will vary by site. At a minimum:

(a) The entire parcel (tax lot) or study area must be investigated during a field investigation. If only a portion of a parcel is investigated, the study area with respect to parcel boundaries must be made clear in the report text and shown on the wetland maps.

(b) All waters of this state in addition to wetlands must be identified, described, supported by data as appropriate, and mapped.

(c) Sufficient data and additional information shall be collected for any wetlands and other waters of this state to enable the Department to make a JD and also to determine if removal-fill permit requirements apply or if the feature identified may be specifically exempt from permit requirements.

(d) The wetland delineation must include sample plots that represent the characteristics of each wetland present; represent each adjacent non-wetland(s); are paired and located close enough to either side of the wetland boundary to accurately substantiate the wetland boundary location and are sufficient to characterize long or irregular boundaries.

(e) Wetland determination sample plot data must be provided for any portion of the study area where there is significant deviation from wetlands mapped on the NWI or LWI unless the deviation is due to development that is so significant that it precludes data collection.

(f) At least one sample plot must be placed in all mapped hydric soil units within the study area.

(g) At least one sample plot must be placed in the lowest topographic areas or other locations most likely to contain wetlands.

(8) Study area boundaries, wetland and other water boundaries, and sample plots shall be identified on the ground. For actively managed sites, such as agricultural fields, golf courses, or recreational fields, where it may be impractical to leave the boundary and plot markers on the ground until the JD is issued, their precise location must be readily relocated in the field by the applicant or consultant during a site visit by the Department.

(9) Because sites are highly variable and JD needs also vary, some situations may warrant deviation from the Field Methods requirements outlined in OAR 141-090-0035(7), for example large geographic areas, linear projects, mosaics, and difficult wetland sites. In such situations, persons conducting wetland delineations are encouraged to consult with the Department regarding appropriate methods.

(10) For farmed sites, field work should be guided by multiple information sources including at least three aerial photos from three different years (early growing season if possible), a detailed topographic survey, and information about site management activities such as subsurface drainage systems and plowing frequency and depth.

(a) Wetland determination and delineation on farmed sites shall follow procedures outlined in the Difficult Wetland Situations Chapter of the appropriate regional supplement.

(b) On sites where the hydrology indicators may be missing or misleading due to natural or hydrologic manipulation, hydrologic monitoring may be needed to verify the absence or presence of wetland hydrology. When a hydrology monitoring method alternative to the manual standard is being pursued, the proposed method shall be submitted to the Department in writing for prior approval.

(11) Wetland boundaries, samples plots, and study area boundaries must be mapped to the standards described in subsection (a) and (b) of this section.

(a) Except as provided in subsection (b) of this section, the map precision standard (precision of transferring boundaries of features located on the ground to a map) for wetland boundaries, data plots and study area boundaries is within one meter (3.28 feet);

(b) The minimum delineation accuracy and map precision standard for voluntary wetland ecosystem restoration projects (see OAR 141-089-0800) that do not include compensatory mitigation activities or payment-in-lieu is 50 feet.

(c) Mapping procedures may include professional land survey, GPS, measurements made from permanent features identified on the map or on an aerial photo included with the report, or approximated. For most intensive development activities, such as subdivision planning or commercial development, a professional land survey may be necessary. The appropriate map precision for removal-fill permitting is subject to the judgment of the Department.

(12) Report Text: The report text must include:

(a) A detailed description of the site, its landscape setting, and previous and current land uses;

(b) A description, including the approximate year and extent, of any site alterations that likely affected the presence, location or geographic boundaries of any wetlands or other waters on the site (e.g., surface drainage ditches or fill material);

(c) Precipitation for the day(s) of and 2 week period preceding the field investigation(s), observed and percent of normal rainfall for the water year to date, and for the observed rainfall compared to the NRCS WETS table 30% and 70% chance exceedance values for each of the three months preceding the field investigation;

(d) The date(s) of the field investigation and site-specific methods used to conduct the field investigation, select sample plot locations, determine boundaries of wetlands and other waters, interpolate boundaries between paired plots, and make PJDs;

(e) A description of any wetlands and other waters, including whether or not they extend offsite, and the characteristics of the wetland and other water boundaries on the site;

(f) Deviation from NWI mapping, LWI mapping, or previous DSL-approved delineations, supported by wetland determination data or explanation of development in area mapped previously as wetland;

(g) An explanation of how the location of the parcel boundaries, data plots, wetlands, and other features depicted on the delineation map(s) were mapped. A statement of precision must be included with each method used to generate the map.

(h) All preliminary jurisdictional determinations shall be supported with information and rationale sufficient to demonstrate jurisdiction based on OAR 141-085-0515 criteria. This information can include, but is not limited to:

(A) Documentation of fish presence or absence in a stream or ditch, using published maps or reports or information from an authoritative source (e.g., Oregon Department of Fish and Wildlife field staff);

(B) Information sufficient to determine whether or not an identified water feature is artificially created entirely from upland and the purpose for which it was created.

(C) Information about the water feature's wetland status, size, average water depth at ordinary high water, topographic and geomorphological location, mapped soil series and hydric status, and evidence of drainage (e.g., drain tiles or ditching).

(D) Hydrology monitoring data;

(E) Historical aerial photographs;

(F) Data or other information on pre-disturbance conditions, such as excavation to an original (formed in situ) soil surface or identification of a former stream course;

(G) A detailed topographic survey;

(H) Data collected at a certain time of year;

(I) Additional plant species identification; or

(J) Documentation from a Removal-fill permit including permit number.

(i) The results and conclusions of the investigation;

(j) The following disclaimer: "This report documents the investigation, best professional judgment and conclusions of the investigator. It is correct and complete to the best of my knowledge. It should be considered a Preliminary Jurisdictional Determination of wetlands and other waters and used at your own risk unless it has been reviewed and approved in writing by the Oregon Department of State Lands in accordance with OAR 141-090-0005 through 141-090-0055." and

(k) Appendices, as needed.

(13) Report Figures and Maps: All reports shall include the figures and maps listed in (13)(a) through (13)(g). All maps must include an outline of the study area boundary, a north arrow, a scale bar, and legend of all map elements.

(a) A location map, such as a city map,

(b) Assessors tax lot map(s), which include the entire study area, downloaded as PDFs from the Oregon Department of Revenue's "ORMAP" website.

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(c) The appropriate LWI map(s) or if no LWI has been completed, the NWI map(s),

(d) The county soil survey map including the map unit symbol, name, and hydric status for all soil series mapped within the study area;

(e) At least one recent aerial photograph, preferably taken early in the growing season that includes the month and year of the photo (include at least three aerial photos from three different years for farmed sites).

(f) One or more wetland and other waters maps comprising the wetland and water determination or delineation, as appropriate, that meets the requirements in sections (14) through (16) of this rule.

(g) Ground level color photographs of the site.

(14) The wetland and other waters map(s) must include:

(a) The boundaries of the entire parcel(s) subject to investigation; or

(b) The study area boundary in relation to the parcel boundaries, if only a portion of the parcel(s) was investigated. For large parcels with small study areas, a map in addition to the wetland map may be required to show the relationship between the study area and parcel boundaries.

(c) An index map if a large project study area needs to be divided into more than one detail map for clarity or map scale issues. The index map shall show the precise location and extent of the areas shown on the detail maps in relationship to the larger study area.

(d) Locations of existing structures (unless visible on a current aerial photo included in the report), such as culverts, bridges, tidegates, fence-lines, powerlines, and roads, where practicable.

(e) Locations of fill, water diversions, or other major alterations;

(f) The boundaries of all wetlands and other waters and where they extend offsite;

(g) Numbered sample plots corresponding to data forms (see section (17) of this rule);

(h) Photograph locations and direction of view.

(i) A statement of the mapping method and estimated mapping precision for the study area boundary, wetland and non-wetland water boundaries, and data plot points, for example the GPS post-processing error estimate.

(15) The wetlands and other waters identified must be accurately transferred to a linework basemap, legible on a black-and-white photocopy. An aerial photo base layer may be used but the image shall be lightened to maintain map legibility.

(16) The wetland map(s) shall be at a scale suitable for the study area size and for legibility. For most purposes, an appropriate map scale is 1 inch = 100 feet. For large study areas, a scale of 1 inch = 250 feet may be sufficient. Minimum map scale for a JD and for permitting purposes is subject to Department approval.

(17) Data Form Requirements: All reports shall include a wetland determination data form for each sample plot. The data form used must be that provided with the appropriate regional supplement to the manual, or other form provided by the Department. All wetland determination data forms must:

(a) Be fully completed;

(b) Include only data collected from a single sample plot on a single date (additional dates of hydrology data may be reported in the comments section or provided in a table);

(c) Include the full Latin botanical name of all plant species listed per the National Wetland Plant List;

(d) Use standard soils terminology and abbreviations as established by the U.S. Department of Agriculture, Natural Resources Conservation Service; and

(e) Provide remarks for each disturbed or problematic wetland parameter per procedures outlined in the Difficult Wetland Situations Chapter of the appropriate regional supplement.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0040

Procedures for Review and Approval of a Wetland Delineation Report Submitted to the Department for a Jurisdictional Determination

(1) When a wetland delineation report is submitted to the Department for review, approval and a JD, the Department shall review the report (according to its established priorities) to ensure that:

(a) The work meets the technical requirements in OAR 141-090-0030;

(b) The report meets the standards and requirements in OAR 141-090-0035;

(c) There is sufficient information for the Department to make a JD, including the geographic extent of any waters identified, as appropriate; and

(d) There is sufficient information for the Department to determine the removal-fill authorization requirements or exemptions that apply to the wetlands or other waters identified and/or the activities proposed.

(2) The Department shall complete an initial review of the report within 120 calendar days from receipt of the report and the fee.

(3) During or upon completion of the Department's review, the Department may take the following actions:

(a) Approve all or a portion of the report and PJD by providing a written JD to the landowner, agent or applicant and the consultant, if any, in accordance with OAR 141-090-0025(10).

(b) Request missing information (report incomplete), clarification or additional data (see OAR 141-090-0035(9), (10), and (12)(h)).

(A) The request will be made to the primary contact orally by telephone or in writing by, e-mail or regular U.S. Mail.

(B) If the Department makes a written request to the primary contact, the Department will copy the request to the consultant, landowner and applicant, as appropriate.

(C) The primary contact shall be responsible for promptly informing the Department of any change in the primary contact during the Department's review process.

(c) Conduct a site visit to confirm the report findings or obtain additional information;

(d) Withdraw the report from further review if missing payment, additional or clarifying information, or requested revisions, are not provided within 60 calendar days of the Department's written request;

(e) Require revisions of the wetland map and the PJD based upon the report review, any additional information requested, and a site visit, if conducted, and provide a JD accordingly after consulting with the primary contact and report author, if different; or

(f) Reject the report, along with a written explanation to the applicant, consultant, landowner and agent, as appropriate. Examples of reasons for rejecting a report include, but are not limited to:

(A) The work has not been completed according to the technical requirements in OAR 141-090-0030.

(B) The report does not, in the judgment of the Department, accurately reflect site conditions or provide sufficient information for a JD;

(C) The report contains major errors, omissions or inconsistencies according to the standards and requirements in OAR 141-090-0035, such as but not limited to:

(i) Onsite data is not collected (e.g., offsite or reconnaissance level report);

(ii) No paired plots or number of paired plots is clearly inadequate for length and complexity of wetland boundaries;

(iii) Data forms with major gaps (e.g., no soils data collected);

(iv) Wrong data form used;

(v) Clearly erroneous data or conclusions;

(vi) All water features are not mapped;

(vii) Permission for a requested site visit is not granted;

(viii) Standard report format is not followed (OAR 141-090-0035(1));

(ix) Report cannot be field-verified because site preparation or construction has already commenced;

(x) The Department requests and conducts a site visit and the wetland boundaries and sample plots are not identified on the ground or cannot be accurately relocated by the consultant or applicant (see OAR 141-090-0035(8)); or

(xi) After the second written request for information or revisions, the resubmitted information does not address all of the Department's comments or requests, or introduces new errors.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0045

Duration, Expiration and Reissuance of Jurisdictional Determinations

(1) All JDs by the Department shall be in writing and, except as provided in section (2) of this rule, shall remain valid for a period of five years from the date of issuance. A JD may be revised by the Department prior to the expiration date if:

(a) A field investigation or new information reveals that site conditions or the geographic extent of waters of this state are not consistent with the information in a report or permit application submitted to the Department;

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(b) Additional site information or data is provided voluntarily by an applicant or landowner to the Department;

(c) Additional information is provided to or obtained by the Department in conjunction with a request for reconsideration (OAR 141-090-0050), a contested case hearing associated with an authorization application (ORS 196.825(6) and OAR 141-085-0575); a contested case hearing provided under 141-090-0050(4)(a), or an independent review provided under 141-090-0050(4)(b).

(d) Information is provided to or obtained by the Department in conjunction with an appeal to the U.S. Army Corps of Engineers of an Approved Jurisdictional Determination (33 CFR Parts 320, 326 and 331); or

(e) New information obtained by or provided to the Department shows a change in circumstances resulting in a change in the jurisdictional area.

(2) JDs that are issued in the form of a removal-fill authorization or those made for an enforcement action are not subject to the five-year expiration.

(3) Upon expiration, a report and JD are no longer valid for determining whether a state removal-fill authorization may be required.

(4) If agency approval is still needed or desired, and a wetland professional determines that the wetland boundaries have not changed the Department may reissue the JD one time for up to five years within one year of the expiration date.

(5) To request the reissuance of a JD within one year of the expiration date, the landowner, agent, or applicant with landowner permission must submit information prepared by a wetland professional to the Department, as listed in (a) through (i).

(a) A new fully completed wetland delineation/determination report cover form referencing the recently expired wetland delineation number.

(b) Date of the field inspection and the name of the person conducting the field inspection.

(c) A concise description of any changes in land use, hydrology, and management of the site and surrounding area relevant to the location and extent of the wetlands within the study area since the last JD.

(d) A summary of any relevant changes to the manual that have occurred since the most recent JD was issued and a discussion of those changes on the JD.

(e) A description of the method used to relocate the wetland boundary(ies) in the field and a summary of the supporting evidence used to conclude that the location and extent of wetlands is the same.

(f) A wetland map(s) that meets the requirements in OAR 141-090-0035. The recently-expired map can be used if the current mapping requirements are met and the study area boundary is the same.

(g) A recent aerial photograph with the study area boundary identified.

(h) Any figures that may have changed from the recently expired wetland delineation report, such as a smaller study area.

(i) Completed data sheets from representative data plots illustrating the unchanged wetland conditions.

(6) Upon receipt of the reissuance information outlined in subsections (5)(a) through (i), the Department shall review the information within 120 days of receipt and may take the following actions:

(a) Reissue the original report for up to another 5 years;

(b) Request missing information, clarification, or additional information;

(c) Conduct a site visit to confirm the report's findings or to collect additional information;

(d) Withdraw the request for reissuance from further review if missing additional or clarifying information, or requested information is not provided within 60 calendar days of the Department's written request; or

(e) Disagree with the conclusion that the wetland boundaries have not changed and require a new report that satisfies the requirements of OAR 141-090-0035 and payment of the fee described in 141-090-0032 for review of a new delineation report.

(7) At the discretion of the Department and within staffing ability, a landowner can request the Department to conduct a site visit to determine if a recently expired JD can be reissued or if a new report is required. If only minor boundary changes have occurred, new boundaries may be flagged at the discretion of staff during a site visit and the landowner shall produce and submit a new map that reflects the changes and meets the mapping requirements in OAR 141-090-0035.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0050

Request for Reconsideration, Contested Case, and Independent Review

(1) A JD by the Department may be reconsidered upon written request to the Department by the landowner, agent, or applicant with landowner approval within six months of the date of the JD (date the letter or form was signed by the Department). The request for reconsideration initiates an informal review process.

(2) New information may be provided by the applicant, landowner, agent or the Department, or may be requested by the Department, as part of the reconsideration process.

(3) A reconsideration may result in a modified JD or in the reaffirmation of the original JD.

(4) In the event that the landowner, agent, or applicant with landowner permission disagrees with the reconsideration decision, the applicant, landowner or agent may:

(a) Request a contested case proceeding pursuant to ORS 183.413 through 183.470 by submitting a written request so that it is received by the Department within 21 calendar days of the reconsideration decision; or

(b) Request an independent review per Oregon Laws 2012, c. 108, § 2 by submitting a written request so that it is received by the Department within 21 calendar days of the reconsideration decision. The independent review option is available only when the disagreement is over a wetland determination or delineation that has been the subject of reconsideration by the Department. The independent review option is not available for ordinary high water or highest measured tide determinations and does not involve a review of whether the wetland or other water is subject to state regulation.

(5) The Department will maintain a list of persons that are qualified under Oregon Laws 2012, c. 108, § 2 to be independent reviewers and that have qualified through a contract solicitation. If there are no such persons, the list shall be blank.

(6) Upon receipt of the written request for an independent review, the Department will contact all of the persons on the list maintained by the Department under section (5) of this rule and request that they either disclose all prior knowledge of the land parcel that is the subject of the review and any potential or actual conflicts of interests, or state that they will not serve as an independent reviewer in the review. The person shall sign the disclosure to certify that the disclosure is accurate. The Department will develop a list of persons that made the required disclosures and that have not identified any interest in the land parcel that is the subject of the review. The Department shall provide the list and the signed disclosures to the requestor of the request for an independent review.

(7) The requestor and the Department shall each select one person from the list developed by the Department under section (6) of this rule.

(8) The two selected independent reviewers shall select a third person from the list developed by the Department under section (6) of this rule. If the two selected reviewers do not jointly agree on the selection of a third reviewer, the Department shall request the US Army Corps of Engineers to provide a reviewer who has at least five years of experience with wetland delineation per the manual.

(9) The panel of independent reviewers shall submit to the Department and the requestor a written itemized estimate of the costs of the independent review, including all expenses and fees.

(10) Upon selection of three independent reviewers, the Department shall enter agreements with each of the independent reviewers, except for an independent reviewer provided by the U.S. Corps of Engineers. The agreements shall include but not be limited to the following:

(a) A maximum compensation amount not to exceed 120% of the sum of the written itemized estimates of the costs of the independent review provided to the Department by the panel of independent reviewers under section (9) of this rule;

(b) A maximum term for performance of the independent review of 60 calendar days from the date on which all three independent reviewers were selected; and

(c) A requirement that the panel of independent reviewers shall determine the cost of the review, subject to the maximum compensation amount.

(11) The Department will enter into a written agreement with the requestor which includes the following:

(a) The list of the three independent reviewers selected;

(b) A promise by the requestor to deliver a deposit to the Department within 5 calendar days in the amount of 60% of the sum of the written itemized estimate;

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(c) A provision stating that the determination of the panel of independent reviewers shall be final and binding, with no opportunity for a contested case or any judicial review;

(d) A provision that the panel of independent reviewers will review the record, conduct a site visit and gather additional information if needed, write a decision that includes findings of fact, and a conclusion that either affirms or modifies the wetland determination or delineation issued by the Department after reconsideration; and

(e) A promise by the requestor to pay 60% of the cost of the independent review, including all expenses and fees, regardless of the outcome of the review. If the amount exceeds the deposit provided under section 9, the requestor shall pay the excess amount to the Department within 15 calendar days of the issuance of the decision by the panel of independent reviewers. If the amount is less than the deposit provided under section 9, the Department will return the excess deposit to the requestor within 15 calendar days of the issuance of the decision by the panel of independent reviewers.

(12) The criteria by which the panel of independent reviewers will evaluate the wetland delineation or determination shall include only the following:

(a) OAR 141-090-0005 through 141-090-0020, 141-090-0030, and 141-090-0035;

(b) OAR 141-090-0045, if the wetland delineation was reissued by the Department; and

(c) The manual, as defined in OAR 141-090-0020(17).

(13) The record for the independent review consists of the following:

(a) The original report submitted per OAR 141-090-0035;

(b) All documents related to the JD per OAR 141-090-0025 or OAR 141-090-0040; and

(c) All documents related to the Department's reconsideration per OAR 141-090-0050.

(14) The panel will take the following actions:

(a) Review the record;

(b) Gather additional information and conduct a site visit, if needed; and

(c) Draft findings of fact and a conclusion that either affirms or modifies the wetland determination or delineation that the Department issued after reconsideration.

(15) Within 60 days of the date on which all three independent reviewers were selected, the panel will submit a decision in writing to the Department and to the Requestor that includes findings of fact, a conclusion, and a decision that either affirms or modifies the wetland determination or delineation that the Department issued after reconsideration.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279 & 2012 OL Ch. 108

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

141-090-0055

Effective Date

These rules become effective on January 1, 2013.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

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

Rule Caption: Increases fee for the Vehicle Code Book; deletes reference to DMV Administrative Rules Handbook.

Adm. Order No.: DMV 14-2012

Filed with Sec. of State: 11-19-2012

Certified to be Effective: 11-19-12

Notice Publication Date: 10-1-12

Rules Amended: 735-012-0000

Rules Repealed: 735-012-0000(T)

Subject: Pursuant to ORS 802.050, DMV publishes a biennial compilation of Oregon motor vehicle laws (Vehicle Code Book) for distribution to the public. The fee collected for the Vehicle Code Book is calculated to cover DMV's costs to compile, publish and distribute the publication. Due to an increase in costs, DMV is increasing from \$5 to \$7, the fee collected for each book sold to cover DMV's

costs and to avoid a loss of revenues to the State Highway Fund. DMV must recoup its costs to avoid a violation of Article IX, section 3a of the Oregon Constitution. The fee charged for the Vehicle Code Book had not changed since 1991.

Due to lack of demand, DMV no longer produces the DMV Administrative Rules Handbook; consequently, reference to the handbook is deleted.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-012-0000

Fee Charged for the Oregon Vehicle Code Book

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) publishes the Oregon Vehicle Code Book, a biennial publication containing a compilation of Oregon motor vehicle laws. The Vehicle Code Book is available to any person or organization for a fee that covers DMV's costs to produce the publication.

(2) The fee for an Oregon Vehicle Code Book is \$7.

(3) The fee for the Oregon Vehicle Code is calculated from:

(a) The cost to publish the code book; and

(b) The mailing costs.

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

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.010 & 802.050

Stats. Implemented: ORS 802.050

Hist.: MV 16-1985, f. 12-19-85, ef. 1-1-86; Administrative Renumbering 3-1988, Renumbered from 735-032-0045; MV 9-1988, f. & cert. ef. 3-2-88; MV 15-1988, f. & cert. ef. 5-18-88; MV 50-1989, f. & cert. ef. 12-1-89; MV 28-1991, f. & cert. ef. 12-16-91; DMV 17-2001, f. & cert. ef. 9-21-01; DMV 7-2012(Temp), f. & cert. ef. 7-19-12 thru 1-15-13; DMV 14-2012, f. & cert. ef. 11-19-12

Rule Caption: Possibility of Early Reinstatement When False Act Made Oneself Appear Old Enough to Buy Alcohol.

Adm. Order No.: DMV 15-2012

Filed with Sec. of State: 11-19-2012

Certified to be Effective: 11-19-12

Notice Publication Date: 10-1-12

Rules Adopted: 735-070-0006

Subject: ORS 809.415 authorizes DMV to suspend for one year the driving privileges of a person who has provided false information or committed false swearing when applying for driving privileges or an ID card. Chapter 14, Oregon Laws 2012 (HB 4043) allows DMV to end the suspension and reinstate a person's driving privileges before the end of the one-year suspension period if DMV determines the person gave false information or committed false swearing to obtain false identification solely for the purpose of acquiring alcohol or entering licensed premises prohibited to minors when the person was under the age of 21. The person must also pay a reinstatement fee. The rule establishes the process for requesting an administrative review and adopts the criteria for DMV's determination.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-070-0006

Reinstatement of Driving Privileges Suspended for Obtaining False ID

(1) Chapter 14, Oregon Law 2012 allows DMV to reinstate driving privileges prior to the full year suspension required under ORS 809.415(5) if DMV determines the person committed an act constituting an offense described in ORS 809.310(3)(a) or (b) when he or she was under 21 years of age and the only reason for the act was to obtain a driver license, driver permit or identification card that would make the person appear old enough to purchase or consume alcohol or to enter licensed premises prohibited to minors.

(2) A person may request reinstatement of driving privileges if the person's driving privileges or right to apply for driving privileges are suspended under ORS 809.415(5) and OAR 735-070-0004(3) for committing an act that constitutes an offense under ORS 809.310(3)(a) or (b). To request reinstatement, the person must submit a written request for an administrative review. The request for an administrative review must include a signed statement describing how and for what purpose the person obtained a driver license or identification card when he or she committed the act under ORS 809.310(3)(a) or (b).

(3) Upon receipt of a request described under section (2) of this rule, DMV will conduct an administrative review to determine if the person's driving privileges or right to apply for driving privileges should be reinstated. DMV will authorize reinstatement of driving privileges or the right to apply, only if DMV determines the circumstances of the person's com-

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mission of an act under ORS 809.310(3)(a) or (b) meets all of the following criteria:

- (a) The person was under 21 years of age at the time the person committed the act;
 - (b) The person's driving privileges were not suspended or revoked at the time the person committed the act;
 - (c) The person did not commit more than one act described in ORS 809.310(3)(a) or (b); and
 - (d) It appears from the statement provided that the act was committed solely for the purpose of attempting to purchase, purchasing, consuming or acquiring alcoholic beverages or entering or attempting to enter licensed premises posted or otherwise identified as being prohibited to the use of minors.
- (4) Upon completion of an administrative review, DMV will issue an order. If DMV determines the circumstances of the person's commission of an act under ORS 809.310(3)(a) or (b) meet the criteria set forth in section (3) of this rule, the person's driving privileges or right to apply for driving privileges will be reinstated upon payment of a reinstatement fee.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 2012 OL Ch. 14
Stat. Imp.: ORS 809.310, 809.320 & 2012 OL Ch. 14
Hist.: DMV 15-2012, f. & cert. ef. 11-19-12

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

Rule Caption: Reduces certain business license fees; adds new category for digital billboard applications.

Adm. Order No.: HWD 11-2012

Filed with Sec. of State: 11-20-2012

Certified to be Effective: 11-20-12

Notice Publication Date: 10-1-12

Rules Amended: 734-059-0100

Subject: The Outdoor Advertising Program is addressing two different needs by amending its fee rule:

1. By reducing the annual Business License fee for those owning only one state sign permit, small businesses benefit economically.

2. The 2011 passage of SB 639 allows digital billboards visible to state highways. This amendment establishes three different categories for digital application fees by the square footage of the display face. Previously the application fee was the same as static sign applications.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-059-0100

Outdoor Advertising Permit and Business License Fees

This rule establishes fees for outdoor advertising permits and business licenses as authorized by ORS 377.729 and 377.730.

(1) The application fee for a permit for any sign in a year in which the sign is new, is relocated as defined in ORS 377.710, or is reconstructed under 377.725 is due at the time of application, and is non-refundable in the event of a withdrawal by applicant or denial by the Department. Fees are:

- (a) Static:
 - (A) \$200 — 25 square feet or less;
 - (B) \$500 — 26 to 50 square feet;
 - (C) \$850 — 51 to 400 square feet;
 - (D) \$1000 — 401 square feet or more.

- (b) Digital:
 - (A) \$500 — 249 square feet or less;
 - (B) \$1500 — 250 to 400 square feet (Poster);
 - (C) \$2000 — 401 or more square feet (Bulletin).

(2) The fees for annual renewal of sign permits issued under the authority of ORS 377.712, 377.725 and 377.753 are as follows:

- (a) \$120 — 50 square feet or less;
- (b) \$140 — 51 to 400 square feet;
- (c) \$160 — 401 square feet or more.

(3) The fee to convert a standing sign permit to a relocation credit under ORS 377.762 is \$150. The fee to renew a relocation credit under 377.710 is \$25.

(4) Renewal fees for permits and relocation credits are due by January 2nd each year. If the renewal is mailed it must be post-marked no later than January 2nd. If the fee required by this subsection is not received or post-marked by the due date, applicant may renew the permit or relocation credit by paying the fee and a penalty of \$100 per permit or relocation credit by February 1, received or post-marked, of that year. A permit that is not

renewed in compliance with this rule will be canceled. A canceled permit will not be reinstated without proof of extraordinary and compelling reason.

(5) The following is used to determine the permit fee:

(a) For a back-to-back sign, the permit sign area includes both sides of the sign.

(b) A double-faced sign or a back-to-back sign is one sign.

(c) A V-type sign constitutes two signs.

(d) A single-faced tri-vision sign constitutes three signs; a back-to-back tri-vision sign constitutes six signs.

(e) Any mechanically operated multifaced display sign other than a tri-vision sign is the number of signs equal to the number of display faces. Nothing in this subsection authorizes mechanically operated multifaced display signs.

(6) The annual fees for outdoor advertising business licenses under ORS 377.730 are as follows:

(a) \$850 — only erects or maintains signs;

(b) \$375 — owns 1;

(c) \$650 — owns 2 to 49 signs;

(d) \$1,700 — owns 50 to 499;

(e) \$2,500 — owns 500 or more signs.

(7) Miscellaneous Fees

(a) The fee for a replacement permit plate required by ORS 377.725 is \$100.

(b) The fee to combine (aggregate) relocation credits into a single credit under ORS 377.763 is \$500 per application.

(c) The fee to transfer ownership of a permit or relocation credit is \$150 per credit or permit. The maximum fee for multiple permits and credits transferred in a single transaction is \$1500.

(8) The Department will review sign program revenues and costs every two years to determine whether fees should be adjusted up or down to comply with the requirement of ORS 377.729 that fees be designed to recoup costs of operating the sign program. The Department will retain civil penalties collected under 377.992 as revenue for the operation of the program, and will attribute collected amounts as revenue in the biennial calculations.

Stat. Auth.: ORS 184.616, 184.619, 377.725 & 377.729

Stats. Implemented: ORS 377.712, 377.725, 377.726, 377.729 & 377.730

Hist.: TO 2-2002, f. & cert. ef. 2-19-02; HWD 14-2010, f. & cert. ef. 10-25-10; HWD 11-2012, f. & cert. ef. 11-20-12

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Rule Caption: Prequalification for Bidding Highway and Bridge Construction/Contractor Performance Evaluations.

Adm. Order No.: HWD 12-2012

Filed with Sec. of State: 11-21-2012

Certified to be Effective: 11-21-12

Notice Publication Date: 10-1-12

Rules Amended: 734-010-0220, 734-010-0290, 734-010-0300, 734-010-0320, 734-010-0330, 734-010-0340, 734-010-0350, 734-010-0380

Rules Repealed: 734-010-0310, 734-010-0370

Subject: The majority of contractors doing business with ODOT provide quality service and good value to Oregonians. However, ODOT's previous evaluation and scoring procedure did not sufficiently identify the small number of contractors with records of poor performance or provide sufficient incentives to improve contractor performance. ODOT will now have the ability to identify contractors with poor records of workmanship, regulatory compliance or project delivery and work with them to improve their performance and ensure that only the highest-quality, most conscientious contractors are allowed to bid on ODOT's projects.

The revised OAR will achieve the following objectives:

- Adopt a scoring methodology where every contractor starts with a score of zero and then increases or decreases based on performance.

- Broaden the rating categories as well as weigh the categories based on importance or risk and increase the frequency of evaluations.

- Eliminate the rolling average scoring method so that poor performance is promptly identified rather than minimized by the average (OAR 731-010-0310).

- Allow more types of information and interactions with ODOT Project Managers, such as email, diary entries, phone calls, oral conversations, to be used in the performance rating.

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• Develop remedial actions and progressively tiered consequences for poor performance scores ranging from short term probation to revocation of prequalification status.

The revision of these rules has been a joint effort between ODOT and industry working side-by-side to improve project delivery, while moving Oregon forward to improve the state's business climate.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-010-0220

Definitions

The following definitions apply to terms used in Division 10 rules:

(1) "Applicant" means any individual or legal entity submitting a Contractor's Prequalification Application to ODOT.

(2) "Authorized contractor representative" means the person authorized by the contractor to sign the prime contractor performance evaluation.

(3) "Bidder" means any individual or legal entity submitting a proposal to an advertisement for a contract.

(4) "Bid opening" means the day on which the bids for a highway project will be opened and read.

(5) "Commission" means the Oregon Transportation Commission.

(6) "Contract" means public improvement contracts, as defined in ORS 279A.010(1)(bb), awarded by the Oregon Department of Transportation under authority of ORS 279A.050 and 366.205.

(7) "Contractor" means the individual or legal entity that has entered into a contract with ODOT.

(8) "DAS" means Oregon Department of Administrative Services.

(9) "Date of Second Notification" means the date on which required construction work, including change order work and extra work, has been satisfactorily completed, except for minor corrective work, and the recording of daily time charges cease.

(10) "Disqualification" means an action taken by ODOT to prohibit an applicant from becoming prequalified or from bidding on ODOT contracts.

(11) "Engineer" means ODOT's Chief Engineer or authorized representative.

(12) "Notice to Contractors" means the public announcement inviting bids for work to be performed or materials to be furnished.

(13) "Notice to Proceed" means written notice from ODOT authorizing the contractor to begin the work.

(14) "ODOT" means the Oregon Department of Transportation.

(15) "OPO" means the ODOT Procurement Office.

(16) "Construction Project Manager" represents ODOT on the project, including, but not limited to, an ODOT employee, local government representative, or consultant employed by ODOT or a local government. The Construction Project Manager also represents the Highway Administrator or Engineer, who directly manages and/or performs the engineering and administration of a contract.

(17) "Revocation" means an action taken by ODOT terminating a contractor's prequalification and ability to bid on ODOT contracts.

(18) "Suspension" means action taken by ODOT to temporarily suspend a contractor's prequalification for a specified period of time.

(19) "Performance Level 1" is a performance evaluation range in which all of the scores on the performance evaluation set out under this rule fall into the acceptable category and do not require any corrective actions.

(20) "Performance Level 2" is a performance evaluation range designating a performance evaluation that has one or more scores that have fallen below Performance Level 1 and requires some level of corrective action depending on the number of occurrences within a 36-month period.

(21) "Performance Level 3" is a performance evaluation range designating a performance evaluation that has one or more scores below the ranges set in Performance Level 2 and requires a higher level of corrective action beyond those required for Performance Level 2.

(22) "Verifiable Receipt" means confirmation of receipt of email, facsimile or certified mail.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 12-2012, f. & cert. ef. 11-21-12

734-010-0290

Contractor Performance Evaluations

(1) This rule applies to contractors who must be prequalified to bid on ODOT contracts.

(2) Contractors who enter into contracts with ODOT after this administrative rule becomes effective, shall have their performance evaluated on each contract. The evaluation will be scored on the basis of a numeric score and on an evaluation form provided by ODOT.

(3) The Construction Project Manager shall complete the evaluation using the current version of ODOT Form 734-2884, "Prime Contractor Performance Evaluation." The form will also include a Contractor Evaluation Submittal page to document the results of the evaluation process.

(4) Contractor performance will be evaluated under five categories: management, safety, administration, regulatory compliance and work force and small business equity programs.

(5) The evaluation shall be conducted as follows:

(a) If the duration of a contract is 12 months or less, the Construction Project Manager will complete one evaluation within 60 days of date of Second Notification for the contract; or

(b) If the duration of a contract is over 12 months, the Construction Project Manager will complete an evaluation within 30 days of the anniversary date of the Notice to Proceed. In addition to annual evaluations, the Construction Project Manager will complete an evaluation within 60 days of the date of Second Notification for the contract.

(6) Evaluations are valid for 36 months for purposes of determining consequences for scores falling within Performance Level 2 or 3.

(7) Contracts that are terminated for default automatically warrant prequalification suspension under Performance Level 3.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 12-2012, f. & cert. ef. 11-21-12

734-010-0300

Scoring Contractor Performance Evaluation

(1) Each evaluation will result in six numeric scores. Scores will be assessed for each of the five specific performance categories, as well as an overall score. The overall score is a total amount of all five of the category scores. The evaluation scoring shall be conducted as follows:

(a) If the duration of a contract is 12 months or less, the Construction Project Manager will score the evaluation for the entire duration of the project, or

(b) If the duration of a contract is over 12 months, the Construction Project Manager will score the evaluation for the preceding year within 30 days of the anniversary date of the Notice to Proceed. The scores shall reflect only that time period and will not be a cumulative score for the project duration. The final evaluation shall be prepared within 60 days of Second Notification.

(2) After the evaluation score has been calculated, the Construction Project Manager will send the evaluation score by email, facsimile or certified mail to the authorized contractor representative. Within 14 days of the date of verifiable receipt of the evaluation, the contractor's authorized representative may either sign and return the evaluation to the ODOT Construction Project Manager or schedule a meeting with the Construction Project Manager to review the evaluation. Signature and return of the form represents the contractor's acceptance of the evaluation.

(3) At the Review or Mandatory meeting with the Construction Project Manager, the consequences and corrective actions should be discussed, in an effort to improve contractor performance on future projects and prevent future scores from falling into Performance Level 2 or 3.

(a) If an authorized contractor representative refuses to sign the evaluation form within 14 days of verifiable receipt or within 7 days following the meeting with the Construction Project Manager, the Construction Project Manager will sign and date the evaluation, note in the contractor's signature area "did not respond," and transmit a copy to the State Construction and Materials Engineer.

(b) Following a Review meeting with the Construction Project Manager, the authorized contractor representative may sign the evaluation or request an Appeal meeting with the Contract Administration Engineer. The request for an Appeal meeting must be made within 7 days after the Review meeting with the Construction Project Manager.

(c) If the contractor does not sign the form following the Review meeting with the Construction Project Manager and does not request an appeal meeting with the Contract Administration Engineer within 7 days after the review meeting with the Construction Project Manager, the score is final and no appeal to the Contract Administration Engineer for that evaluation shall be available.

(4) The Construction Section will forward the final evaluation to the authorized contractor representative by email, facsimile or certified mail with verifiable receipt indicating the date score became final.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 12-2012, f. & cert. ef. 11-21-12

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734-010-0320

Scoring Ranges and Corrective Actions

(1) There are three performance levels. The Construction Project Manager will score each of the five evaluation categories as well as an overall evaluation score in one of the three performance levels. The contractor's authorized representative may request a Review meeting with the Construction Project Manager within 14 days of verifiable receipt of the evaluation to discuss the evaluation score with the Construction Project Manager.

(2) The following describes each performance level by identifying the scoring matrix for remedial actions and consequences depending on the number of occurrences during a 36-month period.

(a) For all performance levels, scores are assessed on a per category basis, as well as a project total.

(b) Occurrences are considered on a per category basis, as well as the project total. [Table not included. See ED. NOTE.]

(3) If the evaluation score falls within Performance Level 1, no further action will be required of the contractor. However, the contractor may still request a Review meeting, regardless of the score, with the Construction Project Manager to discuss the score. The options available to the contractor at all Performance Levels are:

(a) Sign and return the evaluation to the Construction Project Manager.

(b) Request a Review meeting with the Construction Project Manager to discuss the evaluation score within 14 days of verifiable receipt. Following the Review meeting with the Construction Project Manager, sign and return the evaluation to the Construction Project Manager.

(c) Request an Appeal meeting with the Contract Administration Engineer within 7 days from Construction Project Manager Review meeting, to appeal the Construction Project Manager's evaluation score.

(4) The Contract Administration Engineer will schedule a meeting with the contractor within 14 days of receiving the contractor's request to appeal the score. Following the Appeal meeting, the Contract Administration Engineer may uphold the Construction Project Manager's evaluation score or adjust the score. The Contract Administration Engineer's decision shall be made within 14 days of the Appeal meeting and the score is considered the final score.

(a) The contractor may choose to sign the evaluation form following the appeal to the Contract Administration Engineer. Should the contractor choose not to sign the evaluation within 14 days of the appeal decision, the score becomes final without the contractor's signature.

(b) Following the Appeal meeting, the Contract Administration Engineer will send the final evaluation/score by verifiable receipt to the authorized contractor representative indicating the date the score became final. [Table not included. See ED. NOTE.]

(5) The options available to the contractor at all Performance Levels are:

(a) Sign and return the evaluation to the Construction Project Manager.

(b) Request a Review meeting with the Construction Project Manager to discuss the evaluation score within 14 days of verifiable receipt. Following the Review meeting with the Construction Project Manager, sign and return the evaluation to the Construction Project Manager.

(c) Request an Appeal meeting with the Contract Administration Engineer within 7 days from Construction Project Manager Review meeting, to appeal the Construction Project Manager's evaluation score.

(6) The Contract Administration Engineer will schedule a meeting with the contractor within 14 days of receiving the contractor's request to appeal the score. Following the Appeal meeting, the Contract Administration Engineer may uphold the Construction Project Manager's evaluation score or adjust the score. The Contract Administration Engineer's decision shall be made within 14 days of the Appeal meeting and the score is considered the final score.

(a) The contractor may choose to sign the evaluation form following the appeal to the Contract Administration Engineer. Should the contractor choose not to sign the evaluation within 14 days of the appeal decision, the score becomes final without the contractor's signature.

(b) Following the Appeal meeting, the Contract Administration Engineer will send the final evaluation/score by verifiable receipt to the authorized contractor representative indicating the date the score became final.

(7) The following table identifies the actions required for a final score under Performance Level 2 depending on the number of the occurrences in Levels 2 and 3. Occurrences are considered on a per category basis, as well as a project total. [Table not included. See ED. NOTE.]

(8) If the final evaluation score warrants any prequalification suspension, the contractor may appeal the suspension to DAS under OAR 734-010-0380. [Table not included. See ED. NOTE.]

(9) The options available to the contractor at all Performance Levels are:

(a) Sign and return the evaluation to the Construction Project Manager.

(b) Request a Review meeting with the Construction Project Manager to discuss the evaluation score within 14 days of verifiable receipt. Following the Review meeting with the Construction Project Manager, sign and return the evaluation to the Construction Project Manager.

(c) Request an Appeal meeting with the Contract Administration Engineer within 7 days from Construction Project Manager Review meeting, to appeal the Construction Project Manager's evaluation score.

(10) The Contract Administration Engineer will schedule a meeting with the contractor within 14 days of receiving the contractor's request to appeal the score. Following the Appeal meeting, the Contract Administration Engineer may uphold the Construction Project Manager's evaluation score or adjust the score. The Contract Administration Engineer's decision shall be made within 14 days of the Appeal meeting and the score is considered the final score.

(a) The contractor may choose to sign the evaluation form following the appeal to the Contract Administration Engineer. Should the contractor choose not to sign the evaluation within 14 days of the appeal decision, the score becomes final without the contractor's signature.

(b) Following the Appeal meeting, the Contract Administration Engineer will send the final evaluation/score by verifiable receipt to the authorized contractor representative indicating the date the score became final.

(11) The following table identifies the course of action once the score is final under Performance Level 3 depending on the number of the occurrences in Levels 2 and 3. [Table not included. See ED. NOTE.]

(12) If you have occurrences falling under Performance Level 2 and 3 within a 36 month period: An occurrence in Performance Level 2 is considered a 1/2 occurrence in the Performance Level 3 Course of Action.

(13) If the evaluation identifies that the contract was terminated for default, there is an automatic suspension for 6 months.

(14) If the final evaluation score warrants any prequalification suspension the contractor may appeal the suspension to DAS under OAR 734-010-0380.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 12-2012, f. & cert. ef. 11-21-12

734-010-0330

Corrective Action Plan

(1) The purpose of the corrective action plan and the meeting with the State Construction and Materials Engineer is to help the contractor improve performance, project delivery, and avoid low ratings in the future. The tables shown in OAR 734-010-0320 identify remedial actions based on the number of occurrences using category and total project scores. If a contractor's performance requires submission and approval of a corrective action plan, the State Construction and Materials Engineer will notify the contractor in writing.

(a) The authorized contractor representative must contact State Construction and Materials Engineer within 14 days of verifiable receipt of notice from the State Construction and Materials Engineer to schedule a meeting to present a written corrective action plan. The parties must meet within 21 days of the date the contractor's representative contacts the State Construction and Materials Engineer or within an otherwise agreed timeframe.

(b) The contractor will be allowed to bid and receive award for any proposal submitted until the parties meet within 21 days or otherwise agreed timeframe.

(c) After the 21 days or otherwise agreed timeframe has expired, if the contractor has not presented a corrective action plan acceptable to the State Construction and Materials Engineer, the contractor will not be allowed to bid or receive award again until a corrective action plan has been submitted and approved by the State Construction and Materials Engineer.

(2)(a) If a contractor's evaluation score requires suspension of the contractor's prequalification, a written corrective action plan must be submitted to and approved by the State Construction and Materials Engineer no later than 30 days prior to the end of the prequalification suspension period.

(b) If the corrective action plan is not submitted and approved by the State Construction and Materials Engineer at least 30 days prior to the end

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of suspension, the contractor's prequalification will remain suspended until the corrective action plan is approved by the State Construction and Materials Engineer.

(3) When the State Construction and Materials Engineer approves the corrective action plan submitted by the contractor, the State Construction and Materials Engineer shall notify by verifiable receipt the authorized contractor representative and the OPO Construction Contracts Manager.

(4) The OPO Construction Contracts Manager will notify by verifiable receipt the authorized contractor representative, once the contractor's prequalification is reinstated.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 12-2012, f. & cert. ef. 11-21-12

734-010-0340

Notification of Suspension from Bidding

(1) The State Construction and Materials Engineer will notify OPO's Construction Contracts Manager when a contractor's evaluation scores result in suspension of pre-qualification.

(2) The OPO Construction Contracts Manager will notify by verifiable receipt the authorized contractor representative that its score has fallen below an acceptable level and that its prequalification has been suspended.

(3) The contractor may appeal a suspension through DAS by requesting a DAS appeal within 7 days of receipt of the suspension notice, as specified in OAR 734-010-0380.

(4) In all cases, any notification of suspension and reinstatement shall be made in writing and sent to the authorized contractor representative by the OPO Construction Contracts Manager.

(5) The effective date of a suspension will be:

(a) 10 days after the date of the OPO Construction Contracts Manager's notification; or

(b) 10 days after the date any DAS appeal becomes final.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 12-2012, f. & cert. ef. 11-21-12

734-010-0350

Use of Suspension Records

For purposes of these prequalification rules, ODOT shall draw on contractor records of suspension for a three year period from the date of suspension. A record of a contractor's suspension that is older than three years may not be used in calculating further suspensions.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 12-2012, f. & cert. ef. 11-21-12

734-010-0380

DAS Appeal Process Covering Contractor Evaluations

(1) In the event that a contractor's prequalification is suspended or revoked by ODOT, the contractor may appeal the suspension or revocation to DAS in accordance with ORS 279C.445 and 279C.450. If the contractor wishes to appeal disqualification of its prequalification as a bidder to DAS, the contractor must, within 7 business days after receipt of notice of disqualification, notify the OPO Construction Contracts Manager in writing.

(2) Upon receipt of such notice of appeal, the OPO Construction Contracts Manager will immediately notify the Director of DAS and the State Construction and Materials Engineer.

(3) The Director of DAS will notify the appealing party and ODOT of the time and date of the hearing. The hearings appeal and final decision will take place in accordance with the statutory requirements and applicable DAS rules.

(4) If the suspension is upheld, the OPO Construction Contracts Manager will notify the contractor and the State Construction and Materials Engineer that the suspension of the contractor's prequalification will begin 10 days after the contractor is notified.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 12-2012, f. & cert. ef. 11-21-12

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Land Conservation and Development Department Chapter 660

Rule Caption: Regional large lot employment land in Central Oregon.

Adm. Order No.: LCDD 9-2012

Filed with Sec. of State: 11-26-2012

Certified to be Effective: 12-10-12

Notice Publication Date: 9-1-12

Rules Adopted: 660-024-0045

Rules Amended: 660-024-0040

Subject: The amended rule provides guidance to cities in Central Oregon when implementing the provisions of a regional large lot industrial land need study. The adopted rules apply to local governments in Crook, Deschutes or Jefferson counties who have entered into a local intergovernmental agreement (IGA) to allocate a limited number of large industrial sites to cities willing to fulfill an identified regional need for large industrial sites.

The new and amended rules provide procedures and requirements for determining large lot employment land need in a three county Central Oregon region (Crook, Deschutes and Jefferson Counties, and participating cities in those counties). The rules include planning and zoning requirements for sites added to UGBs in response to the determined need, and provide for urban growth boundary amendments to accommodate the need.

Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-024-0040

Land Need

(1) The UGB must be based on the adopted 20-year population forecast for the urban area described in OAR 660-024-0030, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision. Local governments in Crook, Deschutes or Jefferson Counties may determine the need for Regional Large-Lot Industrial Land by following the provisions of OAR 660-024-0045 for areas subject to that rule.

(2) If the UGB analysis or amendment is conducted as part of a periodic review work program, the 20-year planning period must commence on the date initially scheduled for completion of the appropriate work task. If the UGB analysis or amendment is conducted as a post-acknowledgement plan amendment under ORS 197.610 to 197.625, the 20-year planning period must commence either:

(a) On the date initially scheduled for final adoption of the amendment specified by the local government in the initial notice of the amendment required by OAR 660-018-0020; or

(b) If more recent than the date determined in subsection (a), at the beginning of the 20-year period specified in the coordinated population forecast for the urban area adopted by the city and county pursuant to OAR 660-024-0030, unless ORS 197.296 requires a different date for local governments subject to that statute.

(3) A local government may review and amend the UGB in consideration of one category of land need (for example, housing need) without a simultaneous review and amendment in consideration of other categories of land need (for example, employment need).

(4) The determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goals 10 and 14, OAR chapter 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

(5) Except for a metropolitan service district described in ORS 197.015(13), the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR chapter 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses consistent with 660-009-0025. Employment land need may be based on an estimate of job growth over the planning period; local government must provide a reasonable justification for the job growth estimate but Goal 14 does not require that job growth estimates necessarily be proportional to population growth. Local governments in Crook, Deschutes or Jefferson Counties may determine the need for Regional Large-Lot Industrial Land by following the provisions of 660-024-0045 for areas subject to that rule.

(6) Cities and counties may jointly conduct a coordinated regional EOA for more than one city in the county or for a defined region within one or more counties, in conformance with Goal 9, OAR chapter 660, division 9, and applicable provisions of ORS 195.025. A defined region may include incorporated and unincorporated areas of one or more counties.

(7) The determination of 20-year land needs for transportation and public facilities for an urban area must comply with applicable require-

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ments of Goals 11 and 12, rules in OAR chapter 660, divisions 11 and 12, and public facilities requirements in ORS 197.712 and 197.768. The determination of school facility needs must also comply with 195.110 and 197.296 for local governments specified in those statutes.

(8) The following safe harbors may be applied by a local government to determine housing need under this division:

(a) A local government may estimate persons per household for the 20-year planning period using the persons per household for the urban area indicated in the most current data for the urban area published by the U.S. Census Bureau.

(b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.

(c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.

(d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.

(e) A local government outside of the Metro boundary may estimate its housing vacancy rate for the 20-year planning period using the vacancy rate in the most current data published by the U.S. Census Bureau for that urban area that includes the local government.

(f) A local government outside of the Metro boundary may determine housing needs for purposes of a UGB amendment using the combined Housing Density and Housing Mix safe harbors described in this subsection and in Table 1, or in combination with the Alternative Density safe harbor described under subsection (g) of this section and in Table 2. To meet the Housing Density safe harbor in this subsection, the local government may Assume For UGB Analysis that all buildable land in the urban area, including land added to the UGB, will develop at the applicable average overall density specified in column B of Table 1. Buildable land in the UGB, including land added to the UGB, must also be Zoned to Allow at least the average overall maximum density specified as Zone To Allow in column B of Table 1. Finally, the local government must adopt zoning that ensures buildable land in the urban area, including land added to the UGB, cannot develop at an average overall density less than the applicable Required Overall Minimum density specified in column B of Table 1. To meet the Housing Mix safe harbor in this subsection, the local government must Zone to Allow the applicable percentages of low, medium and high density residential specified in column C of Table 1.

(g) When using the safe harbor in subsection (f), a local government may choose to also use the applicable Alternative Density safe harbors for Small Exception Parcels and High Value Farm Land specified in Table 2. If a local government chooses to use the Alternative Density safe harbors described in Table 2, it must

(A) Apply the applicable Small Exception Parcel density assumption and the High Value Farm Land density assumption measures specified in the table to all buildable land that is within these categories, and

(B) Apply the Housing Density and Mix safe harbors specified in subsection (f) of this section and specified in Table 1 to all buildable land in the urban area that does not consist of Small Exception Parcels or High Value Farm Land.

(h) As an alternative to the density safe harbors in subsection (f) and, if applicable, subsection (g), of this section, a local government outside of the Metro boundary may assume that the average overall density of buildable residential land in the urban area for the 20-year planning period will increase by 25 percent over the average overall density of developed residential land in the urban area at the time the local government initiated the evaluation or amendment of the UGB. If a local government uses this Incremental Housing Density safe harbor, it must also meet the applicable Zoned to Allow density and Required Overall Minimum density requirements in Column B of Table 1 and, if applicable, Table 2, and must use the Housing Mix safe harbor in Column C of Table 1.

(i) As an alternative to the Housing Mix safe harbor required in subsection (f) of this section and in Column C of Table 1, a local government outside the Metro boundary that uses the housing density safe harbor in either subsection (f), (g) or (h) of this section may estimate housing mix using the Incremental Housing Mix safe harbor described in paragraphs (A) to (C) of this subsection, as illustrated in Table 3:

(A) Determine the existing percentages of low density, medium density, and high density housing on developed land (not "buildable land") in

the urban area at the time the local government initiated the evaluation or amendment of the UGB;

(B) Increase the percentage of medium density housing estimated in paragraph (A) of this subsection by 10 percent, increase the percentage of high density housing estimated in paragraph (A) of this subsection by five percent, as illustrated in Table 3, and decrease the percentage of low density single family housing by a proportionate amount so that the overall mix total is 100 percent, and

(C) Zone to Allow the resultant housing mix determined under subparagraphs (A) and (B) of this subsection.

(j) Tables 1, 2 and 3 are adopted as part of this rule, and the following definitions apply to terms used in the tables:

(A) "Assume For UGB Analysis" means the local government may assume that the UGB will develop over the 20-year planning period at the applicable overall density specified in Column B of Tables 1 and 2.

(B) "Attached housing" means housing where each unit shares a common wall, ceiling or floor with at least one other unit. "Attached housing" includes, but is not limited to, apartments, condominiums, and common-wall dwellings or row houses where each dwelling unit occupies a separate lot.

(C) "Average Overall Density" means the average density of all buildable land in the UGB, including buildable land already inside the UGB and buildable land added to the UGB, including land zoned for residential use that is presumed to be needed for schools, parks and other institutional uses.

(D) "Coordinated 20-year Population Forecast" under Column A of the Tables refers to the population forecast for the urban area described under OAR 660-024-0030.

(E) "Density" means the number of dwelling units per net buildable acre.

(F) "High Value Farm Land" has the same meaning as the term defined in ORS 195.300(10).

(G) "Required Overall Minimum" means a minimum allowed overall average density, or a "density floor," that must be ensured in the applicable residential zones with respect to the overall supply of buildable land for that zone in the urban area for the 20-year planning period.

(H) "Single Family Detached Housing" means a housing unit that is free standing and separate from other housing units, including mobile homes and manufactured dwellings under ORS 197.475 to 197.492.

(I) "Small Exception Parcel" means a residentially zoned parcel five acres or less with a house on it, located on land that is outside a UGB prior to a proposed UGB expansion, subject to an acknowledged exception to Goal 3 or 4 or both.

(J) "Zone To Allow" or "Zoned to Allow" means that the comprehensive plan and implementing zoning shall allow the specified housing types and densities under clear and objective standards and other requirements specified in ORS 197.307(3)(b) and (6).

(9) The following safe harbors may be applied by a local government to determine its employment needs for purposes of a UGB amendment under this rule, Goal 9, OAR chapter 660, division 9, Goal 14 and, if applicable, ORS 197.296.

(a) A local government may estimate that the current number of jobs in the urban area will grow during the 20-year planning period at a rate equal to either:

(A) The county or regional job growth rate provided in the most recent forecast published by the Oregon Employment Department; or

(B) The population growth rate for the urban area in the adopted 20-year coordinated population forecast specified in OAR 660-024-0030.

(b) A local government with a population of 10,000 or less may assume that retail and service commercial land needs will grow in direct proportion to the forecasted urban area population growth over the 20-year planning period. This safe harbor may not be used to determine employment land needs for sectors other than retail and service commercial.

(10) As a safe harbor during periodic review or other legislative review of the UGB, a local government may estimate that the 20-year land needs for streets and roads, parks and school facilities will together require an additional amount of land equal to 25 percent of the net buildable acres determined for residential land needs under section (4) of this rule, and in conformance with the definition of "Net Buildable Acre" as defined in OAR 660-024-0010(6).

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764

Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09;

LCDD 9-2012, f. 11-26-12, cert. ef. 12-10-12

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660-024-0045

Regional Large Lot Industrial Land

(1) Local governments in Crook, Deschutes or Jefferson Counties may determine a need for large lot industrial land in the region and provide sites to meet that need in accordance with this rule.

(2) In addition to the definitions in OAR 660-024-0010, the following definitions apply to this rule:

(a) "Analysis" means the document that determines the regional large lot industrial land need within Crook, Deschutes, or Jefferson County that is not met by the participating local governments' comprehensive plans at the time the analysis is adopted. The analysis shall also identify necessary site characteristics of needed land.

(b) "COIC" means the Central Oregon Intergovernmental Council.

(c) "Intergovernmental Agreement (IGA)" means the document adopted by the three counties and any participating city to implement the provisions of the analysis.

(d) "Participating city" means a city within Crook, Deschutes, or Jefferson County that has adopted the analysis and entered into the intergovernmental agreement to implement the provisions of the analysis.

(e) "Participating local government" means Crook, Deschutes, and Jefferson Counties, and participating cities.

(f) "Regional large lot industrial land need" means the need for a specific type of 20-year employment land need, as described in OAR 660-024-0040(1) and (5), that is determined based upon the analysis.

(g) "Site" means land in the region that:

(A) Provides the site characteristics necessary for traded sector uses as set forth in the analysis;

(B) Is 50 acres or larger as provided in section (3) of this rule; and

(C) Is determined to be "available," as that term is defined in OAR 660-009-0025(7), for regional large-lot industrial users and for purposes identified by the analysis.

(h) "Site characteristics" has the meaning given that term in OAR 660-009-0005(1).

(i) "Traded Sector use" has the meaning given that term in ORS 285B.280.

(3) For purposes of subsection (2)(g) of this rule, a large lot is at least 50 acres if it is:

(a) A single lot, parcel that is at least 50 acres,

(b) An aggregation of existing lots or parcels under the same ownership that comprises at least 50 acres, or

(c) An aggregation of existing lots or parcels not in the same ownership created and maintained as a unit of land comprising at least 50 acres through a binding agreement among the owners.

(4) Participating local governments may adopt the analysis and implement its provisions. The analysis may demonstrate a need for six vacant, suitable and available sites in the region, and up to three additional sites that may be designated in order to replace one of the original six sites that is developed or committed to development as provided in section (12) of this rule. The original six sites must include two sites of at least 100 acres and not more than 200 acres, and one site more than 200 acres.

(5) If a participating city adopts the analysis, it is deemed to provide an adequate factual basis for the determination of regional large lot industrial land need for that city provided:

(a) The city and other participating local governments have entered into an intergovernmental agreement with the COIC, and

(b) The analysis is adopted by Crook, Deschutes and Jefferson Counties.

(6) Participating cities may adopt the analysis and enter into the intergovernmental agreement without amending the Economic Opportunities Analysis adopted by the city prior to the adoption of the analysis.

(7) The intergovernmental agreement shall describe the process by which the COIC shall coordinate with participating local governments in:

(a) The determination of a qualifying site that a participating city may designate in order to satisfy the regional large lot industrial land need; and

(b) The allocation of the qualifying sites among the participating cities in accordance with section (4) of this rule.

(8) A participating city may amend its comprehensive plan and land use regulations, including urban growth boundaries (UGB), in order to designate a site in accordance with the requirements of this rule, other applicable laws and the intergovernmental agreement, as follows:

(a) A participating city must show whether a suitable and available site is located within its existing UGB. If a participating city determines that a suitable site already exists within the city's urban growth boundary, that site must be designated to meet the regional industrial land need. Cities

shall not be required to evaluate lands within their UGB designated to meet local industrial land needs.

(b) If a site is not designated per subsection(a), then a participating city may evaluate land outside the UGB to determine if any suitable sites exist. If candidate sites are found, the city may amend its UGB in accordance with Goal 14, other applicable laws and the intergovernmental agreement.

(9) A participating city that designates a site shall apply a regional large-lot industrial zone or overlay zone to the site in order to protect and maintain the site for regional large lot purposes. The zone or overlay zone must:

(a) Include development agreements and other provisions that prevent redesignation of the site for other uses for at least 10 years from the time the site is added to the city's comprehensive plan to meet regional large lot industrial land needs;

(b) Prohibit division or separation of lots or parcels within the site to new lots or parcels less than the minimum size of the site need until the site is developed with a primary traded sector use requiring a large lot; and

(c) Limit allowed uses on the site to the traded sector uses, except as provided in section (10) of this rule.

(10) The zone or overlay zone established under section (9) may allow:

(a) Subordinate industrial uses that rely upon and support the primary traded sector use when a site is occupied by a primary traded sector use; and

(b) Non-industrial uses serving primarily the needs of employees of industrial uses developed on the site provided the zone includes measures that limit the type, size and location of new buildings so as to ensure such non-industrial uses are intended primarily for the needs of such employees;

(11) If a participating city adds a site to its plan pursuant to this rule, it must consider the site in any subsequent urban growth boundary evaluation conducted to determine local industrial land needs and the adequacy of land available to meet local industrial land needs.

(12) A site may be considered developed or committed to industrial development if a large-lot traded sector user demonstrates a commitment to develop the site by obtaining land use approvals such as site plan review or conditional use permits, and

(a) Obtaining building permits; or

(b) Providing other evidence that demonstrates at least an equivalent commitment to industrial development of the site as is demonstrated by a building permit.

(13) The participating local governments shall review the analysis after the regional supply of six sites has either been replenished by three additional sites or after ten years, whichever comes first.

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764

Hist.: LCDD 9-2012, f. 11-26-12, cert. ef. 12-10-12

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

Adm. Order No.: LCDD 10-2012

Filed with Sec. of State: 12-4-2012

Certified to be Effective: 1-1-13

Notice Publication Date: 8-1-12

Rules Adopted: 660-044-0040, 660-044-0045, 660-044-0050, 660-044-0055, 660-044-0060

Rules Amended: 660-044-0000, 660-044-0005

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

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

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

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of a preferred scenario and a cycle for updating the preferred land use and transportation scenario.

Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-044-0000

Purpose

(1) This division implements provisions of chapter 865, section 37 (6), Oregon Laws 2009, and chapter 85, section 5 (1), Oregon Laws 2010, that direct the Land Conservation and Development Commission (“commission”) to adopt rules setting targets for reducing greenhouse gas emissions from light vehicle travel for each of the state’s metropolitan areas for the year 2035 to aid in meeting the state goal in ORS 468A.205 to reduce the state’s greenhouse gas emissions in 2050 to 75 percent below 1990 levels.

(2) This division also implements provisions of Oregon Laws 2009, chapter 865, section 38 regarding land use and transportation scenario planning to reduce greenhouse gas emissions in the Portland metropolitan area. The commission’s intent and expectation is that the requirements set forth in this rule will be integrated into and addressed as part of existing procedures for coordinated regional planning in the Portland metropolitan area. The requirements set forth in this division for scenario planning apply only to the Portland metropolitan area. Nothing in this division is intended to require other metropolitan areas to conduct scenario planning, or provide for commission or department review or approval of scenario plans that other metropolitan areas may develop or adopt. While a preferred scenario may include assumptions about state or federal policies, programs, or actions that would be put in place to reduce greenhouse gas emissions, nothing in this division or commission approval of a preferred scenario is intended to grant authority to the commission, Metro or local governments to approve or require implementation of those policies, programs or actions.

(3) The targets in this division provide guidance to local governments in metropolitan areas on the level of reduction in greenhouse gas emissions to achieve as they conduct land use and transportation scenario planning. Land use and transportation scenario planning to meet the targets in this division is required of the Portland metropolitan area and is encouraged, but not required, in other metropolitan areas. Success in developing scenarios that meet the targets will depend in large part on the state funding for scenario planning; on the state developing strategies and actions that reduce greenhouse gas emissions from light vehicle travel within metropolitan areas; and on state and local governments jointly and actively engaging the public on the costs and benefits of reducing greenhouse gas emissions.

(4) Land use and transportation scenario planning is intended to be a means for local governments in metropolitan areas to explore ways that urban development patterns and transportation systems would need to be changed to achieve significant reductions in greenhouse gas emissions from light vehicle travel. Scenario planning is a means to address benefits and costs of different actions to accomplish reductions in ways that allow communities to assess how to meet other important needs, including accommodating economic development and housing needs, expanding transportation options and reducing transportation costs.

(5) The expected result of land use and transportation scenario planning is information on the extent of changes to land use patterns and transportation systems in metropolitan areas needed to significantly reduce greenhouse gas emissions from light vehicle travel in metropolitan areas, including information about the benefits and costs of achieving those reductions. The results of land use and transportation scenario planning are expected to inform local governments as they update their comprehensive plans, and to inform the legislature, state agencies and the public as the state develops and implements an overall strategy to meet state goals to reduce greenhouse gas emissions.

(6) The greenhouse gas emissions reduction targets in this division are intended to guide an initial round of land use and transportation scenario planning over the next two to four years. The targets are based on available information and current estimates about key factors, including improvements in vehicle technologies and fuels. Pursuant to OAR 660-044-0035, the commission shall review the targets by June 1, 2015, based on the results of scenario planning, and updated information about expected changes in vehicle technologies and fuels, state policies and other factors.

(7) Success in meeting the targets will require a combination of local, regional and state actions. State actions include not only improvements in vehicle technology and fuels, but also other statewide efforts to reduce greenhouse gas emissions from light vehicle travel. These efforts—which are programs and actions to be implemented at the state level—are currently under review by the Oregon Department of Transportation as part of its

Statewide Transportation Strategy to reduce greenhouse gas emissions. As metropolitan areas develop scenario plans to reduce greenhouse gas emissions and compare them to the targets in this division, it is incumbent that metropolitan areas and the state work as partners, with a shared responsibility of determining how local and statewide actions and programs can reach the targets.

(8) Nothing in this division is intended to amend statewide planning goals or administrative rules adopted to implement statewide planning goals.

Stat. Auth.: ORS 197.040; Chapter 865 Oregon Laws 2009 (House Bill 2001) §37(6) and (8); Chapter 85 Oregon Laws 2010 Special Session (Senate Bill 1059) §5
Stats. Implemented: Chapter 865 Oregon Laws 2009 (House Bill 2001) §37(6) and (8); Chapter 85 Oregon Laws 2010 Special Session (Senate Bill 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

660-044-0005

Definitions

For the purposes of this division, the definitions in ORS 197.015 and the statewide planning goals apply. In addition, the following definitions shall apply:

(1) “1990 baseline emissions” means the estimate of greenhouse gas emissions from light vehicle travel in each metropolitan area for the year 1990, as presented by the Department of Environmental Quality and the Oregon Department of Energy included in the Agencies’ Technical Report.

(2) “2005 emissions levels” means an estimate of greenhouse gas emissions from light vehicle travel in a metropolitan area for the year 2005.

(3) “2035 greenhouse gas emissions reduction goal” means the percentage reduction in greenhouse gas emissions from light vehicle travel in a metropolitan area needed by the year 2035 in order to meet the state goal of a 75 percent reduction in greenhouse gas emissions from 1990 levels by the year 2050 as recommended by the Department of Environmental Quality and the Oregon Department of Energy in the Agencies’ Technical Report.

(4) “Agencies’ Technical Report” means the report prepared by the Oregon Department of Transportation, the Department of Environmental Quality and the Oregon Department of Energy and submitted to the commission on March 1, 2011, that provides information and estimates about vehicle technologies and vehicle fleet to support adoption of greenhouse gas reduction targets as required by chapter 865, section 37 (7), Oregon Laws 2009, and chapter 85, section 5 (2), Oregon Laws 2010.

(5) “Design type” means the conceptual areas described in the Metro Growth Concept text and map in Metro’s regional framework plan, including central city, regional centers, town centers, station communities, corridors, main streets, neighborhoods, industrial areas and employment areas.

(6) “Framework plan” or “regional framework plan” means the plan adopted by Metro as defined by ORS 197.015(16).

(7) “Functional plan” or “regional functional plan” means an ordinance adopted by Metro to implement the regional framework plan through city and county comprehensive plans and land use regulations.

(8) “Greenhouse gas” means any gas that contributes to anthropogenic global warming including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. ORS 468A.210(2). Greenhouse gases are generally measured in terms of CO₂ equivalents—CO₂e—which means the quantity of a given greenhouse gas multiplied by a global warming potential factor provided in a state-approved emissions reporting protocol.

(9) “Greenhouse gas emissions reduction target” or “target” means the percent reduction in greenhouse gas emissions from light vehicle travel within a metropolitan area from 2005 emissions levels that is to be met by the year 2035 through scenario planning. Greenhouse gas emissions reduction targets are expressed as a percentage reduction in emissions per capita, i.e., total emissions divided by the population of the metropolitan area. Targets represent additional reductions from 2005 emissions levels beyond reductions in vehicle emissions that are likely to result by 2035 from the use of improved vehicle technologies and fuels and changes to the vehicle fleet. When determining whether a scenario meets a target, the reduction per capita is to be calculated as a percentage of the emissions per capita assuming 2005 light vehicle travel per capita and 2035 baseline assumptions for light vehicle technologies, fuels and fleet as set forth in Tables 1 and 2 of OAR 660 044 0010. The combined effect of the baseline assumptions for light vehicle technologies, fuels and fleet from 1990 to 2035, estimated changes to light vehicle travel from 1990 to 2005, and scenario planning to meet targets from 2005 to 2035 is to meet the greenhouse gas emissions reduction goal from 1990 to 2035.

(10) “Greenhouse gas emissions reduction toolkit” means the toolkit prepared by the Oregon Department of Transportation and the department to assist local governments in developing and executing actions and pro-

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grams to reduce greenhouse gas emissions from light vehicle travel in metropolitan areas as provided in chapter 85, section 4, Oregon Laws 2010.

(11) "Land use and transportation scenario planning" means the preparation and evaluation by local governments of two or more land use and transportation scenarios and the cooperative selection of a preferred scenario that accommodates planned population and employment growth while achieving a reduction in greenhouse gas emissions from light vehicle travel in the metropolitan area. Land use and transportation scenario planning may include preparation and evaluation of alternative scenarios that do not meet targets specified in this division.

(12) "Light vehicles" means motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.

(13) "Light vehicle travel within a metropolitan area" means trips made by light vehicles that begin and end within the same metropolitan planning area, and that portion of other trips made by light vehicles that occurs within the metropolitan planning area, including a portion of through trips (i.e., trips that pass through the metropolitan planning area but do not begin or end there) and that portion within the metropolitan planning area of other light vehicle trips that begin or end within the metropolitan planning area. Trips and portions of trips that are within the metropolitan planning area are illustrated by solid lines as shown in Figure 1. [Figures not included. See ED. NOTE.]

Figure 1. Light vehicle travel within a metropolitan area. Circles indicate trip origins and destinations. Arrows indicate the direction of travel. Solid lines indicate the portion of each type of trip that is considered travel within a metropolitan area for purposes of this definition.

(14) "Metro" means the metropolitan service district organized for the Portland metropolitan area under ORS chapter 268.

(15) "Metropolitan planning area" or "metropolitan area" means lands within the boundary of a metropolitan planning organization as of the effective date of this division.

(16) "Metropolitan planning organization" means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c). ORS 197.629(7). Included are metropolitan planning organizations for the following areas: the Portland metropolitan area, the Bend metropolitan area, the Corvallis metropolitan area, the Eugene-Springfield metropolitan area, the Salem-Keizer metropolitan area and the Rogue Valley metropolitan area.

(17) "Planning period" means the period of time over which the expected outcomes of a scenario plan are estimated, measured from a base year, typically 2005, to a future year that corresponds with greenhouse gas emission targets set forth in this division.

(18) "Preferred land use and transportation scenario" means a generalized plan for the Portland metropolitan area adopted by Metro through amendments to the regional framework plan that achieves the targets for reducing greenhouse gas emissions set forth in OAR 660-044-0020 as provided in 660-044-0040.

(19) "Scenario planning guidelines" means the guidelines established by the Oregon Department of Transportation and the department to assist local governments in conducting land use and transportation scenario planning to reduce greenhouse gas emissions from light vehicle travel in metropolitan areas as provided in chapter 85, section 3, Oregon Laws 2010.

(20) "Statewide Transportation Strategy" means the statewide strategy adopted by the Oregon Transportation Commission as part of the state transportation policy to aid in achieving the greenhouse gas emissions reduction goals set forth in ORS 468A.205 as provided in chapter 85, section 2, Oregon Laws 2010.

[ED. NOTE: Figure referenced are available from the agency.]
Stat. Auth.: ORS 197.040; Chapter 865 Oregon Laws 2009 (House Bill 2001) §37(6) and (8); Chapter 85 Oregon Laws 2010 Special Session (Senate Bill 1059) §5
Stats. Implemented: Chapter 865 Oregon Laws 2009 (House Bill 2001) §37(6) and (8); Chapter 85 Oregon Laws 2010 Special Session (Senate Bill 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

660-044-0040

Cooperative Selection of a Preferred Scenario; Initial Adoption

(1) Metro shall by December 31, 2014, amend the regional framework plan and the regional growth concept to select and incorporate a preferred land use and transportation scenario that meets targets in OAR 660-044-0020 consistent with the requirements of this division.

(2) In preparing and selecting a preferred land use and transportation scenario Metro shall:

(a) Consult with affected local governments, the Port of Portland, TriMet, and the Oregon Department of Transportation;

(b) Consider adopted comprehensive plans and local aspirations for growth in developing and selecting a preferred land use and transportation scenario;

(c) Use assumptions about population, housing and employment growth consistent with the coordinated population and employment projections for the metropolitan area for the planning period;

(d) Use evaluation methods and analysis tools for estimating greenhouse gas emissions that are:

(A) Consistent with the provisions of this division;

(B) Reflect best available information and practices; and,

(C) Coordinated with the Oregon Department of Transportation.

(e) Make assumptions about state and federal policies and programs expected to be in effect in over the planning period, including the Statewide Transportation Strategy, in coordination with the responsible state agencies;

(f) Evaluate a reference case scenario that reflects implementation of existing adopted comprehensive plans and transportation plans;

(g) Evaluate at least two alternative land use and transportation scenarios for meeting greenhouse gas reduction targets and identify types of amendments to comprehensive plans and land use regulations likely to be necessary to implement each alternative scenario;

(h) Develop and apply evaluation criteria that assess how alternative land use and transportation scenarios compare with the reference case in achieving important regional goals or outcomes;

(i) If the preferred scenario relies on new investments or funding sources to achieve the target, evaluate the feasibility of the investments or funding sources including:

(A) A general estimate of the amount of additional funding needed;

(B) Identification of potential/likely funding mechanisms for key actions, including local or regional funding mechanisms; and,

(C) Coordination of estimates of potential state and federal funding sources with relevant state agencies (i.e. the Oregon Department of Transportation for transportation funding); and,

(D) Consider effects of alternative scenarios on development and travel patterns in the surrounding area (i.e. whether proposed policies will cause change in development or increased light vehicle travel between metropolitan area and surrounding communities compared to reference case).

(3) The preferred land use and transportation scenario shall include:

(a) A description of the land use and transportation growth concept providing for land use design types;

(b) A concept map showing the land use design types;

(c) Policies and strategies intended to achieve the target reductions in greenhouse gas emissions in OAR 660-044-0020;

(d) Planning assumptions upon which the preferred scenario relies including:

(A) Assumptions about state and federal policies and programs;

(B) Assumptions about vehicle technology, fleet or fuels, if those are different than those provided in OAR 660-044-0010;

(C) Assumptions or estimates of expected housing and employment growth by jurisdiction and land use design type; and

(D) Assumptions about proposed regional programs or actions other than those that set requirements for city and county comprehensive plans and land use regulations, such as investments and incentives;

(e) Performance measures and targets to monitor and guide implementation of the preferred scenario. Performance measures and targets shall be related to key elements, actions and expected outcomes from the preferred scenario. The performance measures shall include performance measures adopted to meet requirements of OAR 660-012-0035(5); and

(f) Recommendations for state or federal policies or actions to support the preferred scenario.

(4) When amending the regional framework plan, Metro shall adopt findings demonstrating that implementation of the preferred land use and transportation scenario meets the requirements of this division and can reasonably be expected to achieve the greenhouse gas emission reductions as set forth in the target in OAR 660-044-0020. Metro's findings shall:

(a) Demonstrate Metro's process for cooperative selection of a preferred alternative meets the requirements in subsections (2)(a)-(j);

(b) Explain how the expected pattern of land use development in combination with land use and transportation policies, programs, actions set forth in the preferred scenario will result in levels of greenhouse gas emissions from light vehicle travel that achieve the target in OAR 660-044-0020;

(c) Explain how the framework plan amendments are consistent with and adequate to carry out the preferred scenario, and are consistent with other provisions of the Regional Framework Plan; and,

(d) Explain how the preferred scenario is or will be made consistent with other applicable statewide planning goals or rules.

(5) Guidance on evaluation criteria and performance measures.

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(a) The purpose of evaluation criteria referred to in subsection (2)(h) is to encourage Metro to select a preferred scenario that achieves greenhouse gas emissions reductions in a way that maximizes attainment of other community goals and benefits. This rule does not require the use of specific evaluation criteria. The following are examples of categories of evaluation criteria that Metro might use:

- (A) Public health;
- (B) Air quality;
- (C) Household spending on energy or transportation;
- (D) Implementation costs;
- (E) Economic development;
- (F) Access to parks and open space; and,
- (G) Equity

(b) The purpose of performance measures and targets referred to in subsection (3)(e) is to enable Metro and area local governments to monitor and assess whether key elements or actions that make up the preferred scenario are being implemented, and whether the preferred scenario is achieving the expected outcomes. This rule does not establish or require use of particular performance measures or targets. The following are examples of types of performance measures that Metro might establish:

- (A) Transit service revenue hours;
 - (B) Mode share;
 - (C) People per acre by 2040 Growth Concept design type;
 - (D) Percent of workforce participating in employee commute options programs; and
 - (E) Percent of households and jobs within one-quarter mile of transit.
- Stat. Auth.: ORS 197.040 & 2009 OL Ch. 865 §37(8) (HB 2001)
Stats. Implemented: 2009 OL Ch. 865 §37(8) (HB 2001)
Hist.: LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

660-044-0045

Adoption of Regional Plans to Implement the Preferred Scenario

(1) Within one year of the commission's order approving Metro's amendments to the regional framework plan to select and incorporate a preferred land use and transportation scenario, Metro shall adopt regional functional plan amendments to implement the framework plan amendments.

(2) Functional plan amendments shall establish requirements, deadlines and compliance procedures for amendments to local comprehensive plans, transportation system plans and land use regulations as necessary to implement the framework plan amendments. The functional plan amendments shall require affected cities and counties to adopt implementing amendments to comprehensive plans and land use regulations within two years of acknowledgement of Metro's functional plan amendments or by a later date specified in the adopted functional plan.

(3) Functional plan amendments shall include requirements that local governments amend local comprehensive plans, transportation system plans and land use regulations to:

(a) Use population, housing and employment allocations to specific areas and land use design types that are consistent with estimates in the framework plan including assumptions about densities, infill, and redevelopment;

(b) Apply comprehensive plan designations and zoning districts that are consistent with land use design type, allowing uses and densities that are consistent with land use design type and limiting uses that would be incompatible with the design type specified in the preferred scenario; and,

(c) Include other provisions needed to implement the amended framework plan.

(4) As part of its adoption of functional plan amendments under this rule, Metro shall adopt findings demonstrating that actions required by the functional plan amendments are consistent with and adequate to implement the relevant portions of the preferred land use and transportation scenario set forth in the adopted framework plan amendments. The findings shall demonstrate that assumptions or allocations of housing and employment growth to specific areas are consistent with the estimates or assumptions in the framework plan amendments. In the event Metro's allocations or assumptions vary from those upon which the framework plan amendments are based, Metro shall demonstrate that the revised assumptions or allocations, in combination with other measures adopted as part of the functional plan will meet the GHG reduction target in OAR 660-044-0020.

(5) Those portions of the preferred scenario in the framework plan that Metro chooses to implement by establishing requirements for city and county comprehensive plans and land use regulations shall be set forth in amendments to the functional plan. The amendments shall meet the following minimum planning standards:

(a) For adoption of amendments to the regional framework plan, the Metro Council shall follow the process set forth in the Metro Charter;

(b) For adoption of amendments to the functional plan, the Metro Council shall follow the process set forth in the Metro Charter for adoption of ordinances;

(c) The Metro Council shall strive for flexibility when establishing new requirements for cities and counties, and shall consider offering optional compliance paths to cities and counties, such as adoption of a model ordinance developed by Metro;

(d) Metro shall make new requirements for cities and counties included in the functional plan amendments adopted under this rule enforceable by Metro pursuant to ORS 268.390(6);

(6) When it adopts an updated regional transportation system plan required by OAR chapter 660, division 12, Metro shall demonstrate that the updated plan is consistent with framework plan amendments adopting a preferred scenario as provided in 660-044-0040(3).

Stat. Auth.: ORS 197.040 & 2009 OL Ch. 865 §37(8) (HB 2001)
Stats. Implemented: 2009 OL Ch. 865 §37(8) (HB 2001)
Hist.: LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

660-044-0050

Commission Review of Regional Plans

(1) The commission shall review Metro's framework plan amendments adopting a preferred land use and transportation scenario and amendments to functional plans to implement the framework plan amendments in the manner provided for periodic review under ORS 197.628 to 197.650.

(2) The commission's review of framework plan amendments adopting a preferred land use and transportation scenario shall determine whether the preferred scenario can reasonably be expected to achieve greenhouse gas emission reductions as set forth in the targets in OAR 660-044-0020, other requirements of this division, and any applicable statewide planning goals.

(3) The commission's review of amendments to functional plans shall determine whether the adopted functional plans are consistent with and adequate to carry out relevant portions of the framework plan amendments.

(4) The commission may conduct review of Metro's framework plan amendments adopting a preferred scenario in conjunction with review of a UGB update or an update to the regional transportation system plan.

Stat. Auth.: ORS 197.040, 197.274(2) & 2009 OL Ch. 865 §37(8) (HB 2001)
Stats. Implemented: ORS 197.274(2) & 2009 OL Ch. 865 §37(8) (HB 2001)
Hist.: LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

660-044-0055

Adoption of Local Plans to Implement the Preferred Scenario

(1) Local governments shall amend comprehensive plans, land use regulations, and transportation system plans to be consistent with and implement relevant portions of the preferred land use and transportation scenario as set forth in Metro's functional plans or amendments. "Consistent" for the purpose of this section means city and county comprehensive plans and implementing ordinances, on the whole, conforms with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

(2) Beginning one year from Metro's adoption of a preferred scenario, local governments in the Portland metropolitan area shall, in adopting an amendment to a comprehensive plan or transportation system plan, other than a comprehensive plan or transportation system plan update or amendment to implement the preferred scenario, demonstrate that the proposed amendment is consistent with the preferred land use and transportation scenario.

Stat. Auth.: ORS 197.040, 197.274(2) & 2009 OL Ch. 865 §37(8) (HB 2001)
Stats. Implemented: ORS 197.274(2) & 2009 OL Ch. 865 §37(8) (HB 2001)
Hist.: LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

660-044-0060

Monitoring

(1) Metro shall as part of reports required by ORS 197.301 prepare a report monitoring progress in implementing the preferred scenario including status of performance measures and performance targets adopted as part of the preferred scenario.

(2) Metro's report shall assess whether the region is making satisfactory progress in implementing the preferred scenario; identify reasons for lack of progress, and identify possible corrective actions to make satisfactory progress.

(3) The commission shall review the report and shall either find Metro is making satisfactory progress or provide recommendations for corrective actions to be considered or implemented by Metro prior to or as part of the next scheduled update of the preferred scenario.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 197.040, 197.301, 197.274(2) & 2009 OL Ch. 865 §37(8) (HB 2001)
Stats. Implemented: ORS 197.301 & 2009 OL Ch. 865 §37(8) (HB 2001)
Hist.: LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

Landscape Architect Board Chapter 804

Rule Caption: Address Changes in the National Landscape Architect Registration Examination (LARE) & Associated Housekeeping Updates.

Adm. Order No.: LAB 4-2012

Filed with Sec. of State: 11-16-2012

Certified to be Effective: 11-21-12

Notice Publication Date: 10-1-12

Rules Amended: 804-010-0000, 804-020-0001, 804-020-0003, 804-020-0010, 804-020-0015, 804-020-0030, 804-020-0040, 804-020-0045, 804-020-0065, 804-040-0000

Rules Repealed: 804-010-0000(T), 804-020-0001(T), 804-020-0003(T), 804-020-0010(T), 804-020-0015(T), 804-020-0030(T), 804-020-0040(T), 804-020-0045(T), 804-020-0065(T), 804-040-0000(T)

Subject: These amendments replace identical temporary rules that became effective in September 2012. The rules are updated to address qualifications and procedures related to the national Landscape Architect Registration Examination (LARE). The primary driver for the amendments was to ensure Board rules reflected changes in the national examination structure, registration processes, and administration as put in place by the Council of Landscape Architectural Registration Boards (CLARB) after the June 2012 examinations. CLARB phased in the examination changes starting with fall and winter 2012 examinations and will have fully implemented the changes for 2013 examinations. The Board also made housekeeping changes to these rules to better clarify language or otherwise improve readability of the rules. No changes were made to how candidates qualify to sit for examinations or the types of Board approvals required for candidates seeking to register for examinations. The Board did not add any additional examinations to licensure requirements. The Board now provides candidates additional time to submit requests for Board approvals. The fee rule was also revised to clarify that examination candidates now send payment for examinations directly to CLARB instead of to the Board.

Rules Coordinator: Christine Valentine—(503) 589-0093

804-010-0000

Examination Qualifications

(1) To qualify to sit for the Board required examination, an examination candidate must have a degree from a program accredited and accepted by the Landscape Architecture Accreditation Board (LAAB) or the equivalent as specified in 804-010-0010 or 804-010-0020.

(2) For a LAAB degree program, it must be listed in LAAB's Accreditation Report current at the time of the candidate's graduation.

(3) Candidates applying to sit for either Section 3 or 4 of the examination must also meet work experience requirements as specified in 804-020-0003.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-020-0001

Landscape Architect Registration Examination (LARE)

(1) The Landscape Architect Registration Examination (LARE) is prepared by the Council of Landscape Architect Registration Boards (CLARB) and tests candidates' knowledge, skills, and abilities considered to be the minimum competency needed for protecting the health, safety and welfare of the public.

(2) All sections of the LARE are administered by CLARB.

(3) Exam candidates must obtain Board approval before registering for any section(s) of the LARE as addressed in OAR 804-020-0003 and 804-020-0010.

(4) Depending on the date examination sections were taken, examination candidates or licensure applicants must upon request of the Board or Board staff request of CLARB that verification be provided to the Board of passing scores for completed sections of the LARE.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 2-1998, f. & cert. ef. 4-22-98; Renumbered from 804-020-0020. LAB 1-2007, f. & cert. ef. 4-27-07; LAB 4-2008, f. & cert. ef. 11-7-08; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-020-0003

Application and Prior Approval

(1) Exam candidates must obtain Board approval before registering for any sections of the Landscape Architect Registration Examination (LARE). Candidates for Section 1 or 2 must obtain prior approval, as addressed in (2) of this rule. Candidates for Section 3 or 4 must submit an application to the Board, as addressed in (3) of this rule. A candidate can simultaneously submit documentation for the requisite approvals under (2) and (3) if requesting to register for multiple sections of the LARE.

(2) A candidate registering for either Section 1 or 2 of the LARE must have prior approval from the Board.

(a) Prior approval to take either Section 1 or 2 does not authorize an exam candidate to register for Section 3 or 4 of the LARE.

(b) This prior approval may be granted by the Board Administrator after verification of receipt and review of the following information submitted to the Board office:

(A) A cover letter identifying candidate name and the exam section(s) for which registration would be made.

(B) The letter must include home address, work address, daytime phone number, and current email address and identify which address should be used as the mailing address.

(C) An official university sealed transcript(s) demonstrating the exam candidate meets the educational requirements to sit for the exam.

(c) No fee is required for this prior approval.

(d) For a candidate with a non-Landscape Architecture Accreditation Board (LAAB) accredited degree, work experience verification must also be provided as specified in 804-010-0010 or 804-010-0020, whichever is applicable.

(3) A candidate's application for either Section 3 or 4 of the LARE must be on forms provided by the Board. The completed application must be accompanied by the following:

(a) Official university sealed transcript(s) demonstrating the exam candidate meets the educational requirements to sit for the exam;

(b) Verification of qualifying work experience as follows:

(A) For a candidate with an LAAB accredited degree, one year of qualifying work experience under the direct supervision of a Registered Landscape Architect; or

(B) For a candidate with a non-LAAB accredited degree, the qualifying work experience as specified in 804-010-0010 or 804-010-0020, whichever is applicable, plus one additional year of qualifying work experience under the direct supervision of a Registered Landscape Architect; and

(c) Application fee for each examination section.

Stat. Auth.: ORS 671.325, 671.335, 671.415

Stats. Implemented: ORS 671.325, 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; Renumbered from 804-020-0000. LAB 1-2007, f. & cert. ef. 4-27-07; LAB 2-2009, f. & cert. ef. 12-11-09; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-020-0010

Date of Application and Prior Approval Request Receipt

(1) Requests for prior approval to register for either Section 1 or 2 of the Landscape Architect Registration Examination (LARE) must be received in the Board's office no less than 30 days prior to the close of the examination registration period as set by the Council of Landscape Architectural Boards (CLARB).

(2) Applications to register for either Section 3 or 4 of the LARE must be received in the Board's office no less than 45 days prior to the close of the examination registration period as set by CLARB.

(3) The Board Administrator may waive the deadlines in (1) or (2) on a case-by-case basis to accept a candidate's prior approval request or application closer to CLARB registration deadlines but only upon receipt of a written request from the candidate or CLARB and upon determination by the Board Administrator of extenuating circumstances outside the control of a candidate. Failure of a candidate to be knowledgeable about the need

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for Board approval or to begin the registration process in a timely manner considering the Board deadlines is an example of a situation that would not constitute extenuating circumstances.

Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.415
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-020-0015

Refunds

Examination application fees are non-refundable.

Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.365
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-020-0030

Date of Exams

The LARE shall be administered on the dates and times established by the Council of Landscape Architectural Registration Boards (CLARB) at test centers designated by CLARB.

Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-020-0040

Examination Grading

The Board shall accept the recommended grading procedures and minimum passing scores for all sections of the Landscape Architect Registration Examination (LARE) as established by the Council of Landscape Architectural Registration Boards (CLARB).

Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-020-0045

Notice of Score

Examination candidates will receive notification of examination scores directly from the Council of Landscape Architectural Boards (CLARB).

Stat. Auth.: ORS 671
Stats. Implemented:
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-020-0065

Revoked Registration

Individuals whose registrations have been revoked must reapply and pass an appropriate examination, as determined by the Board, and establish to the Board's satisfaction having met all requirements of ORS 671.425 to be re-registered.

Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.425
Hist.: LAB 1-1984, f. & ef. 1-5-84; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

804-040-0000

Fees

The following are fees established by the board:

- (1) Examination Fees:
 - (a) Application fee for examination Section 3 or 4: \$50.00.
 - (b) Landscape Architect Registration Examination (LARE): the cost for each section of the LARE is set by the Council of Landscape Architectural Boards (CLARB) and must be paid directly to CLARB.
- (2) Registration Fees:
 - (a) Initial Landscape Architect in Training registration: \$50.00.
 - (b) Annual renewal for Landscape Architect in Training: \$50.00.
 - (c) Application fee for initial Landscape Architect registration: \$100.00.
 - (d) Application fee for Landscape Architect registration by reciprocity: \$100.00.
 - (e) Initial Landscape Architect registration: \$250.00.
 - (f) Annual renewal for Landscape Architect: \$250.00.

(g) Emeritus Annual fee: \$25.00.

(3) Business Fees:

(a) Application fee for business registration: \$100.00.

(b) Initial certification as an Authorized Business Entity in Landscape Architecture: \$112.50.

(c) Annual renewal fee for an Authorized Business Entity in Landscape Architecture: \$112.50.

(4) Miscellaneous Fees:

(a) Late fee: \$100.00 for each delinquent year.

(b) Duplicate certificate: \$50.00.

(c) Fee for registrant list: \$50.00.

Stat. Auth.: ORS 671.415
Stats. Implemented: ORS 671.365
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 1-2006, f. & cert. ef. 3-17-06; LAB 2-2008, f. & cert. ef. 3-20-08; LAB 2-2009, f. & cert. ef. 12-11-09; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12

Landscape Contractors Board Chapter 808

Rule Caption: Clarifies rules for continuing education credit for teaching and presenting.

Adm. Order No.: LCB 8-2012

Filed with Sec. of State: 12-4-2012

Certified to be Effective: 12-4-12

Notice Publication Date: 9-1-12

Rules Amended: 808-040-0025, 808-040-0050, 808-040-0060

Subject: Clarifies rules for continuing education credit for teaching and presenting. Clarifies that credit for presenting a class is not given only for the first presentation, but for each presentation. Also clarifies the preparation and research CEH may be available one time only and what documentation is required if selected for audit.

Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-040-0025

Continued Education Programs

In order to qualify for CEH credit under these rules, a CEH program must be a formal program or board approved program of learning that contributes directly to the professional competence of the licensee

(1) Eligible Programs and Activities. The following programs will qualify for CEH credit provided they also meet the requirements of section (2) through (5) of this rule:

(a) Programs presented by national, state or local landscape industry organizations.

(b) Programs offered by a business to licensees.

(c) Programs sponsored by organizations that provide professional educational programs.

(d) Correspondence courses or other individual independent study programs and activities do not qualify for CEH credit unless both the CEH sponsor and the specific CEH program or activity are approved by the Board prior to the offering of, presentation of, attendance of, or participation in the program or activity.

(e) Volunteering activities for industry related boards, commissions, and designated committees.

(f) Making presentations or teaching courses related to approved subjects for the CEH credit.

(2) Sponsored Program and Activity requirements. Sponsored CEH programs must meet the following requirements to qualify for CEH credit:

(a) An outline of the program is prepared in advance and preserved;

(b) The program must cover at least one of the topic areas listed in 808-040-0040;

(c) The program is at least one hour (fifty-minute period) in length;

(d) A record of attendance is maintained by the provider;

(e) The program is conducted by a qualified instructor or presenter whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular program.

(f) Evidence of completion is provided to participating licensees in the form of a certificate that must include:

(A) Name of sponsoring institution, association or organization;

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- (B) Title of the presentation;
- (C) Name of instructor or presenter;
- (D) Date of presentation;
- (E) Type of CEH;
- (F) Number of approved CEH; and
- (G) Signature of the instructor or presenter or official stamp of the sponsor signifying attendance and/or completion of the course.

(3) Correspondence and Independent Study courses. Correspondence courses or other individual independent study programs and activities must meet the following requirements to qualify for CEH credit:

- (a) An outline of the program is prepared in advance and preserved;
- (b) The program must cover at least one of the topic areas listed in 808-040-0040;
- (c) The program is at least one hour (fifty-minute period) in length;
- (d) A record of attendance is maintained by the provider; and
- (e) The provider of the correspondence or independent study course is a qualified instructor or presenter whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular course.

(4) Volunteering. Education opportunities that engage the licensee in volunteering must meet the following requirements to qualify for CEH credit:

- (a) One CEH credit is allowed for every three hours of qualifying volunteer work;
- (b) The maximum CEH credit allowed for volunteering under this section may not exceed 4 hour in a two year period;
- (c) The volunteer activity must be directly related to the landscape construction industry, such as, but not limited to:
 - (A) serving on industry related boards, commissions or committees;or
 - (B) Providing a not-for-profit service to local or state entities for the enhancement and preservation of the environment to natural resources through landscape planning, installation and maintenance.

(5) Teaching and Presenting. Activities that engage the licensee in teaching and presenting courses must meet the following criteria to qualify for CEH credit:

- (a) The licensee must be an actively licensed landscape construction professional;
- (b) The licensee must have been actively licensed for a period of not less than five(5) years;
- (c) An outline of the course is prepared in advance and preserved;
- (d) The course must cover at least one of the topic areas listed in 808-040-0040;
- (e) The course is at least one hour (fifty-minute period) in length;
- (f) A record of attendance is maintained by the licensee;
- (g) The course is presented for an education provider; a school, university or college; a landscape contracting business, or any industry related organization or association

(h) CEH credit is allowed for each 50 minute period completed as an instructor or discussion leader of the subject material;

(i) CEH credit for preparation and research time allowed for an instructor, discussion leader, or a speaker shall be calculated on the basis of two CEH hours of preparation and research in the CEH type of the presentation for each hour of presenting or teaching.

(j) The maximum CEH credit allowed for preparation and research under this section must not exceed one-half of the total number of CEH hours required for the renewal period;

(k) Preparation and research CEH may be available one time only for teaching a course or making a presentation. CEH credit may be allowed for additional preparation and research if the substantive content of the program was substantially changed and the licensee provides evidence that such change required significant additional study or research.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 7-2011, f. & cert. ef. 6-17-11; LCB 2-2012, f. 3-30-12, cert. ef. 4-1-12; LCB 8-2012, f. & cert. ef. 12-4-12

808-040-0050

Program Approval Process

(1) Pre-approval Process. Programs offered by any institution, agency, professional organization or association, which conducts educational meetings, workshops, symposiums, seminars and other such activities where a CEH credit is desired must be approved by the Board prior to the presentation of the program and prior to the attendance by a licensee. The written request for the issuance of CEH credit must:

(a) Be received on a form provided by the Board at least 30 calendar days prior to the presentation date (unless otherwise approved by the agency Administrator) and include:

- (A) Name of sponsoring institution, association or organization;
- (B) Title of the presentation;
- (C) Date of presentation;
- (D) Topic covered from list in 808-040-0040;
- (E) A written outline of the program;
- (F) The length of the program in hours;
- (G) Name of instructor or presenter;
- (H) Type of CEH requested;

(I) Copy of the certificate to be given to each attendee with the signature of the instructor or presenter or the official stamp of the sponsor on the certificate. If more than one presenter is authorized to sign, then the signatures of each presenter must be on the certificate or on copies of the certificate; and

(J) Contact information for the provider which must include the address, phone number, fax number and email (if available) for the provider.

(b) Upon receipt of all documentation required in subsection (1) of this rule the board will review the request and notify the provider by either email or regular mail the determination of the CEH allowed by the board.

(2) Other Approval Process. In the event a landscape construction professional attends a program that is not pre-approved as outlined in section (1) above, or claims credit for teaching/presenting or volunteering:

(a) The landscape construction professional may request approval of the attended program by submitting written documentation no later than 180 days after the date the program was attended that includes:

- (A) Name of sponsoring institution, association or organization;
- (B) Topic of the presentation;
- (C) Title of the presentation;
- (D) Name of instructor or presenter;
- (E) Date of presentation;
- (F) Length of presentation in hours;
- (G) Type of CEH; and
- (H) Number of CEH claimed.

(I) Signature of the instructor or presenter or official stamp of the sponsor signifying attendance and completion of the course.

(b) The board, after reviewing the submitted documentation, will determine:

- (A) If the program meets the conditions for the CEH requirement; and
- (B) The number of CEH allowed for the program, if any.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.676

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 2-2009(Temp), f. & cert. ef. 5-13-09 thru 11-9-09; LCB 10-2009, f. & cert. ef. 10-28-09; LCB 1-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 9-28-12; LCB 7-2012, f. & cert. ef. 8-2-12; LCB 8-2012, f. & cert. ef. 12-4-12

808-040-0060

Continuing Education: Audit, Required Documentation and Sanctions

(1) To ensure adequate proof of continuing education course completion is available for audit or investigation by the Landscape Contractors Board the licensees shall maintain a record of attendance for two years following renewal.

(2) The Landscape Contractors Board will audit a select percentage of renewals determined by the Board to verify compliance with continued education hour requirement at intervals determined by the Board.

(3) Licensees notified of selection for audit of continuing education verification shall submit to the agency within 21 calendar days from the date of issuance of the notification, satisfactory documentation of completing the required continuing education outlined in OAR 808-040-0020.

(4) Documentation for a preapproved program or preapproved course provided by any institution, agency, professional organization or association, must be a certificate issued by the program provider and approved by the Landscape Contractors Board which includes:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation;
- (c) Date of attendance;
- (d) Type of CEH;
- (e) Number of approved CEH; and
- (f) Instructor's, presenter's or sponsor's signature or official stamp signifying attendance and completion of the course.

(5) Documentation for independent study course, volunteering and other non-sponsored education must be an approval form issued pursuant to a CEH approval request made by the licensee under OAR 808-040-0050(2).

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(6) Documentation for attending an accredited educational institution must be in the form of an official transcript showing the length of the academic term.

(7) Documentation for programs that were not pre-approved or claims for credit for teaching/presenting or volunteering must be an approval form issued pursuant to a CEH approval request made by the licensee under OAR 808-040-0050(2).

(8) The Board may perform an audit on any licensee at any time the board determines necessary to maintain compliance with the CEH requirement.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 550 OL 2007
Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 1-2010, f. & cert. ef. 1-27-10; LCB 3-2010, f. & cert. ef. 6-1-10; LCB 8-2012, f. & cert. ef. 12-4-12

Rule Caption: Amends written contract standards for contracts and subcontracts with other contractors.

Adm. Order No.: LCB 9-2012

Filed with Sec. of State: 12-4-2012

Certified to be Effective: 12-4-12

Notice Publication Date: 9-1-12

Rules Amended: 808-002-0020

Subject: OAR 808-002-0020 is being amended to separate the written contract requirements when a contract is with a homeowner (or agent of the homeowner) or another contractor. The standards for a contract with another contractor will no longer require all ten elements. LCB licensees have requested this amendment.

Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-002-0020

Minimum Standards for Written Contracts and Billings

(1) Landscaping contracts and subcontracts with a homeowner or an agent of the homeowner shall include, but not be limited to, the following:

- (a) Landscape contracting business name, license number, business address and telephone number;
- (b) Consumer's name and address;
- (c) Address or location of work to be performed if different from the consumer's address;
- (d) General description of the work to be performed and materials to be installed;
- (e) Estimated time for completion or estimated completion date;
- (f) Price and payment schedule;
- (g) Description of guarantee; if no guarantee such a statement shall be included;
- (h) Signatures of the authorized business representative and consumer;

(i) Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

(j) Effective January 1, 2012: If subcontractors will be used for the performance of landscaping work, the contract must include a statement notifying the consumer that there will be subcontractors used to perform landscaping work.

(2) Landscaping contracts or subcontracts with another contractor licensed with the Landscape Contractors Board or the Construction Contractors Board shall include, but not be limited to, the following:

- (a) Landscape contracting business name;
- (b) Other contractor's name;
- (c) Address or location of work to be performed;
- (d) General description of the work to be performed;
- (e) Estimated completion date or statement regarding schedule of work;
- (f) Price and, if payments are to be made, a payment schedule;
- (g) Description of guarantee; if no guarantee such a statement shall be included; and

(h) Signatures of the authorized business representative for both the other contractor and the landscape contracting business.

(3) For enforcement actions taken by the Landscape Contractors Board subsection (1) and (2) of this rule are retroactive to August 1, 2011. All contracts or subcontracts with another contractor signed on or after August 1, 2011 only need comply with subsection (2).

(4) Changes or amendments to landscaping contracts and subcontracts shall identify the scope of the change or amendment, be agreed to by both parties, and be in writing.

(5) All billings by a licensed landscape contracting business shall include the following:

(a) Name, address and telephone number of the licensed landscape contracting business;

(b) Name and address of the consumer;

(c) Total contract price and amount paid to date;

(d) The amount now due and the work performed for the amount due.

Stat. Auth.: ORS 183, 671.670 & 670.310

Stats. Implemented: ORS 671.625

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-020-0010 & 808-020-0020; LCB 1-1991, f. & cert. ef. 7-22-91; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 8-2010(Temp), f. 10-25-10, cert. ef. 10-26-10 thru 4-24-11; LCB 1-2011(Temp), f. 1-27-11, cert. ef. 1-28-11 thru 7-27-11; LCB 6-2011, f. & cert. ef. 6-17-11; LCB 11-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 9-2012, f. & cert. ef. 12-4-12

Rule Caption: Allows civil penalty amounts to be settled; adds penalty for misleading statements when advertising.

Adm. Order No.: LCB 10-2012

Filed with Sec. of State: 12-4-2012

Certified to be Effective: 12-4-12

Notice Publication Date: 9-1-12

Rules Amended: 808-005-0020

Subject: Amends rule to allow civil penalties to be settled; adds penalty amount and suspension for making misleading statements when advertising services or materials.

Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-005-0020

Schedule of Civil Penalties and Suspensions

The agency assesses civil penalties for violations of ORS 671.510 to 671.760 and OAR chapter 808, some of which may be settled per the terms of a settlement agreement. These penalties include, but are not limited to:

(1) Operating as a landscape contracting business in violation of ORS 671.530(1) or (3):

- (a) if the value of the work is \$500 or less; \$500; and
- (b) if the value of the work is more than \$500; \$1,000

(2) Operating as a landscape contracting business in violation of ORS 671.530(1) or (3), when a claim has been filed for damages arising out of that work, \$2,000.

(3) Operating as a landscape construction professional in violation of ORS 671.530(1), \$1,000.

(4) Advertising in violation of ORS 671.530(2), (4), or (5):

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(5) Advertising for landscaping work outside the scope of the landscape contracting business license in violation of OAR 808-003-0040:

- (a) \$1,000 for the first offense; and
- (b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(6) Operating as a landscape contracting business in violation of ORS 671.530(1) or (3) when one or more previous violations have occurred after action taken on first offense, \$2,000.

(7) Operating as a landscaping contracting business without having at least one owner or employee who is a licensed landscape construction professional licensed within the phase of work performed, in violation of OAR 808-003-0040 and 808-003-0045:

- (a) \$1,000 for the first offense; and
- (b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(8) Performing landscaping work while not subject to a written contract or failing to comply with minimum contract standards, in violation of ORS 671.625(2) and OAR 808-002-0020:

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(9) Failure to include the license number in all written advertising, in violation of OAR 808-003-0010:

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.

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(10) Performing work outside the scope of the landscape contracting business license in violation of OAR 808-003-0040:

(a) \$1,000 for the first offense; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(11) Installation of an irrigation backflow assembly or tapping into the potable water supply in violation of a written agreement with the Board as provided in OAR 808-003-0040, \$1,000 and suspension of the license until Backflow Prevention license is obtained.

(12) Failure to maintain the insurance or workers compensation insurance coverage required by ORS 671.565 or bond or other board accepted surety as required by 671.690 in effect continuously throughout the license period:

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(13) Failure to submit documentation of workers' compensation insurance coverage or failing to register with the agency as non-exempt upon hiring one or more employees:

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(14) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710:

(a) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules.

(15) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by 671.510 to 671.710 or rules promulgated by the agency:

(a) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules.

(16) Conduct that is dishonest or fraudulent or that the board finds injurious to the welfare of the public as a landscape construction professional or landscape contracting business:

(a) \$1,000 for the first offense and suspension of the license; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license. The agency may also revoke the license.

(17) Failure to verify workers' compensation coverage for temporary or leased workers as required in OAR 808-003-0620:

(a) \$500 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules. For purposes of subsection (17)(a) only, if the documentation of verification of workers' compensation coverage is received by the agency on or before the 21st day after the date of the contested case notice and the verification shows coverage of all employees from the employees' hire date, the contested case will be withdrawn without prejudice.

(18) Hiring employees while licensed as an exempt landscape contracting business:

(a) \$400 for the first offense if the licensee obtained workers' compensation coverage prior to the employee hire date;

(b) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date;

(c) \$1,000 for subsequent offenses occurring after action taken on first offense if the licensee obtained workers' compensation coverage prior to the employee hire date; and

(d) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date.

(19) Violating an order to stop work as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(20) Failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply with applicable plumbing code requirements as required by OAR 808-003-0126(3)(a):

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(21) Failure to obtain the appropriate building code permit(s):

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(22) When as set forth in ORS 671.610(5), the number of licensed landscape contracting businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) \$1,000 for the first offense;

(b) \$2,000 for the second offense;

(c) Six month suspension of the license for the third offense; and

(d) Three-year revocation of license for a fourth offense.

(23) Failure of a landscape contracting business to notify the board of a change in the landscaping business' phase of license as required by OAR 808-003-0125:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(24) Failure by the landscape construction professional to comply with the supervisory responsibilities as required by OAR 808-003-0018:

(a) \$200 for the first offense;

(b) \$500 for the second offense occurring after action taken on first offense; and

(c) \$1,000 and six month suspension of the license for the third offense.

(25) Failure of the landscape construction professional to notify the Landscape Contractors Board of a change of address or employment in writing or on line at the LCB website as required by ORS 671.603 and OAR 808-003-0125:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(26) Failure of a landscape contracting business to notify the board of a change in address in writing or on line at the LCB website as required by ORS 671.603:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(27) Failure of a landscape contracting business to require the landscape construction professional to directly supervise unlicensed employees of the landscaping business performing landscaping work that is related to the landscape construction professional phase of license:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(28) Failure of a landscape contracting business to obtain the correct amount of surety bond or irrevocable letter of credit, as required by ORS 671.690(1):

(a) \$1,000 for the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office;

(b) \$2,000 for the second offense occurring after action taken on the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office.

(29) Failure to notify the LCB of a new business name (including any new assumed business name) or, in the case of a sole proprietor, any personal surname under which the business is conducted, in violation of OAR 808-003-0020:

(a) \$200 for first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(30) Failure to respond to the continuing education audit as required under OAR 808-040-0060(3):

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(a) For the first offense:

(A) \$200; and

(B) Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection (26)(a) only, if the CEH documentation as required by OAR 808-040-0060(3) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the CEH documentation is received by the agency.

(31) Failure to submit complete documentation as required under OAR 808-040-0060(3), (4), (5) or (6):

(a) For the first offense:

(A) \$200; and

(B) Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 27(a) only, if the CEH documentation as required by OAR 808-040-0060(3), (4), (5) or (6) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the CEH documentation is received by the agency.

(32) Failure to complete the continuing education hours by the deadline as required under OAR 808-040-0020(1):

(a) For the first offense, \$200; and

(b) For subsequent offenses occurring after action taken on the first offense, \$500.

(33)(a) Pursuant to ORS 671.610(1)(e) makes misleading statements when advertising services or materials:

(A) \$200; and

(B) Suspension of the license until the advertisement is amended, removed or the licensee no longer uses the misleading advertisement. If advertisement cannot be amended or removed, it is to be corrected upon the next printing, i.e. yellow page ads.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the advertisement is amended, removed or the licensee no longer uses the misleading advertisement. If advertisement cannot be amended or removed, it is to be corrected upon the next printing, i.e. yellow page ads.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.997

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2005, f. & cert. ef. 4-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 1-2010, f. & cert. ef. 1-27-10; LCB 3-2010, f. & cert. ef. 6-1-10; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 10-2011, f. 7-26-11, cert. ef. 8-1-11; LCB 13-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 10-2012, f. & cert. ef. 12-4-12

Oregon Business Development Department Chapter 123

Rule Caption: Amendments include language for first loss insurance, add language for collateral support insurance and premiums.

Adm. Order No.: OBDD 18-2012(Temp)

Filed with Sec. of State: 11-20-2012

Certified to be Effective: 11-20-12 thru 5-17-13

Notice Publication Date:

Rules Amended: 123-021-0010, 123-021-0015, 123-021-0080, 123-021-0090, 123-021-0110

Subject: The Credit Enhancement Fund rules are being amended to increase the First Loss Insurance from \$300,000 to \$500,000.

The First Loss Collateral Support Insurance is established which is only intended to mitigate collateral shortfall and is not intended to mitigate other or additional credit deficiencies. Collateral Support Insurance will only be provided to the extent necessary to facilitate making a qualified loan, not on a maximum allowable basis for each

loan. Limits are \$500,000 and up to 25% of an enrolled loan, or for insurance between \$500,000 and \$1,000,000, 20% of the enrolled loan.

Amendments also updates the Insurance Premium to reflect the newly introduced Collateral Support Insurance.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-021-0010

Definitions

For the purposes of these rules, additional definitions may be found in OAR chapter 123, division 1. The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Authorized loan amount" means the amount of a loan authorized by the Department to be under the CEF Program pursuant to a loan insurance authorization issued by the Department to the financial institution making the loan.

(2) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(3) "CEF Program" means the Credit Enhancement Fund Insurance Program established under ORS 285B.200 to 285B.218.

(4) The "deficiency" of a loan means the amount of principal outstanding upon default, accrued interest and the financial institution's reasonable costs of collection, exclusive of costs attributable to environmental problems, remaining unpaid after liquidation of collateral and collection of guarantees.

(5) "Destination facilities other than retail or food service" means a qualified business which has a significant impact on the regional recreational or tourism economy. Incidental food service or retail facilities necessary to the operation of a destination facility are eligible. Sleeping accommodations without unique attraction capabilities are not qualified businesses.

(6) "Financial institution" has the meaning set forth in ORS 706.008.

(7) "Fund" means the Credit Enhancement Fund created by ORS 285B.215.

(8) "Loan insurance authorization" means a letter from the director or deputy director or designee to a financial institution agreeing to insure a loan to a borrower on the terms and conditions and subject to the requirements stated therein.

(9) "Loan insurance agreement" means the agreement between the financial institution and the Department required by OAR 123-021-0100.

(10) "Working capital loan" means any loan, the proceeds of which are to be used for operating, maintenance and other costs and expenses, or for purposes other than acquiring real property, production equipment, or other capital assets.

(11) "Principal" in regards to a borrower is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each managing partner and each partner who is a natural person and holds a twenty percent (20%) or more ownership interest in the partnership; and,

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

"Principal" in regards to a financial institution is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each partner; and

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers or employees of the entity, and each direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(12) "SSBCI Funds" means U.S. Treasury funds allocated to the Department under the State Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, P.L. 111-240, 124 Stat. 2568, 2582).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 4-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-03-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13

ADMINISTRATIVE RULES

123-021-0015

Qualified Business

In a distressed area, any existing or proposed business is a Qualified business. Any company that owns, occupies, operates, or has entered into an agreement to own, occupy or operate real property containing a brown-field is a Qualified business. Through June 30, 2015, outside of a distressed area, any existing or proposed businesses is a Qualified business. After June 30, 2015, outside of a distressed area, a Qualified business is defined as any existing or proposed business that sells goods or services in markets for which national or international competition exists, and such sales of goods or services will result in or will aid, promote or facilitate the development of one or more of the following activities:

- (1) Manufacturing or other industrial production;
- (2) Food processing;
- (3) Aquaculture development or seafood processing;
- (4) Convention facilities or trade centers;
- (5) Destination facilities other than retail or food service;
- (6) Transportation or freight facilities;
- (7) Distribution facilities; or
- (8) Other activities, as approved by the Department that represent new technology or diversifying activity but not including:

(a) Construction of office buildings;

- (b) Retail businesses, shopping centers or food service facilities;
- (c) Motels or bed and breakfast hotels;
- (d) Professional services for medicine, law, dentistry or finance;
- (e) Athletic, racquetball, handball, or private membership clubs, or golf courses;

(f) Sand and gravel facilities;

(g) Newspapers;

(h) Lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended); or,

(i) Acquiring or holding passive investments such as commercial real estate ownership or the purchase of securities; this does not include acquisitions of businesses through 100% stock transfer. For the Evergreen Entrants Insurance, a Qualified business includes an existing or proposed business without, or about to be without, an existing line of credit. For the Evergreen Plus Insurance, a Qualified business includes an existing or proposed business with an existing line of credit.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13

123-021-0080

Loan and Insurance Terms and Conditions

(1) Interest rate and term. The rate of interest on the insured loan and the term of the loan shall be agreed between the financial institution and a borrower provided that no insurance term may exceed the lesser of fifteen years or the useful life of the assets being financed or one year plus four annual renewals for the Evergreen Entrants or Evergreen Plus Programs.

(2) Collateral. Repayment of an insured loan shall be secured by such collateral as the Department deems prudent.

(a) Insured loans may, at the discretion of the Department, be secured by collateral valued for collateral purposes at less than the amount of the insured loan, provided the borrower, its principals, and the guarantors, to the satisfaction of the Department, are of good character, have good credit histories, and exhibit the ability to service the proposed and existing debt;

(b) Real estate or unmovable machinery or equipment constituting a significant portion of collateral for repayment of an insured loan shall be located within the state. Mobile machinery or equipment, including vessels, constituting a significant portion of collateral for repayment of an insured loan shall be registered with and taxed by the state or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral, and shall be stored or berthed in the state when not in use.

(c) The Department may, at its sole discretion, require independent collateral valuation and appraisal of the real property assets securing the loan.

(3) Covenants. The covenants and requirements of the loan shall be established by the financial institution in accordance with prudent lending practices. The Department may require such additional covenants and requirements as may be necessary, prudent or desirable. At a minimum, the loan documents should require the borrower to:

(a) Make periodic payments of principal and interest, with the exception of short term working capital loans or evergreen working capital loans or lines of credit where periodic interest payments with a balloon principal

payment and/or term options may be acceptable, as determined by the Department;

(b) Make any lease payments;

(c) Maintain adequate insurance on collateral, and maintain books and records on the business;

(d) Pay any taxes or governmental charges assessed against the collateral and comply with all applicable laws and regulations;

(e) Keep the collateral free of liens and encumbrances except for as may be expressly accepted by the financial institution and Department;

(f) Provide for periodic financial reports to the financial institution;

(g) Pay advances necessary to protect the collateral and all expenses of protecting or enforcing the rights of the financial institution and Department.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-030-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13

123-021-0090

Loan Insurance Programs

The Department shall offer the following insurance programs:

(1) Conventional Insurance, under which the Department may insure

(a) Up to 80 percent of a loan in which case the Department's maximum liability for any loss under the Conventional Insurance is the lesser of \$2,000,000 or an amount equal to the insured percentage times the authorized loan amount, or

(b) Up to 90 percent of a loan in which case the Department's maximum liability for any loss under the Conventional Insurance is the lesser of \$500,000 or an amount equal to the insured percentage times the authorized loan amount. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department will pay the financial institution the deficiency of a loan times the insured percentage, subject to the limitation set forth above. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Conventional Insurance and the uninsured portion of the loan.

(2)(a) Evergreen Entrants Insurance, under which the Department may insure up to 75 percent of a line of credit working capital loan. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department will pay the financial institution the deficiency of the line of credit working capital loan times the insured percentage; provided that the Department's maximum liability for any deficiency under the Evergreen Entrants Insurance is the lesser of \$1,500,000 or an amount equal to the insured percentage of the authorized loan amount. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Evergreen Entrants Insurance and the uninsured portion of the loan.

(b) Eligible borrowers include persons or enterprises without or about to be without existing line of credit working capital loans.

(c) To obtain Evergreen Entrants Insurance, a financial institution must have the capacity to service the loan effectively, including monitoring compliance with any audit and control procedures prescribed by the Department or comparable procedures of the financial institution approved by the Department and must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(3) First Loss Insurance, under which the Department will pay 100 percent of the deficiency of a loan, but the Department's maximum liability under the First Loss Insurance shall be the lesser of (a) the insured percentage (which shall not exceed 25 percent) times the authorized loan amount, (b) the insured percentage (which shall not exceed 25 percent) times the outstanding balance of the loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral exclusive of costs attributable to environmental problems, but not taking into account the proceeds of collateral liquidation and payments by guarantors, or (c) \$500,000. Any recovery after payment of a deficiency is applied first to the uninsured portion of the loan and then to the portion of a loan insured through First Loss Insurance.

(4)(a) Evergreen Plus Insurance, under which the Department may insure up to 90 percent of a new increment of a line of credit; provided that

ADMINISTRATIVE RULES

the Department's maximum liability under the Evergreen Plus Insurance is \$1,500,000 and the aggregate amount of the line of credit insured under any program does not exceed 80% of the total line of credit. If a financial institution makes a payment request for any deficiency, the Department will pay to the financial institution the lesser of:

(A) A ratable share of the total default charges; or

(B) the deficiency times the insured percentage. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Evergreen Plus Insurance and the uninsured portion of the loan.

(b) The formula for calculating the Department's ratable share of total default charges is:

$$R = (G \div T) \times P$$

R represents the ratable share of total default charges.

G represents the amount of the new increment of the line of credit.

T represents the total credit facility made available.

P represents the principal outstanding upon default plus accrued unpaid interest and costs of collateral liquidation and collection of guarantees exclusive of costs attributable to environmental problems.

(c) To obtain the Evergreen Plus Insurance, a financial institution must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(5) First Loss Collateral Support Insurance (aka Collateral Support Insurance), under which the Department will pay up to a maximum of 100 percent of the deficiency of a loan as follows. The Department's maximum liability under the Collateral Support Insurance per enrolled loan shall be the lesser of:

(a) The insured percentage times the authorized and enrolled loan amount;

(b) The insured percentage times the outstanding balance of the enrolled loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral exclusive of costs attributable to environmental problems, after taking into account payments by guarantors but not taking into account the proceeds of collateral liquidation; or,

(c) 25% of the enrolled loan or \$1,000,000. Collateral Support Insurance may not exceed a term of 5 years. Loan payments, the proceeds of collection of guarantees, and recovery after payment of a deficiency from any source other than liquidation of collateral are applied pro rata to the portion of a loan insured through Collateral Support Insurance and the uninsured portion of the loan; the proceeds of collateral are applied first to the uninsured portion of the loan and then to the portion of a loan insured through Collateral Support Insurance. Loans covered by Collateral Support Insurance must meet a participating Lender's credit underwriting criteria with the exception of loan collateral adequacy. Borrowers with loans covered by Collateral Support Insurance must:

(a) Demonstrate significant current and historical cash flow coverage,

(b) Demonstrate strong credit history,

(c) Provide personal guarantees of significant owners; and,

(d) Meet other criteria as determined by the Department. In contrast to First Loss Insurance, Collateral Support Insurance is only intended to mitigate a collateral shortfall and is not intended to mitigate other or additional credit deficiencies. Collateral Support Insurance will only be provided to the extent necessary to facilitate making a qualified loan, not on a maximum allowable basis for each loan. Loan proceeds may be used to pay off an existing loan where the collateral value is no longer adequate to secure the loan due to a decline in the value of the existing collateral (not due to the loan having been less than fully secured at inception). If any proceeds of the new insured loan are used to finance an existing loan of the lender making application for Collateral Support Insurance, to be eligible for Collateral Support Insurance the existing loan must have reached its maturity date and the new loan must also include new monies advanced to the borrower. Enrollment of the new loan in the Collateral Support Insurance will be limited to the amount of the collateral shortfall or the decline in the collateral value, from the date of the existing loan if proceeds are applied to an existing loan secured by the collateral, whichever is less. For the Collateral Support Insurance, the maximum insured percentage for insurance up to \$500,000 shall be 25% of the loan. For insurance above \$500,000 and up to \$1,000,000 the maximum insured percentage shall be 20% of the loan.

(6) The Conventional Insurance, First Loss Insurance, and Collateral Support Insurance are available for all types of non-revolving loans with regular periodic payments of principal and interest no less often than annually for eligible purposes, including working capital loans that are secured

by fixed assets or other collateral determined to be sufficient by the Department.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06; EDD 1-2006, f. & cert. ef. 2-10-06; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-03-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13

123-021-0110

Insurance Premiums

(1) The Department shall charge a one-time (up-front) insurance premium. Premiums are due at the time financial institutions originate loans and execute loan authorizations with the Department. The Department's insurance is not effective until premiums are paid. It is expected that financial institutions will pass along the cost of premiums to borrowers. Premiums, expressed as a percentage of the Department's maximum liability, shall be charged in accordance with the following schedule for the programs indicated:

Term — Conventional Insurance — First Loss Insurance — Collateral Support

Insurance

Up to 1 year — 1.25% — 2.50% — 2.0%

Up to 2 years — 1.50% — 3.00% — 2.5%

Up to 4 years — 1.75% — 3.50% — 3.0%

Up to 7 years — 2.00% — 4.00% — 3.5% (maximum 5 years)

Up to 11 years — 2.50% — 5.00% — N/A

Up to 15 years — 3.00% — 6.00% — N/A

(2) The fee for the Evergreen Entrants Insurance is 1.25 percent annually; the fee for the Evergreen Plus Insurance is 2.5 percent annually.

(3) For revolving lines of credit or evergreen facilities, the premium is based on the Department's maximum liability in regard to the credit facility made available to a borrower, regardless of whether or not the line of credit is fully drawn down. Examples:

(a) The premium due on a \$200,000, five year loan with 80% Conventional Insurance would be \$3,200 (\$200,000 x .80 x .02);

(b) The premium for a \$200,000 loan with 75% Evergreen Entrants Insurance is \$1,875 (\$200,000 x .75 x .0125); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the Evergreen Entrants program (5 years);

(c) The premium for a \$200,000, eight year loan with 25% First Loss Insurance is \$2,500 (\$200,000 x .25 x .05);

(d) The premium for a \$700,000 increment to the line of credit with 25% Evergreen Plus Insurance is \$4,375 (\$700,000 x .25 x .025); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the program (5 years);

(e) The premium for a \$1,000,000 five-year loan with a 15% Collateral Support Insurance is \$5,250 (\$1,000,000 x .15 x .035).

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-03-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13

Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

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

Adm. Order No.: DMAP 56-2012(Temp)

Filed with Sec. of State: 11-30-2012

Certified to be Effective: 12-1-12 thru 4-1-13

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

ADMINISTRATIVE RULES

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 permanent on or before April 1, 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 December 1, 2012, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR Chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective on or after July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR Chapter 461. References to “the Administrator” in division 25 of chapter 461 or “the Department” are hereby incorporated as references to the Authority.”

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; 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. 11-1-2 thru 4-29-12; DMAP 56-2012(Temp), f. 11-30-12, cert. ef. 12-1-12 thru 4-1-13

Oregon Health Insurance Exchange Chapter 945

Rule Caption: Certification of Plans as Qualified Health Plans.

Adm. Order No.: OHIE 4-2012

Filed with Sec. of State: 12-13-2012

Certified to be Effective: 12-13-12

Notice Publication Date: 11-1-12

Rules Adopted: 945-020-0010, 945-020-0020

Subject: Establishes the process for certification of plans as qualified health plans.

Rules Coordinator: Gregory Jolivet—(503) 373-9406

945-020-0010

Statutory Authority; Purpose; Applicability

(1) OAR chapter 945, division 20 is adopted pursuant to the general rulemaking authority of the Exchange in ORS 741.002.

(2) The purpose of OAR chapter 945, division 20 is to establish the process for certification of health plans as qualified health plans.

(3) OAR chapter 945, division 20 applies to all qualified health plans offered through the Exchange, except the following:

(a) Multistate plans, as defined in section 1334 of the Affordable Care Act.

(b) Consumer Operated and Oriented Plans (CO-OPs), as defined in section 1322 of the Affordable Care Act.

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.310

Hist.: OHIE 3-2012(Temp), f. 9-13-12, cert. ef. 10-1-12 thru 3-13-13; OHIE 4-2012, f. & cert. ef. 12-13-12

945-020-0020

Certification of Qualified Health Plans

Each health benefit plan offered through the Oregon Health Insurance Exchange (Exchange) must have in effect a certification issued by the Exchange. This certification demonstrates that the health benefit plan is a qualified health plan (QHP).

(1) The Exchange will issue a request for applications (RFA). To be considered for participation and plan certification, a health insurance issuer must submit a completed application to the Exchange in the form and manner, and within the timeframes specified by the Exchange.

(2) Conditional approval to participate in the Exchange will be granted to applicants who

(a) Are licensed and in good standing to offer health insurance in Oregon;

(b) Agree to offer at least one standardized QHP at the bronze, silver, and gold levels of coverage;

(c) Meet any other performance standards that may be adopted by the Exchange; and

(d) Agree to contract with the Exchange to offer QHPs. Contracts will require issuers to comply with Exchange standards and requirements, including but not limited to the following:

(A) Transparency in coverage standards;

(B) Accreditation requirements;

(C) Network adequacy standards;

(D) Exchange administrative fees and assessments;

(E) Quality improvement strategies, quality reporting, and enrollee satisfaction surveys;

(F) Exchange agent management program requirements;

(G) Tribal requirements;

(H) Premium tax credit and cost sharing reductions; and

(I) Exchange processes and procedures, including those related to enrollment, enrollment periods, premium payment, terminations of coverage, customer service, and QHP recertification and decertification.

(3) Issuer approval is conditioned upon certification of their health benefit plans. Issuers will be approved for a two-year period. No new issuers will be considered for participation during those two years unless there is a significant loss of statewide coverage.

(4) A loss of statewide coverage may include, but is not limited to, plan discontinuance, withdrawal, decertification, or enrollment closures that result in a lack of coverage choices in a geographic area(s) of the state.

(5) Any health benefit plan an approved issuer wants to offer through the Exchange must be filed with the Oregon Insurance Division and determined to meet applicable benefit design standards and all other insurance regulations as required under state and federal law.

(6) Benefit design standards means coverage that includes, but is not limited to, the following:

(a) The essential health benefits as described in section 1302(b) of the Affordable Care Act;

(b) Cost sharing limits as described in section 1302(c) of the Affordable Care Act; and

(c) A bronze, silver, gold, or platinum level of coverage as described in section 1302(d) of the Affordable Care Act, or is a catastrophic plan as described in section 1302(e) of the Affordable Care Act

(7) Subject to any limitation on the number of plans that may be offered through the Exchange, the Exchange will certify health benefit plans that are submitted by approved issuers and determined by the Oregon Insurance Division to meet all applicable standards.

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.310

Hist.: OHIE 3-2012(Temp), f. 9-13-12, cert. ef. 10-1-12 thru 3-13-13; OHIE 4-2012, f. & cert. ef. 12-13-12

Oregon Health Licensing Agency Chapter 331

Rule Caption: Add temporary license pathway for individuals waiting to take examination and add qualification requirements.

Adm. Order No.: HLA 16-2012(Temp)

Filed with Sec. of State: 11-19-2012

Certified to be Effective: 11-19-12 thru 5-17-13

Notice Publication Date:

Rules Amended: 331-710-0080, 331-710-0090, 331-718-0020

ADMINISTRATIVE RULES

Subject: Create a temporary license pathway under Temporary License - Indirect Supervision for individuals who have received an academic degree and are waiting to take the board approved national examination. Temporary license would be valid for 1 year with no renewal. Applicants under pathway three will be required to submit certain documentation to qualify for license. Documentation includes fingerprint based national criminal background check and statement from the college or universities Registrar of Dean verifying the applicant has completed the work necessary to obtain a degree in polysomnography.

Revise temporary license indirect supervision pathway two to require an applicant submit education equivalent to 80 clock hours of education and have the pathway be longer effective as of July 1, 2013.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-710-0080

Polysomnographic Technologist Temporary-IS (Indirect Supervision) Licensure

(1) Provisions of this rule become effective October 15, 2012. A polysomnographic technologist Temporary-IS license authorizes the holder to temporarily practice polysomnography under indirect supervision by an approved supervisor.

(2) Indirect supervision is supervision of the Temporary-IS licensee by an approved supervisor who is physically present and onsite, but may not be immediately accessible at the sleep facility when the Temporary-IS licensee is working, who reasonably oversees the work of the Temporary-IS licensee, and who is available for questions and assistance when needed.

(3) A polysomnographic technologist Temporary-IS license holder must notify the agency within 10 calendar days of changes in employment status and changes in supervisor.

(4) A polysomnographic technologist Temporary-IS license under OAR 331-710-0090(4)(a) pathway one temporary licensee-DS and (b) pathway two an individual with qualified experience received prior to January 1, 2013 are is valid for one year and may be renewed once.

(5) A polysomnographic technologist Temporary-IS license under OAR 331-710-0090(4)(c) pathway three academic degree is valid for one year and may not be renewed.

(6) A Temporary-IS licensee is prohibited from performing services on persons 12 and under.

(7) A polysomnographic technologist temporary-IS license is invalid after passage of all required written examinations listed under OAR 331-712-0010 for a full polysomnographic technologist license under OAR 331-710-0040.

Stat. Auth.: ORS 676.615, 676.607, 688.819 & 688.830

Stats. Implemented: ORS 676.607, 676.615, 688.800, 688.815, 688.819 & 688.830

Hist.: HLA 14-2012, f. 9-12-12, cert. eff. 9-14-12; HLA 16-2012(Temp), f. & cert. eff. 11-19-12 thru 5-17-13

331-710-0090

Application Requirements for Polysomnographic Temporary-IS Licensure

Provisions of this rule become effective October 15, 2012. An applicant for a polysomnographic technologist Temporary-IS license must:

(1) Meet the requirements of OAR chapter 331 division 30;

(2) Submit a completed application form prescribed by the Agency, containing the information listed in OAR 331-030-0000 and accompanied by payment of all required fees;

(3) Be at least 18 years of age, and provide official documentation confirming the applicant's date of birth, such as a copy of the birth certificate, driver's license, or passport;

(4) Submit current certification in cardiopulmonary resuscitation from an Agency approved provider;

(5) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(6) Submit documentation of qualification through one of the following pathways:

(a) Temporary License-IS Pathway One: Temporary Licensee-DS: applying for Temporary-IS licensure must:

(A) Submit documentation of successful completion of 30 sleep tests as a polysomnographic technologist Temporary-DS licensee, which includes the signatures of an approved supervisor and certification by a qualified medical director for polysomnography of successful completion of 30 sleep studies and satisfactory performance;

(B) Submit examination fees;

(C) Complete and pass the Oregon Laws and Rules examination for polysomnography within two years before the date of registration application;

(D) Submit information identifying the applicant's approved supervisor on a form prescribed by the Agency; and

(E) Submit appropriate licensing fees.

(b) Temporary License-IS Pathway Two: This rule is in effect through July 1, 2013. An individual with qualified experience received prior to January 1, 2013, applying for Temporary-IS licensure must:

(A) Submit form prescribed by the Agency documenting completion of 30 sleep studies within the last six months which were prior to January 1, 2013. The form must be signed by a qualified medical director for polysomnography. The agency may accept up to six months of work experience if received prior to January 1, 2013;

(B) Submit official transcripts defined under OAR 331-705-0050 or documentation approved by the Agency which shows a minimum of proof of successful completion of an Emergency Medical Technician Basic Program, Certified Nursing Assistant Level One Program or A-STEP Introductory Course; OR

(C) Submit official transcripts defined under OAR 331-705-0050 or documentation approved by the Agency which shows proof of successful completion of 80 clocks hours of professional or post-secondary coursework, provided by an in-person or real-time remote instructor, in two or more of the following: Human Anatomy and Physiology, Medical Law and Ethics, Basic Electrocardiogram, Introduction to Health Services, Chemistry for Health Occupations, Health Care Systems, Medifecta Healthcare Training Course, Polysomnographic Technologist Online Audiovisual Content, Basic Allied Health Classes and other courses approved by the agency; AND must

(D) Submit examination fees;

(E) Complete and pass the Oregon Laws and Rules examination for polysomnography within two years before the date of registration application;

(F) Submit information identifying the applicant's approved supervisor on a form prescribed by the Agency; and

(G) Submit appropriate licensing fees.

(c) Temporary License-IS Pathway Three: Academic Degree: applying for Temporary-IS licensure must:

(A) Submit a statement, signed by the Registrar or a Dean of a college or university and sent directly to the Agency from that college or university, verifying the applicant has completed all work necessary to obtain an associate's degree in polysomnography, polysomnographic technology, or sleep technology from an accredited community college, college or university, or successful completion of a polysomnography course of study from a CAAHEP accredited institution;

(B) Submit examination fees;

(C) Complete and pass the Oregon Laws and Rules examination for polysomnography within two years before the date of registration application;

(D) Submit information identifying the applicant's approved supervisor on a form prescribed by the Agency; and

(E) Submit appropriate licensing fees.

Stat. Auth.: ORS 676.615, 676.607, 688.819 & 688.830

Stats. Implemented: ORS 676.607, 676.615, 688.800, 688.815, 688.819 & 688.830

Hist.: HLA 14-2012, f. 9-12-12, cert. eff. 9-14-12; HLA 16-2012(Temp), f. & cert. eff. 11-19-12 thru 5-17-13

331-718-0020

Standards of Practice for Polysomnography

(1) A licensee must comply with the prevailing community standards for professional conduct. The Board recognizes and adopts the BRPT Standards of Conduct as its professional standards model. Documents are available on the BRPT Website at <http://www.brpt.org>.

(2) At minimum, licensees are subject to directives and policies established by the medical facilities, businesses or agencies by which they are employed or regulated.

(3) A licensee must comply with the following safety and infection control requirements:

(a) All devices or items that come into direct contact with a client must be cleaned or disinfected according to the manufacturer's instructions or Centers for Disease Control and Prevention (CDC) Standard Precautions;

(b) All items that come in direct contact with the client's skin that do not require disinfecting must be clean;

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(c) All items that come in direct contact with the client's skin that cannot be cleaned or disinfected must be disposed of in a covered waste receptacle immediately after use;

(d) All disinfecting solutions and agents must be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times unless equipment is prepackaged, pre-sterilized and within the expiration date listed on the label of the disinfecting solution;

(e) All high-level and low-level disinfecting agents must be EPA registered. High-level disinfectant means a chemical agent which has demonstrated tuberculocidal activity. Low-level disinfectant means a chemical agent which has demonstrated bactericidal, germicidal, fungicidal and limited virucidal activity;

(f) Before use instruments must be stored in clean containers that can be closed between use to maintain effective cleanliness until removed from the container.

(g) Masks must be disinfected before each use on a client by removing foreign and completely saturating the mask with a high level disinfectant solution, spray or foam used to manufacturer's instructions.

(4) A licensee must observe and follow the Standard Precautions adopted by the CDC as defined in OAR 437 division 2, subdivision Z, and the CDC Standard Precautions for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment when providing services to patients.

Stat. Auth.: ORS 676.605, 676.615 & 688.830
Stats. Implemented: ORS 676.605, 676.615 & 688.830
Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 16-2012(Temp), f. & cert. ef. 11-19-12 thru 5-17-13

Oregon Housing and Community Services Department Chapter 813

Rule Caption: Establishes the Oregon Hunger Response Fund. Designates the Oregon Food Bank to coordinate fund moneys.

Adm. Order No.: OHCS 6-2012(Temp)

Filed with Sec. of State: 12-6-2012

Certified to be Effective: 12-6-12 thru 6-4-13

Notice Publication Date:

Rules Amended: 813-250-0000, 813-250-0020, 813-250-0030, 813-250-0040

Rules Suspended: 813-250-0010, 813-250-0050

Subject: These amendments designate the Oregon Food Bank as the agency to coordinate distribution of food in Oregon under the Oregon Hunger Response Fund.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-250-0000

Purpose and Objectives

(1) OAR chapter 813, division 250 establishes and implements the Oregon Hunger Response Fund, which is funded by General Fund moneys and carries out the Department's responsibility as the lead public body in administering the state policy on hunger under ORS 458.525 to 458.545. The Oregon Hunger Response Fund is the means by which the Department allocates funds for the statewide network of food banks and emergency food programs to acquire food and new food sources, build network capacities and link emergency food clients to other services.

(2) The Oregon Food Bank, a nonprofit corporation organized under ORS chapter 65, is the agency designated by the Department to coordinate distribution of food in Oregon under the Oregon Hunger Response Fund. Under the program, the food is distributed to low income households, which are those households with an income that does not exceed 185 percent of the federal poverty guideline.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.625 & 458.525 - 458.545
Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08; OHCS 6-2012(Temp), f. & cert. ef. 12-6-12 thru 6-4-13

813-250-0010

Definitions

All words and terms used in OAR chapter 813, division 250, are defined in the Act, in 813-005-0005 and 813-250-0010 and below. As used in OAR chapter 813, division 250, unless the context indicates otherwise:

(1) "General Fund Food Program (GFFP)" means state funding established by the 1993 Oregon Legislature and in accordance with OAR chapter 813, division 250.

(2) "Low Income Household" means a household with an income that does not exceed 185% of the federal poverty guideline.

(3) "Oregon Food Bank (OFB)" means the private nonprofit organization designated by the Department to coordinate distribution of food in Oregon to Low Income Households.

(4) "Regional Food Bank (RFB)" means any nonprofit agency that has subcontracted with the Oregon Food Bank to relieve situations of emergency and distress through provision of food under the GFFP to Emergency Food Organizations.

(5) "Emergency Food Organization (EFO)" means a private, public, faith based, or non-profit organization (pantry) that is subcontracted with an RFB to relieve situations of emergency and distress through provision of food under the program to low-income households.

(6) "Department" means Oregon Housing and Community Services Department (OHCS).

Stat. Auth.: ORS 456.555 & OL 1993 Ch. 725
Stats. Implemented: OL 1993 Ch. 725
Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08; Suspended by OHCS 6-2012(Temp), f. & cert. ef. 12-6-12 thru 6-4-13

813-250-0020

Administration

(1) The Oregon Food Bank may select and subcontract with recipient agencies to carry out activities of the Oregon Hunger Response Fund at the local level. A recipient agency is a regional food bank or other local public agency or private nonprofit agency that under the subcontracting agreement undertakes to relieve situations of emergency and distress by enabling the provision of food to low income households.

(2) A recipient agency may provide program services only if the agency has first entered into a subcontracting agreement with the Oregon Food Bank to serve as a recipient agency. The agreement must at least include provisions regarding the grant amount, conditions, effective date, terms of the contract, eligible services, fiscal and program report requirements, and audit requirements.

(3) A recipient agency may recommend guidelines to the Oregon Food Bank for the uses and disbursement of program funds.

(4) The Oregon Food Bank may use program funds to supplement but not supplant existing funds used in supporting the work of the recipient .

(5) Neither the Oregon Food Bank nor a recipient agency may require a program recipient to make any payments in money, materials or services for, or in connection with, the receipt of emergency food.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.625 & 458.525 - 458.545
Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08; OHCS 6-2012(Temp), f. & cert. ef. 12-6-12 thru 6-4-13

813-250-0030

Eligible Activities

(1) The Oregon Food Bank and recipient agencies may use funds furnished through the Oregon Hunger Response Fund for:

(a) Capacity building activities and equipment purchases to strengthen or expand the infrastructure of recipient agencies to facilitate expansion of the food supply, including the transportation of commodities;

(b) Acquisition and distribution of food in bulk form that is repackaged for household use ; and

(c) Linkage grants to RFBs recipient agencies for outreach to underserved areas so that emergency food recipients can obtain needed nutrition education and other support services.

(2) The Oregon Food Bank and recipient agencies may use program funds to pay for the reasonable administrative costs of the program.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.625 & 458.525 - 458.545
Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08; OHCS 6-2012(Temp), f. & cert. ef. 12-6-12 thru 6-4-13

813-250-0040

Fiscal Control and Reporting Requirements

(1) The Oregon Food Bank and each recipient agency under the Oregon Hunger Response Fund:

(a) Shall maintain records that document the use of program funds for linkage activities and the receipt and distribution of commodities purchased; and

(b) Shall maintain records of program activities and fiscal transactions for a period of three years and shall make the records available to the Department upon request.

(2) The Oregon Food Bank shall provide the Department:

(a) An annual audit of program activities and fiscal transactions within nine months following the end of the fiscal audit period; and

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(b) A year-end report of linkage projects carried out by each recipient agency and acquisitions of goods by the Oregon Food Bank.

(3) Each recipient agency shall report annually to the Oregon Food Bank regarding the type and amount of food purchased with program funds.
Stat. Auth.: ORS 456.555
Stats. Implemented: 1993 OL Ch. 725, ORS 456.625 & 458.525 - 458.545
Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08; OHCS 6-2012(Temp), f. & cert. ef. 12-6-12 thru 6-4-13

813-250-0050

Waiver

The Director may waive or modify any requirements of OAR 813, division 250, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 184 & 458.505 - 458.515
Stats Implemented: ORS 458.525 - 458.530
Hist.: OHCS 4-2003, f. & cert. ef. 5-12-03; Suspended by OHCS 6-2012(Temp), f. & cert. ef. 12-6-12 thru 6-4-13

Oregon Public Employees Retirement System

Chapter 459

Rule Caption: Establish uniform rules applicable when PERS has independent contracting authority.

Adm. Order No.: PERS 13-2012

Filed with Sec. of State: 12-5-2012

Certified to be Effective: 12-5-12

Notice Publication Date: 7-1-2012, 9-1-2012

Rules Adopted: 459-005-0400

Rules Amended: 459-035-0001

Rules Repealed: 459-035-0200, 459-035-0220

Subject: PERS is generally subject to the Department of Administrative Services (DAS) public contracting and procurement provisions in ORS Chapters 279A, 279B, and 279C (Public Contracting Code), with some statutory exceptions such as the PERS Health Insurance Program (PHIP) or the Oregon Savings Growth Plan. This rulemaking establishes uniform rules for when PERS has independent contracting authority under those exceptions. These rules are based on the Department of Justice (DOJ) model public contract rules, as effective on August 1, 2012, as generally applicable to PERS, with exceptions being specifically identified.

This rulemaking also codifies the public contracting rules in one place rather than having similar provisions in each subject area, which makes the rules easier to use and to update, as well as provides consistency of rules for all subjects. Repealing existing rules and adopting these new rules will not substantively change any of PERS' contracting practices.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-005-0400

General Applicability of Attorney General's Model Public Contract Rules

(1) When PERS has independent statutory authority to contract, and the Public Contracting Code does not apply, PERS adopts the following Attorney General's Model Public Contract Rules to govern its contracting activity:

(a) OAR chapter 137, division 46 — General Provisions Related to Public Contracting: 137-046-0100, 137-046-0110, 137-046-0200, 137-046-0252, and 137-046-0400 through 137-046-0480; and

(b) OAR chapter 137, division 47 — Public Procurements for Goods or Services: 137-047-0100, 137-047-0260 through 137-047-0670, 137-047-0700 through 137-047-0760 (excluding provisions governing judicial review), and 137-047-0800. Judicial review of decisions relating to any protest is governed by the Oregon Administrative Procedures Act, ORS Chapter 183.

(2) For PERS' purposes, references in the Model Public Contract Rules to the Director of the Oregon Department of Administrative Services shall be applied as references to the PERS Executive Director.

(3) Model Public Contract rules other than those identified in section

(1) of this rule do not apply to PERS.

Stat. Auth.: ORS 238.650, 238A.450 & 279A.065

Stats. Implemented: ORS 279A & 279B

Hist.: PERS 13-2012, f. & cert. ef. 12-5-12

459-035-0001

Definitions

The words and phrases used in this division have the same meaning given them in ORS Chapters 238 and 238A. Additional terms are defined as follows unless the context requires otherwise.

(1) "Dependent" means a PERS member's or retiree's dependent child. For the purpose of this rule a "child" is defined as follows:

(a) A natural child.

(b) A legally adopted child, or a child placed in the home pending adoption.

(c) A step-child who resides in the household of the stepparent who is an eligible retired member.

(d) A grandchild, provided that at the time of birth, at least one of the grandchild's parents was covered under a PERS-sponsored health insurance plan as a dependent child of the PERS member or retiree and resides in the household of the member or retiree.

(2) "Dependent Domestic Partner" means a person who has a relationship with a PERS retiree that has the characteristics described below. To qualify as a "dependent domestic partner", the person and the PERS retiree must:

(a) Share a close personal relationship and be responsible for each other's common welfare, including but not limited to having joint financial responsibilities;

(b) Be each other's sole domestic partner;

(c) Not be married to anyone, nor have had another domestic partner within the previous 12 months;

(d) Not be related by blood so closely as to bar marriage in the State of Oregon;

(e) Have jointly shared the same regular and permanent residence for at least 12 months immediately preceding the effective date of coverage with the intent to continue doing so indefinitely; and

(f) Have the PERS retiree providing over one-half of the financial support for the person and qualify as a dependent of the PERS retiree as determined under section 105(b) of the Internal Revenue Code, 26 USC 105(b).

(3) "Eligible Person" means a person who is eligible for coverage under a PERS-sponsored health insurance plan. The conditions for such eligibility are set forth in OAR 459-035-0020.

(4) "Eligible Retired Member" means an eligible person who is eligible for payments toward the cost of the Medicare Companion Plan from RHIA. The conditions for such eligibility are set forth in OAR 459-035-0030.

(5) "Eligible Retired State Employee" means an eligible person who is eligible for non-Medicare insurance premium payments from the RHIPA. Conditions for such eligibility are set forth in OAR 459-035-0040.

(6) "Medicare" means the federal health care insurance plan established under Title XVIII of the Social Security Act as amended.

(7) "Medicare Companion Plan" means a PERS-sponsored health insurance plan for eligible persons who are eligible for and enrolled in Medicare.

(8) "PEBB" means the Public Employees' Benefit Board established under ORS 243.061.

(9) "PERS Member" has the same meaning as "member" provided in ORS 238.005 and 238A.005.

(10) "Plan Year" means a 12-month period beginning January 1 and ending December 31.

(11) "Qualifying Service" means:

(a) Creditable service, as defined in ORS 238.005, plus any periods of employment with an employer participating in PERS that are required of the employee before becoming a PERS member; or

(b) Periods of employment in a qualifying position, as that term is defined in OAR 459-010-0003.

(12) "Retiree" means a PERS member who is receiving a service or disability retirement allowance or benefit under PERS or who received a lump sum payment under ORS 238.305(3), 238.315, or 238A.195, or payment(s) under 238A.400, or a person who is receiving retirement pay or pension calculated under 1.314 to 1.380 (1989 Edition).

(13) "RHIA" means the Retirement Health Insurance Account established under ORS 238.420 to help defray the cost of the Medicare Companion Plan.

(14) "RHIPA" means the Retiree Health Insurance Premium Account established under ORS 238.415 to help defray the cost of PERS-sponsored health plans other than the Medicare Companion Plan.

ADMINISTRATIVE RULES

(15) "SRHIA" means the Standard Retiree Health Insurance Account established under ORS 238.410 to administer employee and the employer contributions to the PERS sponsored health insurance program.

(16) "Staff" means the employees of the Public Employees Retirement System.

(17) "Third Party Administrator" means the individual or organization that the Board contracts with to provide administrative services as specified in the contract.

Stat. Auth.: ORS 238.410, 238.650 & 238A.450
Stats. Implemented: ORS 238.410, 238.415, 238.420 & 238A.050
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 17-2005, f. & cert. ef. 10-3-05; PERS 1-2010(Temp), f. & cert. ef. 4-5-10 thru 9-27-10; PERS 9-2010, f. & cert. ef. 9-29-10; PERS 13-2012, f. & cert. ef. 12-5-12

Oregon State Lottery Chapter 177

Rule Caption: Clarifies top \$1,000 prize with multiple winners; Selling bonus; Claiming prize Lottery Headquarters; Other changes.

Adm. Order No.: LOTT 8-2012

Filed with Sec. of State: 11-30-2012

Certified to be Effective: 12-16-12

Notice Publication Date: 11-1-12

Rules Amended: 177-094-0080, 177-094-0085

Rules Repealed: 177-094-0080(T), 177-094-0085(T)

Subject: The Oregon State Lottery adopted permanent rules to establish the maximum annual payout when there are more than three winning tickets for the Win for Life \$1,000 a week top prize in a single drawing, the calculation of the retailer selling bonus under such circumstances, and to require in-person presentation of a winning ticket for the Win for Life top prize of \$1,000 a week for life at Lottery Headquarters in Salem, Oregon.

The rule making further specifies that only one natural person may sign a Win for Life top prize of \$1,000 per week for life ticket; that ownership of a winning ticket for a Win for Life top prize of \$1,000 per week cannot be relinquished; specifies the process for claiming the Win for Life top prize by the personal representative of the estate of an owner who dies before the prize is claimed; and specifies that annual payments of the Win for Life top prize of \$1,000 per week for life will be paid on the anniversary date of the validation or on the next Lottery business day if the anniversary date is a Saturday, Sunday, holiday, or furlough closure day.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-094-0080

Prizes

(1) General: Prizes for a winning ticket are determined by matching each horizontal set in the ticket's game play with the winning numbers from the relevant drawing. [Table not included. See ED. NOTE.]

(2) Prize Percentage Payout: The number of prizes for the Win for LifeSM game is not predetermined by the Lottery. The overall prize percentage payout for the Win for LifeSM game is estimated at approximately 65% over time, but the actual prize payout may vary from day-to-day and year-to-year due to factors that include, but are not limited to, the numbers of players participating each day and the number of winning wagers.

(3) Disputes: In the event of a dispute over the value of a prize or whether a ticket contains winning numbers or is a winning ticket, the Director's determination is controlling.

(4) Multiple Prizes:

(a) Subject to the validation requirements in OAR 177-094-0060, for each drawing, a player may receive multiple prizes on each ticket for which a ticket containing a winning game play is eligible.

(b) Only the top-prize associated with each set of numbers within the Win for LifeSM, \$50,000, \$20,000, and \$10,000 prize categories shall be paid.

(5) Claiming a Prize: Prize payments must be claimed, and shall be made, in accordance with the provisions of OAR 177-070-0025. Notwithstanding OAR 177-070-0025(2) and subject to section (7) of this rule, a person who claims a Win for LifeSM top prize of \$1,000 a week for life must present the winning ticket and completed claim form in person, at Lottery Headquarters in Salem, Oregon.

(6) Payment of Prizes: Upon validation of a winning ticket, a prize resulting from that winning ticket shall be paid to the prize winner in one lump-sum except for the Win for LifeSM prize of \$1,000 per week for life.

(7) Win for LifeSM Top Prize:

(a) General: The Win for LifeSM top prize is \$1000 per week for life. Only one natural person may own a winning ticket for the Win for LifeSM top prize of \$1,000 per week for life, and claim the Win for LifeSM top prize of \$1,000 per week for life. Notwithstanding OAR 177-046-0110(6), a winning ticket of the Win for LifeSM top prize cannot be owned jointly and the top ticket will only be paid to the owner of the winning ticket.

(b) Ownership: Only one natural person may sign a Win for LifeSM top prize of \$1000 per week for life winning ticket. A winning ticket of a Win for LifeSM top prize is owned by the natural person who first signs the ticket and cannot be claimed by multiple owners. In the event a single winning ticket is signed by more than one natural person, the natural persons who signed the ticket must identify the natural person who first signed the ticket on a form provided by the Lottery.

(A) No Relinquishment: Notwithstanding OAR 177-024-0110(6)(c), ownership of a winning ticket of a Win for LifeSM top prize of \$1000 per week for life cannot be relinquished.

(B) Deceased Signatory: If the owner of a winning ticket of a Win for LifeSM top prize dies before the prize is claimed, the personal representative of the owner's estate as appointed by a court, may claim the prize on behalf of the owner's estate. The maximum prize is \$260,000 as set forth in subsection (f) and will be paid by the Lottery to the owner's estate in one lump sum.

(c) Payment Options: The Win for LifeSM top prize is \$1,000 per week for life and shall be paid, based upon a selection made by the prize winner, either as:

(A) Weekly: A prize payment of \$1000 each week beginning on the date prize payment is initiated upon validation of the winning ticket and thereafter on the same day each week, or if such day falls on a non-business day, then the next business day; or

(B) Annually: A payment of \$52,000 paid annually beginning on the date prize payment is initiated upon validation of the winning ticket and thereafter on the anniversary date of the first payment, or if such date falls on a non-business day, then the first business day following the anniversary date of the first payment.

(d) Payments to Cease upon Winner's Death: The Win for LifeSM top prize of \$1,000 per week for life will be paid to the prize winner until such time as the prize winner dies at which time all further prize payments shall cease.

(e) Five-Year Guaranteed Payment: Notwithstanding subsection (d) of this section, if the prize winner dies within five years of the date of prize validation, the Lottery shall pay any remaining prize payments the prize winner would have received within the first five years after prize validation in one lump sum to the individual designated on a beneficiary designation form or to the prize winner's estate.

(f) Maximum Five-Year Guaranteed Payment: Notwithstanding subsections (d) and (e) of this section, for Win for LifeSM tickets purchased on or after December 1, 2010, if the prize winner dies within five years of the date of prize validation, the Lottery shall pay any remaining prize payment the prize winner would have received within the first five years after prize validation in one lump sum, up to a maximum of \$260,000, to the individual designated on a beneficiary designation form or to the prize winner's estate.

(g) Election of Payment Schedule:

(A) Limitations of Election: At the time of the validation of a winning Win for LifeSM ticket for the top prize of \$1000 per week for life, the prize winner of the top prize must elect either the weekly or annual prize payment schedule described in subsection (b) of this section. A prize winner who elects the annual payment schedule cannot subsequently convert to the weekly payment schedule. The election of the annual payment schedule is irrevocable. A prize winner who elected the weekly payment schedule may convert to the annual payment schedule at any time, and the Lottery will issue payment to the prize winner for the sum of the remaining weekly payments from that date to the next anniversary date. Subsequent annual payments will be made on the anniversary date.

(B) Election When Child Support Owed: Notwithstanding subsection (A) of this subsection and subsection (g) of this section, when a search of delinquent child support obligors performed pursuant to ORS 461.715 and OAR 177-010-0090 Child Support Validation Check results in a positive match with the prize winner and the Division of Child Support of the Department of Justice (DOJ) or its successor initiates garnishment proceedings, the prize winner of the Win for LifeSM top prize of \$1,000 per

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week for life has no payment options from which to select and will be placed on the annual payment schedule as described in subsection (7)(b)(B) of this section. This placement on the annual payment schedule is irrevocable.

(C) Conversion to Annual Payment Schedule upon Garnishment from Department of Justice: Upon receipt of garnishment proceedings from DOJ directed to the Lottery for monies due or to become due to a prize winner receiving weekly payments under the Win for LifeSM top prize of \$1000 per week for life, the Lottery will place that prize winner on the annual payment schedule as described in subsection (7)(b)(B) of this section. Conversion of the prize winner's payment schedule from weekly to annual under this section of the rule is irrevocable. The Lottery shall make payments to such a prize winner as follows:

(i) Payment Less Garnishment Amounts: Within a reasonable time after the disposition of the garnishment proceeding, the Lottery shall pay the prize winner the sum of the prize winner's weekly payments from the date the Lottery placed the prize winner's payments on hold to the prize winner's next anniversary date less any amounts withheld pursuant to the garnishment proceedings and applicable tax laws.

(ii) Subsequent Payments: The Lottery shall make any subsequent annual payments, less any amounts withheld pursuant to the garnishment proceedings and applicable tax laws, on the anniversary date of the validation of the prize or on the next business day following if the anniversary date is a Saturday, Sunday, holiday or furlough closure day.

(h) Limitation on Prize Amount for Multiple Top Prize Winning Tickets: Where there are more than three winning tickets in a single Win for LifeSM drawing, the maximum combined annual top prize payout for a single Win for LifeSM drawing is \$156,000.

(A) More Than Three Winning Tickets: Notwithstanding the \$1,000 per week amount referred to in this rule, if there are more than three winning tickets for a Win for LifeSM top prize of \$1,000 per week for life in a single drawing, the annual top prize payment per winning ticket shall be limited to \$156,000 divided by the number of winning tickets of the Win for LifeSM top prize in that drawing.

(B) Example: For example, if there are four Win for LifeSM top prize winning tickets in a single drawing, the annual top prize amount is calculated by dividing 4 into \$156,000 which equals \$39,000 as the annual prize payment amount per each winning ticket.

(C) Payment: Notwithstanding subsection (g) of this section, the prize winner will be paid on an annual prize payment schedule. This placement on the annual prize payment schedule is irrevocable.

(D) Effect of Subsequent Events: Subsequent events, including, but not limited to, the death of one of the prize winners, shall not alter the other prize winners' original pro rata share of the calculated prize amount.

(i) Initiation of Payment: Prize payment is initiated upon validation of a winning ticket.

(j) Electronic Fund Transfer: After the initial prize payment issued to a Win for LifeSM top prize winner, the Lottery shall pay both weekly and annualized Win for LifeSM prize installments via electronic funds transfer in the usual course of Lottery business.

(k) Annual Affidavit Required:

(A) General: Once each year and no earlier than thirty days prior to the anniversary of the original validation date, a prize winner of a Win for LifeSM top prize of \$1,000 per week for life shall provide the Lottery with an affidavit on a form provided by the Lottery, signed by the prize winner, bearing the seal of a notary public, verifying the prize winner is living, containing the prize winner's current address, and a bank account number to which the prize shall be paid.

(B) Termination of Prize: If a prize winner of a Win for LifeSM prize of \$1,000 per week for life does not provide the Lottery with the affidavit described in subsection (i)(A) of this section, then the Lottery shall not make further prize payments to the prize winner. If the failure of a prize winner to provide the affidavit continues to the next anniversary of the validation date, the remainder of the prize shall be terminated.

(C) Exception: Notwithstanding paragraph (B) of this subsection, when it is reasonable and prudent to do so based on the facts underlying a prize winner's failure to provide an annual affidavit, the Director may authorize prize payment even though an affidavit has not been provided or is not timely provided. No interest shall be paid by the Lottery on the value of the prize during the period a prize remained unclaimed.

(l) Death During a Payment Year: If a prize winner of a Win for LifeSM top prize of \$1,000 per week for life dies after five years have elapsed from the date of validation and if a sequence of weekly prize payments are paid over the course of the year in which the prize winner dies or if a single annual prize payment has been paid prospectively to the winning

player for that year, the prize could be overpaid. It is the policy of the Lottery that the difference between the prize that should have been paid based on the date of the death of the prize winner relative to the anniversary date of validation of the prize and the prize amount that was actually paid during the year in which the prize winner died will not be subject to reimbursement by the Lottery. Any prize payment paid after the year in which the prize winner dies relative to the anniversary date of validation of the prize shall be subject to reimbursement to the Lottery.

(m) Non-Assignability: A Win for LifeSM top prize of \$1,000 per week for life is based on the unknown duration of the life of the prize winner and is therefore a prize of unspecified value and uncertain periodicity. Consequently, a Win for LifeSM top prize of \$1,000 per week for life is not a future periodic prize payment as described in ORS 461.253(1) and cannot be assigned, gifted, sold, or transferred in any manner from the winner to another person or entity except under the circumstances as described in subsection (d) of this rule.

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

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 1-2001(Temp), f. & cert. ef. 1-22-01 thru 7-21-01; LOTT 7-2001, f. 4-25-01, cert. ef. 4-26-01; LOTT 8-2002(Temp), f. & cert. ef. 7-15-02 thru 1-3-03; LOTT 20-2002, f. & cert. ef. 9-30-02; LOTT 11-2010, f. 11-19-10, cert. ef. 12-1-10; LOTT 4-2012(Temp), f. & cert. ef. 6-29-12 thru 12-21-12; LOTT 8-2012, f. 11-30-12, cert. ef. 12-16-12

177-094-0085

Retailer Selling Bonus

(1) General: For the purposes of OAR 177-040-0025(2)(a), a retailer who sells any winning and validated Win for LifeSM top prize of \$1,000 per week for life shall receive a bonus of \$13,000 which is based on one percent (1%) of an estimated prize value of \$52,000 per year paid over a period of 25 years ($\$52,000 \times 25 = \$1,300,000 \times .01 = \$13,000$).

(2) Multiple Top Prize Winning Tickets: Notwithstanding section (1) of this rule, if the Win for LifeSM top prize of \$1,000 per week for life is reduced in accordance with OAR 177-094-0080(7)(g), the selling retailer shall receive a bonus based on one percent of the actual prize amount paid over a period of 25 years. For example, if the prize value paid is \$31,200 per year, the bonus shall be $\$31,200 \times 25 = \$780,000 \times .01 = \$7,800$.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02; LOTT 4-2012(Temp), f. & cert. ef. 6-29-12 thru 12-21-12; LOTT 8-2012, f. 11-30-12, cert. ef. 12-16-12

Oregon State Treasury Chapter 170

Rule Caption: Amend Advance Refunding Rules to Include Forward Current Refundings.

Adm. Order No.: OST 2-2012(Temp)

Filed with Sec. of State: 11-19-2012

Certified to be Effective: 11-19-12 thru 5-15-13

Notice Publication Date:

Rules Amended: 170-062-0000

Subject: Modifies current Advance Refunding Rule to explicitly include to both advance refundings and forward current refundings. The Oregon State Treasury is empowered to create rules for both types of refundings (per ORS 287A.365), however, due to the rarity of forward current refundings no rule for forward current refundings has been adopted. The proposed modifications would clarify that both types of refundings require Treasury approval in accordance with the Rule.

Rules Coordinator: Curtis Hartinger—(503) 378-3150

170-062-0000

Procedure for Submission, Review and Approval of an Advance Refunding Plan

(1) Plan Contents and Filing. An Advance Refunding Plan or Forward Current Refunding Plan (the "Refunding Plan") for a public body (as defined in ORS 287A.001(13)) consists of a:

(a) Request for approval for a Refunding Plan bond sale submitted to OST. The request should include the name, phone number, U.S. mailing and e-mail address for the public body and for their bond counsel, Financial Advisor ("FA"), escrow verification agent, underwriter and trustee;

(b) Copy of the resolution, ordinance or other documents authorizing submission of the plan to the Office of the Oregon State Treasurer ("OST");

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(c) Statement of the primary purpose of the Refunding Plan bond sale. Permissible purposes are:

(A) A present value savings. To effect a savings, discounted to present value;

(B) A favorable reorganization of debt. Bonds issued for a favorable reorganization of debt require submission of a detailed written analysis elaborating the financial, legal or other benefits of the reorganization to the public body. Valid reasons for a reorganization of debt may include, but are not limited to:

(i) Replacement of undesirable or overly restrictive bond covenants or terms, such as liquidity covenants and debt service coverage requirements or release of reserve requirements;

(ii) Restructuring of debt payments considered by the public body to be favorable to the financial health of the relevant jurisdiction or its taxpayers or ratepayers;

(C) Fiscal distress. To pay or discharge all or any part of a bonded obligation or series or issue of bonds, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available.

(d) Description of the bonds to be refunded, including: date and premium, if any, when each is first callable; semi-annual debt service to final maturity for each issue; par amount originally issued, current amount outstanding, proposed amount and maturities to be refunded; the dated date; and the purpose for which the bonds were issued;

(e) Description of the Refunding Plan bond issue including the proposed: call date and premium, if any; semi-annual debt service to final maturity; present value of each semi-annual payment; par amount; dated date; sale and closing date; True Interest Cost as set forth in OAR 170-061-0000(l); and the federal arbitrage yield limit.

(f) A description of the escrow account, listing the type of securities to be used and the redemption date of the account;

(g) Preliminary Net Present Value Savings (NPVS): Present value savings is defined as the present value of the difference in debt service between the proposed refunded debt service and the proposed refunding debt service, discounted at the arbitrage yield of the refunding debt service. Any issuance expenses paid from sources other than bond proceeds and any other cash contributed to the escrow other than from bond proceeds must also be subtracted from proceeds to determine NPVS.

(h) Itemization of all administrative costs, expenses or fees associated with the Refunding Plan. OST will determine if the fees are comparable to similar offerings and if excessive, approval may be withheld;

(i) For a public body, a copy of the contract with their FA;

(j) Completed MDAC Form 1;

(k) Final Official Statement, if the bonds have been publicly offered;

(l) Final Net Present Value Savings as described in subsection (g) of this section;

(m) Copy of the arbitrage or tax certificate for the refunding;

(n) Copy of bond counsel's approving legal opinion;

(o) Copy of the escrow verification report demonstrating the ability of the escrow account to meet all future debt service and related costs relative to the refunded bonds;

(p) Copy of the Escrow Deposit Agreement;

(q) Copy of the underwriting or bond purchase agreement, if sold on a negotiated basis;

(r) Copy of the letter from FA to the public body as described in section (2) of this rule;

(s) Completed MDAC Form 2; and

(t) Completed MDAC Form 3, if using a synthetic fixed rate refunding issue.

(2) Financial Advisor required. A public body must employ a FA whose function is to advocate the interest of and advise them on the refinancing transaction. The FA must be registered with the Securities and Exchange Commission as a FA as required under 17 CFR § 240.15Ba2-6T, or its successor permanent rule. The FA cannot also serve as the underwriter in the same negotiated bond sale as required in Rule G23 of the Municipal Securities Rulemaking Board. Prior to closing, the public body and the OST must receive from the FA a letter stating that the FA has reviewed the assumptions included in the plan and that the plan is consistent with this rule. The letter must include a recommendation on the desirability or undesirability of completing the Refunding Plan and the reasons therefor. Forward current refunding plans must also include a description of the suitability of the public body for conducting a forward current refunding and an estimate in basis points of the premium paid to execute the forward refunding. The contract with the FA must reflect the obligations of the parties in the event the sale is not consummated as planned.

(3) Significant Savings Tests. Equating or surpassing any one of the following tests indicates that the present value savings purpose, as required by subsection (1)(c)(A) of this rule, has been met:

(a) Present value savings of \$5 million or more; or

(b) A minimum savings ratio of 3.0 percent for a fixed rate refunding issue or a minimum savings ratio of 5.0 percent for a synthetic fixed rate refunding issue or other interest rate exchange agreement in conjunction with the refunding issue. If using an interest rate exchange agreement to synthetically fix a variable rate issue, the agreement must be for the maturity of the variable rate issue. The savings ratio is the net total present value savings divided by the proceeds of the refunding bonds, expressed as a percent.

(4) OST Approval Procedure.

(a) Preliminary Approval. Items in subsections (1)(a) through (1)(j) of this rule are initial components of a Refunding Plan and are required for preliminary approval. If approved, the OST will notify the public body of OST's preliminary approval and state its intention to issue a final approval conditional upon receipt and approval of items in subsections (1)(k) through (1)(t) of this rule;

(b) Preliminary Refunding Plans should be submitted to OST sufficiently in advance to allow 10 working days for review. The 10-day review period begins the working day after all items (1)(a) through (1)(j) of this rule and the application fee identified in OAR 170-061-0015 have been received;

(c) Preliminary approval is valid for a period of six months from the date of the preliminary approval letter. After the six month period expires a new application fee and Refunding Plan are required.

(d) Final Approval. Items in subsections (1)(k) through (1)(t) of this rule are the final components of a Refunding Plan and must be received at least five working days prior to final approval. The five-day period begins after receipt of all items required for final approval.

(e) At the discretion of OST, drafts of preliminary and final components of Refunding Plans may be acceptable with the understanding that finalized documents will be provided within five working days of the bond closing.

(5) Administrative Expenses.

(a) To reimburse OST for the services, duties and activities of OST in connection with reviewing proposals, a fee and other expenses will be charged to public bodies as identified in OAR 170-061-0015.

(b) Ongoing Evaluation. OST evaluates the statewide impact of Refunding Plans. Adverse trends associated with Refunding Plan bond sales may result in a review and revision of the savings tests, thereby diminishing any undesirable impact upon the higher priority "new money" bond issues.

(7) Waiver of Certain Provisions. OST may waive certain provisions of this rule to accommodate unusual circumstances.

(8) Noncompliance. If OST finds that a Refunding Plan is not in substantial compliance with ORS 287A.370 and this rule, the plan may not be approved. Notice that the plan does not comply, and the reasons for this finding will be sent to the public body and its bond counsel within 30 business days after receipt of the plan.

(9) Address. Submit Refunding Plans as provided in OAR 170-055-0001(4).

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

Stat. Auth.: ORS 287A.365

Stats. Implemented: ORS 287A.360 - 287A.380

Hist.: TD 2-1986, f. & ef. 6-16-86; TD 2-1990, f. 9-18-90, cert. ef. 9-19-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 5-2004, f. & cert. ef. 6-23-04; OST 2-2006, f. & cert. ef. 8-4-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 5-2010(Temp), f. 11-29-10, cert. ef. 12-1-10 thru 5-29-11; OST 2-2011, f. & cert. ef. 4-1-11; OST 2-2012(Temp), f. & cert. ef. 11-19-12 thru 5-15-13

Rule Caption: Amend DMD Fees Rule to Waive MDAC for Bond Issuances of less than \$1 Million.

Adm. Order No.: OST 3-2012(Temp)

Filed with Sec. of State: 12-14-2012

Certified to be Effective: 12-14-12 thru 5-29-13

Notice Publication Date:

Rules Amended: 170-061-0015

Subject: Modifies current Debt Management Division (DMD) fee schedule to eliminate the the Municipal Debt Advisory Commission (MDAC) filing fee charged to local government districts for any bond sale or private placement of less than \$1 million. The MDAC

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met on November 14, 2012, and took a board action to approve this action.

Rules Coordinator: Curtis Hartinger—(503) 378-3150

170-061-0015

Fees Charged by the Debt Management Divisions

(1) State agencies. The OST shall charge the following fees in connection with the services, duties and activities of the OST related to bonds issued for state agencies by the State Treasurer:

(a) Agency Bond Issues of \$15 million or less. For a single series bond sale of \$15 million or less, a state agency will be charged \$15,000 per sale. For a bond sale of \$15 million or less by a single state agency with multiple series, the state agency will be charged the greater of (i) \$15,000 or (ii) \$6,000 per series. For a bond sale of \$15 million or less by two or more state agencies, each agency will be charged the greater of (i) \$7,500 or (ii) \$6,000 for each series sold for the agency. This subsection does not apply if the bond sale is a private placement conduit sale of \$5 million or less as described below in subsection (c).

(b) Agency Bond Issues of more than \$15 million. For a single series bond sale of more than \$15 million, a state agency will be charged \$20,000. For a bond sale of more than \$15 million by a single state agency with multiple series, the state agency will be charged the greater of (i) \$20,000 or (ii) \$7,000 per series. For a bond sale of more than \$15 million by two or more state agencies, each agency will be charged the greater of (i) \$10,000 or (ii) \$7,000 for each series sold for the state agency. This subsection does not apply if the bond sale is a private placement conduit sale described below in subsection (c).

(c) Conduit Bond Sales. A state agency will be charged: (i) \$5,000 for conduit bond sales of \$5 million or less, (ii) \$10,000 for conduit bond sales of greater than \$5 million but less than \$10 million, or (iii) \$15,000 for conduit bond sales of \$10 million or greater, that are payable solely from moneys owed by a party other than the State of Oregon, with no recourse for payment to the State of Oregon, and when the bonds are sold by a private placement, with no publicly disseminated official statement or other offering circular, to one or more sophisticated investors, accredited investors or qualified institutional buyers. Should conduit bonds be sold publicly or using an official statement then subsection (b) or subsection (c) above applies.

(d) Advance refunding or forward current refunding plan application and review. The fee for review and approval of an advance refunding or a forward current refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged. When necessary to review complex proposals, OST may consult recognized experts whose fees will be charged to the agency, whether or not the refunding is approved or completed.

(e) Tax Anticipation Notes. A state agency shall be charged \$30,000 for each sale of tax anticipation notes.

(f) Interest Rate Exchange Agreements. In addition to any other fee, \$25,000 will be charged for the review and approval of a state agency's first executed interest rate exchange agreement for a specific bond program of the agency. After the first agreement, a fee of \$10,000 will be charged for each executed interest rate exchange agreement subsequently entered into by the agency for the same bond program or indenture. These charges do not include costs such as interest rate exchange advisor fees, rating agency charges or printing costs which are payable by the agency or authority for whom the cost is incurred.

(2) Public Bodies. OST shall charge the fees set forth below in connection with the services, duties and activities of the OST related to bonds issued by public bodies in Oregon; expenses incurred in reviewing refunding and defeasance plans may be charged against the bond proceeds or may be paid by the public body from such other funds as may be available:

(a) Advance refunding or forward current refunding plan application and review. The application fee for submission of an advance-refunding plan is \$350. The fee for review and approval of an advance refunding or forward current refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged.

(b) Oregon School Bond Guarantee Program. School Districts that submit an application for participation in the Oregon School Bond Guarantee Program shall submit an application fee of \$200 to OST at the time their application is submitted. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing

of any guaranteed bonds, a fee equal to .03% (.0003) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates. If bonds are issued as "Qualified Bonds" under OAR 170-063-000 that may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of bonds, the fee for such Qualified Bonds shall be equal to .045% (.00045) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates and that there is no conversion to a different interest bearing format than the original terms of the bonds.

(3) Municipal Debt Advisory Commission. OST shall charge the following fees in connection with the services, duties and activities of the OST as staff to the Municipal Debt Advisory Commission.

(a) Administrative Tracking and Reporting fee. Local Government entities shall submit, at the time of closing, a fee equal to: (i) \$800 for bond sales of greater than or equal to \$1 million, but less than \$8 million (ii) 0.01% (0.0001) of the principal amount for bond sales of greater than \$8 million, but less than \$50 million, or (iii) \$5,000 for bond sales of \$50 million or greater. No fee is charged for a bond sale of less than \$1 million.

(b) Other fees and charges. Fees for specialized reports and services shall be determined by the number of hours spent producing such specialized report or service times the rate of \$115 per hour.

(4) Private Activity Bonds.

(a) Current Year Allocation. State agencies or public bodies that submit an application for allocation of the state's private activity bond volume limit ("CAP") for the current year to the Private Activity Bond Committee under OAR 170-071-0005 shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive CAP shall pay to OST: (i) For a bond sale of \$10 million or less, a fee equal to \$3,000, payable within 10 business days of the closing bond sale, (ii) For a bond sale of more than \$10 million, a fee equal to \$10,000 payable within 10 business days of the closing bond sale, or (iii) for a Mortgage Credit Certificate program, a fee equal to \$2,000, payable within 10 business days of the date of the notice of allocation by OST.

(b) Carry Forward Allocation. State agencies or public bodies that submit an application for carry forward CAP allocation under OAR 170-071-0005(10) shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive carry forward CAP shall pay to OST: (i) For a bond sale of \$10 million or less, a fee equal to \$3,000 of which the first \$500 is payable within 10 days of the date of the notice of allocation by OST, with the balance payable within 30 days of the closing of the first bond sale associated with the allocation, (ii) For a bond sale of more than \$10 million, a fee equal to \$10,000 of which the first \$2,000 is payable within 10 days of the date of the notice of allocation by OST, with the balance payable within 30 days of the closing of the first bond sale associated with the allocation, or (iii) for a Mortgage Credit Certificate program, a fee equal to \$2,000, payable within 10 business days of the date of the notice of allocation by OST.

(5) OST may, at its discretion, waive or reduce any fee outlined in sections (1) to (4) based on compelling financial reasons.

Stat. Auth.: ORS 286A.014, 287A.370 & 287A.634

Stats. Implemented: ORS 287A & 286A

Hist.: TD 3-1990, f. & cert. ef. 12-21-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 1-1999, f. & cert. ef. 2-1-99; OST 1-2005, f. & cert. ef. 4-22-05; OST 5-2006, f. & cert. ef. 10-25-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 2-2009, f. & cert. ef. 4-22-09; OST 3-2009, f. & cert. ef. 7-21-09; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010 f. & cert. ef. 1-15-10; OST 2-2010(Temp), f. & cert. ef. 1-26-10 thru 7-24-10; OST 4-2010(Temp), f. & cert. ef. 7-1-10 thru 12-27-10; Administrative correction 1-25-11; OST 1-2011, f. & cert. ef. 2-28-11; OST 1-2012(Temp), f. & cert. ef. 1-26-12 thru 7-1-12; Administrative correction 8-1-12; OST 3-2012(Temp), f. & cert. ef. 12-14-12 thru 5-29-13

Parks and Recreation Department Chapter 736

Rule Caption: Prohibits possession or use of alcoholic beverages at Iwetemlaykin State Heritage Area.

Adm. Order No.: PRD 8-2012

Filed with Sec. of State: 11-16-2012

Certified to be Effective: 11-16-12

Notice Publication Date: 8-1-12

Rules Amended: 736-010-0060

Subject: Since the park opened alcohol has been banned at Iwetemlaykin State Heritage Site. The temporary ban was placed by the park manager as a result of tribal concerns raised during the planning process for the park. The site is a very special place and as such it

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was determined that it should be one of the few state park properties where alcohol is prohibited.

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

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-010-0060

Alcoholic Beverages

(1) A person under 21 years of age may not possess or use alcoholic beverage(s) in any park area.

(2) A person may not possess or use alcoholic beverages in the following areas except by permit from the park manager:

(a) Bald Peak State Scenic Viewpoint;

(b) That portion of Dabney State Recreation Area downstream from the Stark Street bridge;

(c) Lewis and Clark State Recreation Site between the east bank river frontage road and the Sandy River from I-84 upstream to the park boundary;

(d) TouVelle State Recreation Site;

(e) Tumalo State Park day use area;

(f) Bonnie Lure State Recreation Area;

(g) Warm Springs boat launch access, Deschutes River, Jefferson County;

(h) Iwetemlaykin State Heritage Site; and

(i) Other park areas as signed.

(3) A person may not use an Oregon Liquor Control Commission licensed server to dispense any alcoholic beverage including malt beverages from kegs without a permit from the park manager.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 34(Temp), f. & ef. 8-7-74; 1 OTC 39, f. 10-1-74; 1 OTC 40, f. 11-1-74; OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1990(Temp), f. & cert. ef. 8-1-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 16-1992, f. & cert. ef. 12-1-92; PR 8-1996, f. 8-14-96, cert. ef. 8-15-96; Renumbered from 736-015-0058, 736-015-0063, 736-015-0070, 736-015-0097, 736-015-0144, 736-015-0146 & 736-015-0148, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2012, f. & cert. ef. 11-16-12

Rule Caption: Tribal and Oregon Youth Authority Foster Fee Waiver and No Show rules for Preregistration.

Adm. Order No.: PRD 9-2012

Filed with Sec. of State: 11-16-2012

Certified to be Effective: 11-16-12

Notice Publication Date: 9-1-12

Rules Amended: 736-015-0006, 736-015-0015

Subject: Amends the definitions section of division 15 rules (736-015-0006) to add families in homes certified by tribal governments, the Oregon Youth Authority and therapeutic Foster Homes for Children with Developmental Disabilities provided through a third party provider that has been certified by the Department of Human Services to the list of those eligible for the foster family fee waiver.

Amends the reservations section of division 15 rules (736-015-0015) and applies the standard no show rules to campers who preregister but do not arrive by 1:00 PM on the second day of their reservation.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-015-0006

Definitions

As used in this division, unless the context requires otherwise:

(1) "Adoptive Foster Families" means one or more persons who have adopted one or more foster children pursuant to ORS 418.285. At least one of the children must currently be under 18 years of age and living with the Adoptive Foster Family.

(2) "Commission" means the Oregon State Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "Director" means the director of the department.

(5) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate

observed or reported violations, and to issue oral or written warnings or citations to enforce park area rules.

(6) "Foster Families" means persons with their foster children, who currently maintain:

(a) A Foster Home, a Relative Home for Children or a Foster Home for Children with Developmental Disabilities, as described in ORS 418.625 or 443.830;

(b) A Foster Home certified by the Oregon Youth Authority under OAR chapter 416, division 530;

(c) A Foster Home certified by any of the nine federally-recognized tribal governments as listed in ORS 172.110; or

(d) A therapeutic Foster Home for Children with Developmental Disabilities provided through a third party provider that has been certified by the Department of Human Services.

(7) "In Kind Services" means a group or person who provides, at the direction of park staff, materials or services whose value to the park area equals or is greater than the normal fees.

(8) "Marketing and Promotion" generally are agency-sponsored events that are of regional or statewide significance promoting tourism or partnerships with local communities, other agencies or economic development.

(9) "Motor Vehicle" as defined in ORS 801.360 means a vehicle that is self-propelled or designed for self-propulsion. ORS 801.590 further defines "vehicle" as "any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means."

(10) "Non-Profit Entity" means a group having a 501c(3) exempt status filed with the US Department of Internal Revenue Service.

(11) "Park Area" means any state park, wayside, corridor, monument, historic, or recreation area, except portions of ocean shore recreation areas not abutting a state park or wayside, under the jurisdiction of the department.

(12) "Park Employee" means an employee of the department.

(13) "Park Facility" includes but is not limited to individual and group campsites, day use areas and shelters, cabins, yurts, tepees, camper wagons, meeting halls, lodges, pavilions, and other amenities of the department.

(14) "Park Manager" means the supervisor or designated park employee in charge of a park area.

(15) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(16) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(17) "Reduced Service Level" means a reduction in the normal level of service that a person may reasonably expect due to the department's action/inaction or park facility failure lasting longer than 24 hours.

(18) "Reservation Cancellation" means the person requests an existing reservation be ended without the creation of a new reservation.

(19) "Reservation Change" means a modification to an existing reservation by a person that changes the arrival or departure dates, a complete change to reservation dates, or changes the type of site from the original request.

(20) "Special Events" may be an activity sponsored or co-sponsored by the department, an event that provides entertainment to park visitors, or other activities that promote the mission of the department or Oregon tourism.

(21) "Split Reservation" means a stay at a park area for one person for one continuous date range that requires a mid-stay move from one site to another.

(22) "Traditional Tribal Activities" generally means traditional, spiritual, natural and cultural resource practices that would have been or which still are conducted by a federally recognized tribe or its members.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.050, 390.111, 390.121 & 390.124

Hist.: PRD 4-2005, f. & cert. ef. 5-5-05; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 5-2010, f. & cert. ef. 3-24-10; PRD 5-2011, f. & cert. ef. 8-1-11; PRD 5-2012(Temp), f. & cert. ef. 6-26-12 thru 12-20-12; PRD 9-2012, f. & cert. ef. 11-16-12

736-015-0015

Reservations

(1) Purpose: Based on the department's goal to promote outdoor recreation in Oregon, the department established a reservation program known as Reservations Northwest to increase use of park areas and facilities. The director may designate specific park facilities to offer for reservation through a centralized call center and through the Internet.

ADMINISTRATIVE RULES

(2) General Regulations:

(a) Reservations will be accepted and processed for designated park facilities through Reservations Northwest.

(b) A person may make a reservation a minimum of two days and a maximum of nine months prior to the arrival date.

(c) A person must be 18 years of age or older to make a reservation.

(d) A person who qualifies under the Americans with Disabilities Act (ADA) may reserve accessible campsites.

(e) A person may not make reservations for multiple park areas for the same date range.

(f) A person reserving a boat slip (where available) must also reserve another facility at the same park area.

(g) Reservations and registrations for horse camping sites shall be made only for people camping with their horses or similar large animals unless otherwise specified by the park manager.

(h) Split reservations are allowed to accommodate persons. Only one split reservation shall be allowed per reservation.

(i) Only the person whose name appears on the original reservation or their designee (as documented in the original reservation) may change or cancel an existing reservation or access information associated with a reservation.

(j) Customer information may be made available upon written request in compliance with ORS chapter 192 and department policy.

(k) Specific information regarding a confirmed reservation will not be released to the public as provided in ORS 192.501 and 192.502.

(3) Transaction Fees and Deposits:

(a) The department will charge a \$8 non-refundable transaction fee for each reservation made through the centralized call center or the Internet.

(b) Reservations require a facility deposit equal to the full amount charged for use of the facility during the reservation period.

(c) All fees are due at the time the person makes the reservation.

(4) Payment Methods:

(a) A person may use a valid credit card (VISA or MasterCard) or bank debit card with a VISA or MasterCard logo.

(b) A person may pay by personal check, money order, certified check, or travelers check (in U.S. funds).

(c) The department must receive payment within five calendar days of the date the person makes the reservation. If payment is not received within this time frame, the department will cancel the reservation. The person remains responsible for the \$8 transaction fee for each reservation request.

(d) If a banking institution returns a check to the department for any reason or if a credit or debit card is declined, the department will attempt to contact the person. Inability to resolve the payment dispute will result in a reservation cancellation. The person will remain responsible for the \$8 transaction fee for each reservation.

(e) Government agencies and non-profit entities may request to be invoiced for services. Reservations should be made at least 30 days prior to arrival. The department must receive payment within 25 days of the date the reservation is made. If payment is not received the department will cancel the reservation. The department will bill for the \$8 transaction fee for each reservation.

(f) A person must pay all outstanding account balances prior to making future reservations.

(5) Reservation Cancellations:

(a) A person may cancel a reservation three calendar days or more prior to their arrival date by calling Reservations Northwest. An automated reservation cancellation voice mail system is available seven days a week, 24 hours a day.

(b) A person may also cancel a reservation three calendar days or more prior to their arrival date through E-mail by accessing the department's web site and following the posted cancellation procedures. The web site is available seven days a week, 24 hours a day.

(c) A person must contact the specific park to cancel reservations with an arrival date that is two calendar days or less from the current date.

(d) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(e) In order to receive a refund of the facility deposit, a person must cancel the reservation for individual campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more calendar days prior to arrival. If the cancellation is not received three or more days in advance of the arrival date, an amount of the facility deposit fee equal to one night rental for the facility will be forfeited.

(f) In order to receive a refund of the facility deposit for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres

Garden House, Pavilions, RV Group Areas and other special facilities as designated by the department, a person must cancel the reservation at least one month prior to arrival. If the cancellation is not received one month or more in advance of the arrival date, an amount of facility deposit fee equal to one night rental for the facility will be forfeited.

(6) Reservation Changes:

(a) The department will charge an \$8 non-refundable transaction fee for each reservation change.

(b) A person may request to change a confirmed reservation by calling Reservations Northwest during normal business hours Monday through Friday.

(c) A person may also request to change a reservation through Email by accessing the department's web site and following the posted reservation change procedures. The web site is available seven days a week, 24 hours a day.

(d) A person may not make any changes to reservations more than eight months in advance of the arrival date.

(e) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(f) The department will assess a fee equal to the nightly rental fees for all nights cancelled for any reservation change resulting in a reduction in length of stay for reservation bookings greater than five nights.

(g) A person must request a reservation change for campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more days in advance of the arrival date. The department will treat reservation change requests with an arrival date of three days or less from the current date as a reservation cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(h) A person requesting a reservation change for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas, and other special facilities as designated by the department must request the change at least one month prior to arrival date. The department will treat reservation change requests with an arrival date of less than one month from the current date as a reservation cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(7) Claiming Reservations

(a) Customers with confirmed reservations must arrive before 1:00 p.m. the day following the first scheduled day of their reservation.

(b) The reserved site must remain occupied each night during the entire length of stay.

(c) In emergency situations, customers may request Park Manager approval for late arrivals not to exceed 6:00 p.m. of the second day of the reservation. Site fees for the first night will be charged regardless of the arrival time.

(d) Customers, including those that have pre-registered, who do not check in at the park or notify park staff that they will be delayed prior to 1:00 p.m. of the second day of the reservation will be considered a "no show" and the entire reservation will be cancelled. The first night fee and any transaction fees previously collected for the reservation will be retained. Any remaining nightly fees paid to confirm the reservation will be refunded.

(8) Reservations to Accommodate Organized Groups:

(a) General: To promote the use of facilities by groups and to bring efficiencies to the group reservation process, the director may offer group camping to persons reserving multiple tent, electrical or full hook-up campsites.

(b) The department will charge only one transaction fee for the group when the sites are reserved together. The department will require a facility deposit fee equal to the full amount of the site fee for each campsite at the time the reservation is made.

(c) A person must reserve a minimum of five individual campsites during Discovery Season (October 1 to April 30) or ten individual campsites during the Prime Season (May 1 to September 30) to qualify for group camping benefits.

(d) The department will charge a transaction fee of \$8 for each site cancellation or change made to the group reservation.

(e) Reservations made on the Internet for a group of sites are not eligible.

(f) A person may reserve a meeting hall (where available) for one day's free use when the minimum number of sites are reserved and used. The person may reserve the meeting hall for additional days at the normal rental rate.

ADMINISTRATIVE RULES

(g) Special facilities such as deluxe cabins and yurts, rustic cabins and yurts, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, and other special facilities as designated by the department are not included in the group camping program.

(h) A person must make reservations at least 10 days prior to arrival date to qualify for group camping benefits.

(9) When only a portion of a specific type of facility in a park is designated as ADA compliant, the department will hold the facility designated as ADA compliant for use by individuals with disabilities until all other facilities of that type have been reserved and the accessible facility is the only remaining facility of that type available in the park.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979(Temp), f. & ef. 9-9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 2-1994, f. & cert. ef. 2-9-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 10-2003, f. & cert. ef. 10-17-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0099, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2009, f. 6-2-09, cert. ef. 8-1-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 5-2010, f. & cert. ef. 3-24-10; PRD 5-2011, f. & cert. ef. 8-1-11; PRD 9-2012, f. & cert. ef. 11-16-12

Rule Caption: Register significant natural heritage resources and special species in Oregon.

Adm. Order No.: PRD 10-2012

Filed with Sec. of State: 12-13-2012

Certified to be Effective: 12-13-12

Notice Publication Date: 11-1-11

Rules Adopted: 736-045-0006, 736-045-0011, 736-045-0100, 736-045-0200, 736-045-0300, 736-045-0305, 736-045-0310, 736-045-0320, 736-045-0330, 736-045-0340, 736-045-0400, 736-045-0405, 736-045-0410, 736-045-0412, 736-045-0414, 736-045-0416, 736-045-0418, 736-045-0420, 736-045-0422, 736-045-0424, 736-045-0426, 736-045-0428, 736-045-0430, 736-045-0432, 736-045-0434, 736-045-0436, 736-045-0438, 736-045-0440, 736-045-0442, 736-045-0444, 736-045-0446, 736-045-0448, 736-045-0500, 736-045-0505

Subject: Director of Oregon Parks and Recreation Department may appoint Natural Areas Advisory Committee to advise the department and Parks Commission in managing the Oregon Natural Areas Program. The rules provide guidelines for program administration by the department; provides guidance for the registration and dedication of state natural areas, and describes documentation needed to integrate the program throughout the state consistent with similar national programs.

These rules were approved by the OPRD Commission on April 4, 2012 and represent a re-file to the May 4, 2012 version to correct a filing error.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-045-0006

Purpose

The purpose of this division is to provide a central and continuing register of areas in Oregon that contain significant natural heritage resources and special species, and describe the process used to register properties on the Oregon Register of Natural Areas.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0011

Definitions

As used in this division, the definitions in ORS 273.563 and 390.005 apply, unless the context provides otherwise:

(1) "Agency" means a local, state or federal, agency, board, commission, or department.

(2) "Commission" means the State Parks and Recreation Commission.

(3) "Committee" means the Natural Areas Advisory Committee.

(4) "Candidate natural area" means a natural resource area that may be considered for registration or dedication.

(5) "Data bank" means the Natural Areas Program inventory of natural heritage resources classification, data analysis, priority setting, owner and other data maintained by the Institute for Natural Resources under ORS 352.239.

(6) "Dedicate" means the formal recognition and protection of a natural area for conservation purposes.

(7) "Department" means Oregon Parks and Recreation Department.

(8) "Director" means the Oregon Parks and Recreation Department Director.

(9) "Instrument" means any written document intended to convey an interest in real property under ORS 93.710, or an agreement between parties according to the Natural Areas Program or the Oregon Natural Areas Plan.

(10) "Introduced plant species" means exotic or non-native species.

(11) "Managed area" means a registered or dedicated state natural area that, by management agreement between the department and private landowner, or agency, the area and its natural heritage resources are maintained in a manner to protect the natural character.

(12) "Management scheme" means a plan that sets forth in detail the responsibilities for the administration of an individual state natural area.

(13) "Natural area" means a unit of land or water or both that may be considered for dedication under ORS 273.563 to 273.591 and that has substantially retained its natural character, or, if altered in character, shall in addition to its natural heritage resource values, be valuable as habitat for plant and animal species or for the study and appreciation of natural features.

(14) "Natural heritage resources" means the terrestrial ecosystems types, aquatic ecosystems types and unique geologic types as defined in the Oregon Natural Areas Plan or a unit of land or water which contains a natural resource.

(15) "Plan" means the Oregon Natural Areas Plan established under ORS 273.578, which governs the Natural Areas Program in selecting natural areas for conservation.

(16) "Program" means the Natural Areas Program as established in ORS 273.566, which provides for the establishment of a limited system of State Natural Area representing a full range of Oregon's natural resources and includes special species of plants and animals.

(17) "Register" means the Oregon Register of Natural Areas established under ORS 273.581. The Register contains an official list of areas which have significant natural resources and special species.

(18) "Special species" means those species of plants and animals determined by the department to be of significant value in a state natural area and defined in the Plan.

(19) "State natural area" means an area that an individual, organization or public agency dedicates as a state natural area under ORS 273.586. The department classifies property dedicated as a state natural area under ORS 273.586 and this division and owned by the department as a "State Natural Area Reserve."

(20) "Wildlife" means any wild or free living vertebrate or invertebrate animal.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 & 390.005

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0100

Composition and Roles

(1) The director may appoint a Natural Areas Advisory Committee composed of nine members as follows:

(a) Three authorized representatives of state agencies with jurisdiction over a managed areas or natural areas that are appropriate for dedication, including:

- (A) The department;
- (B) Department of State Lands;
- (C) Department of Forestry;
- (D) Department of Fish and Wildlife;
- (E) Department of Education; and
- (F) Oregon Department of Transportation;

(b) Two authorized representatives of federal natural resources management agencies, such as the U.S. Forest Service and Bureau of Land Management; and

(c) Four individuals recognized as experts in the ecology of natural areas. Desirable fields of expertise are botany, zoology, terrestrial ecology, aquatic biology and geology;

(2) Members appointed under subsection (1)(c) may serve two consecutive four-year terms on the committee. However, the director shall appoint the first committee members following the effective date of this rule to serve a two, three, or four-year term.

(3) The director shall appoint the chair from the committee membership, considering the recommendations of the committee.

ADMINISTRATIVE RULES

(4) The committee shall meet at times and places specified by the call of the director.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) Function and duties of the Natural Areas Advisory Committee. Upon the request of the director, the committee may assist the department in:

(a) Development of policy for the Natural Areas Program through the review and approval of the Oregon Areas Plan;

(b) Reviewing nominations for registration and the voluntary dedication of State Natural Area Reserves, and review instruments of dedication for such areas;

(c) Providing recommendations to the commission, State Land Board, State Board of Forestry, State Fish and Wildlife Commission, State Board of Higher Education and Oregon Transportation Commission regarding areas under their respective jurisdictions which are appropriate for dedication; and

(d) Advising the commission in the adoption of rules that may be considered necessary in carrying out ORS 273.563 to 273.591.

(7) Members of the advisory committee are not entitled to compensation, but in the discretion of the director may be reimbursed from funds available to the department for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.573

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0200

Acceptance of Funds

(1) The department may accept monies for, but not limited to, documents, including records, reports or maps pertaining to Program data, and services under this division.

(2) The department may apply for and accept grants, contributions and assistance from any federal, state or local government agency and any foundation, individual or organization for the purpose of carrying out the provisions of ORS 273.563 to 273.591.

(3) All money received by the department for the purposes of this division shall be paid into the State Treasury and credited to the Natural Areas Program Account.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0300

Criteria for Inclusion in or Removal from the Register

The commission must determine criteria for inclusion in the Register to fulfill not only the definition of a natural area but the natural heritage resources and site considerations within the priorities and criteria for conservation in the Plan. The commission, department, the committee upon request pursuant to OAR 736-045-0100(6)(b), and the Institute for Natural Resources pursuant to ORS 352.239(2)(g) will use the following criteria in evaluating a candidate natural area proposed for inclusion in or removal from the Register:

(1) The priority for protection in the Plan of the primary natural heritage resources objective and other natural heritage resources in the candidate natural area;

(2) Whether the natural heritage resource occurrence(s) is an adequate representative of the type;

(3) The extent to which each natural heritage resource has retained its natural character, i.e., a measurement of the degree of human-caused disturbance;

(4) The health and viability of the natural heritage resource occurrence(s), i.e., the ability of each natural heritage resource occurrence to perpetuate itself or its natural sequence of development in the candidate natural area;

(5) The number of natural heritage resources that will be adequately represented in the candidate natural area;

(6) The degree of uniqueness and educational and natural interpretation values of a geologic resource(s);

(7) The priority of protection given in the Plan to each special species of plant or animal;

(8) The contribution the particular candidate natural area will make to the protection of the special species;

(9) Manageability, i.e., the capability of the candidate natural area to be managed to protect and maintain the natural values, as well as to make it available and useful for its designated purposes;

(10) Whether there are alternative methods of accomplishing the same purposes of this division; and

(11) The cost effectiveness of including a candidate natural area in the Register.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591 & 352.239(2)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0305

Procedures for Registering

The department and the Institute for Natural Resources will review and provide recommendations on proposals for registration and dedication of natural areas for the Register, together with field evaluation, maps and sufficient data to complete the register file. Pursuant to OAR 736-045-0100(6)(b), the director may also request that the committee review a nomination for the Register.

(1) A proposal for the Register of private land shall include the written permission for registration of the landowner.

(2) The commission may place a natural area onto the Register or remove a natural area from the Register. The department will provide recommendation to the commission for its consideration.

(3) A voluntary management agreement may be developed between the department and a private landowner or agency of a natural area on the Register.

(4) The commission may enter onto the Register any candidate natural area that a federal or state agency establishes by public hearing and dedicates under this division.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591 & 352.239(2)(g)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0310

Register File

The Register may include file(s) of registered state natural areas or state natural area reserves:

(1) The card file may include name of a state natural area, location, size, ownership, register category, and principal natural heritage resource(s) and special species. The card file may be cross referenced by county and principal resource.

(2) The data file may include:

(a) Data form — comprehensive information compiled for each state natural area;

(b) Instrument of dedication or other documents certifying official dedication;

(c) Consent form — written permission for registration for a state natural areas on private land;

(d) Supportive data — includes maps, photographs, remote sensing imagery, species lists, field notes, reports, research papers, and references to other information available;

(e) Cross references to the data bank maintained by the Institute for Natural Resources pursuant to ORS 352.239(2)(f) — to data file, computer and manual file consistent with data bank components;

(f) Implementation data — written management agreement pertaining to the state natural area; and

(g) Summary sheet — a map and one page summary of information about each area which can be duplicated and circulated to appropriate authorities.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591 & 352.239(2)(f)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0320

Location and Maintenance of Register

The department will maintain the Oregon Register of Natural Areas at the department's office in Salem, OR.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.581(1)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0330

Register Review

The department may review and update the Register every five years.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

ADMINISTRATIVE RULES

736-045-0340

Register Withdrawal

The commission may remove natural areas from the Register. The commission will consider ORS 273.586(4) and the factors in OAR 736-045-0300 in removing a state natural area or state natural area reserve from the Register.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.581(4) & 273.586(4).
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0400

Purpose

The purpose and scope of dedication is to establish and maintain the integrity of the Plan, and the Program, by means of written formal recognition and protection of a natural area of land, water, or both land and water for natural heritage conservation purposes.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0405

Instruments of Dedication

(1) Private dedication – a private individual or organization that is the owner of any registered natural area may voluntarily agree to dedicate that area as a state natural area by executing with the department, an instrument of dedication. Instrument provisions and policies include, but are not limited to, the following:

(a) An agreement that provides each natural heritage resource in the state natural area with the most secure protection obtainable;

(b) An unlimited period of time, or a term sufficiently long to warrant dedication protection;

(c) Permission for conducting scientific research and other activities shall be commensurate with Program objectives; and

(d) Termination of dedication may occur upon written notification to the commission, including specific reasons for termination, and provision by the commission of opportunity for adequate public notice and hearing.

(2) The department shall file an executed instrument of dedication of a state natural area under private ownership under section (1) in the office of the clerk of the county in which any or all of the state natural area is located, and shall be effective upon its recording.

(3) The department shall provide a copy of the dedication and management agreement(s) to the private owner of a state natural area.

(4) Agency dedication — any public agency may dedicate lands under the provisions of ORS 273.563 to 273.591, this division, and the Plan, after providing the opportunity for adequate public notice and hearing.

(5) The Oregon Transportation Commission, the State Fish and Wildlife Commission, the State Board of Forestry, the State Board of Higher Education, and the State Land Board shall, with the advice and assistance of the department, establish procedures for the dedication of state natural areas on land or water, the title of which is held by the State of Oregon, and which is under that agency's management and control.

(6) Instruments of dedication under sections (1) and (4) shall contain any information or provisions as the private owner, organization or agency and department consider necessary to complete the dedication.

(7) Termination of the dedication of a state natural area by a public agency or a state natural area reserve by the department requires that the terminating agency:

(a) Provide an opportunity for adequate public notice and hearing; and

(b) Makes a finding of either:

(A) An imperative and unavoidable necessity due to natural disaster in the site, need of the natural resource during time of declared war, or the need of the natural resource because of extreme economic crisis of the state; or

(B) That the state natural area or state natural area reserve is no longer needed according to the guidelines of the Plan, or has permanently lost its character, subject to the department's approval.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.586
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0410

Publicity

The department and the Institute for Natural Resources may develop and make available to private landowners, researchers, agencies and interested persons information about a state natural area or state natural area reserve and appropriate descriptive material. However, publicity which would tend to encourage the general public to visit a state natural area or

state natural area reserve in greater numbers than its carrying capacity will be avoided.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591 & 352.239(2)(f).
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0412

Reports

At regular intervals the department may make or cause to be made a record of management activities and other influences affecting each state natural area and state natural area reserve.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0414

Instruments

The instruments of dedication shall include, but not be limited to, the following:

(1) The size, location, purpose, and resources of the state natural area or state natural area reserve;

(2) A management scheme written for each state natural area or state natural area reserve which describes:

(a) The conservation objective of the area;

(b) Proscribed, allowed and prohibited activities on the area; and

(c) Provisions as consistent as possible with OAR 736-045-0410 through 736-045-0448, which, unless otherwise noted, are a part of each management scheme.

(3) Agreements between the department and any agency necessary to establish the state natural area or state natural area reserve.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0416

State Natural Area Manager

Notwithstanding the instruments of dedication, managers of state natural areas or state natural area reserves shall not take any action or fail to take any action that is in conflict with an applicable statute, rule, regulation or policy relating to an agency having an interest in or responsibility for the state natural area or state natural area reserve.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0418

Fire

Prescribed fire may only be used as a management tool in such areas or situations where fire is needed to maintain or protect a state natural area or state natural area reserve as an ecosystem type specified in the management scheme.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0420

Water Level Control

Agencies shall manage state natural areas and the department shall manage state natural area reserves to maintain their natural water levels. Water levels which have previously been altered by man may be changed if provided for in the management scheme as essential for the restoration of natural conditions.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0422

Disturbance of Natural Features

The management of state natural area and state natural area reserves shall not include the cutting or removal of vegetation or the disturbance of other natural features, except that which is essential to carry out the management scheme enumerated in this division.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0424

Visitor Protection

Guard rails, fences, steps, and bridges may be provided when essential to the safety of a reasonable alert and cautious visitor.

Stat. Auth.: ORS 390.124(4)

ADMINISTRATIVE RULES

Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0426

Erosion Control

Erosion and soil deposition due to disturbances of natural conditions by man within or outside a state natural area or state natural area reserve may be controlled as provided in the management scheme.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0428

Scenic or Landscape Management

No measures or actions shall be taken to alter the natural growth or features of a state natural area or state natural area reserve for the purpose of enhancing its neatness, beauty, or amenities.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0430

Control of Succession

Control of succession may be undertaken only if maintenance or restoration of a particular ecosystem type or preservation of threatened or endangered species is designated in the instruments of dedication as an objective of the state natural area or state natural area reserve. Based on scientific evidence of necessity, successional control measures may be undertaken as provided in the management scheme. Such measures shall be applied with caution and only to that part of the area as is necessary.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0432

Control of Introduced Plant Species

Control of introduced plant species may be undertaken as provided in the management scheme.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0434

Control of Wildlife Populations

The control of wildlife populations on state natural areas and state natural area reserves shall be by agreements between the commission and Oregon Department of Fish and Wildlife, or other agency. As far as practical, any control measures shall be to correct those situations where wildlife populations are significantly affecting natural conditions on a state natural area or state natural area reserve.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - ORS 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0436

Introduction and Management of Special Species

The introduction into or the management of a state natural area or state natural area reserve for special wildlife species shall be by agreement between the commission and the Oregon Department of Fish and Wildlife, Oregon Department of Agriculture or other agency as provided in the management scheme.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0438

Use Tolerance

The management scheme shall set forth the use tolerance or durability of all or any portion of a state natural area or state natural area reserve and specify the steps to be taken if overuse occurs.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0440

Collecting Permits

A person wishing to collect material from a site for the purposes of research, education or restoration within a state natural area or state natural area reserve shall secure written permission from:

- (1) The department;
- (2) The owner of the land; and

(3) The appropriate agency if any, including but not limited to the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0442

Boundary Markers

When feasible, boundaries of a state natural area or state natural area reserve may be made evident by placing markers at corners or other strategic locations or by boundary signs.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0444

Fences

Fences and barriers may be installed as provided in the management scheme.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0446

Trails

The location and specifications of any trails may be established in the management scheme. Trails shall be adequate to provide for permitted use of a state natural area or state natural area reserve, but otherwise kept to a minimum. The use of paving materials, footbridges and elevated walks may be permitted when necessary.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0448

Other Structures and Improvements

Signs and temporary research installations may be permitted within a state natural area or state natural area reserve. No other structures or facilities shall be located within a state natural area or state natural area reserve except as provided in the management scheme or this division.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0500

Amendments

The commission may review and approve or disapprove any modification to the Plan submitted by the department.

Stat. Auth.: ORS 390.124(4)
Stats. Implemented: ORS 273.578(2)
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0505

Waiver of Rules

The commission may waive all or any part of this division that would prevent the establishment, management, or protection of a state natural area or state natural area reserve if such rule is in conflict with an applicable statute, rule, regulation, or policy relating to an agency having an interest in or responsibility for the state natural area or the department interest in or responsibility for the state natural area reserve.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 273.563 - 273.591
Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

Rule Caption: Amendment to OAR 736-018-0045 for adoption of the Cape Lookout State Park Comprehensive Plan.

Adm. Order No.: PRD 11-2012

Filed with Sec. of State: 12-13-2012

Certified to be Effective: 12-31-12

Notice Publication Date: 3-1-12

Rules Amended: 736-018-0045

Subject: ORS 390.180(1) authorizes the Director of the Oregon Parks and Recreation Department to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting a new master plan for Cape Lookout State Park, titled Cape Lookout State Park Comprehensive Plan. Master plans for state parks are adopted as administrative rules under OAR 736-018-0045. The

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purpose of amending OAR 736-018-0045 is to adopt the Plan as an Oregon Administrative Rule.

The Cape Lookout State Park Comprehensive Plan responds to the most current information on park resource conditions and public recreation needs as they pertain to this park. The Plan was formulated through OPRD's mandated planning process which included meetings and written comment opportunities involving the general public, a planning advisory committee, local residents, tribes that are affiliated with the area, and affected state and federal agencies and local governments. The Department held a rule-making hearing and accepted testimony on the proposed rule amendment for adoption of the Plan.

The Cape Lookout State Park Comprehensive Plan has no affect on small businesses. However, businesses have had the same opportunities to be involved, through public meetings and written comment opportunities, as other members of the public.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-018-0045

Adopted State Park Master Plan Documents

(1) The following state park master plan documents have been adopted and incorporated by reference into this division:

- (a) Fort Stevens State Park Master Plan, as amended in 2001;
- (b) Cape Lookout State Park, amended in 2012 as Cape Lookout State Park Comprehensive Plan;
- (c) Cape Kiwanda State Park, renamed as Cape Kiwanda State Natural Area;
- (d) Nestucca Spit State Park, renamed as Robert Straub State Park;
- (e) Jessie M. Honeyman Memorial State Park as amended in 2009;
- (f) Columbia Gorge Management Unit Master Plan, including: Rocky Butte State Scenic Corridor, Lewis and Clark State Recreation Site, Dabney State Recreation Area, Portland Womens' Forum State Scenic Viewpoint, Crown Point State Scenic Corridor, Guy W. Talbot State Park, George W. Joseph State Natural Area, Rooster Rock State Park, Shepperd's Dell State Natural Area, Bridal Veil Falls State Scenic Viewpoint, Dalton Point State Recreation Site, Benson State Recreation Area, Ainsworth State Park, McLoughlin State Natural Area, John B. Yeon State Scenic Corridor, Bonneville State Scenic Corridor, Sheridan State Scenic Corridor, Lang Forest State Scenic Corridor, Lindsey Creek State Scenic Corridor, Starvation Creek State Park, Viento State Park, Wygant State Natural Area, Vinzenz Lausman Memorial State Natural Area, Seneca Fouts Memorial State Natural Area, Koberg Beach State Recreation Site, Memaloose State Park, and Mayer State Park;
- (g) Molalla River State Park;
- (h) Champoeg State Park;
- (i) Willamette Mission State Park;
- (j) Cascadia State Park;
- (k) Willamette River Middle Fork State Parks Master Plan, 2006, including: Elijah Bristow State Park; Jasper State Recreation Site; Pengra Access; Dexter State Recreation Site; Lowell State Recreation Site; and the parks that comprise the Fall Creek State Recreation Area, including Winberry Park, North Shore Park, Sky Camp, Cascara Campground, Fisherman's Point Group Camp, Free Meadow, Lakeside 1 and Lakeside 2;
- (l) Cove Palisades State Park Master Plan, as amended in 2002;
- (m) Silver Falls State Park Master Plan, as amended in 2009;
- (n) Curry County State Parks Master Plan, including: Floras Lake State Park, renamed as Floras Lake State Natural Area; Cape Blanco State Park; Paradise Point Ocean Wayside, renamed as Paradise Point State Recreation Site; Port Orford Heads Wayside, renamed as Port Orford Heads State Park; Humbug Mountain State Park; Otter Point Wayside, renamed as Otter Point State Recreation Site; Cape Sebastian State Park, renamed as Cape Sebastian State Scenic Corridor; Otter Point Wayside; Port Orford Cedar Forest Wayside, renamed as Port Orford Cedar Forest State Scenic Corridor; and Buena Vista Ocean Wayside; Pistol River State Scenic Viewpoint; Samuel H. Boardman State Scenic Corridor; Harris Beach State Recreation Area; McVay State Recreation Site; Winchuck State Recreation Site; Crissey Field State Recreation Site; Alfred A. Loeb State Park;
- (o) Hat Rock State Park Master Plan, renamed as Hat Rock State Recreation Area;
- (p) Deschutes County State Parks, including: La Pine and Tumalo State Parks; Cline Falls, renamed as Cline Falls State Scenic Viewpoint; and Pilot Butte, renamed as Pilot Butte State Scenic Viewpoint;
- (q) Sunset Bay District Parks, including: Umpqua Lighthouse State Park (this chapter was replaced by the Umpqua Lighthouse State Park

Master Plan, 2004); William M. Tugman State Park; Yoakam Point State Park, renamed as Yoakum Point State Natural Site; Sunset Bay State Park; Shore Acres State Park; and Cape Arago State Park;

(r) Bullards Beach District Parks, including: Seven Devils State Wayside, renamed as Seven Devils State Recreation Site; Bullards Beach State Park; Bandon Ocean Wayside, renamed as Face Rock State Scenic Viewpoint; and Bandon State Park, renamed as Bandon State Natural Area;

(s) Tillamook County Coastal State Parks, including: Oswald West State Park; Nehalem Bay State Park (this chapter was replaced by the Nehalem Bay State Park Master Plan, 2009); Cape Meares State Park, renamed as Cape Meares State Scenic Viewpoint; Neahkanie-Manzanita State Wayside, renamed as Neahkanie-Manzanita State Recreation Site; Manhattan Beach State Wayside, renamed as Manhattan Beach State Recreation Site; Rockaway Beach State Wayside, renamed as Rockaway Beach State Recreation Site; Twin Rocks State Wayside, renamed as Twin Rocks State Natural Site; Oceanside Beach State Wayside, renamed as Oceanside Beach State Recreation Site; and Neskowin Beach State Wayside, renamed as Neskowin Beach State Recreation Site;

(t) Beverly Beach District Parks South, including: Boiler Bay State Park, renamed as Boiler Bay State Scenic Viewpoint; Rocky Creek State Wayside, renamed as Rocky Creek State Scenic Viewpoint; Otter Crest State Wayside, renamed as Otter Crest State Scenic Viewpoint; Devil's Punchbowl State Park, renamed as Devil's Punchbowl State Natural Area; Beverly Beach State Park; Agate Beach State Wayside, renamed as Agate Beach State Recreation Site; and Ellmaker State Park, renamed as Ellmaker State Wayside;

(u) Smith Rock State Park;

(v) Collier District Parks, including: Booth State Wayside, renamed as Booth State Scenic Corridor; Chandler State Wayside; Collier Memorial State Park; Goose Lake State Recreation Area; Jackson F. Kimball State Park, renamed as Jackson F. Kimball State Recreation Site; and Klamath Falls-Lakeview Forest Wayside, renamed as Klamath Falls-Lakeview Forest State Scenic Corridor;

(w) Banks-Vernonia State Park, renamed as Banks-Vernonia State Trail;

(x) Sumpter Valley Dredge State Park, renamed as Sumpter Valley Dredge State Heritage Area;

(y) Illinois River Forks State Park;

(z) Wallowa County State Parks Master Plan, 2000;

(aa) L.L. "Stub" Stewart Memorial State Park Master Plan, 2005;

(bb) Master Plan for Clay Myers State Natural Area at Whalen Island, 2003;

(cc) South Beach State Park Master Plan, 2003;

(dd) Prineville Reservoir Resource Management Plan/Master Plan, 2003;

(ee) Detroit Lake State Park Master Plan, 2002;

(ff) Umpqua Lighthouse State Park Master Plan, 2004;

(gg) Fort Yamhill State Heritage Area Master Plan, 2004;

(hh) Thompson's Mills State Heritage Site Master Plan, 2006;

(ii) Luckiamute State Natural Area Master Plan, 2009;

(jj) Iwetemlaykin State Heritage Site Master Plan, 2009;

(kk) Kam Wah Chung State Heritage Site Master Plan, 2009;

(ll) Nehalem Bay State Park Master Plan, 2009;

(mm) Bates State Park Master Plan, 2010;

(nn) Cottonwood Canyon State Park Comprehensive Plan, 2012.

(2) The master plan documents which have been incorporated by reference into this division are available from the State Parks and Recreation Department, 725 Summer Street NE, Suite C, Salem OR 97301.

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

Stat. Auth.: ORS 390.180(1)(c)

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

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98; PRD 4-1999, f. & cert. ef. 5-14-99; PRD 9-2000, f. 6-14-00, cert. ef. 7-1-00; PRD 1-2001, f. & cert. ef. 2-1-01; PRD 5-2001, f. & cert. ef. 6-29-01; PRD 6-2001, f. & cert. ef. 9-6-01; PRD 3-2002, f. & cert. ef. 3-22-02; PRD 2-2003, f. & cert. ef. 2-27-03; PRD 3-2003, f. & cert. ef. 2-27-03; PRD 5-2003, f. & cert. ef. 7-8-03; PRD 9-2003, f. & cert. ef. 10-13-03; PRD 11-2003, f. & cert. ef. 11-7-03; PRD 7-2004, f. & cert. ef. 5-14-04; PRD 9-2004, f. & cert. ef. 6-14-04; PRD 1-2005, f. & cert. ef. 2-4-05; PRD 3-2005, f. & cert. ef. 5-4-05; PRD 4-2006, f. 7-14-06, cert. ef. 7-14-06; PRD 5-2006, f. 9-15-06, cert. ef. 10-1-06; PRD 1-2009, f. 1-15-09, cert. ef. 2-1-09; PRD 3-2009, f. 3-12-09, cert. ef. 4-1-09; PRD 4-2009, f. 4-15-09, cert. ef. 5-1-09; PRD 5-2009, f. 4-15-09, cert. ef. 5-1-09; PRD 6-2009, f. 5-14-09, cert. ef. 6-1-09; PRD 12-2009, f. & cert. ef. 9-3-09; PRD 13-2009, f. 9-15-09, cert. ef. 10-1-09; PRD 9-2010, f. 9-15-10, cert. ef. 10-1-10; PRD 6-2012, f. 9-13-12, cert. ef. 9-14-12; PRD 11-2012, f. 12-13-12, cert. ef. 12-31-12

ADMINISTRATIVE RULES

Physical Therapist Licensing Board Chapter 848

Rule Caption: Implement a one time renewal fee reduction to optimize Board reserve balance.

Adm. Order No.: PTLB 2-2012(Temp)

Filed with Sec. of State: 11-30-2012

Certified to be Effective: 1-1-13 thru 3-31-13

Notice Publication Date:

Rules Amended: 848-005-0020

Subject: To optimize its surplus reserve account balance, the Board will implement a ONE TIME renewal fee reduction of 25%. This will change the 2013 renewal fee for PTs from \$100 to \$75 and for PTAs from \$65 to \$48.75.

Rules Coordinator: James Heider—(971) 673-0203

848-005-0020

Board Fees and Refunds

(1) The following fees shall be paid to the Board:

(a) Physical Therapist or Physical Therapist Assistant Examination Application Fee of \$150.00, plus the actual cost to the Board of conducting a nationwide background check.

(b) Physical Therapist or Physical Therapist Assistant Endorsement Application Fee of \$150.00, plus the actual cost to the Board of conducting a nationwide background check.

(c) Physical Therapist special one-time reduced renewal fee for licenses renewed 1.1.13 through 3.31.13 of \$75.00.

(d) Physical Therapist Assistant special one-time reduced renewal fee for licenses renewed 1.1.13 through 3.31.13 of \$48.75.

(e) Lapsed License Renewal Fee of \$50.00 for renewal applications postmarked or received by the Board after March 31st.

(f) On-line renewal and application convenience fee not to exceed the actual processing costs of an on-line electronic transaction.

(g) Physical Therapist or Physical Therapist Assistant Temporary Permits Fee of \$50.00.

(h) Duplicate License Fee of \$25.00.

(i) Physical Therapist or Physical Therapist Assistant Wall Certificate Fee of \$15.00.

(j) Physical Therapist or Physical Therapist Assistant Verification of Oregon Licensure Letters/Forms Fee of \$25.00.

(k) Non-Sufficient Funds (NSF) Check Fee of \$25.00.

(l) Miscellaneous Fees:

(A) Physical Therapist and/or Physical Therapist Assistant electronic mailing list fee of \$150.00.

(B) Photocopying Fee of ten cents (\$0.10) per copy.

(2) Board refunds of overpayments in any amount less than \$25.00 will be held by the Board unless the payor requests a refund in writing.

Stat. Auth.: ORS 182.466(4)

Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110

Hist.: PT 6-1996, f. & cert. ef. 9-5-96; PT 3-1997, f. & cert. ef. 6-9-97; PLTB 1-1998, f. & cert. ef. 2-9-98; PTLB 6-1999, f. 11-23-99, cert. ef. 1-1-00; PTLB 4-2000, f. & cert. ef. 12-21-00; Renumbered from 848-010-0110, PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 3-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 2-2012(Temp), f. 11-30-12, cert. ef. 1-1-13 thru 3-31-13

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

Rule Caption: Factors for deciding whether to audit a school district or education service district.

Adm. Order No.: AUDIT 2-2012

Filed with Sec. of State: 11-27-2012

Certified to be Effective: 11-27-12

Notice Publication Date: 10-1-12

Rules Adopted: 162-050-0020

Subject: Identifies factors to be used by the Secretary of State Audits Division when deciding whether to initiate a performance audit of a school district or education service district.

Rules Coordinator: Julie A. Sparks—(503) 986-2262

162-050-0020

Audits of School Districts and Education Service Districts

(1) Pursuant to ORS 297.210, the Secretary of State shall use the following factors to determine whether to initiate a performance audit of a school district or education service district:

(a) Total annual expenditures of district

(b) Total full time equivalent employees of district

(c) The district's annual financial audit, including any findings it contains

(d) Any other audits, reviews or reports indicating inappropriate, inefficient or ineffective operations or business practices at one or more school districts or education service districts

(e) A request from the Department of Education

(f) A request from the Governor

(g) A request from a member or committee of the Oregon Legislature

(h) A request from a school district or education service district

(i) A request from a member of the public

(j) Evaluation of any response given to the Secretary of State by a school district or education service district after notice of intent to audit is made to the district by the Secretary of State.

(2) The Secretary shall weigh these factors when determining whether to initiate an audit.

(3) The Secretary shall forward a copy of any audit conducted pursuant to this rule to:

(a) The Governor

(b) The school district board or the board of directors of an education service district that is the subject of the audit

(c) The requestor of the audit if there is one

(d) Any other entity that the Secretary determines would benefit from review of the audit or that has requested a copy of the audit

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297-210

Hist.: AUDIT 2-2012, f. & cert. ef. 11-27-12

**Secretary of State,
Elections Division
Chapter 165**

Rule Caption: Adjusting terms of office for Cammann Special Road District in Coos County.

Adm. Order No.: ELECT 13-2012

Filed with Sec. of State: 11-29-2012

Certified to be Effective: 11-29-12

Notice Publication Date: 10-1-12

Rules Adopted: 165-020-0440

Subject: This rule adjusts the terms of office of the district board of commissioners for the Cammann Special Road District, a special district formed in Coos County at the May 18, 2010, Primary Election.

The terms must be adjusted to provide for future election in May of odd numbered years, as provided in ORS 255.335.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-0440

Adjusting the Terms of Office for Cammann Special Road District Commissioners

(1) This rule adjusts the terms of office for the district board of commissioners for the Cammann Special Road District, a Coos County special district created by election at the May 18, 2010 primary election. The terms must be adjusted to expire on odd-numbered years to conform to the regular district election schedule in ORS 255.335.

(2) The position numbers are assigned the following length of terms:

(a) Position 1, term to expire June 30, 2015;

(b) Position 2, term to expire June 30, 2017;

(c) Position 3, term to expire June 30, 2015.

(3) Following the expiration of these adjusted terms, each position will be filled by election at the regular district election for a four year term.

Stat. Auth.: ORS 246.150, 255.325

Stats. Implemented: ORS 255.335

Hist.: ELECT 13-2012, f. & cert. ef. 11-29-12

ADMINISTRATIVE RULES

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Amends rules related to administrators, highly qualified teachers and professional development. Repeals test waiver rules.

Adm. Order No.: TSPC 10-2012

Filed with Sec. of State: 11-19-2012

Certified to be Effective: 11-19-12

Notice Publication Date: 9-1-2012

Rules Adopted: 584-018-0220

Rules Amended: 584-080-0031, 584-090-0115, 584-100-0038, 584-100-0091, 584-100-0096

Rules Repealed: 584-036-0082, 584-052-0030, 584-052-0031, 584-052-0032, 584-052-0033

Subject: ADOPT: 584-018-0220 – *Knowledge, Skills, Abilities, and Professional Dispositions for Education Service District (ESD) Leadership Endorsement* – Adopts standards to add an ESD leadership endorsement to an administrative license.

AMEND: 584-080-0031 – *Distinguished Administrator License* – Clarifies qualifying licenses, adds experience required to obtain license.

584-090-0115 – *Professional Development Requirements* – Clarifies new requirements, allows for carryover credits;

584-100-0038 – *HOUSSE for Secondary Teachers Not New to the Profession* – Clarifies definition of secondary teacher and stresses district responsibility to track highly qualified status;

584-100-0091 – *Licensed and Registered Elementary Charter School Teacher* – Clarifies that a registered elementary charter school teacher may also meet the definitions of highly qualified teacher;

584-100-0096 – *Licensed and Registered Secondary Charter School Teacher* – Clarifies that a registered secondary charter school teacher may also meet the definitions of highly qualified teacher.

REPEAL: 584-036-0082 – *Courses in Lieu of or in Preparation for Basic Skills Examination* – allowed for waiver of basic skills tests with coursework;

584-052-0030 – *Eligibility for Alternative Assessment* – Defined eligibility for licensure content test waiver;

584-052-0031 – *Evidence Needed for Subject-Matter Alternative Assessment* – Outlined materials required to seek alternative assessment;

584-052-0032 – *Determination of Subject-Matter Competency through Alternative Assessment* – Procedure for evaluating alternative assessment;

584-052-0033 – *Resubmissions of Alternative Assessments* – Procedures to resubmit alternative assessment application.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-018-0220

Knowledge, Skills, Abilities, and Professional Dispositions for Education Service District (ESD) Leadership Endorsement

The licensed administrator eligible for the Education Service District (ESD) Leadership endorsement:

(1) Understands the history of education service agencies in Oregon and the history of education service agencies nationally;

(2) Understands the uniqueness of education service agencies and their role in enhancing K–12 educational services to students;

(3) Demonstrates an understanding of regional school improvement initiatives which are supported by evidence-based practices and state initiatives;

(4) Understands and demonstrates the ability to be entrepreneurial in developing services and products for component school districts;

(5) Understands the differences and demonstrates the ability to accommodate large and small district needs in the Local Service Plan;

(6) Understands the various education service agency business models, including the effectiveness and efficiencies found in each;

(7) Demonstrates an understanding of effective change processes;

(8) Demonstrates the ability to form networks with regional agencies and component school districts;

(8) Demonstrates the skills to understand and influence the political climate surrounding education service agencies;

(9) Understands the unique features of Oregon school finance as it relates to education service districts;

(10) Demonstrates the ability to effectively use group facilitation and consensus building skills;

(11) Demonstrates the ability to focus on the future through strategic planning, data gathering, and other relevant skills; and

(12) Acts with integrity, fairness, and in an ethical manner in interactions with education service district constituents and stakeholders.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430, 342.455–342.495; 342.533

Hist.: TSPC 10-2012, f. & cert. ef. 11-19-12

584-080-0031

Distinguished Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Distinguished Administrator License.

(2) The Distinguished Administrator License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Distinguished Administrator License is voluntary and is valid for school administration at all age or grade levels in any position and for substitute teaching at any level in any specialty.

(4) To be eligible for a Distinguished Administrator License, an applicant must have:

(a) Completed, beyond the advanced administrator program specified in OAR 584-080-0022 an advanced education leadership or school administration program consisting of at least 12 semester hours or 18 quarter hours of graduate credit or the equivalent; or in the alternative, hold a regionally accredited doctor's degree in school administration or educational leadership.

(A) Completion of the advanced program must be verified by the institution offering the program or through official transcripts.

(B) Doctorates in programs other than school administration or educational leadership do not qualify for this license.

(b) Five years of full time experience on a Standard, Initial, Continuing, Transitional or out-of-state administrative license valid for the assignment functioning as a superintendent in a public school district, education service district, or regionally accredited private school system; and

(c) Have obtained a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights and professional ethics.

(5) The Distinguished Administrator License may be renewed for five years upon completion of continuing professional development pursuant to OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455 – 342.495; 342.533

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TPSC 10-2012, f. & cert. ef. 11-19-12

584-090-0115

Professional Development Requirements

(1) Applicants for licensure renewal must complete professional development units as described in this rule. These professional development requirements apply to all actively licensed educators listed in OAR 584-090-0100(4), including those who are retired or work less than half-time in a contracted position and those who hold provisional licenses.

(2) All educators renewing a Five-Year Teaching License issued prior to 1965, Basic, Standard, Limited Teaching, Initial II or, Continuing License and currently subject to the Commission's Continuing Professional Development requirements must continue to meet the PDU requirements set forth in subsection (7) below.

(3) All licensed educators holding renewable licenses are subject to PDU reporting upon licensure renewal.

(a) All licensees, except Substitute or Restricted Substitute license holders, reporting PDU's for the first time pursuant to this rule, will have the requirements phased in on the following schedule. Renewing educators whose license expires in:

(A) 2013 must complete 25 PDUs total;

(B) 2014 must complete 50 PDUs total; and

(C) 2015 or later must complete 25 PDUs per year of the license.

(b) All Substitute and Restricted Substitute Teaching License holders reporting PDU's for the first time pursuant to this rule, will have the requirements phased in on the following schedule. Renewing substitute teaching license holders who's license expires in:

(A) 2013 must complete 10 PDUs total;

(B) 2014 must complete 20 PDUs total; and

ADMINISTRATIVE RULES

(C) 2015 must complete 30 PDUs total.

(4) PDUs counted toward licensure renewal may be earned at any time during the life of the license; however, licensees may carry-over into the next renewal cycle excess PDUs consistent with subsection (9) below.

(5) Educators holding Career and Technical Education teaching endorsements may be subject to other continuing professional development requirements consistent with their formal professional development plan. See, OAR 584-042-0051 *Career and Technical Education (CTE) Professional Development Plan* to determine whether additional CPD requirements apply upon licensure renewal.

(6) Except and provided in subsection (4) above, continuing professional development requirements upon renewal are:

- (a) 75 professional development units (PDUs) for a three year license;
- (b) 125 PDUs for a five-year license;
- (c) 30 PDUs for a Substitute or Restricted Substitute Teaching License.

(7) Completing any of the following advanced certifications will waive CPD for the renewal period during which the certification is completed and the next licensure renewal cycle only:

- (a) National Board of Professional Teaching Standards (NBPTS);
- (b) National Association of School Psychologists certification (NASP);
- (c) National School Counselor Certification (NCSC);
- (d) National Association of Social Workers certification (C-SSWS);

or

(e) Association of Speech, Hearing and Audiology (ASHA) certification.

(8) Professional Development Units (PDUs) are defined as follows:

(a) One (1) hour of approved professional development activity equals one (1) PDU;

(b) One (1) semester hour of college credit equals thirty (30) PDUs;

or

(c) One (1) quarter hour of college credit equals twenty (20) PDUs.

(9) Licensed educators may carry-over excess PDU's obtained only in the previous reporting renewal period as follows:

(a) Substitutes/Restricted Substitutes: 10 PDU's;

(b) Three-year licenses: 25 PDU's;

(c) Five-year licenses: 25 PDU's.

Stat. Auth.: ORS 342

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

Hist.: TSPC 8-2012, f. & cert. ef. 8-15-12; TPSC 10-2012, f. & cert. ef. 11-19-12

584-100-0038

HOUSSE for Secondary Teachers Not New to the Profession

(1) (a) Teachers not new to the profession are eligible for a High Objective Uniform State Standard of Evaluation (HOUSSE) in order to determine whether they meet the federal definition of highly qualified secondary teacher. (See OAR 584-100-0006(10) for definition of "not new to the profession.")

(b) Secondary teachers are all teachers teaching in grades seven (7) through twelve (12) regardless of setting such as departmentalized or self-contained.

(2) Teachers may use a combination of coursework, professional development and experience to acquire points on a one-hundred (100) point scale to meet the federal definition of Highly Qualified Teacher (HQT) through Oregon's High Objective Uniform State Standard of Evaluation (HOUSSE).

(3) To qualify for the HOUSSE, a total of one hundred (100) points of combined coursework, professional development and experience must be earned. Experience may not count for more than 50 points.

(4) Teaching Off License in the Core Academic Subjects: Teachers who are conditionally assigned to teach a core academic subject more than 10 hours per week must apply for a License for Conditional Assignment (LCA) pursuant to division 60 and must add the endorsement to teach the assignment as quickly as possible. Districts must continue to report misassigned teachers as *not* meeting the definition of "Highly Qualified Teacher" so long as the teacher does not meet the federal definition.

(a) If the educator meets the federal definition for HQT under any circumstances, then the district may report the teacher as HQT for purposes of that core academic subject even if the teacher does not immediately qualify to add the endorsement to the teaching license and even if the teacher is teaching under a License for Conditional Assignment (LCA).

(b) If the educator meets the federal definition for HQT and is teaching less than 10 hours per week in the core academic subject, the district may report the teacher as highly qualified and the teacher does not have to add the core academic endorsement to the license.

(5) Experience: Experience may not exceed more than fifty (50) points in the HOUSSE calculation. Generally, the educator will be given ten (10) points of credit for each full academic year as defined by the district's contracted teacher year. Experience will be valued under the following conditions:

(a) One (1) instructional day is one (1) period or more teaching the core academic subject.

(b) The subject must have been taught at grade 4 or above.

(c) One full instructional year equals 10 points.

(d) Partial instructional years will be calculated as the number of instructional days teaching the subject divided by the number of contracted days in one full instructional year times 10.

Example: 150 days taught/180 days in full instructional year = $(5/6 \times 10) = 8.3$ points.

(e) An educator must have taught at least five complete school years in order to earn the full fifty (50) points.

(6) Academic Coursework in the Core Academic Subject: There is no limit to the number of points that may be obtained through academic coursework related to the core academic subject.

(a) Core academic coursework must be college transfer level or graduate credit and must have a course number of 100 or greater;

(b) Transcripts for core academic coursework must be from a regionally accredited college or university;

(c) Core academic coursework will be valued as follows:

(A) One (1) quarter hour of credit equals three (3) points.

(B) One (1) semester hour of credit equals four and one-half (4.5) points.

(7) Professional Development: Professional Development directly related to the core academic credit may be counted toward the one hundred (100) points needed to meet the state's HOUSSE. Professional Development points will be valued under the following conditions:

(a) One (1) hour of core academic professional development is equal to 0.15 points.

(b) School district personnel authorized to certify professional development must verify that the professional development is directly relevant to the core academic subject in which the teacher is seeking to meet the definition of being "highly qualified." "Directly relevant" means that upon scrutiny, the professional development is more content related than pedagogy related.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 5-2012, f. & cert. ef. 5-18-12; TPSC 10-2012, f. & cert. ef. 11-19-12

584-100-0091

Licensed and Registered Elementary Charter School Teacher

(1) To be highly qualified to teach in a charter school requires additional qualifications, beyond a license or a registration, to teach in a charter school. It is possible for a teacher to be properly licensed or registered to teach in a charter school and yet not be highly qualified to teach the courses or students for which they have been assigned.

(2) Charter School teachers teaching in prekindergarten (pre k) through grade six (6) must meet the following criteria:

(a) Licensed teachers new or not new to the profession must meet the federal definition for highly qualified elementary teacher. (See, OAR 584-100-0011 and 584-100-0016.)

(b) Registered teachers must hold a bachelor's degree and demonstrate subject matter competency by passing the appropriate rigorous multiple subjects state test or meet the HOUSSE provisions of OAR 584-100-0016.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TPSC 10-2012, f. & cert. ef. 11-19-12

584-100-0096

Licensed and Registered Secondary Charter School Teacher

(1) Licensed secondary charter school teachers teaching in grades seven (7) through twelve (12) must meet the highly qualified teacher definition for new or not new to the profession for secondary teachers. (See, OAR 584-100-0026, 584-100-0036 or 584-100-0038.)

(2) Registered secondary charter school teachers teaching in grades seven (7) through twelve (12) must hold a bachelor's degree and must meet the highly qualified teacher definition for new or not new to the profession for secondary teachers. (See, OAR 584-100-0026, 584-100-0036 or 584-100-0038.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.125

ADMINISTRATIVE RULES

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TPSC 10-2012, f. & cert. ef. 11-19-12

Water Resources Department Chapter 690

Rule Caption: Revision of the following coastal basin programs: Rogue, Umpqua, South Coast, North Coast and Mid-Coast.

Adm. Order No.: WRD 3-2012

Filed with Sec. of State: 12-12-2012

Certified to be Effective: 12-12-12

Notice Publication Date: 9-1-12

Rules Amended: 690-501-0005, 690-501-0010, 690-501-0030, 690-515-0000, 690-515-0010, 690-515-0020, 690-515-0030, 690-515-0040, 690-515-0050, 690-515-0060, 690-516-0005, 690-516-0010, 690-516-0030, 690-517-0000, 690-517-0020, 690-517-0030, 690-517-0040, 690-518-0010, 690-518-0030, 690-518-0050

Rules Repealed: 690-501-0020, 690-516-0020, 690-517-0050, 690-518-0040

Subject: The Oregon Water Resources Commission develops, adopts and periodically modifies programs for the state's major administrative basins as part of its statutory responsibility to progressively formulate an integrated, coordinated program for the use and control of the water resources of the state (ORS 536.300). Basin programs are administrative rules which establish water management policies and objectives and which govern new appropriations of the surface and groundwater within each of the respective basins. There is a need to revise the basin program rules to reflect changes in statute and other related administrative rules. The Department is proposing changes to the basin programs for the Rogue (Division 515), Umpqua (Division 516), South Coast (Division 517), Mid-Coast (Division 518) and North Coast (Division 501), which together comprise the coastal basin programs for the state.

Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-501-0005

Classifications

(1) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the North Coast Basin are classified for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life, with the following exceptions:

(a) The waters of the natural lakes of the North Coast Basin are classified for utilization of water for domestic, livestock, power development not to exceed 7-1/2 theoretical horsepower, and in-lake uses for recreation, wildlife, and fish life purposes;

(b) The attainment of the highest and best use of the waters of Clatskanie and Klaskanine Rivers and their tributaries, Lewis and Clark River and Tillasqua Creek (Big Creek), has been determined through legislative withdrawal by ORS 538.251 to be for the protection of fish life. ORS 538.260 states that 538.251 shall not affect any existing rights or prevent appropriation for domestic, stock, municipal, fish culture, esthetic, recreational, or public park purposes;

(c) The waters of the Columbia River creating a tidal influence in the mouths of the tributaries to the Columbia River within the Columbia Subbasin are classified for utilization of water for domestic, livestock, municipal, irrigation, industrial, recreation, wildlife, and fish life purposes;

(d) The waters of all streams tributary to Sand Lake are classified only for utilization for domestic, livestock, use in dairies, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, power development and instream use for recreation, fish life and wildlife purposes;

(e) The waters of Jetty Creek and its tributaries are classified for utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife and fish life purposes. In addition, up to one cubic foot per second of the waters of Jetty Creek is classified for municipal use;

(f) The waters of Heitmiller Creek are classified for utilization of water for human consumption, livestock consumption, and instream uses for recreation, wildlife and fish life purposes;

(g) The waters of the following streams are classified for utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Tillamook Subbasin:

- (i) All streams tributary to Daley Lake;
- (ii) All streams tributary to Netarts Bay;
- (iii) Coleman Creek and its tributaries;
- (iv) Vaughn Creek and its tributaries;
- (v) Douhty Creek and its tributaries;
- (vi) Patterson Creek and its tributaries;
- (vii) Larson Creek and its tributaries;
- (viii) All streams tributary to Lake Lytle.

(B) Nehalem Subbasin:

- (i) Salmonberry River and its tributaries;
- (ii) Rock Creek and its tributaries.

(C) Columbia Subbasin:

- (i) Short Sand Creek and its tributaries;
- (ii) Arch Cape Creek and its tributaries;
- (iii) Cullaby Creek and its tributaries;
- (iv) John Day River and its tributaries;
- (v) Gnat Creek and its tributaries;

(vi) All tributaries to Westport Slough, except Plympton Creek. In addition to uses in subsection (g) of this section, permits may also be used to collect and divert polluted industrial site runoff, before entering OK Creek, for pollution abatement purposes. This use shall be allowed only on the condition that all applicable requirements of other agencies are met;

(vii) Tide Creek and its tributaries, except that water from the main stem Tide Creek from the falls near river mile 3 to the mouth may be used for gravel washing provided that such use shall not diminish the flow in Tide Creek below 2.5 cfs;

(viii) Goble Creek and its tributaries, except that surface water legally stored and released from storage may be used for any beneficial purpose. Diversion for storage shall be limited to the period December 1 to February 28.

(2) Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works, which do not give cognizance to the multiple-purpose concept, are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536.300, 536.340 & 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010; WRD 3-2012, f. & cert. ef. 12-12-12

690-501-0010

Minimum Perennial Streamflows

For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for human consumption, livestock consumption, and waters legally released from storage shall be granted for the waters of the following streams and their tributaries for flows below the amounts specified in Table 1.

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

Stat. Auth.: ORS 536.300, 536.340 & 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010; WRD 3-2012, f. & cert. ef. 12-12-12

690-501-0030

Out-of-Basin Appropriations

To support present and proposed North Coast Basin water resource development, no out-of-basin appropriation of the waters of the North Coast Basin shall be granted without the prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536.300, 536.340 & 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010; WRD 3-2012, f. & cert. ef. 12-12-12

690-515-0000

Upper Rogue Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the upper Rogue River Basin are classified with the following exceptions:

(A) Those waters on which development is further restricted by ORS 542.210;

ADMINISTRATIVE RULES

(B) In accordance with ORS 538.220, the waters of Barr Creek (beginning in Section 1, T32S, R3E, W.M. and in Section 6 and Section 7, T32s, R4E, W.M. running thence in a general southwesterly direction through T32S, R3E, W.M. to a junction with the Rogue River in Section 32, T32S, R3EW.M.) and its tributaries are withdrawn from further appropriation for any purpose except domestic use and fish life as determined by the Oregon Department of Fish and Wildlife;

(C) In accordance with ORS 536.220, the waters of Mill Creek and its tributaries (beginning in Section 22, T31S, R4E, W.M., running thence southwesterly through T31S, R3E, W.M. and T32S, R3E, W.M., to a junction with the Rogue River in Section 32, T32S, R3E, W.M.) are withdrawn from further appropriation for any purpose except domestic use and fish life as determined by the Oregon Department of Fish and Wildlife (ODFW), and the development of hydroelectric power not to exceed one megawatt if: 1) the hydroelectric project is located on Mill Creek at a point at least two miles above the confluence of Mill Creek and the Rogue River, 2) all water appropriated from the stream is returned to the stream at a point at least one-half mile above the confluence of Mill Creek and the Rogue River, and 3) the hydroelectric project was constructed and operated in compliance with ODFW concerning fish conservation, including streamflow requirements based upon biological criteria;

(D) In accordance with ORS 538.430, the waters of Big Butte Creek, including its tributaries and springs at the head which form the creek, are withdrawn from further appropriation for any purpose except municipal use by the City of Medford, with the exceptions for Eagle Point Irrigation District as provided in ORS 538.430;

(E) In accordance with ORS 538.270, the waters of the main channel of the Rogue River (excluding tributaries) from its intersection with the south line of Section 27, T33S, R1E, W.M. to its confluence with the Pacific Ocean, are withdrawn from appropriation for any purpose except domestic, stock, irrigation, municipal, fish, wildlife, recreation, and road maintenance;

(F) The waters of Indian Creek, Evergreen Creek, Reese Creek, Trail Creek and Elk Creek and tributaries are classified for domestic, livestock and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for purposes specified in subsection (a) of this section;

(G) To protect, maintain and perpetuate the resident fish habitat, the recreational value, and the cultural resources of the Upper Rogue Basin, the waters of the following streams and natural lakes shall not be diverted, interrupted or appropriated for power development purposes:

(i) All natural lakes in the Upper Rogue Basin;

(ii) The Rogue River from the origin near the intersection with the south line of Section 4, Township 29 South, Range 5 East, downstream to USGS stream gage 14328000 (Township 32 South, Range 3 East, Section 19) excluding existing projects;

(iii) Union Creek and tributaries;

(iv) Abbott Creek and tributaries.

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be granted for the waters of the Rogue River or tributaries above river mile 164 when the combined flow measured at stream gages 14330000, Rogue River below Prospect (Township 33 South, Range 3 East, Section 6), and 14334700, South Fork Rogue River, South of Prospect (Township 33 South, Range 3 East, Section 7) is below 835 cubic feet per second except that this limitations shall not apply to:

(A) Water legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(C) Appropriation of water for power development at or near gage 14330000 provided that alternative provisions for flow measurements are included in any permit or license issued for the project.

(b)(A) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted for the waters of Reese Creek and tributaries when flows are below the specified levels in Table 1, Section B. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage, subject to section (3) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) Storage:

(a) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following site: Elk Creek (SW 1/4 SW 1/4, Section 20, Township 33 South, Range 1 East).

(4) Water Quality: Rights to use of water for industrial, power development or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreation, fish life or other beneficial uses of water.

NOTE: The Upper Rogue Basin includes all of the drainage area of the Rogue River and its tributaries above river mile 133 at the south line of Section 31, Township 35 South, Range 1 West, Willamette Meridian.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert. ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

690-515-0010

Little Butte Creek Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Little Butte Creek Basin are classified for domestic, livestock, irrigation, agricultural use, power development, recreation, wildlife, and fish life purposes, except for water administratively withdrawn from appropriation;

(b) In accordance with the Order of the State Engineer dated January 22, 1959 (Special Order Vol 9, Page 489), the waters of Antelope Creek and its tributaries are withdrawn from further appropriation except for storage of water from November 1 through March 30 and the appropriation of stored water.

(c) Structures or works of the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows: For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic or livestock use shall be granted, except that this limitation shall not apply to water legally stored or legally released from storage subject to the provisions of Section D for the waters of the streams listed in Table 2 when flows are below the specified levels. Domestic use does not include irrigation of lawns and gardens.

(3) Storage:

(a) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Lake Creek (E 1/2, Section 30, Township 36 South, Range 2 East);

(B) South Fork Little Butte Creek (SE 1/4 SE 1/4, Section 29, Township 36 South, Range 2 East).

(b) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert. ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin:

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WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

690-515-0020

Bear Creek Basin

(1) Classifications:

(a) In accordance with the Order of the State Engineer dated January 22, 1959 (Special Order Vol 9, Page 489), the waters of Bear Creek and its tributaries are withdrawn from further appropriation except for storage of water from November 1 through March 30 and the appropriation of stored water;

(b) No applications for appropriation of water shall be approved except for beneficial uses involving water legally stored in excess of the amount necessary for existing rights;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life, or other beneficial uses of water.

(3) Power Development: Rights to use of water for power development purposes shall be issued only on the condition, as demonstrated by the applicant, that any dams, diversions, generating facility, or return flows shall not significantly interfere with recreational, fish life or other beneficial uses of water.

(4) Storage:

(a) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Walker Creek, NE 1/4 Section 12, Township 39 South, Range 1 East, Willamette Meridian;

(B) West Fork Ashland Creek (Winburn site), NE 1/4 Section 32, Township 39 South, Range 1 East, Willamette Meridian;

(C) West Fork Ashland Creek (Ranger site), SW 1/4 Section 28, Township 39 South, Range 1 East, Willamette Meridian.

(b) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

690-515-0030

Applegate River Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Applegate River Basin are classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life, with the following exceptions:

(A) The waters of the following streams and tributaries are classified for domestic, livestock, power development except for those streams listed in paragraph (C) of this subsection, irrigation of noncommercial gardens not to exceed 1/2 acre in area, and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section:

(i) Palmer Creek;

(ii) Beaver Creek;

(iii) Little Applegate River;

(iv) Forest Creek;

(v) Williams Creek;

(vi) Cheney Creek;

(vii) Slate Creek.

(B) The waters of Thompson Creek and tributaries are classified for domestic, livestock and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for purposes specified in subsection (a) of this section;

(C) To protect, maintain and perpetuate anadromous fish habitat and propagation, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) Palmer Creek from the confluence with Bailey Gulch downstream to the mouth;

(ii) Beaver Creek from the intersection with the east line of Section 11, Township 40 South, Range 3 West, Willamette Meridian, to the mouth;

(iii) Little Applegate River Subbasin:

(I) Little Applegate River from the confluence with Lake Creek downstream to the mouth;

(II) Glade Creek from the confluence with Mule Gulch downstream to the mouth;

(III) Yale Creek from the intersection with the east line of Section 22, Township 40 South, Range 2 West, Willamette Meridian, to the mouth;

(IV) Sterling Creek from the intersection with the east line of Section 8, Township 39 South, Range 2 West, Willamette Meridian, to the mouth.

(iv) Forest Creek from the intersection with the north line of Section 15, Township 38 South, Range 3 West, Willamette Meridian, to the mouth;

(v) Thompson Creek from the intersection with the south line of Section 24, Township 39 South, Range 5 West, Willamette Meridian, to the mouth and the tributary of Ninemile Creek from the intersection with the east line of Section 30, Township 39 South, Range 4 West, Willamette Meridian, to the mouth;

(vi) Williams Creek Subbasin:

(I) Williams Creek from the confluence with the East Fork and West Fork of Williams Creek downstream to the mouth;

(II) East Fork Williams Creek from the first intersection with the east line of Section 26, Township 39 South, Range 5 West, Willamette Meridian, to the mouth and the tributary of Rock Creek from the confluence with Horsetail Creek downstream to the mouth;

(III) West Fork Williams Creek from the confluence with Right Hand Fork of the West For, Williams Creek downstream to the mouth;

(IV) Right Hand Fork of the West Fork Williams Creek from the intersection with the south line of Section 13, Township 39 South, Range 6 West, Willamette Meridian, to the confluence of the West Fork Williams Creek;

(V) Bill Creek from the confluence with Bear Wallow Creek downstream to the mouth;

(VI) Munger Creek from the confluence with North Fork Munger Creek downstream to the mouth;

(VII) Powell Creek from the intersection with the west line of Section 167, Township 38 South, Range 5 West, Willamette Meridian, to the mouth.

(vii) Cheney Creek from the intersection with the south line of Section 22, Township 37 South, Range 7 West, Willamette Meridian, to the mouth and the tributary of Little Cheney Creek from the intersection with the south line of Section 18, Township 37 South, Range 6 West, Willamette Meridian, to the mouth;

(viii) Slate Creek Subbasin:

(I) Slate Creek from the intersection with the north line of Section 1, Township 37 South, Range 8 West, Willamette Meridian, to the mouth;

(II) Ramsey Creek from the intersection with the north line of Section 13, Township 37 South, Range 8 West, Willamette Meridian, to the mouth;

(III) Butcherknife Creek from the intersection with the west line of Section 18, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(IV) Waters Creek from the intersection with the west line of Section 32, Township 36 South, Range 7 West, Willamette Meridian, to the mouth;

(V) The entire length of Bear Creek;

(VI) Salt Creek from the intersection with the north line of Section 8, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(VII) Elliott Creek from the intersection with the south line of Section 15, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(VIII) Round Prairie Creek from the intersection with the north line of Section 3, Township 37 South, Range 7 West, Willamette Meridian, to the mouth and the tributary of South Fork Round Prairie Creek from the intersection with the west line of Section 2, Township 37 South, Range 7 West, Willamette Meridian, to the mouth.

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

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(a) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Reservoir sites should be protected through the comprehensive land-use planning process for possible further development or until alternative methods of meeting water needs have been developed. Immediate concern should be given to the following sites as delineated on Water Resources Department map file number 15B.4, Plate 4:

- (A) Little Applegate River, site 26;
- (B) Waters Creek, site 112;
- (C) Elliott Creek, site 110.

(3) Minimum Perennials Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic, livestock and irrigation of noncommercial gardens not to exceed 1/2 acre in area or waters legally released from storage shall be granted for the waters of the Applegate River or its tributaries for flows below the specified levels in Table 3, Section A;

(b)(A) To support aquatic life and minimize pollution in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted for the waters of Williams Creek and Thompson Creek and tributaries for flows below the specified levels in Table 3, Section B. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage, subject to paragraph (1)(a)(C) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with recreational, fish life, or other beneficial uses of water.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

690-515-0040

Middle Rogue Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Middle Rogue River are classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life, with the following exceptions:

(A) The waters within the Rogue River Scenic Waterway from the confluence with the Applegate River near river mile 95 to Lobster Creek Bridge near river mile 11 are classified for domestic, livestock, and irrigation of one-half acre noncommercial garden, and instream use for recreation, wildlife and fish life;

(B) Those waters on which development is further restricted by ORS 542.210;

(C) In accordance with ORS 538.270, the waters of the main channel of the Rogue River (excluding tributaries) from its intersection with the south line of Section 27, T33S, R1E, W.M. to its confluence with the Pacific Ocean, are withdrawn from appropriation for any purpose except domestic, stock, irrigation, municipal, fish, wildlife, recreation, and road maintenance;

(D) The waters of the following streams and tributaries are classified only for domestic use, livestock consumption and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section. Domestic use does not include irrigation of lawns and gardens:

- (i) Galls Creek;
- (ii) Foots Creek;
- (iii) Birdseye Creek;
- (iv) Sardine Creek;
- (v) Same Creek;
- (vi) Kane Creek;
- (vii) Fruitdale Creek;

(viii) Ward Creek;

(ix) Gilbert Creek;

(x) Jones Creek;

(xi) Savage Creek.

(E) The waters of the following streams and tributaries, are classified only for domestic, livestock and irrigation of one-half acre noncommercial garden and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section:

(i) Pickett Creek;

(ii) Limpy Creek;

(iii) Snider Creek;

(iv) Shan Creek.

(F) The waters of the following streams and tributaries, are classified only for domestic, livestock, irrigation of one-half acre noncommercial garden, mining during the period November 1 to May 1, power development and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section:

(i) Grave Creek;

(ii) Evans Creek.

(G) The waters of Jumpoff Joe Creek and tributaries are classified only for domestic, livestock, irrigation of one-half acre noncommercial garden, industrial, mining during the period November 1 to May 1, power development and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section;

(H) To protect, maintain and perpetuate anadromous fish habitat and propagation within the Middle Rogue Basin, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) Galice Creek from the intersection with the south line of Section 10, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(ii) North Fork Galice Creek from the intersection with the west line of Section 5, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(iii) Taylor Creek from the intersection with the east line of Section 34, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(iv) South Fork Taylor Creek from the intersection with the south line of Section 28, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(v) Lone Tree Creek from the intersection with the north line of Section 32, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(vi) Minnow Creek from the intersection with the south line of Section 34, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth.

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

(a) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Grave Creek, SE 1/4, Section 6, Township 34 South, Range 4 West, Willamette Meridian;

(B) Jumpoff Joe Creek, NE 1/4, Section 36, Township 34 South, Range 6 West, Willamette Meridian;

(C) Evans Creek, SE 1/4, Section 19, Township 34 South, Range 2 West, Willamette Meridian;

(D) West Fork Evans Creek, SE 1/4 Section 32, Township 33 South, Range 3 West, Willamette Meridian.

(3) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations

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of water shall be granted for the waters of the Rogue River or tributaries above Raygold for flows of the Rogue River below 1200 cubic feet per second, except that this limitation shall not apply to:

(A) Waters legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(b) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be granted for the waters of the Rogue River or tributaries above Savage Rapids Dam for flows of the Rogue River below 1,200 cubic feet per second, except that this limitation shall not apply to:

(A) Water legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(c) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic or livestock use shall be granted, except that this limitation shall not apply to water legally stored or legally released from storage, for the waters of the Rogue River tributaries listed in Table 4, Section B when flows are below the specified levels. Domestic use does not include irrigation of lawns and gardens;

(d)(A) To support aquatic life and minimize pollution in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted for the waters of the Rogue River tributaries listed in Table 4, Section C when flows are below the levels specified. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include the irrigation of lawns and gardens;

(ii) Water legally stored or released from storage subject to the provisions of subsection (2)(a) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial, power development, or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life or other beneficial uses of water.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

690-515-0050

Illinois Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Illinois River Basin are classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses including propagation, with the following exceptions:

(A) The waters within the Illinois River Scenic Waterway from the confluence with Deer Creek near river mile 47 to the confluence with the Rogue River are classified only for domestic and livestock uses and instream use for recreation, wildlife and fish life;

(B) The waters of the following streams and all tributaries are classified only for domestic, livestock, agricultural use, municipal, industrial, power development except for those streams listed in paragraph (C) of this subsection, mining use during the period November 1 to May 1, fish propagation, irrigation use for noncommercial gardens not exceeding one-half acre in area, and instream use for recreation, fish life and wildlife. Water stored between November 1 and March 1 may be used for purposes specified in subsection (a) of this section:

(i) Deer Creek;

(ii) East Fork Illinois River, except Althouse and Sucker Creeks and their tributaries;

(iii) West Fork Illinois River.

(C) The waters of Althouse and Sucker Creeks and tributaries are classified only for domestic, livestock and non-consumptive instream uses for fish life, wildlife and recreation between May 1 and November 30. Althouse and Sucker Creeks and tributaries are classified for domestic, livestock, mining (subject to Division 51 restrictions and except for those

streams listed in paragraph (D) of this subsection), storage, and instream uses for fish life, wildlife and recreation between December 1 and April 30. Water diverted for storage between December 1 and April 30 may be used for any beneficial purpose. Permits shall be conditioned to prevent obstacles to fish migration and degradation of rearing or spawning habitat;

(D) To protect, maintain and perpetuate anadromous fish habitat and propagation, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) West Fork Illinois River Subbasin:

(I) West Fork Illinois River from the confluence with Whiskey Creek downstream to the mouth;

(II) Whiskey Creek from the intersection with the west line of Section 8, Township 41 South, Range 9 West, Willamette Meridian, to the mouth;

(III) Elk Creek from the Oregon-California border downstream to the mouth;

(IV) Trapper Gulch from the intersection with the east line of Section 13, Township 41 South, Range 9 West, Willamette Meridian, to the mouth;

(V) Dwight Creek from the Oregon-California border downstream to the mouth;

(VI) Wood Creek from the potential reservoir site in SE 1/4 of NW 1/4 of Section 32, Township 40 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Fry Gulch from the intersection with the east line of Section 29, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(VII) Rough and Ready Creek from the confluence with the North and South forks downstream to the mouth;

(VIII) North Fork Rough and Ready Creek from the intersection with the west line of Section 8, Township 40 South, Range 9 West, Willamette Meridian, to the mouth;

(IX) South Fork Rough and Ready Creek from the intersection with the west line of Section 20, Township 40 South, Range 9 West, Willamette Meridian, to the mouth.

(X) Mendenhall Creek from the intersection with the west line of Section 6, Township 40 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Parker Creek from the intersection with the west line of Section 7, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(XI) Woodcock Creek from the intersection with the west line of Section 32, Township 39 South, Range 8 West, Willamette Meridian, to the mouth.

(ii) East Fork Illinois River Subbasin:

(I) East Fork Illinois River from the Oregon-California border downstream to the mouth;

(II) Page Creek from the intersection with the east line of Section 2, Township 41 South, Range 8 West, Willamette Meridian, to the mouth;

(III) Elder Creek from the intersection with the east line of Section 26, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(IV) Althouse Creek from the potential reservoir site in SW 1/4 of SW 1/4 of Section 4, Township 40 South, Range 7 West, Willamette Meridian, to the mouth;

(V) Sucker Creek from the potential reservoir site in NE 1/4 of Section 25, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VI) Little Grayback Creek from the intersection with the south line of Section 13, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VII) Bear Creek from the intersection with the north line of Section 21, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VIII) Chapman Creek from the confluence with East Fork Chapman Creek downstream to the mouth.

(iii) Holton Creek from the intersection with the east line of Section 10, Township 39 South, Range 8 West, Willamette Meridian, to the mouth;

(iv) Reeves Creek from the intersection with the east line of Section 34, Township 38 South, Range 8 West, Willamette Meridian, to the mouth;

(v) Josephine Creek from the intersection with the west line of Section 26, Township 39 South, Range 9 West, Willamette Meridian, to the mouth and the tributary of Canyon Creek from the confluence with Sebastopol Creek downstream to the mouth;

(vi) Deer Creek Subbasin:

(I) Deer Creek from the confluence with North Fork and South Fork Deer Creek downstream to the mouth;

(II) South Fork Deer Creek from the intersection with the south line of Section 29, Township 38 South, Range 6 West, Willamette Meridian, to the mouth;

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(III) North Fork Deer Creek from the intersection with the north line of Section 18, Township 38 South, Range 6 West, Willamette Meridian, to the mouth;

(IV) White Creek from the intersection with the south line of Section 13, Township 38 South, Range 7 West, Willamette Meridian, to the mouth;

(V) Crooks Creek from the intersection with the east line of Section 34, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(VI) Thompson Creek from the confluence with Haven Creek downstream to the mouth;

(VII) Draper Creek from the intersection with the east line of Section 31, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(VIII) Clear Creek from the intersection with the west line of Section 23, Township 37 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Anderson Creek from the intersection with the north line of Section 35, Township 37 South, Range 8 West, Willamette Meridian, to the mouth.

(vii) Sixmile Creek from the intersection with the north line of Section 25, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;

(viii) Fall Creek from the intersection with the south line of Section 4, Township 38 South, Range 9 West, Willamette Meridian, to the mouth;

(ix) Rancherie Creek from the intersection with the west line of Section 17, Township 38 South, Range 9 West, Willamette Meridian, to the mouth;

(x) Dailey Creek from the intersection with the west line of Section 31, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;

(xi) Briggs Creek Subbasin:

(I) The entire mainstem of Briggs Creek;

(II) Horse Creek from the intersection with the east line of Section 8, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(III) Myers Creek from the confluence with Dutchy Creek downstream to the mouth and the tributary of Dutchy Creek from the intersection with the north line of Section 7, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(IV) Brush Creek from the intersection with the north line of Section 18, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(V) Secret Creek from the intersection with the east line of Section 16, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(VI) Onion Creek from the intersection with the south line of Section 29, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(VII) Swede Creek from the intersection with the east line of Section 1, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;

(VIII) Soldier Creek from the confluence with Horse Creek downstream to the mouth and the tributary of Horse Creek from the intersection with the east line of Section 11, Township 37 South, Range 9 West, Willamette Meridian, to the mouth.

(xii) Panther Creek from the intersection with the north line of Section 31, Township 36 South, Range 9 West, Willamette Meridian, to the mouth;

(xiii) Labrador Creek from the intersection with the south line of Section 12, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;

(xiv) Nome Creek from the intersection with the south line of Section 12, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;

(xv) Clear Creek from the intersection with the east line of Section 35, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;

(xvi) Pine Creek from the first intersection with the east line of Section 27, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;

(xvii) Klondike Creek from the intersection with the south line of Section 10, Township 36 South, Range 10 West, Willamette Meridian, to the mouth and the tributary of Yukon Creek from the intersection with the south line of Section 5, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;

(xviii) Collier Creek from the intersection with the west line of Section 7, Township 37 South, Range 11 West (projected), Willamette Meridian, to the mouth;

(xix) Silver Creek Subbasin:

(I) Silver Creek from the confluence with South Fork Silver Creek downstream to the mouth;

(II) South Fork Silver Creek from the intersection with the east line of Section 21, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;

(III) North Fork Silver Creek from the intersection with the east line of Section 18, Township 35 South, Range 9 West, Willamette Meridian, to the mouth.

(xx) Indigo Creek from the intersection with the east line of Section 31, Township 35 South, Range 10-1/2 West, Willamette Meridian, to the mouth and the tributary of North Fork Indigo Creek from the intersection with the north line of Section 34, Township 35 South, Range 11 West, Willamette Meridian, to the mouth;

(xxi) Horse Sign Creek from the intersection with the south line of Section 7, Township 36 South, Range 11 West, Willamette Meridian, to the mouth;

(xxii) Lawson Creek from the intersection with the west line of Section 2, Township 36 South, Range 12 West (projected), Willamette Meridian, to the mouth;

(xxiii) Fox Creek from the intersection with the south line of Section 19, Township 35 South, Range 11 West, Willamette Meridian, to the mouth.

(E) The waters of the mainstem Illinois River from the confluence of the East and West Forks Illinois River downstream to the confluence with Deer Creek near river mile 47 are classified only for domestic, livestock and agricultural uses, fish propagation, irrigation use for noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife during the period July 1 to October 31. Water diverted for storage between November 1 and March 31 may be used for purposes specified in subsection (a) of this section.

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

(a) Storage projects consistent with the purposes of minimum flows shall be encouraged;

(b) Potential reservoir sites should be identified through the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate concern should be given to the following sites:

(A) Wood Creek, SE 1/4 Section 32, Township 40 South, Range 8 West, Willamette Meridian;

(B) Sucker Creek, NE 1/4 Section 25, Township 39 South, Range 7 West, Willamette Meridian;

(C) Upper Althouse Creek, SW 1/4 SW 1/4 Section 4, Township 40 South, Range 7 West, Willamette Meridian.

(3) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic and livestock use shall be granted, except that his limitation shall not apply to water legally stored or legally released from storage, for the waters of the Illinois River or the tributaries above the confluence with the Rogue River for flows of the Illinois River at the mouth below 80 cubic feet per second and when flows are below the specified levels listed in Table 5, Section A. Domestic use does not include irrigation of lawn and garden;

(b)(A) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted, for the waters of the following Illinois River tributaries listed in Table 5, Section B when flows are below the specified levels. This limitation shall not apply to:

(i) Domestic and livestock use. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage subject to provisions of section A5.

(B) Attainment of the specified flow levels during some portion of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial, power development, or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with recreational, fish life, or other beneficial uses of water.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert. ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

ADMINISTRATIVE RULES

690-515-0060

Lower Rogue Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310 and 536.340, the waters of the Lower Rogue River Basin are classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife, and fish life, with the following exceptions:

(A) The waters within the Rogue River Scenic Waterway from the confluence with Applegate River near river mile 95 to Lobster Creek Bridge near river mile 11 are classified for domestic, livestock, and irrigation of one-half acre noncommercial garden, and instream use for recreation, wildlife and fish life;

(B) Those waters on which development is further restricted by ORS 542.210;

(C) In accordance with ORS 538.270, the waters of the main channel of the Rogue River (excluding tributaries) from its intersection with the south line of Section 27, T33S, R1E, W.M. to its confluence with the Pacific Ocean, are withdrawn from appropriation for any purpose except domestic, stock, irrigation, municipal, fish, wildlife, recreation, and road maintenance;

(D) To protect, maintain and perpetuate anadromous fish habitat and propagation within the Lower Rogue Basin, the waters of the following stream reaches of tributaries to the Rogue River shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) Lobster Creek from the confluence of the North and South Forks of Lobster Creek, downstream to the mouth;

(ii) North Fork Lobster Creek from the intersection with the east line of Section 15, Township 34 South, Range 13 West, Willamette Meridian, downstream to the mouth;

(iii) South Fork Lobster Creek from the intersection with the east line of Section 30, Township 34 South, Range 12 West, Willamette Meridian, downstream to the mouth;

(iv) Shasta Costa Creek from the intersection with the east line of Section 35, Township 34 South, Range 11 West, Willamette Meridian, downstream to the mouth;

(v) Foster Creek from the intersection with the west line of Section 12, Township 34 South, Range 12 West, Willamette Meridian, downstream to the mouth;

(vi) Quosatana Creek from the intersection with the projected south line of Section 23, Township 36 South, Range 13 West, Willamette Meridian, downstream to the mouth;

(vii) Jim Hunt Creek from the intersection with the south line of Section 14, Township 36 South, Range 14 West, Willamette Meridian, downstream to the mouth;

(viii) Mule Creek from the intersection with the east line of Section 26, Township 32 South, Range 10 West, Willamette Meridian, downstream to the mouth.

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows: For the purpose of maintaining minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be granted for the waters of the Rogue River or the tributaries above the mouth for flows of the Rogue River at the mouth below 935 cubic feet per second, except that this limitation shall not apply to:

(a) Water legally stored or legally released from storage;

(b) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(3) Water Quality: Rights to use of water for industrial, power development or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life, or other beneficial uses of water.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

690-516-0005

Classifications

(1) In accordance with ORS 536.220, 536.300, 536.310 and 536.340, the waters of the Umpqua River Basin are classified for domestic, livestock, municipal, irrigation, temperature control, power development, industrial, mining, recreation, wildlife, fish life, with the following exceptions:

(a) Preference shall be given to human consumption, livestock consumption and irrigation of non-commercial gardens not to exceed one-half acre in area for all the waters of the Umpqua River Basin over any other beneficial uses;

(b) The waters of the natural lakes of the Umpqua River Basin are classified for the utilization of water for domestic, livestock, power development not to exceed 7-1/2 theoretical horsepower, and in-lake uses for recreation, wildlife, and fish life purposes;

(c) The waters of Roberts Creek and its tributaries were withdrawn by Water Resources Commission's Order of Withdrawal on October 4, 1991;

(d) The unappropriated waters of Lookingglass Creek and tributaries are withdrawn from further appropriation except for domestic and livestock watering uses under 5,000 gallons per day per appropriation and water legally stored and released from storage from June 1 through September 30 of each year, by the Water Policy Review Board's Order of Withdrawal dated April 3, 1983.

(e) The unappropriated waters of the South Umpqua River and tributaries, excluding Lookingglass and Roberts Creeks, are withdrawn from further appropriation except for human consumption, livestock consumption, irrigation of up to 1/2-acre non-commercial garden and water legally released from storage from July 15 through September 30 of each year, by the Water Policy Review Board's Order of Withdrawal dated April 29, 1985. This limitation shall not affect the withdrawals previously enacted by the Board for the waters of Roberts and Lookingglass Creeks.

(f) In accordance with ORS 538.140, the waters of Diamond Lake and tributaries shall not be diverted or interrupted for any purpose and are withdrawn from further appropriation, except for domestic use on contiguous and surrounding land or other water uses necessary to maintain, increase and perpetuate game fish and game fish propagation in Diamond Lake and its tributaries.

(2) Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works which do not give cognizance to the multiple-purpose concept are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536.300, 536.340 & 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160; WRD 3-2012, f. & cert. ef. 12-12-12

690-516-0010

Minimum Perennial Streamflows

(1) For the purpose of maintaining minimum perennial streamflows sufficient to support aquatic life, no appropriations of water except for human consumption, livestock consumption and irrigation of non-commercial gardens not to exceed one-half acre in area and waters legally released from storage shall be granted for waters of the following streams when flows are at or below the levels specified in Table 1.

(2) The minimum perennial streamflows established by the October 24, 1958, Umpqua Basin program shall remain in effect over appropriations issued from October 24, 1958 to March 26, 1974.

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

Stat. Auth.: ORS 536.300, 536.340 & 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160; WRD 3-2012, f. & cert. ef. 12-12-12

690-516-0030

Out-of-Basin Appropriations

To support present and proposed Umpqua River Basin water resource development, no out-of-basin appropriation of the waters of the Umpqua

ADMINISTRATIVE RULES

River Basin shall be granted without the prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536.300, 536.340 & 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160; WRD 3-2012, f. & cert. ef. 12-12-12

690-517-0000

Classifications

(1) Ground water resources in sections or the portions of Sections 13, 14, 22, 23, 26, 27, 32, 33 and 34 of Township 23 South, Range 13 West; 2, 3, 4, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 27, 28, 29, 31, 32, 33 and 34 of Township 24 South, Range 13 West; and 3, 4, 5 and 6 of Township 25 South, Range 13 West, bounded on the north by Tenmile Creek, on the west by the Pacific Ocean, on the south by Coos Bay and on the east by Highway 101 are hereby classified for single or group domestic, livestock, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and any single industrial or commercial use not exceeding 5,000 gallons per day.

(2) The waters of the following lakes are classified for domestic, livestock, municipal, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and in-lake use for recreation, fish life and wildlife. The Director of the Water Resources Department may place specific limits on municipal appropriations from the lakes, or require outlet control structures to protect recreation, fish life and wildlife uses:

- (a) Bradley Lake;
- (b) Eel Lake;
- (c) Garrison Lake.

(3) All other natural lakes are classified for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and in-lake use for recreation, fish life and wildlife.

(4) The waters of Glenn Creek (tributary to the East Fork, Millicoma River) and its tributaries are classified for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, fire control and instream use for recreation, fish life and wildlife;

(5) The waters of the Middle Fork of the Coquille River and tributaries upstream from the confluence with Holmes Creek are classified for domestic, livestock and irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife during the period from July 1 to September 30 of every year. Water diverted for storage between October 1 and June 30 may be used for any purpose specified in section 11 of this rule.

(6) The waters of the West Fork Millicoma River and tributaries above Stall Falls are classified for municipal, domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife.

(7) The waters of Pony Creek above lower Pony Creek Dam and Ferry and Geiger Creeks above the Ferry Creek — Geiger Creek confluence are classified for municipal use.

(8) In accordance with ORS 538.120, the waters of Brush Creek (Brushes Creek) and its tributaries are withdrawn from further appropriation or condemnation, and shall not be diverted or interrupted for any purpose except for use in state parks or as otherwise prescribed by ORS 538.120.

(9) The waters of Clear Lake are withdrawn from further appropriation by order of the State Engineer dated October 4, 1940 (Special Order Vol 3, Pg 504).

(10) The waters of Edna Lake are withdrawn from further appropriation by order of the State Engineer dated October 4, 1940 (Special Order Vol 3, Pg 504).

(11) All other surface and ground water resources are classified for domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife and fish life uses.

(12) The planning, construction and operation of any structures or works for the utilization of water in accordance with the aforementioned classifications are to conform with the applicable provisions of ORS 536.310, including but not restricted to the recommendation of the multiple-purpose concept.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef.

5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170; WRD 3-2012, f. & cert. ef. 12-12-12

690-517-0020

Minimum Perennial Streamflows

(1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses and irrigation of noncommercial gardens not exceeding one-half acre in area shall be allowed for waters of the streams and tributaries listed in Table 1 when flows are below the specified levels.

(2) The Water Resources Commission requests the opportunity to review applications for an allowed beneficial use that has traditionally been identified as nonconsumptive or take-and-put, such as fish hatcheries, hydroelectric facilities, municipal or water process industries that could potentially impact, in an adverse way, the Commission's minimum flow regime or the public interest. The Water Resources Commission intends to continue to protect, in its entirety, that portion of the stream system on which any minimum streamflow has been established. Permitting procedures and water use regulation should reflect that objective as far as possible under the law. The Commission solicits the advice or complaints of any party who is aware that the objectives are not being met.

(3) Minimum flows established in the Water Resource Program for the South Coast Basin dated May 22, 1964 (Table 2), shall remain in full force and effect except as follows:

(a) The minimum perennial streamflow for the Elk River above U.S. Highway 101 crossing (45 cfs) is rescinded;

(b) The minimum perennial streamflow for the Coquille River Middle Fork above Bear Creek (4 cfs) is rescinded;

(c) The minimum perennial streamflow for the Sixes River above the U.S. Highway 101 crossing is reduced to 25 cfs during the period from August 1 to September 30;

(d) The minimum perennial streamflow for the South Fork Coquille River near Powers is reduced to 15 cfs during the period from June 16 to September 30.

(4) For purposes of distributing water, minimum flows established in 1964 shall be considered part of and not in addition to revised minimum flow regimes.

(5) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted for the waters of the Coquille River and tributaries when flows are below the specified levels in Table 2. This limitation shall not apply to:

(a) Domestic and livestock uses and irrigation of non-commercial gardens not exceeding 1/2 acre in area;

(b) Water legally released from storage.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170; WRD 3-2012, f. & cert. ef. 12-12-12

690-517-0030

Storage

The following reservoir sites should be protected through the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed:

(1) West Fork of the Millicoma River, site 223;

(2) South Fork of Coquille River at Eden Ridge, site 430;

(3) North Fork Coquille River, site 146A;

(4) Rock Creek at Rasler Creek, site 201;

(5) Catching Creek, site 101;

(6) Fourmile Creek, site 158;

(7) North Fork Floras Creek at Okietown, sit 435;

(8) North Fork Chetco River, site 239;

(9) Wheeler Creek, site 241;

(10) East Fork Winchuck River, site 243;

(11) Joe Ney Slough.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170; WRD 3-2012, f. & cert. ef. 12-12-12

ADMINISTRATIVE RULES

690-517-0040

Out-of-Basin Appropriations

No out-of-basin diversion of South Coast Basin water shall be granted without the prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170; WRD 3-2012, f. & cert. ef. 12-12-12

690-518-0010

Classifications

(1) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Mid-Coast Basin are classified for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses with preference given to human consumption and livestock consumption over any other beneficial uses, with the following exceptions:

(a) The waters of the following natural lakes of the Mid-Coast Basin are classified for utilization of water for domestic, livestock, and in-lake uses for recreation, wildlife, and fish life purposes: Devils, Triangle, Lily, Sutton, Mercer, Collard, Munsel, Cleawox, Carter, Lost, Elbow, Clear, Woahink, Siltcoos, Tahkenitch, and Threemile;

(b) The waters of Clear Lake are classified for municipal use in addition to the uses specified in subsection (a) of this section;

(c) The waters of the following streams and their tributaries are classified for utilization of water for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Schoolhouse Creek (Mouth in Township 8 South);

(B) Fogarty Creek;

(C) Deadhorse Creek;

(D) Canal Creek of Alsea Bay;

(E) Cummins Creek;

(F) Bob Creek;

(G) Tenmile Creek;

(H) Big Creek at Roosevelt Beach;

(I) Cape Creek at Heceta Head;

(J) Quarry Creek;

(K) Knowles Creek of Siuslaw River;

(L) Hadsall Creek of Siuslaw River;

(M) Woahink Creek;

(N) Siltcoos River;

(O) Tahkenitch Creek; and

(P) Threemile Creek.

(d) The waters of the following streams and their tributaries are classified for utilization of water for domestic, livestock, municipal, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Salmon River;

(B) Schooner Creek of Siletz Bay upstream from the intersection of Schooner Creek and the section line between Section 25, Township 7 South, Range 11 West, WM, and Section 30, Township 7 South, Range 10 West, WM;

(C) Drift Creek of Siletz Bay;

(D) Tributaries to Depoe Bay;

(E) Rocky Creek;

(F) Spencer Creek;

(G) Moolack Creek;

(H) Big Creek near Newport;

(I) Henderson Creek (Mouth in Township 11 South);

(J) Beaver Creek (Mouth in Township 12 South);

(K) Big Creek at San Marine;

(L) Vingie Creek;

(M) Starr Creek;

(N) Sutton Creek; and

(O) Munsel Creek.

(e) The waters of Olalla Creek and its tributaries are classified for human consumption, livestock consumption, industrial, and instream uses for recreation, wildlife, and fish life purposes;

(f) The waters of Schooner Creek and its tributaries downstream from the intersection of Schooner Creek and the section line between Section 25, Township 7 South, Range 11 West, WM, and Section 30, Township 7

South, Range 10 West, WM, are classified for domestic, livestock, municipal, irrigation and frost control not to exceed an additional total appropriation of 2.5 cfs, power development and instream uses for recreation, wildlife, and fish life purposes; and

(g) The waters of Thiel Creek are classified for domestic, livestock, municipal, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development, aesthetics and in-lake and instream uses for recreation, fish life and wildlife purposes.

(h) The waters of Little Creek, a tributary of the Pacific Ocean, and its tributaries located within Sections 22, 27, 28, 29, 32, and 33, Township 10 South, Range 11 West, W.M., are withdrawn from further appropriation by order of the State Engineer dated June 7, 1960 (Special Order Vol 10, Pg 397) except for municipal use by Agate Beach Water District;

(i) The waters of Mill Creek, a tributary of Yaquina River, and its tributaries located within Sections 22, 23, 26, 27, 28, 32, 33, 34 and 35, Township 11 South, Range 10 West, W.M., are withdrawn from further appropriation by order of the State Engineer dated December 7, 1959 (Special Order Vol 10, Pg 246); and

(j) The waters of Rock Creek (also known as Little Rock Creek or South Fork Rock Creek), a tributary of the Siletz River, and its tributaries above the north line of the SW 1/4 of the NE 1/4, Section 7, Township 10 South, Range 8 West, W.M., during the months of July, August, and September are withdrawn from further appropriation of direct flow and for storage by order of the State Engineer dated July 22, 1960 (Special Order Vol 10, Pg 459).

(2) Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works, which do not give cognizance to the multiple-purpose concept are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180; WRD 3-2012, f. & cert. ef. 12-12-12

690-518-0030

Minimum Perennial Streamflows

(1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and recreation, no appropriations of water except for reservations in OAR 690-518-0020, human consumption, livestock consumption, or waters legally released from storage shall be granted for the waters of the following streams and their tributaries for flows below the amounts specified in Table 1.

(2)(a) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be granted for waters of the streams and tributaries listed in Table 2 when flows are below the specified levels. This limitation shall not apply to:

(A) Human and livestock consumption; and

(B) Water legally released from storage.

(b) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) The minimum perennial streamflows established by the July 12, 1966 Mid-Coast Basin Program shall remain in effect over appropriations issued from July 12, 1966 to March 26, 1974.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180; WRD 3-2012, f. & cert. ef. 12-12-12

690-518-0050

Out-of-Basin Appropriations

To support present and proposed Mid-Coast Basin water resource development, no out-of-basin appropriation of the waters of the Mid-Coast Basin shall be granted without prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180; WRD 3-2012, f. & cert. ef. 12-12-12

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121-001-0005	12-1-2012	Repeal	1-1-2013	125-246-0460	12-1-2012	Repeal	1-1-2013
121-020-0000	12-1-2012	Repeal	1-1-2013	125-246-0470	12-1-2012	Repeal	1-1-2013
121-020-0010	12-1-2012	Am. & Ren.	1-1-2013	125-246-0500	12-1-2012	Amend	1-1-2013
121-020-0020	12-1-2012	Am. & Ren.	1-1-2013	125-246-0556	12-1-2012	Amend	1-1-2013
121-020-0030	12-1-2012	Am. & Ren.	1-1-2013	125-246-0560	12-1-2012	Repeal	1-1-2013
121-020-0040	12-1-2012	Am. & Ren.	1-1-2013	125-246-0576	12-1-2012	Amend	1-1-2013
121-020-0050	12-1-2012	Am. & Ren.	1-1-2013	125-246-0800	12-1-2012	Amend	1-1-2013
121-030-0000	12-1-2012	Am. & Ren.	1-1-2013	125-247-0100	12-1-2012	Amend	1-1-2013
121-030-0010	12-1-2012	Am. & Ren.	1-1-2013	125-247-0110	12-1-2012	Amend	1-1-2013
121-030-0020	12-1-2012	Am. & Ren.	1-1-2013	125-247-0165	12-1-2012	Amend	1-1-2013
121-030-0030	12-1-2012	Am. & Ren.	1-1-2013	125-247-0255	12-1-2012	Amend	1-1-2013
121-030-0040	12-1-2012	Am. & Ren.	1-1-2013	125-247-0260	12-1-2012	Amend	1-1-2013
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121-030-0060	12-1-2012	Am. & Ren.	1-1-2013	125-247-0270	12-1-2012	Amend	1-1-2013
121-030-0070	12-1-2012	Am. & Ren.	1-1-2013	125-247-0275	12-1-2012	Amend	1-1-2013
121-030-0080	12-1-2012	Am. & Ren.	1-1-2013	125-247-0280	12-1-2012	Amend	1-1-2013
121-030-0090	12-1-2012	Am. & Ren.	1-1-2013	125-247-0285	12-1-2012	Amend	1-1-2013
121-040-0010	12-1-2012	Am. & Ren.	1-1-2013	125-247-0287	12-1-2012	Amend	1-1-2013
123-021-0010	11-20-2012	Amend(T)	1-1-2013	125-247-0288	12-1-2012	Amend	1-1-2013
123-021-0015	11-20-2012	Amend(T)	1-1-2013	125-247-0296	12-1-2012	Amend	1-1-2013
123-021-0080	11-20-2012	Amend(T)	1-1-2013	125-247-0300	12-1-2012	Amend	1-1-2013
123-021-0090	11-20-2012	Amend(T)	1-1-2013	125-247-0330	12-1-2012	Amend	1-1-2013
123-021-0110	11-20-2012	Amend(T)	1-1-2013	125-247-0575	12-1-2012	Amend	1-1-2013
125-021-0005	12-1-2012	Repeal	1-1-2013	125-247-0600	12-1-2012	Amend	1-1-2013
125-180-1000	12-17-2012	Adopt(T)	1-1-2013	125-247-0690	12-1-2012	Amend	1-1-2013
125-180-1100	12-17-2012	Adopt(T)	1-1-2013	125-247-0700	12-1-2012	Amend	1-1-2013
125-180-1200	12-17-2012	Adopt(T)	1-1-2013	125-247-0710	12-1-2012	Amend	1-1-2013
125-180-1300	12-17-2012	Adopt(T)	1-1-2013	125-247-0720	12-1-2012	Amend	1-1-2013
125-180-1400	12-17-2012	Adopt(T)	1-1-2013	125-247-0731	12-1-2012	Amend	1-1-2013
125-180-1500	12-17-2012	Adopt(T)	1-1-2013	125-247-0740	12-1-2012	Amend	1-1-2013
125-246-0100	12-1-2012	Amend	1-1-2013	125-247-0750	12-1-2012	Amend	1-1-2013
125-246-0110	12-1-2012	Amend	1-1-2013	125-247-0760	12-1-2012	Amend	1-1-2013
125-246-0165	12-1-2012	Amend	1-1-2013	125-247-0805	12-1-2012	Adopt	1-1-2013
125-246-0170	12-1-2012	Amend	1-1-2013	125-247-0810	12-1-2012	Adopt	1-1-2013
125-246-0210	12-1-2012	Amend	1-1-2013	125-248-0100	12-1-2012	Amend	1-1-2013
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	141-090-0005	1-1-2013	Amend	1-1-2013
125-246-0318	12-1-2012	Adopt	1-1-2013	141-090-0010	1-1-2013	Amend	1-1-2013
125-246-0319	12-1-2012	Adopt	1-1-2013	141-090-0015	1-1-2013	Amend	1-1-2013
125-246-0321	12-1-2012	Amend	1-1-2013	141-090-0020	1-1-2013	Amend	1-1-2013
125-246-0322	12-1-2012	Amend	1-1-2013	141-090-0025	1-1-2013	Amend	1-1-2013
125-246-0323	12-1-2012	Amend	1-1-2013	141-090-0030	1-1-2013	Amend	1-1-2013
125-246-0333	12-1-2012	Amend	1-1-2013	141-090-0032	1-1-2013	Amend	1-1-2013
125-246-0335	12-1-2012	Amend	1-1-2013	141-090-0035	1-1-2013	Amend	1-1-2013
125-246-0345	12-1-2012	Amend	1-1-2013	141-090-0040	1-1-2013	Amend	1-1-2013
125-246-0350	12-1-2012	Amend	1-1-2013	141-090-0045	1-1-2013	Amend	1-1-2013
125-246-0351	12-1-2012	Amend	1-1-2013	141-090-0050	1-1-2013	Amend	1-1-2013
125-246-0353	12-1-2012	Amend	1-1-2013	141-090-0055	1-1-2013	Amend	1-1-2013
125-246-0360	12-1-2012	Amend	1-1-2013	162-050-0020	11-27-2012	Adopt	1-1-2013
125-246-0400	12-1-2012	Amend	1-1-2013	165-020-0440	11-29-2012	Adopt	1-1-2013
125-246-0410	12-1-2012	Repeal	1-1-2013	170-061-0015	12-14-2012	Amend(T)	1-1-2013
125-246-0420	12-1-2012	Repeal	1-1-2013	170-062-0000	11-19-2012	Amend(T)	1-1-2013
125-246-0430	12-1-2012	Repeal	1-1-2013	177-094-0080	12-16-2012	Amend	1-1-2013
125-246-0440	12-1-2012	Repeal	1-1-2013	177-094-0080(T)	12-16-2012	Repeal	1-1-2013

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177-094-0085(T)	12-16-2012	Repeal	1-1-2013	340-220-0030	12-11-2012	Amend	1-1-2013
259-008-0070	12-14-2012	Amend(T)	1-1-2013	340-220-0040	12-11-2012	Amend	1-1-2013
330-090-0140	11-16-2012	Amend(T)	1-1-2013	340-220-0050	12-11-2012	Amend	1-1-2013
330-090-0160	11-16-2012	Amend(T)	1-1-2013	340-225-0090	12-11-2012	Amend	1-1-2013
331-710-0080	11-19-2012	Amend(T)	1-1-2013	340-240-0010	12-11-2012	Amend	1-1-2013
331-710-0090	11-19-2012	Amend(T)	1-1-2013	340-240-0030	12-11-2012	Amend	1-1-2013
331-718-0020	11-19-2012	Amend(T)	1-1-2013	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
335-060-0007	12-14-2012	Adopt	1-1-2013	340-240-0610	12-11-2012	Adopt	1-1-2013
335-080-0005	12-14-2012	Amend	1-1-2013	340-240-0620	12-11-2012	Adopt	1-1-2013
335-080-0010	12-14-2012	Amend	1-1-2013	340-240-0630	12-11-2012	Adopt	1-1-2013
335-080-0015	12-14-2012	Amend	1-1-2013	340-253-0000	12-11-2012	Adopt	1-1-2013
335-080-0025	12-14-2012	Amend	1-1-2013	340-253-0040	12-11-2012	Adopt	1-1-2013
335-095-0030	12-14-2012	Amend	1-1-2013	340-253-0060	12-11-2012	Adopt	1-1-2013
335-095-0040	12-14-2012	Amend	1-1-2013	340-253-0100	12-11-2012	Adopt	1-1-2013
335-095-0050	12-14-2012	Amend	1-1-2013	340-253-0200	12-11-2012	Adopt	1-1-2013
340-054-0005	12-14-2012	Amend	1-1-2013	340-253-0250	12-11-2012	Adopt	1-1-2013
340-054-0010	12-14-2012	Amend	1-1-2013	340-253-0310	12-11-2012	Adopt	1-1-2013
340-054-0011	12-14-2012	Adopt	1-1-2013	340-253-0320	12-11-2012	Adopt	1-1-2013
340-054-0015	12-14-2012	Amend	1-1-2013	340-253-0330	12-11-2012	Adopt	1-1-2013
340-054-0020	12-14-2012	Repeal	1-1-2013	340-253-0340	12-11-2012	Adopt	1-1-2013
340-054-0021	12-14-2012	Repeal	1-1-2013	340-253-0400	12-11-2012	Adopt	1-1-2013
340-054-0022	12-14-2012	Amend	1-1-2013	340-253-0450	12-11-2012	Adopt	1-1-2013
340-054-0023	12-14-2012	Repeal	1-1-2013	340-253-0500	12-11-2012	Adopt	1-1-2013
340-054-0024	12-14-2012	Repeal	1-1-2013	340-253-0600	12-11-2012	Adopt	1-1-2013
340-054-0025	12-14-2012	Amend	1-1-2013	340-253-0630	12-11-2012	Adopt	1-1-2013
340-054-0026	12-14-2012	Adopt	1-1-2013	340-253-0650	12-11-2012	Adopt	1-1-2013
340-054-0027	12-14-2012	Adopt	1-1-2013	340-253-1000	12-11-2012	Adopt	1-1-2013
340-054-0035	12-14-2012	Repeal	1-1-2013	340-253-1010	12-11-2012	Adopt	1-1-2013
340-054-0036	12-14-2012	Adopt	1-1-2013	340-253-1020	12-11-2012	Adopt	1-1-2013
340-054-0055	12-14-2012	Repeal	1-1-2013	340-253-1030	12-11-2012	Adopt	1-1-2013
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340-054-0087	12-14-2012	Repeal	1-1-2013	340-253-3040	12-11-2012	Adopt	1-1-2013
340-054-0090	12-14-2012	Repeal	1-1-2013	340-253-3050	12-11-2012	Adopt	1-1-2013
340-054-0093	12-14-2012	Repeal	1-1-2013	340-262-1000	12-11-2012	Adopt	1-1-2013
340-054-0095	12-14-2012	Repeal	1-1-2013	340-264-0040	12-11-2012	Amend	1-1-2013
340-054-0097	12-14-2012	Repeal	1-1-2013	340-264-0078	12-11-2012	Amend	1-1-2013
340-054-0098	12-14-2012	Repeal	1-1-2013	340-264-0080	12-11-2012	Amend	1-1-2013
340-054-0100	12-14-2012	Amend	1-1-2013	340-264-0100	12-11-2012	Amend	1-1-2013
340-054-0102	12-14-2012	Amend	1-1-2013	340-264-0175	12-11-2012	Adopt	1-1-2013
340-054-0104	12-14-2012	Amend	1-1-2013	410-120-0006	12-1-2012	Amend(T)	1-1-2013
340-054-0106	12-14-2012	Amend	1-1-2013	410-120-0006(T)	12-1-2012	Suspend	1-1-2013
340-054-0108	12-14-2012	Amend	1-1-2013	411-020-0002	11-28-2012	Amend	1-1-2013
340-200-0040	12-10-2012	Amend	1-1-2013	411-020-0002(T)	11-28-2012	Repeal	1-1-2013
340-200-0040	12-11-2012	Amend	1-1-2013	411-020-0030	11-28-2012	Amend	1-1-2013

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411-020-0085	11-28-2012	Amend	1-1-2013	437-002-0120	12-14-2012	Amend	1-1-2013
411-020-0085(T)	11-28-2012	Repeal	1-1-2013	437-002-0240	12-14-2012	Amend	1-1-2013
411-020-0123	11-28-2012	Adopt	1-1-2013	437-003-0001	12-14-2012	Amend	1-1-2013
411-020-0123(T)	11-28-2012	Repeal	1-1-2013	437-005-0001	12-14-2012	Amend	1-1-2013
411-020-0126	11-28-2012	Adopt	1-1-2013	437-005-0002	12-14-2012	Amend	1-1-2013
411-020-0126(T)	11-28-2012	Repeal	1-1-2013	437-005-0003	12-14-2012	Amend	1-1-2013
436-001-0003	12-28-2012	Amend	1-1-2013	459-005-0400	12-5-2012	Adopt	1-1-2013
436-001-0004	12-28-2012	Amend	1-1-2013	459-035-0001	12-5-2012	Amend	1-1-2013
436-001-0005	12-28-2012	Amend	1-1-2013	459-035-0200	12-5-2012	Repeal	1-1-2013
436-001-0009	12-28-2012	Amend	1-1-2013	459-035-0220	12-5-2012	Repeal	1-1-2013
436-001-0019	12-28-2012	Amend	1-1-2013	461-135-1102	12-1-2012	Amend(T)	1-1-2013
436-001-0023	12-28-2012	Amend	1-1-2013	584-018-0220	11-19-2012	Adopt	1-1-2013
436-001-0170	12-28-2012	Amend	1-1-2013	584-036-0082	11-19-2012	Repeal	1-1-2013
436-001-0225	12-28-2012	Amend	1-1-2013	584-052-0030	11-19-2012	Repeal	1-1-2013
436-001-0246	12-28-2012	Amend	1-1-2013	584-052-0031	11-19-2012	Repeal	1-1-2013
436-001-0300	12-28-2012	Repeal	1-1-2013	584-052-0032	11-19-2012	Repeal	1-1-2013
436-001-0410	12-28-2012	Amend	1-1-2013	584-052-0033	11-19-2012	Repeal	1-1-2013
436-001-0420	12-28-2012	Amend	1-1-2013	584-080-0031	11-19-2012	Amend	1-1-2013
436-001-0430	12-28-2012	Amend	1-1-2013	584-090-0115	11-19-2012	Amend	1-1-2013
436-035-0002	1-1-2013	Amend	1-1-2013	584-100-0038	11-19-2012	Amend	1-1-2013
436-035-0003	1-1-2013	Amend	1-1-2013	584-100-0091	11-19-2012	Amend	1-1-2013
436-035-0005	1-1-2013	Amend	1-1-2013	584-100-0096	11-19-2012	Amend	1-1-2013
436-035-0007	1-1-2013	Amend	1-1-2013	603-052-1080	12-3-2012	Adopt	1-1-2013
436-035-0008	1-1-2013	Amend	1-1-2013	603-052-1090	12-3-2012	Adopt	1-1-2013
436-035-0009	1-1-2013	Amend	1-1-2013	603-052-1206	12-12-2012	Adopt	1-1-2013
436-035-0011	1-1-2013	Amend	1-1-2013	603-052-1209	12-12-2012	Adopt	1-1-2013
436-035-0012	1-1-2013	Amend	1-1-2013	603-052-1211	12-12-2012	Adopt	1-1-2013
436-035-0017	1-1-2013	Amend	1-1-2013	635-005-0465	12-12-2012	Amend(T)	1-1-2013
436-035-0018	1-1-2013	Amend	1-1-2013	635-005-0465(T)	12-12-2012	Suspend	1-1-2013
436-035-0030	1-1-2013	Amend	1-1-2013	660-024-0040	12-10-2012	Amend	1-1-2013
436-035-0040	1-1-2013	Amend	1-1-2013	660-024-0045	12-10-2012	Adopt	1-1-2013
436-035-0110	1-1-2013	Amend	1-1-2013	660-044-0000	1-1-2013	Amend	1-1-2013
436-035-0230	1-1-2013	Amend	1-1-2013	660-044-0005	1-1-2013	Amend	1-1-2013
436-035-0235	1-1-2013	Amend	1-1-2013	660-044-0040	1-1-2013	Adopt	1-1-2013
436-035-0255	1-1-2013	Amend	1-1-2013	660-044-0045	1-1-2013	Adopt	1-1-2013
436-035-0260	1-1-2013	Amend	1-1-2013	660-044-0050	1-1-2013	Adopt	1-1-2013
436-035-0265	1-1-2013	Amend	1-1-2013	660-044-0055	1-1-2013	Adopt	1-1-2013
436-035-0340	1-1-2013	Amend	1-1-2013	660-044-0060	1-1-2013	Adopt	1-1-2013
436-035-0350	1-1-2013	Amend	1-1-2013	690-501-0005	12-12-2012	Amend	1-1-2013
436-035-0370	1-1-2013	Amend	1-1-2013	690-501-0010	12-12-2012	Amend	1-1-2013
436-035-0380	1-1-2013	Amend	1-1-2013	690-501-0020	12-12-2012	Repeal	1-1-2013
436-035-0385	1-1-2013	Amend	1-1-2013	690-501-0030	12-12-2012	Amend	1-1-2013
436-035-0390	1-1-2013	Amend	1-1-2013	690-515-0000	12-12-2012	Amend	1-1-2013
436-035-0395	1-1-2013	Amend	1-1-2013	690-515-0010	12-12-2012	Amend	1-1-2013
436-035-0400	1-1-2013	Amend	1-1-2013	690-515-0020	12-12-2012	Amend	1-1-2013
436-035-0410	1-1-2013	Amend	1-1-2013	690-515-0030	12-12-2012	Amend	1-1-2013
436-035-0420	1-1-2013	Amend	1-1-2013	690-515-0040	12-12-2012	Amend	1-1-2013
436-035-0430	1-1-2013	Amend	1-1-2013	690-515-0050	12-12-2012	Amend	1-1-2013
436-035-0440	1-1-2013	Amend	1-1-2013	690-515-0060	12-12-2012	Amend	1-1-2013
436-035-0450	1-1-2013	Amend	1-1-2013	690-516-0005	12-12-2012	Amend	1-1-2013
436-035-0500	1-1-2013	Amend	1-1-2013	690-516-0010	12-12-2012	Amend	1-1-2013
436-050-0175	1-1-2013	Amend	1-1-2013	690-516-0020	12-12-2012	Repeal	1-1-2013
436-070-0002	4-1-2013	Amend	1-1-2013	690-516-0030	12-12-2012	Amend	1-1-2013
436-070-0003	4-1-2013	Amend	1-1-2013	690-517-0000	12-12-2012	Amend	1-1-2013
436-070-0010	4-1-2013	Amend	1-1-2013	690-517-0020	12-12-2012	Amend	1-1-2013

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690-517-0040	12-12-2012	Amend	1-1-2013	736-045-0500	12-13-2012	Adopt	1-1-2013
690-517-0050	12-12-2012	Repeal	1-1-2013	736-045-0505	12-13-2012	Adopt	1-1-2013
690-518-0010	12-12-2012	Amend	1-1-2013	804-010-0000	11-21-2012	Amend	1-1-2013
690-518-0030	12-12-2012	Amend	1-1-2013	804-010-0000(T)	11-21-2012	Repeal	1-1-2013
690-518-0040	12-12-2012	Repeal	1-1-2013	804-020-0001	11-21-2012	Amend	1-1-2013
690-518-0050	12-12-2012	Amend	1-1-2013	804-020-0001(T)	11-21-2012	Repeal	1-1-2013
734-010-0220	11-21-2012	Amend	1-1-2013	804-020-0003	11-21-2012	Amend	1-1-2013
734-010-0290	11-21-2012	Amend	1-1-2013	804-020-0003(T)	11-21-2012	Repeal	1-1-2013
734-010-0300	11-21-2012	Amend	1-1-2013	804-020-0010	11-21-2012	Amend	1-1-2013
734-010-0310	11-21-2012	Repeal	1-1-2013	804-020-0010(T)	11-21-2012	Repeal	1-1-2013
734-010-0320	11-21-2012	Amend	1-1-2013	804-020-0015	11-21-2012	Amend	1-1-2013
734-010-0330	11-21-2012	Amend	1-1-2013	804-020-0015(T)	11-21-2012	Repeal	1-1-2013
734-010-0340	11-21-2012	Amend	1-1-2013	804-020-0030	11-21-2012	Amend	1-1-2013
734-010-0350	11-21-2012	Amend	1-1-2013	804-020-0030(T)	11-21-2012	Repeal	1-1-2013
734-010-0370	11-21-2012	Repeal	1-1-2013	804-020-0040	11-21-2012	Amend	1-1-2013
734-010-0380	11-21-2012	Amend	1-1-2013	804-020-0040(T)	11-21-2012	Repeal	1-1-2013
734-059-0100	11-20-2012	Amend	1-1-2013	804-020-0045	11-21-2012	Amend	1-1-2013
735-012-0000	11-19-2012	Amend	1-1-2013	804-020-0045(T)	11-21-2012	Repeal	1-1-2013
735-012-0000(T)	11-19-2012	Repeal	1-1-2013	804-020-0065	11-21-2012	Amend	1-1-2013
735-070-0006	11-19-2012	Adopt	1-1-2013	804-020-0065(T)	11-21-2012	Repeal	1-1-2013
736-010-0060	11-16-2012	Amend	1-1-2013	804-040-0000	11-21-2012	Amend	1-1-2013
736-015-0006	11-16-2012	Amend	1-1-2013	804-040-0000(T)	11-21-2012	Repeal	1-1-2013
736-015-0015	11-16-2012	Amend	1-1-2013	808-002-0020	12-4-2012	Amend	1-1-2013
736-018-0045	12-31-2012	Amend	1-1-2013	808-005-0020	12-4-2012	Amend	1-1-2013
736-045-0006	12-13-2012	Adopt	1-1-2013	808-040-0025	12-4-2012	Amend	1-1-2013
736-045-0011	12-13-2012	Adopt	1-1-2013	808-040-0050	12-4-2012	Amend	1-1-2013
736-045-0100	12-13-2012	Adopt	1-1-2013	808-040-0060	12-4-2012	Amend	1-1-2013
736-045-0200	12-13-2012	Adopt	1-1-2013	809-001-0000	12-21-2012	Amend	1-1-2013
736-045-0300	12-13-2012	Adopt	1-1-2013	809-001-0020	12-21-2012	Repeal	1-1-2013
736-045-0305	12-13-2012	Adopt	1-1-2013	809-001-0025	12-21-2012	Repeal	1-1-2013
736-045-0310	12-13-2012	Adopt	1-1-2013	809-001-0030	12-21-2012	Repeal	1-1-2013
736-045-0320	12-13-2012	Adopt	1-1-2013	809-010-0025	12-21-2012	Amend	1-1-2013
736-045-0330	12-13-2012	Adopt	1-1-2013	809-020-0030	12-21-2012	Amend	1-1-2013
736-045-0340	12-13-2012	Adopt	1-1-2013	809-055-0000	12-21-2012	Amend	1-1-2013
736-045-0400	12-13-2012	Adopt	1-1-2013	811-015-0080	11-28-2012	Adopt	1-1-2013
736-045-0405	12-13-2012	Adopt	1-1-2013	813-250-0000	12-6-2012	Amend(T)	1-1-2013
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736-045-0412	12-13-2012	Adopt	1-1-2013	813-250-0020	12-6-2012	Amend(T)	1-1-2013
736-045-0414	12-13-2012	Adopt	1-1-2013	813-250-0030	12-6-2012	Amend(T)	1-1-2013
736-045-0416	12-13-2012	Adopt	1-1-2013	813-250-0040	12-6-2012	Amend(T)	1-1-2013
736-045-0418	12-13-2012	Adopt	1-1-2013	813-250-0050	12-6-2012	Suspend	1-1-2013
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736-045-0428	12-13-2012	Adopt	1-1-2013	855-065-0005	12-13-2012	Amend	1-1-2013
736-045-0430	12-13-2012	Adopt	1-1-2013	855-110-0007	12-13-2012	Amend	1-1-2013
736-045-0432	12-13-2012	Adopt	1-1-2013	858-010-0016	11-20-2012	Amend(T)	1-1-2013
736-045-0434	12-13-2012	Adopt	1-1-2013	858-010-0017	11-20-2012	Amend(T)	1-1-2013
736-045-0436	12-13-2012	Adopt	1-1-2013	858-010-0017(T)	11-20-2012	Suspend	1-1-2013
736-045-0438	12-13-2012	Adopt	1-1-2013	858-010-0050	11-19-2012	Amend	1-1-2013
736-045-0440	12-13-2012	Adopt	1-1-2013	877-001-0006	1-1-2013	Amend	1-1-2013
736-045-0442	12-13-2012	Adopt	1-1-2013	877-001-0009	1-1-2013	Adopt	1-1-2013
736-045-0444	12-13-2012	Adopt	1-1-2013	877-001-0020	1-1-2013	Amend	1-1-2013
736-045-0446	12-13-2012	Adopt	1-1-2013	877-001-0025	1-1-2013	Amend	1-1-2013

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877-020-0010	1-1-2013	Amend	1-1-2013				
877-020-0055	1-1-2013	Amend	1-1-2013				
877-020-0057	1-1-2013	Amend	1-1-2013				
877-025-0006	1-1-2013	Amend	1-1-2013				
877-025-0011	1-1-2013	Amend	1-1-2013				
877-025-0016	1-1-2013	Repeal	1-1-2013				
877-030-0025	1-1-2013	Amend	1-1-2013				
877-030-0040	1-1-2013	Amend	1-1-2013				
877-040-0055	1-1-2013	Repeal	1-1-2013				
918-305-0105	1-1-2013	Amend(T)	1-1-2013				
918-305-0105(T)	1-1-2013	Suspend	1-1-2013				
945-020-0010	12-13-2012	Adopt	1-1-2013				
945-020-0020	12-13-2012	Adopt	1-1-2013				

