

# OREGON BULLETIN

Supplements the 2003 *Oregon Administrative Rules Compilation*

**Volume 42, No. 8**  
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For June 16, 2003–July 15, 2003



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**BILL BRADBURY**  
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 *Oregon Bulletin*. The Oregon Administrative Rules Compilation is an annual publication containing the complete text of the Oregon Administrative Rules at the time of publication. The *Oregon Bulletin* is a monthly publication which updates rule text found in the annual compilation and provides notice of intended rule action, Executive Orders of the Governor and Opinions of the Attorney General.

## Background on Oregon Administrative Rules

The *Oregon Attorney General's Administrative Law Manual* defines "rule" to include "directives, standards, regulations or statements of general applicability that implement, interpret or prescribe law or policy or describe the agency's procedure or practice requirements." ORS 183.310(8) Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (180 days), using the procedures outlined in the *Oregon Attorney General's Administrative Law Manual*. The Administrative Rules Unit, Archives Division, Secretary of State assists agencies with the notification, filing and publication requirements of the administrative rules process. Every Administrative Rule uses the same numbering sequence of a 3 digit agency chapter number followed by a 3 digit division number and ending with a 4 digit rule number. (000-000-0000)

## How to Cite

Citation of the Oregon Administrative Rules is made by chapter and rule number. Example: Oregon Administrative Rules, chapter 164, rule 164-001-0005 (short form: OAR 164-001-0005).

## 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 the changes to individual rules, and organize the rule filing forms for permanent retention, the Administrative Rules Unit has developed a "history" for each rule which is located at the end of rule text. An Administrative Rule "history" outlines the statutory authority, statutes being implemented and dates of each authorized modification to the rule text. Changes are listed in chronological order and identify the agency, filing number, year, filing date and effective date in an abbreviated format. For example: "OSA 4-1993, f. & cert. ef. 11-10-93; Renumbered from 164-001-0005" documents a rule change made by the Oregon State Archives (OSA). The history notes that 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 rule was renumbered by this rule change and was formerly known as rule 164-001-0005. 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 annual, bound *Oregon Administrative Rules Compilation* contains the full text of all permanent rules filed through November 15 of the previous year. Subsequent changes to individual rules are listed in the OAR Revision Cumulative Index which is published monthly in the *Oregon Bulletin*. Changes to individual Administrative rules are listed in the OAR Revision Cumulative Index by OAR number and include the effective date, the specific rulemaking action and the issue of the *Oregon Bulletin* which contains the full text of the amended rule. The *Oregon Bulletin* publishes the full text of permanent and temporary administrative rules submitted for publication.

## Locating Administrative Rules Unit Publications

The Oregon Administrative Rules Compilation and the Oregon Bulletin are available in electronic and printed formats. Electronic versions are available through the Oregon State Archives Website at <http://arcweb.sos.state.or.us> Printed copies of these publications are deposited in Oregon's Public Documents Depository Libraries listed in OAR 543-070-0000 and may be ordered by contacting: Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, OR 97310, (503) 373-0701 - ext. 240, Julie.A.Yamaka@state.or.us

## 2002-2003 Oregon Bulletin Publication Schedule

The Administrative Rule Unit accepts rulemaking notices and filings Monday through Friday 8:00 a.m. to 5:00 p.m. at the Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310. To expedite the rulemaking process agencies are encouraged to set the time and place for a hearing in the Notice of Proposed Rulemaking, and submit their filings early in the month to meet the following publication deadlines.

## Submission Deadline — Publishing Date

December 13, 2002	January 1, 2003
January 15, 2003	February 1, 2003
February 14, 2003	March 1, 2003
March 14, 2003	April 1, 2003
April 15, 2003	May 1, 2003
May 15, 2003	June 1, 2003
June 13, 2003	July 1, 2003
July 15, 2003	August 1, 2003
August 15, 2003	September 1, 2003
September 15, 2003	October 1, 2003
October 15, 2003	November 1, 2003
November 14, 2003	December 1, 2003

## 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 910-1997, 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 915-1997. 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 ARC 910-1997 and ARC 915-1997 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

## Publication Authority

The *Oregon Bulletin* is published pursuant to ORS 183.360(3). Copies of the complete text of permanent and temporary rules may be obtained from the adopting agency or from the Secretary of State, Archives Division, 800 Summer Street, Salem, Oregon, 97310; (503) 373-0701.

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## EXECUTIVE ORDERS

### EXECUTIVE ORDER NO. 03-04

#### RESCISSION OF EXECUTIVE ORDERS DECLARING DROUGHT EMERGENCIES

##### IT IS HEREBY ORDERED AND DIRECTED THAT:

I. The following Executive Orders are rescinded as of December 31, 2003:

- a. Executive Order No. 01-01;
- b. Executive Order No. 01-09 as it relates to Baker County.

II. The following Executive Orders are rescinded in their entirety as of the date of this Order:

- a. Executive Order No. 01-03
- b. Executive Order No. 01-04
- c. Executive Order No. 01-05
- d. Executive Order No. 01-06
- e. Executive Order No. 01-07
- f. Executive Order No. 01-09 as it relates to Sherman County, Wheeler County, and Wallowa County;
- g. Executive Order No. 01-11
- h. Executive Order No. 01-12
- i. Executive Order No. 01-17
- j. Executive Order No. 01-23
- k. Executive Order No. 02-03
- l. Executive Order No. 02-19
- m. Executive Order No. 02-21
- n. Executive Order No. 02-23
- o. Executive Order No. 02-26
- p. Executive Order No. 02-27

Done at Salem, Oregon this 26th day of June, 2003

/s/ Theodore R. Kulongoski  
Theodore R. Kulongoski  
GOVERNOR

ATTEST:

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 03-05

#### DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN BAKER COUNTY, MALHEUR COUNTY, WHEELER COUNTY, CROOK COUNTY, AND HARNEY COUNTY DUE TO DROUGHT AND LOW WATER CONDITIONS.

Pursuant to ORS 401.055, I find that ongoing drought and low water conditions and weather patterns have the potential to cause an imminent natural and economic disaster in Baker County, Malheur Coun-

ty, Wheeler County, Crook County and Harney County (the "Affected Counties"). Projected weather patterns are not expected to significantly alleviate the current conditions; drought conditions are continuing. These conditions are expected to have profound consequences on the Affected Counties' agricultural, livestock, and natural resources and are likely to result in stark economic impacts.

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

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

##### IT IS HEREBY ORDERED AND DIRECTED THAT:

I. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources available to mitigate conditions and cause agricultural recovery in the Affected Counties.

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

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

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

V. This Executive Order expires on December 31, 2003.

Done at Salem, Oregon this 26th day of June, 2003

/s/ Theodore R. Kulongoski  
Theodore R. Kulongoski  
GOVERNOR

ATTEST:

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 03-06

#### OREGON COMMEMORATIVE COIN COMMISSION

Pursuant to my authority as Governor of the State of Oregon, I find that:

On December 1, 1997 Congress enacted The 50 State Commemorative Coin Program Act, Public Law 105-124 (the "Act"), which created The 50 State Quarters® Program. The 50 State Quarters® Program is a ten year program under which a design honoring each state is placed on the reverse side of the United States quarter. A quarter honoring the State of Oregon is to be issued in 2005.

As part of the selection process, the Secretary of the Treasury and the United States Mint have requested that the Governor conduct a concept selection process and provide the United States Mint with at least three, but not more than five, narrative design concepts for the Oregon quarter.

## EXECUTIVE ORDERS

Based on the narrative design concepts submitted by the state, the United States Mint will produce original artwork embodying each concept. The Citizens Commemorative Coin Advisory Committee and the U.S. Commission of Fine Arts will then review the designs and make recommendations. After approval of the designs by the Secretary of the Treasury, the designs will be presented to the state. As provided in the Act, the Governor will then recommend the final design to the Secretary of the Treasury. Final approval is by the Secretary of the Treasury.

This Executive Order establishes an Oregon Commemorative Coin Commission to develop the narrative design concepts to be presented to the United States Mint and to make recommendations to the Governor regarding the final design of the Oregon quarter.

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

1. The Oregon Commemorative Coin Commission (the "Commission") is hereby established.
2. The Commission shall consist of eighteen (18) members. The members shall be selected as follows:
  - a. The Governor shall appoint one member from each of the five Congressional districts in Oregon;
  - b. The Governor shall appoint one member who is a high school social studies teacher;
  - c. The Governor shall appoint one member who is a numismatist;
  - d. The Superintendent of Public Instruction shall appoint one member who is a student at a public elementary or secondary school in Oregon;
  - e. The Commission on Tribal Affairs shall appoint one member who is a member of a federally-recognized Indian tribe with a reservation in Oregon;
  - f. The Oregon Arts Commission shall appoint one member representing the arts community;
  - g. The Director of the Oregon Historical Society shall appoint one member representing the Oregon historian community;
  - h. The Chair of the Lewis & Clark Bicentennial in Oregon Board of Directors shall appoint one member;
  - i. The President of the Senate shall appoint one member of the Senate who is a member of the Democratic Party and shall appoint one member of the Senate who is a member of the Republican Party, in consultation with that party's leadership;
  - j. The Speaker of the House of Representatives shall appoint one member of the House of Representatives who is a member of the Republican Party and shall appoint one member of the House of Representatives who is a member of the Democratic Party, in consultation with that party's leadership;
  - k. The State Treasurer or his designee shall be a member; and
  - l. The Governor or his designee shall be a member.
3. The Governor and the State Treasurer shall be Co-Chairs of the Commission.
4. Each member of the Commission shall be a citizen of the United States and shall have been a resident of Oregon for the preceding five years.

5. Each member of the Commission shall remain a member of the Commission until the final design has been selected by the Governor. If a member of the Commission resigns or is otherwise unable to perform his or her duties as a member of the Commission, then the office that was responsible for appointing that member shall appoint a replacement member as soon as possible.

6. The members of the Commission shall be entitled to the reimbursement of reasonable expenses and to a per diem as provided in ORS 292.495 only if funds are made available for that purpose. Otherwise, members of the Commission shall not be entitled to the reimbursement of expenses or to a per diem.

7. The Office of the Governor shall initiate a public process through the media to solicit narrative design concepts for the Oregon quarter from the public by a date certain.

8. The Commission shall adopt a procedure for the review and consideration of all narrative design concepts received by the Commission. By a time to be specified by the United States Mint, the Commission shall submit three to five narrative design concepts for the Oregon quarter to the United States Mint. The Commission may edit or revise any of the narratives if it chooses to do so. Each narrative shall explain why the concept is emblematic of the state of Oregon and what the concept represents to the people of Oregon.

9. When the United States Mint provides the state with its final designs, the Commission shall reconvene to review the designs and to make final recommendations for the design of the Oregon quarter to the Governor. The Commission's final recommendations shall be subject to approval by the Governor.

10. A quorum for Commission meetings shall consist of a majority of the appointed members. The Commission shall strive to operate by consensus; however, the Commission may approve measures and make recommendations based on a vote of a majority of the quorum present.

11. The Governor shall approve and recommend the final design to the United States Mint.

12. The Governor and State Treasurer shall provide the Commission with all reasonable and necessary staff support.

13. This Executive Order shall expire when the Secretary of the Treasury approves the final design for the Oregon quarter.

Done at Salem, Oregon this 27th of June, 2003.

/s/ Theodore R. Kulongoski  
Theodore R. Kulongoski  
GOVERNOR

ATTEST:

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

### **EXECUTIVE ORDER NO. 03-07**

#### **DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN GILLIAM COUNTY, UMATILLA COUNTY, AND MORROW COUNTY DUE TO DROUGHT AND LOW WATER CONDITIONS.**

Pursuant to ORS 401.055, I find that ongoing drought and low water conditions and weather patterns have the potential to cause an imminent natural and economic disaster in Gilliam County, Umatilla County and Morrow County (the "Affected Counties"). Projected weather patterns are not expected to significantly alleviate the cur-

## EXECUTIVE ORDERS

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rent conditions; drought conditions are continuing. These conditions are expected to have profound consequences on the Affected Counties' agricultural, livestock, and natural resources and are likely to result in stark economic impacts.

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

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

### **IT IS HEREBY ORDERED AND DIRECTED:**

I. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources available to mitigate conditions and affect agricultural recovery in the Affected Counties.

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

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

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

V. This Executive Order expires on December 31, 2003

Done at Salem, Oregon this 16th day of July, 2003

/s/ Theodore R. Kulongoski  
Theodore R. Kulongoski  
GOVERNOR

ATTEST:

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## OTHER NOTICES

### NOTICE OF SELECTED REMEDY NORTHWEST INDUSTRIES, INC. — ALBANY

**PROJECT LOCATION:** 125 34th Avenue SW, Albany, Oregon  
**FINAL DECISION:** Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) issues this notice of a final cleanup decision regarding soil and groundwater contamination at the Northwest Industries, Inc. (NWI) site.

**HIGHLIGHTS:** NWI operates a specialty metal fabricating facility at this location. Historic releases of waste trichloroethylene (TCE) to floor drains resulted in soil and groundwater contamination. The contamination at NWI has been reduced significantly as a result of the interim cleanup actions.

**SELECTED CLEANUP ACTION:** Based on the results of a multi-year environmental investigation, implementation of interim cleanup actions, and a review of remedial action alternatives, DEQ selected the continued operation of the existing in-situ soil vapor extraction system and the groundwater containment system, long-term monitoring of groundwater, soil and soil vapor sampling, and long-term monitoring of groundwater use near the facility until contaminant concentrations no longer present an unacceptable risk to human health and the environment. The selected remedy is considered protective of human health and the environment, effective, permanent, implementable, and cost-reasonable and therefore, meets the requirements of the Oregon Environmental Cleanup Laws.

As required by ORS 465.320, DEQ invited public comment on the proposed cleanup action for the NWI Site in February 2002. After consideration of the public comments received, DEQ documented the selection of the cleanup actions in a Record of Decision (ROD). The ROD describes the environmental concerns at the site, and outlines the cleanup, and remedy actions, at the site. The ROD was signed and issued by DEQ's Western Region Administrator on March 21, 2003.

**THE NEXT STEP:** DEQ and NWI are in the process of developing a Remedial Design/Remedial Action Consent Decree. The Consent Decree details the requirements for implementing the selected remedy at NWI. Upon issuance of the Consent Decree, DEQ will provide public notice and opportunity to comment through issuance of a Oregon Secretary of State's Bulletin and issuance of a legal notice and press release to a local newspaper of general circulation.

**INFORMATION:** The ROD and the administrative record for the site are available for public review by appointment at DEQ's Western Region Salem Office. To schedule an appointment call (503) 378-8240. For additional information regarding the selected cleanup actions for the site, contact DEQ Project Manager, Nancy Gramlich at (503) 378-8240 extension 259 or by email at gramlich.nancy@deq.state.or.us.

The TTY number for the hearing impaired is (541) 687-5603. Copies of written material in alternative format such as Braille, large print, or another language are available upon request.

### PROPOSED APPROVAL OF CLEANUP AT BPA LANE SUBSTATION, EUGENE, OREGON

**COMMENTS DUE:** August 29, 2003

**PROJECT LOCATION:** 28190 Kenneth Nielson Road, Eugene, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on results of site investigation activities performed at the BPA Lane Substation located at 28190 Kenneth Nielson Road in Eugene, Oregon. The site is recommended for de-listing from the Confirmed Release List and Inventory of Hazardous Substances.

**HIGHLIGHTS:** The Voluntary Cleanup Program has reviewed site assessments performed at the site. The original water well for the site was initially tested in November 1987. Chloroethane (CA) (3 ppb), dichloroethane (1,1-DCA) (4 ppb), dichloroethene (1,1-DCE) (5

ppb), and oil & grease (4 ppm) were detected in the November 20, 1987 event. Eleven additional sampling events were performed from September 1989 to December 1996. Concentrations of CA, 1,1-DCA, and 1,1-DCE were routinely detected. The original water well was abandoned in 1997. A conceptual site model was developed and identified pathways were further evaluated for risk. The direct contact pathway for excavation workers is low. Contaminates detected in groundwater were significantly lower than risk based concentrations developed for this pathway. BPA's Pollution Abatement Clearance Process (PAC) will further ensure worker's safety in the event future excavation activities are performed at the site. The risk of inhalation to indoor or outdoor air pathways is also low. The soil gas survey performed at the site indicates contamination is not present at significant concentrations at the ground surface. The facility is unmanned and workers are not routinely present at the site. The risk of off-site domestic groundwater use is low. Modeling indicates the groundwater contamination is limited to the site. Additionally, VOCs, specifically CA and 1,1-DCE, were detected in the original well at concentrations less than current tap water Preliminary Remedial Goals (PRGs) with the exception of 1,2-DCA. 1,2-DCA was only detected one time at 2.3 ppb which is above the conservative tap water PRG of 0.12 ppb but less than the federal maximum contaminant level (MCL) of 5 ppb. The two ecological receptor pathways identified were determined to have no risk.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. In the event a person would like to view the file but does not wish to travel to Pendleton, the file will be transferred to DEQ's Salem or Eugene office for viewing upon request. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by August 29, 2003 and sent to Katie Robertson, Project Manager, at the address listed above.

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

**THE NEXT STEP:** DEQ will consider all public comments received before making a final decision regarding the "No Further Action" determination and the de-listing of the site from the Confirmed Release List and Inventory of Hazardous Substances.

### PROPOSED APPROVAL OF SOIL REMOVAL AT THE ODOT FACILITY IN BANKS, OREGON

**COMMENTS DUE:** August 31, 2003

**PROJECT LOCATION:** 48400 Highway 26, Banks, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed approval of a soil cleanup at the ODOT Manning Maintenance Yard in Banks, Oregon.

**HIGHLIGHTS:** In 2002, ODOT removed 38 tons of petroleum-impacted soil from a road equipment cleaning area at its Manning Maintenance Yard at 48400 Highway 26. After the soil was disposed at Hillsboro Landfill, ODOT confirmed, through soil sample analysis, that no significant soil contamination remained in the excavation area. DEQ recommends no further action at the equipment cleaning area at the Maintenance Yard. An independent soil removal activities report, summarizing the basis for DEQ's decision, is available for public review beginning August 1, 2003.

**HOW TO COMMENT:** To schedule an appointment at DEQ, contact Deborah Curtiss at 229-6361. The DEQ project manager is Alicia C. Voss (229-5011). Written comments should be sent to the project manager at DEQ, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by August 31, 2003. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with membership of 10 or more.

## OTHER NOTICES

**THE NEXT STEP:** DEQ will consider all public comments and the Regional Administrator will make a final decision after consideration of these public comments.

### NO FURTHER ACTION REQUIRED ENVIRONMENTAL CLEANUP AT THE CITY OF SPRINGFIELD CHAMBER OF COMMERCE RAILROAD DEPOT SITE COMPLETE

**PROJECT LOCATION:** 101 South A Street, Springfield, Oregon.  
**PROPOSAL:** The Department of Environmental Quality has determined that no further action is required at the site of a petroleum release, and the Site is recommended for delisting from the Confirmed Release List (CRL). Public notification is required by ORS 465.320.

**HIGHLIGHTS:** The site was brought to DEQ's attention in 1989 when the City of Springfield decommissioned five underground storage tanks and removed a building foundation where several service stations formerly operated on the corner of A Street and South 2nd in Springfield.

Environmental investigation and cleanup were performed at the site in August and October 1989 and August 1993. Petroleum contaminated soil was removed from the site and surrounding areas. Confirmation soil samples collected after the soil removal indicated residual petroleum concentrations were below the laboratory detection limits (non-detect); except beneath gas and sewer lines where excavation could not safely take place. Groundwater did not appear impacted at the site.

DEQ has concluded that there is no threat to human health and the environment because cleanup has been effective in reducing contaminants in soil to safe levels where technically feasible.

A more detailed description of the cleanup is presented in a DEQ staff report prepared for the site. The staff report is available for review at DEQ's Eugene office.

**THE NEXT STEP:** DEQ issued a No Further Action Letter and removed the site from the CRL on July 20, 2003.

### PROPOSED APPROVAL OF CLEANUP AT OREGON PACIFIC PETROLEUM BULK PLANT (FORMER) LA PINE, OREGON

**COMMENTS DUE:** August 29, 2003

**PROJECT LOCATION:** 16893 Finley Butte Road in La Pine, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" determination based on results of site investigation activities performed at the Oregon Pacific Petroleum Co.'s former bulk plant located at 16893 Finley Butte Road in La Pine, Oregon, Oregon. The Voluntary Cleanup Program has reviewed site information that indicates the contaminants of concern (benzene, MtBE, 1,3,5-trimethylbenzene) are less than generic risk based concentrations (RBCs) for each of the pathways identified. A deed restriction will be required to ensure future use of the site does not create a risk pathway. The site will remain on the Confirmed Release List and Inventory to track the institutional control.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by August 29, 2003 and sent to Katie Robertson, Project Manager, at the address listed above.

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

**THE NEXT STEP:** DEQ will consider all public comments received before making a final decision regarding the "Conditional No Further Action" determination.

### DEQ NOTICE OF AGREEMENT

The Oregon Department of Environmental Quality (DEQ) has entered into a Prospective Purchaser Agreement (PPA) with BD Ventures LLC for an 1/2 acre property in Ontario. The property is located at 76 SE 4th St in Ontario and will be redeveloped for commercial use.

Under the PPA, BD Ventures will continue annual groundwater monitoring; abandon eleven groundwater monitoring wells; and maintains deed restrictions. In exchange for conducting these remedial measures, DEQ has agreed to limit the liability of BD Ventures under state law for the existing contamination.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The Prospective Purchaser Agreement is a tool which facilitates the cleanup of contaminated property and encourages property transactions which would otherwise not likely occur because of the liabilities associated with existing contamination. DEQ has approved over 50 Prospective Purchaser Agreements throughout the State since the program began.

For additional information on DEQ's Prospective Purchaser Program, contact Charlie Landman, Oregon DEQ, at (503) 229-6461.

### CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION DECISION FOR THE FORMER RMAC INTERNATIONAL, INC. FACILITY, TROUTDALE, OREGON.

**COMMENTS DUE:** September 1, 2003

**PROJECT LOCATION:** The former RMAC facility is located on a 6-acre lowland industrial tract (Tax lots 400 and 500 of Township 1 N, Range 3E, Section 22) in Troutdale, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on DEQ's proposed No Further Action decision for the former RMAC International, Inc. facility, Troutdale, Oregon. Upon issuance of the No Further Action Decision, DEQ would remove the former RMAC facility from the DEQ Confirmed Release List (CRL) and Inventory of facilities needing environmental controls in accordance with ORS 465.230.

**HIGHLIGHTS:** RMAC operated the Troutdale tire recycling and petroleum contaminated soil treatment facility from 1989 to 1994. Prior to 1989, the site was vacant and undeveloped. Site operations began in 1989 when RMAC began receiving and storing waste tires. By October 1989, RMAC was storing more than 25,000 waste tires at the site. During RMAC's 4 years of operations, DEQ issued four Notices of Noncompliance (NONs). The first two violations were issued for storage of larger-than-allowed volumes of waste tires. DEQ issued a third NON to RMAC for having an excessive number of tire chip piles, excessive tire chip pile heights, insufficient financial assurance, and an invalid Site Management Plan that failed to adequately address fire suppression issues. The fourth NON was issued after the facility had ceased operations. This NON was issued primarily for the large volumes of waste material remaining on the site, including about 6,000 tires, 25,000 cubic yards of tire shreds, and 2,000 cubic yards of tire gasifier char/ash. On April 13, 1995, DEQ issued a Notice of Abatement and a Department Order requiring waste removal. RMAC failed to complete waste removal prior to filing for bankruptcy.

In 1997 and 1998, DEQ conducted a several removal actions at the RMAC site to address threats to public health and the environment. Wastes initially removed from the site included the char/ash pile,



## OTHER NOTICES

contaminated sediment in secondary containment structures, grossly contaminated surface soils, tank bottom sludges, residual product in piping and tanks, and drums containing potentially hazardous substances. Subsequent removals included the waste tires and tire chip piles followed by demolition and removal of most of the remaining above-ground structures and associated materials. Structures remaining on the site following completion of the demolition activities included most of the original site paving, the electrical control building located at the south side of the site, the soil storage shed at the northeast corner of the site, the oil/water separator located near the southwest corner of the soil storage shed, and the two wastewater retention ponds.

During 1998 and 1999, DEQ performed a site investigation to determine the extent of soil, groundwater, surface water and sediment contamination at the facility. A human health and ecological risk assessment was performed to assess risk to human health and the environment. The risk assessment showed that site conditions were protective provided that contaminated sediments in on-site storm water catch basins and two wastewater retention ponds were removed. Final cleanup measures were completed in June 2003 with the removal of 134 tons of sediment from the two waste water retention ponds and storm water catch basins. The sediments were transported off-site and disposed of at a solid waste landfill.

**HOW TO COMMENT:** DEQ's Staff Report, which provides the basis for the recommended No Further Action decision, and supporting documents that comprise the Administrative Record for the proposal, 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: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471.

Please send written comments to Bruce Gilles, Project Manager, at the address listed above or via email at [gilles.bruce@deq.state.or.us](mailto:gilles.bruce@deq.state.or.us). DEQ must receive written comments by 5 p.m. on September 1, 2003. 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.

Please notify DEQ of any special physical or other accommodations you may need due to a disability, language accommodations, or if you need copies of written materials in an alternative format (e.g. Braille, large print, etc). To make these arrangements, contact DEQ's Office of Communications and Outreach at 503-229-5317.

**THE NEXT STEP:** DEQ will consider all public comments received by the September 1, 2003 deadline prior to issuing a final cleanup decision for the facility.

### PROPOSED APPROVAL OF CLEANUP AT CROP PRODUCTION SERVICES LA GRANDE, OREGON

**COMMENTS DUE:** August 29, 2003

**PROJECT LOCATION:** 64325 Booth Lane, La Grande, Oregon  
**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on results of site investigation and remedial activities performed at the Crop Production Services located at 64325 Booth Lane in La Grande, Oregon. The site is recommended for de-listing from the Confirmed Release List and Inventory of Hazardous Substances.

**HIGHLIGHTS:** The Voluntary Cleanup Program has reviewed site assessment and removal activities performed at the site. Pesticides, ammonia, diesel, and heavy oil were detected in the soil and groundwater. Additional assessments performed during the last 8 years have shown contaminants of concern do not exceed their respective risk based levels. Approximately 450 cubic yards of soil was removed from a former evaporation pond. Concentrations of contaminants of concern were not detected in confirmation soil sampling collected following excavation activities. Nitrate is present in the groundwater at levels exceeding the safe drinking water level of 10 mg/L. However since nitrate is not a listed hazardous substance additional actions regarding nitrate levels will be addressed under the oversight of DEQ's Water Quality Program.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by August 29, 2003 and sent to Katie Robertson, Project Manager, at the address listed above.

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

**THE NEXT STEP:** DEQ will consider all public comments received before making a final decision regarding the "No Further Action" determination and the de-listing of the site from the Confirmed Release List and Inventory of Hazardous Substances.

# NOTICES OF PROPOSED RULEMAKING

## Notice of Periodic Review of Rules

Every three years an agency reviews their Administrative Rules to determine whether rulemaking action is necessary to minimize the economic effect of individual rules on small business. ORS 183.545 As part of the Periodic Review, agencies invite the public to submit written comment upon their existing rules. ORS 183.550 In reviewing individual rules agencies consider: the continued need for the rule; the nature of complaints or comments received concerning the rule from the public; the complexity of the rule; the extent to which the rule overlaps, duplicates or conflicts with other state rules, federal regulations and, to the extent feasible, local governmental regulations; the degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and the statutory citation or legal basis for each rule.

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### **Department of Transportation, Chapter 731**

#### **Rules to be Reviewed: Ch. 731**

<u>Division</u>	<u>Title</u>
001	Procedural Rules
005	Public Contract Rules
007	Public Improvement Contracts
010	Selection and Hiring of Consultants
015	Coordination Rules
020	Methods of Establishing Gross Weights of Trucks
030	Oregon Transportation Infrastructure Fund
040	Tollway Projects
050	Definition of District Highway

**Last Date for Comment:** 10-3-03

**Rules Coordinator:** Brenda Trump

**Comments:** The Oregon Department of Transportation is inviting public comment and review of its administrative rules in Chapter 731, as required by ORS 183.545 and 183.550. ODOT will follow applicable rulemaking procedures established by law if rules need to be amended or repealed based upon internal review or public comments.

Submit written comments to Brenda Trump, 1905 Lana Avenue NE, Salem, OR 97314. Comments may also be faxed to (503) 945-5254 or e-mailed to BRENDA.C.TRUMP@odot.state.or.us.

**Telephone:** (503) 945-5278

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### **Department of Transportation, Transit Division Chapter 732**

#### **Rules to be Reviewed: Ch. 732**

<u>Division</u>	<u>Title</u>
005	Special Transportation Fund for Elderly and Handicapped
010	The Special Transportation Fund Formula Program
020	The STF Discretionary Program

**Last Date for Comment:** 10-3-03

**Rules Coordinator:** Brenda Trump

**Comments:** The Oregon Department of Transportation is inviting public comment and review of its administrative rules in Chapter 732, as required by ORS 183.545 and 183.550. ODOT will follow applicable rulemaking procedures established by law if rules need to be amended or repealed based upon internal review or public comments.

Submit written comments to Brenda Trump, 1905 Lana Avenue NE, Salem, OR 97314. Comments may also be faxed to (503) 945-5254 or e-mailed to BRENDA.C.TRUMP@odot.state.or.us.

**Telephone:** (503) 945-5278

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

#### **Rules to be Reviewed: Ch. 734**

<u>Division</u>	<u>Title</u>
001	Procedural Rules
010	Construction Contracts
017	Chains or Traction Tires
020	Traffic Control
029	Adopt-A-Highway Program
030	Rest Areas
032	Oregon Scenic Byway Program
035	Right of Way and Real Property
040	Junkyards and Auto Wrecking Yards
050	Weight Restrictions for Highways and Land Use Permits
051	Highway Approaches, Access Control, Spacing Standards and Medians
055	Pole Lines, Buried Cables, Pipe Lines, Signs, Miscellaneous Facilities and Miscellaneous Operation
056	Special Event Permits
057	Permits for Development on Highway Right of Way
059	Signs — General Provisions
060	Signs
062	Signs Identifying Cultural and Historical Features
063	Relocation Outdoor Advertising Signs on a Scenic Byway
065	Advertising Signs Attached to Bus Shelters
070	Vehicle Weight and Dimension Limits — Permits
071	Lengths of Vehicles, Loads and Combinations of Vehicles in Operation Without Need of Special Permit
072	Telephonic Application and Self-Issuance of Permits for the Movement of Oversize/Overweight Vehicles and Loads
073	102"-Wide Commercial Vehicles — Combinations Not Subject to Overall Length Restrictions
074	The Issuance of Permits for Combinations of Vehicles Having Gross Weights in Excess of 80,000 Pounds
075	Movement of Overdimensional Mobile Homes and Modular Building Units
076	Issuance of Permits Allowing Tow Vehicles to Tow Oversize Disabled Vehicles or Combinations of Vehicles on State Highways
077	Transportation of Food Processing Plant By-Products From Which There is Fluid Leakage
078	Transportation of Overlength Logs, Poles, Piling and Structural Members
079	Special Rules for Self-Loading Log Trucks Allowed by Variance Permit
080	Designated Scenic Areas
081	Variance Permits Issued for Non-Divisible Loads and Road Use Assessment Fees

**Last Date for Comment:** 10-3-03

**Rules Coordinator:** Brenda Trump

**Comments:** The Oregon Department of Transportation is inviting public comment and review of its administrative rules in Chapter 734, as required by ORS 183.545 and 183.550. ODOT will follow applicable rulemaking procedures established by law if rules need to be amended or repealed based upon internal review or public comments.

Submit written comments to Brenda Trump, 1905 Lana Avenue NE, Salem, OR 97314. Comments may also be faxed to (503) 945-5254 or e-mailed to BRENDA.C.TRUMP@odot.state.or.us.

**Telephone:** (503) 945-5278

# NOTICES OF PROPOSED RULEMAKING

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

**Rules to be Reviewed: Ch. 735**

<u>Division</u>	<u>Title</u>
001	Procedural Rules
010	Processing and Records
012	DMV Publications
014	Motor Vehicle Accident Prevention Courses
016	Residency and Domicile Requirements
018	Acceptance and Verification of Information Submitted by Electronic Means
020	General Title Provisions
022	Title Issuance
024	Assembled/Reconstructed/Altered/Damaged Vehicles
026	Duplicate/Replacement Titles
028	Odometers
030	General Registration Provisions
032	Registration Plates and Fees
034	Vehicle Permits
040	Particular Vehicles/Permits
042	Fleets
046	Special Plates
048	Farm Vehicles
050	Financial Responsibility
060	Classes of Licenses and Employee Certification
061	Third Party Testing for Class C Driver Licenses and Permits
062	Driver Licensing
064	Special Driver Permits
070	Driver Licenses — Refusal, Suspensions, Cancellations, Revocation and Reinstatement
072	Driver Improvement
074	Medical Certification Program
076	Driver Reexamination Program
080	Parking (SnoPark) and Disabled Person Parking Permits
090	Implied Consent Hearing Procedures
100	Vehicle Equipment: Approval/Designation
102	Occupant/Rider Protection
104	Windows and Glazings
106	Brake Systems/Fluids/Related Devices
108	Lighting Equipment
110	Horns/Sirens/Sound Devices
112	Coupling Devices/Hitches
114	Warning Devices
116	Standards for Off-Road Vehicles
118	Ignition Interlock Devices
120	Transportation of Workers: Definitions/Rights of Transportation Safety
122	Transportation of Workers: Inspection/Testing/Repairs
124	Transportation of Workers: Construction of Vehicles
126	Transportation of Workers: Safety Equipment Requirements
128	Transportation of Workers: Driver's Duties
130	Transportation of Workers: Worker's Duties
140	Manufactured Structures
150	Vehicle Dealers
152	Wreckers
154	Towing Businesses
158	Abandoned Vehicle Appraisers
160	Driver Training (Commercial Schools)
162	Snowmobile Instructors/Operators
164	Snowmobile Title/Registration
168	All-Terrain Vehicle Title/Registration

170	Fuel Licenses and Records
174	Fuel Tax Refunds and Penalties
176	Use Fuel Tax

**Last Date for Comment:** 10-3-03

**Rules Coordinator:** Brenda Trump

**Comments:** The Oregon Department of Transportation is inviting public comment and review of its administrative rules in Chapter 735, as required by ORS 183.545 and 183.550. ODOT will follow applicable rulemaking procedures established by law if rules need to be amended or repealed based upon internal review or public comments.

Submit written comments to Brenda Trump, 1905 Lana Avenue NE, Salem, OR 97314. Comments may also be faxed to (503) 945-5254 or e-mailed to BRENDA.C.TRUMP@odot.state.or.us.

**Telephone:** (503) 945-5278

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**Department of Transportation,  
Transportation Safety Division  
Chapter 737**

**Rules to be Reviewed: Ch. 737**

<u>Division</u>	<u>Title</u>
005	Ignition Interlock Device Program
015	Traffic Safety Education

**Last Date for Comment:** 10-3-03

**Rules Coordinator:** Brenda Trump

**Comments:** The Oregon Department of Transportation is inviting public comment and review of its administrative rules in Chapter 737, as required by ORS 183.545 and 183.550. ODOT will follow applicable rulemaking procedures established by law if rules need to be amended or repealed based upon internal review or public comments.

Submit written comments to Brenda Trump, 1905 Lana Avenue NE, Salem, OR 97314. Comments may also be faxed to (503) 945-5254 or e-mailed to BRENDA.C.TRUMP@odot.state.or.us.

**Telephone:** (503) 945-5278

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

**Rules to be Reviewed: Ch. 740**

<u>Division</u>	<u>Title</u>
010	Procedural Rules
030	Definitions; General Provisions
035	Certificates, Permits, Licenses and Documents
040	Insurance and Bonds
045	Identification, Issuance, and Placement of Plates, Markers, Devices and Passes
050	Tariffs and Time Schedules
055	Records, Reports and Accounting Fees and Taxes
060	Transportation of Household Goods
100	Vehicles: Driver: Equipment: Equipment Required and Condition of Vehicles
105	Equipment: Logs, Poles and Pilings
110	Transportation of Hazardous Materials
115	Cargo Loading and Securement Rules
120	Baled Hay and Straw — Loading, Securement and Transportation
125	Baled Cotton, Paper, and Jute — Loading, Securement and Transportation
130	Logs and Poles — Loading, Securement and Transportation
135	Junk and Scrap Metal — Loading, Securement and Transportation
140	Steel Coils — Loading, Securement and Transportation
145	Steel Plate, Sheet and Tinplate — Loading and Securement

# NOTICES OF PROPOSED RULEMAKING

- 150 Empty Wooden or Plastic Boxes — Loading, Securement and Transportation
- 155 Detachable Freight Vans or Tank Containers — Loading, Securement and Transportation
- 160 Lumber and Lumber Products — Safe Loading, Securement and Transportation
- 165 Sacked Cement, Sand, Ready-Mix Concrete, Bark Dust, Bark Chips, Seed — Securement and Transportation
- 200 Reciprocal Agreements and Interstate Compacts
- 300 Penalties

**Last Date for Comment:** 10-3-03

**Rules Coordinator:** Brenda Trump

**Comments:** The Oregon Department of Transportation is inviting public comment and review of its administrative rules in Chapter 740, as required by ORS 183.545 and 183.550. ODOT will follow applicable rulemaking procedures established by law if rules need to be amended or repealed based upon internal review or public comments.

Submit written comments to Brenda Trump, 1905 Lana Avenue NE, Salem, OR 97314. Comments may also be faxed to (503) 945-5254 or e-mailed to BRENDA.C.TRUMP@odot.state.or.us.

**Telephone:** (503) 945-5278

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## Department of Transportation, Rail Division Chapter 741

**Rules to be Reviewed:** Ch. 741

Division	Title
050	Railroads: Rail Rates, Procedures for Filing, Proceedings
055	Agency Proceedings
060	State Safety Oversight of Rail Fixed Guideway Systems
100	Railroad-Highway Crossings — General
105	Assignment of Identification Numbers to Crossings
110	Protective Devices at Crossings
115	Allocation on Monies to Defray Costs of Maintaining Active Protective Devices at Railroad-Highway Crossings
120	Maintenance, Construction and Closure of Crossings
125	Crossing Blockage
200	Applications
300	Minimum Clearances — General
305	Overhead Clearances
310	Side Clearances
315	Track Centers
320	Standard Walkways
325	Forms
330	Signs
335	Railroad Caboose and Locomotive Sanitation Facility and Water Standards
400	Standard for the Operation by Class I Railroads of Freight Trains Without an Occupied Caboose as the Rear Car
510	Oregon Railroad Hazardous Materials Transportation Rules
520	Hazardous Waste
600	Accident Notices and Reports
700	Uniform System of Accounts for Railroads
710	Railroad Regulatory Fee Methodology for Computing the Regulatory Rail Fee

**Last Date for Comment:** 10-3-03

**Rules Coordinator:** Brenda Trump

**Comments:** The Oregon Department of Transportation is inviting public comment and review of its administrative rules in Chapter 741, as required by ORS 183.545 and 183.550. ODOT will follow

applicable rulemaking procedures established by law if rules need to be amended or repealed based upon internal review or public comments.

Submit written comments to Brenda Trump, 1905 Lana Avenue NE, Salem, OR 97314. Comments may also be faxed to (503) 945-5254 or e-mailed to BRENDA.C.TRUMP@odot.state.or.us.

**Telephone:** (503) 945-5278

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## 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 listed below.

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

A public rulemaking 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 by the Last Date for Comment as printed in the Notice of Proposed Rulemaking in the *Oregon Bulletin*. If sufficient hearing requests are received by an agency, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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## Board of Clinical Social Workers Chapter 877

<b>Date:</b> 9-9-03	<b>Time:</b> 2 p.m.	<b>Location:</b> 3218 Pringle Road SE First Flr. Conference Rm. Salem, OR 97302
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**Hearing Officer:** Ginger Martin, LCSW

**Stat. Auth.:** ORS 675.510 - 675.600; Other Auth.: OAR 877

**Stats. Implemented:** ORS 675.571

**Proposed Amendments:** 877-020-0020

**Last Date for Comment:** 9-3-03

**Summary:** Division 20 identified the fee schedule for certification and licensing. The amendment identifies the restoration of fees from the 1997-99 biennium which were legislatively reduced. The Legislature has now restored the fees effective July 1, 2003.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Elizabeth A. Buys

**Address:** State Board of Clinical Social Workers, 3218 Pringle Rd. SE - Suite 240, Salem, OR 97302-6310

**Telephone:** (503) 378-5735

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## Board of Examiners of Nursing Home Administrators Chapter 853

<b>Date:</b> 10-8-03	<b>Time:</b> 9-9:30 a.m.	<b>Location:</b> Room 445 State Office Bldg. 800 NE Oregon Portland, OR 97232
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**Hearing Officer:** Rene Dumas

**Stat. Auth.:** ORS 678.820(1) & 678.780(m)

**Stats. Implemented:** ORS 678.820(1) & 678.780(m)

**Proposed Adoptions:** 853-010-0074

**Proposed Amendments:** 853-010-0010, 853-010-0065

**Last Date for Comment:** 10-7-03

**Summary:** 853-010-0010 Definitions. Removes (11) Unprofessional Conduct and renumbers (12) to (11).

# NOTICES OF PROPOSED RULEMAKING

853-010-0065 Standards for Nursing Home Administrators. Removes reference to American College of Health Care Administrators adopted standards as an attachment to rules and includes revised standards as part of the rules. These standards will be the Board's statement of conditions and performances which are expected, rather than goals.

853-010-0074 Unprofessional Conduct. New rule. Defines "Unprofessional Conduct" and provides numerous examples of unprofessional conduct.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Barbara Orazio

**Address:** Board of Examiners of Nursing Home Administrators, 800 NE Oregon - Suite 407, Portland, OR 97232

**Telephone:** (503) 731-4046

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**Board of Medical Examiners**  
**Chapter 847**

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.265

**Proposed Amendments:** 847-005-0005

**Last Date for Comment:** 8-25-03

**Summary:** The proposed rule would increase the physician assistant license renewal fee by \$50.00 per biennium, but would allow physician assistant unlimited supervising physician and practice description changes during the biennium. The fee for each supervising physician and practice description change is \$50.00, and there are many physician assistants who have more than one supervising physician and make several changes in their practice description or add or change a supervising physician during the biennium.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826

**Telephone:** (503) 229-5873, ext. 223

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**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.228

**Proposed Amendments:** 847-008-0050

**Last Date for Comment:** 8-25-03

**Summary:** The proposed rules change the current process of back-dating to the beginning of the biennium the effective date the lapsed license is reinstated. The new process will show the effective date of reinstatement being the date the renewal form and all fees were received in the Board office and processed.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826

**Telephone:** (503) 229-5873, ext. 223

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**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.110

**Proposed Amendments:** 847-020-0170, 847-020-0180

**Last Date for Comment:** 8-25-03

**Summary:** The proposed rules change adds the National Board of Medical Osteopathic Examiners (NBOME) examination, and the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) which has taken its place, as the osteopathic licensing examination required for licensure in Oregon. Applicants who have taken either the NBOME examination or COMLEX must also have completed the three Levels of the examination within seven years and passed each Level within three attempts.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826

**Telephone:** (503) 229-5873, ext. 223

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.132

**Proposed Amendments:** 847-070-0038

**Last Date for Comment:** 8-25-03

**Summary:** The proposed rule makes the Limited License, Visiting Professor for acupuncturists much the same as the Limited License, Visiting Professor for physicians. The acupuncture applicant will not be required to submit an application for permanent licensure, but a limited license application. Additional documentation required will be verification of education, acupuncture licensure, verification of identity, and a letter from the acupuncture school or program offering him/her a faculty position. Practice and teaching are limited to the school or program.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826

**Telephone:** (503) 229-5873, ext. 223

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**Board of Naturopathic Examiners**  
**Chapter 850**

**Stat. Auth.:** ORS 685.125

**Stats. Implemented:** ORS 685.100

**Proposed Amendments:** 850-010-0035

**Last Date for Comment:** 8-25-03

**Summary:** This rule will update licenses and fees.

**Rules Coordinator:** Anne Walsh

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

**Telephone:** (503) 731-4045

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**Board of Nursing**  
**Chapter 851**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-11-03	9 a.m.	800 NE Oregon Street Room 120-C (Willamette River Suite) Portland, OR 97232

**Hearing Officer:** Rolf Olson, Board President

**Stat. Auth.:** ORS 678.021 & 678.031

**Stats. Implemented:** ORS 678.021 & 678.031

**Proposed Amendments:** 851-031-0005, 851-031-0006, 851-031-0010, 851-031-0060, 851-031-0070

**Last Date for Comment:** 9-11-03, 9 a.m.

**Summary:** These rule amendments clarify the term "graduate" for the purpose of licensing individuals who complete certificate and direct entry masters nursing programs. These rules also replace text that was inadvertently omitted from the previous rule revisions in regard to reentry requirements and the elimination of picture identification for reactivation and reinstatement of nurse licensure.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** KC Cotton

**Address:** Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162

**Telephone:** (503) 731-4754

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-11-03	9 a.m.	800 NE Oregon Street Room 120-C Portland, OR 97232

**Hearing Officer:** Rolf Olson, Board President

**Stat. Auth.:** ORS 678.375, 678.380, 678.385 & 678.390

**Stats. Implemented:** ORS 678.375, 678.380, 678.385 & 678.390

**Proposed Adoptions:** Rules in 851-050

**Proposed Repeals:** 851-050-0003, 851-050-0139, 851-050-0141

**Proposed Ren. & Amends:** Rules in 851-050

**Last Date for Comment:** 9-11-03

# NOTICES OF PROPOSED RULEMAKING

**Summary:** These rules cover the standards and scope of practice for the Nurse Practitioner. They also distinguish the scope of practice of the Nurse Practitioner from that of the Registered Nurse. It adds a new requirement for Registered Nurse practice prior to certification as a Nurse Practitioner as of June 1, 2005, and modifies re-entry requirements. The pharmacology requirement has been modified for initial and reactivation applicants.

These rules are being amended and renumbered to incorporate changes directed by the Board and to improve the sequencing of rule content.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** KC Cotton

**Address:** Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162

**Telephone:** (503) 731-4754

.....  
**Date:** 9-11-03      **Time:** 9 a.m.      **Location:** 800 NE Oregon St. Room 120-C Portland, OR 97232

**Hearing Officer:** Rolf Olsen, Board President

**Stat. Auth.:** ORS 678.385

**Stats. Implemented:** ORS 678.375 & 678.385

**Proposed Amendments:** 851-050-0131

**Last Date for Comment:** 9-11-03, 9 a.m.

**Summary:** The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. The amendments add the June, July and August 2003 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** KC Cotton

**Address:** Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162

**Telephone:** (503) 731-4754

.....  
**Department of Agriculture  
Chapter 603**

**Date:** 8-25-03      **Time:** 7 p.m.      **Location:** Oregon Trail Electric Co-op 4005 23rd Street Baker City, OR 97814

**Hearing Officer:** Stephanie Page

**Stat. Auth.:** ORS 561.190, 561.191, 561.400 & 568.900 - 568.933; Other Auth.: Rules in OAR 603-090

**Stats. Implemented:** ORS 568.900 - 568.933

**Proposed Adoptions:** 603-095-3600, 603-095-3620, 603-095-3640, 603-095-3660

**Last Date for Comment:** 9-15-03

**Summary:** The rules effectuate the implementation of the Powder/Brownlee Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Sherry Kudna

**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301-2532

**Telephone:** (503) 986-4619

.....  
**Date:** 8-21-03      **Time:** 10:30 a.m.      **Location:** 635 Capitol St. NE Salem, OR Conference Rm. B

**Hearing Officer:** Clark Cooney

**Stat. Auth.:** ORS 561 & 596; Other Auth.: ORS 596.100

**Stats. Implemented:** ORS 596.095 & 596.100

**Proposed Amendments:** 603-012-0230

**Last Date for Comment:** 9-4-03

**Summary:** This rule change will increase the fees for animal remedies, pharmaceuticals and veterinary biologics sold in Oregon to the maximum allowed which is \$75 per product per year.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Sherry Kudna

**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301-2532

**Telephone:** (503) 986-4619

.....  
**Date:** 8-21-03      **Time:** 10 a.m.      **Location:** 635 Capitol St. NE Salem, OR Conference Rm. B

**Hearing Officer:** Clark Cooney

**Stat. Auth.:** ORS 561; Other Auth.: ORS 604

**Stats. Implemented:** ORS 604.027(1) & 604.027(2)

**Proposed Adoptions:** 603-014-0046, 603-014-0047, 603-014-0048

**Proposed Amendments:** 603-014-0045

**Last Date for Comment:** 9-4-03

**Summary:** This rule change will amend the fee charged to record cattle, horse, and sheep brands. It will also establish a new activation fee and renewal fee.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Sherry Kudna

**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301-2532

**Telephone:** (503) 986-4619

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**Date:** 8-26-03      **Time:** 10 a.m.      **Location:** 635 Capitol St. NE Salem, OR Conference Rm. B

**Hearing Officer:** Debbie Gorham

**Stat. Auth.:** ORS 596; Other Auth.: ORS 561

**Stats. Implemented:** ORS 596.341

**Proposed Amendments:** 603-011-0265

**Last Date for Comment:** 9-9-03

**Summary:** This amendment provides additional safeguards to assure Oregon continues to maintain a TB free classification as assigned by USDA-APHIS. The amendment provides alternatives to individuals who import feeder cattle to meet Oregon's entry requirements.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Sherry Kudna

**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301-2532

**Telephone:** (503) 986-4619

.....  
**Department of Agriculture,  
Oregon Blueberry Commission  
Chapter 670**

**Date:** 9-23-03      **Time:** 12 p.m.      **Location:** 1130 Wallace Road NW Salem, Oregon

**Hearing Officer:** Roy Malensky

**Stat. Auth.:** ORS 576 & 183

**Stats. Implemented:** ORS 576 & 183

**Proposed Adoptions:** 670-010-0006, 670-010-0011

**Proposed Amendments:** 670-010-0005, 670-010-0010, 670-010-0015

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 9-23-03

**Summary:** These proposed new rules and amendments to existing rules will bring the Oregon Blueberry Commission into compliance with Chapter 504 Oregon Laws 2001. These rules are designed to define existing terminology; to define the Industry Average Unit Price; to create a challenge process to allow producers to determine whether the assessment they paid exceeds the legal limit; and to revise the rules to include the new terminologies where appropriate. *\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lisa Ostlund

**Address:** Department of Agriculture, Oregon Blueberry Commission, PO Box 3366, Salem, OR 97302

**Telephone:** (503) 364-2944

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## Department of Consumer and Business Services, Division of Finance and Corporate Securities Chapter 441

**Stat. Auth.:** ORS 706.015

**Stats. Implemented:** ORS 706.015

**Proposed Adoptions:** 441-505-1110

**Last Date for Comment:** 8-25-03

**Summary:** Sets June 30, 2003 as the effective date of federal statutes and regulations for purposes of construing those provisions in references in the Bank Act.

**Rules Coordinator:** Berri Leslie

**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE - Rm. 410, Salem, OR 97301-3881

**Telephone:** (503) 947-7478

\*\*\*\*\*

## Department of Environmental Quality Chapter 340

Date:	Time:	Location:
8-15-03	2 p.m.	811 SW Sixth Ave. Rm. 3A Portland, OR

**Hearing Officer:** Stephanie Holmes

**Stat. Auth.:** ORS 466.706 - 466.835, 466.994 & 466.995

**Stats. Implemented:** ORS 466.706 & 466.746

**Proposed Amendments:** 340-150-0010

**Last Date for Comment:** 8-18-03

**Summary:** The proposed rule revision modifies the existing definition of an "underground storage tank" and adds a definition of "earthen materials" to clarify the meaning of underground storage tank.

Note that these proposed rule amendments only apply to regulated underground storage tanks; they do not apply to heating oil tanks.

To submit comments or request additional information, please contact Mitch Scheel at the Department of Environmental Quality (DEQ), 811 SW Sixth Avenue, Portland, Oregon 97204, toll free in Oregon at 800-452-4011 or direct at (503) 229-5769, Fax: (503) 229-6954, E-mail: [scheel.mitch@deq.state.or.us](mailto:scheel.mitch@deq.state.or.us), or visit DEQ's website at <http://www.deq.state.or.us/news/index.asp>

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Rachel Sakata

**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97070

**Telephone:** (503) 229-5659

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## Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
9-12-03	8 a.m.	ODFW Commission Room 3406 Cherry Ave. NE Salem, OR 97303

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 496.012 & 496.138

**Stats. Implemented:** ORS 496.171, 496.172, 496.176, 496.182, 496.430, 496.435, 496.445, 496.450 & 496.555

**Proposed Adoptions:** Rules in 635-007

**Proposed Amendments:** 635-007-0501, 635-007-0505

**Proposed Repeals:** 635-007-0510, 635-007-0515, 635-007-0521, 635-007-0522, 635-007-0523, 635-007-0525, 635-007-0526, 635-007-0527, 635-007-0528, 635-007-0529, 635-007-0536, 635-007-0537, 635-007-0538, 635-007-0540, 635-007-0541, 635-007-0800, 635-007-0805, 635-007-0810, 635-007-0815, 635-007-0817

**Last Date for Comment:** 9-12-03

**Summary:** Adopt and amend rules to implement the Native Fish Conservation Policy.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Mike Lueck

**Address:** Department of Fish and Wildlife, 2501 SW 1st Ave., P.O. Box 59, Portland, OR 97207

**Telephone:** (503) 872-5272, ext. 5447

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## Department of Forestry Chapter 629

Date:	Time:	Location:
9-9-03	9 a.m.-12 p.m.	Division of State Lands Mill Creek Rm. 775 Summer St. NE Salem, OR 97310

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 183, 526.816 & 530.050(11); Other Auth.: ORS 526.041(1)

**Stats. Implemented:** ORS 526.801 et seq., 530.059 & 530.450 et seq.

**Proposed Amendments:** 629-031-0010

**Last Date for Comment:** 9-19-03, 5 p.m.

**Summary:** OAR Chapter 629, Division 31, contains the Department of Forestry's (State Forester's) Log Export Rules. OAR Chapter 629, Division 31, controls the export of unprocessed timber from the state forest lands under the Board of Forestry and State Forester's jurisdiction (hereafter "BOF Lands"). OAR 629-031-0010(2) includes an exemption that allows persons that export softwood logs from lands within Oregon to purchase under some circumstances the hardwood logs that originate from timber sales on BOF forest lands. A parallel provision concerns logs originating from lands under the jurisdiction of the State Land Board (OAR 141, division 16).

In May 2003, a group of seven present or former owners of alder sawmills submitted a Petition for Rulemaking to the State Board of Forestry. (Authority for this rule lies with the State Forester rather than the Board of Forestry, and the Petition is being treated as a petition to the State Forester.) A duplicate Petition was submitted to the State Land Board. The Petition focused on the exemption in OAR 629-031-0010(2) and presented two requests for rulemaking. First, that the State Forester adopt a temporary rule removing the exemption in OAR 629-031-0010(2). Second, that the State Forester initiate permanent rulemaking procedures to remove the exemption. The State Forester initially contemplated initiating a public forum on the proposed rulemaking. However, at its meeting on June 10, 2003, the Land Board decided to go forward with the rulemaking process to consider whether to remove the exemption. In order to avoid duplication of effort, the State Forester decided to conduct a parallel rulemaking process.

This notice of rulemaking and hearing is intended to accompany a similar notice issued by the Land Board, which implements the Land Board's decisions on June 10, 2003. If adopted, the proposed amendments in the two notices would remove the exemptions in OAR 629-031-0010(2) and OAR 141-016-0010(2). Removal of the exemptions could have several impacts. For instance, it could mean that persons who export any unprocessed softwood or hardwood logs that originate from private or public lands in Oregon would not be

## NOTICES OF PROPOSED RULEMAKING

allowed to purchase directly or indirectly any hardwood logs that originate from state owned forest lands. It could mean that persons who are currently selling hardwood logs to persons who export unprocessed logs would have fewer purchasers competing for the logs. And it could mean that either less or more money revenue would be generated from state timber sales, in either the short or the long term.

The Land Board and the State Forester are coordinating their rule-making procedures. Any information submitted to one entity will be included in the rulemaking records of both entities. Persons are requested to submit 4 copies of any written comments. The hearing noticed above will be conducted by a single hearing officer appointed by both entities. The Land Board and the Oregon Department of Forestry will make independent decisions.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Gayle Birch

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

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### Department of Human Services, Child Welfare Programs Chapter 413

<b>Date:</b> 8-19-03	<b>Time:</b> 9 a.m.	<b>Location:</b> DHS Room 275 500 Summer St. NE Salem, OR
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**Hearing Officer:** Barbara Carranza

**Stat. Auth.:** ORS 418.005; Other Auth.: OAR 413-210-0000 - 413-210-0250

**Stats. Implemented:** ORS 418.205 - 418.325 & 418.990 - 418.998  
**Proposed Amendments:** 413-210-0800, 413-210-0806, 413-210-0821

**Last Date for Comment:** 8-29-03

**Summary:** Some refinements need to be made to these rules regarding Outdoor Youth Programs. The advisory committee and staff recommend these revisions after a period of applying these rules. The revisions are related to stating values for regulating outdoor youth programs, licensing requirements related to bonding, insurance, workers compensation and financial stability. Also, a change has been made in the education requirements for outdoor youth program field staff.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Barbara J. Carranza

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E-63, Salem, OR 97301-1067  
**Telephone:** (503) 945-6649

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### Department of Human Services, Departmental Administration and Medical Assistance Programs Chapter 410

<b>Date:</b> 8-20-03	<b>Time:</b> 10:30 a.m.-12 p.m.	<b>Location:</b> Rm 137 D 500 Summer St. NE Salem, OR
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**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-120-1195

**Last Date for Comment:** 8-20-03, 5 p.m.

**Summary:** The General Rules program administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. The Department of Human Services is authorized to provide State-funded reimbursement for limited prescription drugs to "certain individuals previously participating in the Medically Needy program and receiving prescription drugs to sup-

port organ transplants and remedy HIV-positive symptoms." Qualified individuals identified with specific health related conditions as outlined in the committee report for Senate Bill 5548, will be eligible for a State-funded, limited, prescription drug benefit. The program, originally funded through June 30, 2003, has been extended until December 31, 2003. Rule 410-120-1195 was temporarily amended to reflect this extension, effective July 1, 2003. This is the Notice to permanently amend the rule.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Darlene Nelson

**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35 Salem, OR 97301-0177

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

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<b>Date:</b> 8-20-03	<b>Time:</b> 10:30 a.m.-12 p.m.	<b>Location:</b> Rm 137 D 500 Summer St. NE Salem, OR
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**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 410-120-1210

**Proposed Amendments:** 410-120-1200

**Last Date for Comment:** 8-20-03, 5 p.m.

**Summary:** The General Rules program administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. Rule 410-120-1200 contains a description of the plus and standard benefit package. On July 1, 2003, this rule was temporarily amended and a new rule was temporarily adopted to clarify language and to be consistent with other applicable OARs reflecting what eligibility categories receive plus and standard benefit package. This is the Notice to permanently amend Rule 410-120-1200 and adopt 410-120-1210.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Darlene Nelson

**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35 Salem, OR 97301-0177

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

\*\*\*\*\*

<b>Date:</b> 8-20-03	<b>Time:</b> 10:30 a.m.-12 p.m.	<b>Location:</b> Rm 137 D 500 Summer St. NE Salem, OR
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**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-120-1230, 410-120-1235

**Last Date for Comment:** 8-20-03, 5 p.m.

**Summary:** The General Rules program Administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. Rules 410-120-1230 and 410-120-1235 will be amended to add clarifying language regarding provider billing and collection of copayments.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Darlene Nelson

**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35 Salem, OR 97301-0177

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



# NOTICES OF PROPOSED RULEMAKING

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

**Date:** 8-21-03  
**Time:** 10 a.m.  
**Location:** Rm. 254  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.050, 411.060, 411.070, 411.660, 411.816, 414.042, 418.040 & 418.100; Other Auth.: Sections 1115, 1915(c), 1924(d)(3)(B), 1931 and 1935(a)(5)(E) of the Social Security Act; Enactment of the Farm Security and Rural Investment Act on May 13, 2002; 7 CFR 273.5; 7 CFR 273.6; 7 CFR 273.11(c)(3); 7 CFR 273.13(a)(3); 7 CFR 273.18(a)(4); 42 CFR 435.135; 42 CFR 435.726(c)(3)(iii); P.L. 94-566; Federal Register Vol. 68, No. 82, dated April 29, 2003; USDA Administrative Notice 03-23

**Stats. Implemented:** ORS 411.060, 411.070, 411.105, 411.117, 411.630, 411.635, 411.660, 411.700, 411.816, 414.042 & 418.100

**Proposed Adoptions:** 461-190-0197

**Proposed Amendments:** 461-110-0400, 461-120-0125, 461-120-0235, 461-125-0370, 461-135-0405, 461-135-0570, 461-135-0780, 461-135-1120, 461-140-0296, 461-145-0055, 461-145-0120, 461-145-0130, 461-145-0330, 461-145-0380, 461-145-0600, 461-145-0830, 461-145-0920, 461-145-0930, 461-155-0150, 461-160-0120, 461-160-0160, 461-160-0410, 461-160-0620, 461-170-0010, 461-170-0020, 461-175-0200, 461-175-0305, 461-175-0340, 461-180-0090, 461-190-0161, 461-195-0521, 461-195-0541

**Last Date for Comment:** 8-21-03

**Summary:** Rule 461-110-0400 is amended to clarify that, in determining eligibility for the Oregon Health Plan (OHP), filing groups are formed from individuals in the household group.

Rules 461-120-0125 and 461-145-0830 are being amended to allow children under age 18 with a qualified noncitizen status to meet the alien status requirement for the Food Stamp program. They are also being amended to eliminate the deeming requirement for noncitizen children.

Rule 461-120-0235 is being amended to disqualify, from food stamps, any client with an invalid social security number or a number that Social Security Administration says is incorrect.

Rule 461-125-0370 is being amended for clarification purposes with respect to disability determinations made by the Social Security Administration (SSA). As specified in the 42 CFR 435.541(c)(4), disability determinations made by SSA are binding on the Department unless certain conditions exist. We are adding a condition that was previously left out of the rule. That is, an SSA determination is binding unless the decision by SSA to deny was for a reason other than the client's medical condition. Also, we are clarifying the policy on favorable disability determinations made by the Department. An individual remains eligible for OSIPM, even if SSA later denies the disability claim, provided the client maintains an active administrative appeal with SSA.

Rule 461-135-0405 is being amended to clarify that if a child's care is covered by a child care contract between DHS and Head Start, the child is ineligible for DHS payments for child care provided outside the contract.

Rule 461-135-0570 is being amended to align this rule with the federal regulations by including a business or trade school in the list of post secondary schools to the list of higher education options for food stamps. This rule also includes wording clarifying participation in the JOBS program.

Rule 461-135-0780 is being amended to clarify and simplify eligibility of the Pickle Amendment (P.L. 94-566, 42 CFR 435.135 and Section 1935(a)(5)(E) of the Social Security Act). This provision permits continuation of Medicaid coverage if the individual is currently receiving Social Security, lost their SSI benefits for any reason and receives income that would qualify them for SSI after deducting all cost-of-living adjustments received since the last month in which they were eligible for both Social Security and SSI. This rule now

offers a simplified mathematical formula to determine this calculation and provides more understandable language to determine who qualifies using this rule.

Rule 461-135-1120 is being amended to change the date an Oregon Health Plan (OHP) premium payment must be received to be considered paid on time. The date will change from the 25th of the month following the month in which the premium is due to the 20th of the month following the month in which the premium is due.

Rule 461-140-0296 is being amended to conform with policy provided in the State Medicaid Manual Section 3258.5 Subparts H. and I. as published by the Centers for Medicare and Medicaid Services. These provisions detail how to treat disqualifying resource transfers if the periods of disqualification overlap or if separate transfers have periods of disqualification that would not overlap. Federal policy requires that the disqualification period be calculated by determining if an overlap of time can be measured by looking at each uncompensated transfer made during the thirty-six month look-back period. If transfers are made in such a way that the transfer penalties would overlap, the period of time of ineligibility would begin the first of the month in which the transfer was made and would extend through a period of time by adding all the transfers together for one total period. If the transfer period would not overlap, each transfer penalty period would be measured separately and not added together. As an example, if someone transfers \$10,000 in January and \$10,000 in February and the divisor used to measure how many months the individual is disqualified equals \$4,300, the individual would have to serve a penalty period of four months beginning in January. This is a result of the penalty for the January transfer extending into February and thereby overlapping. If this same individual transfers \$10,000 in January and \$10,000 in April, the penalty periods are January and February for the first transfer and April and May for the second transfer.

Rules 461-145-0055, 461-145-0120, 461-145-0600, 461-145-0920, 461-145-0930, 461-160-0160 and 461-190-0161 are being amended and rule 461-190-0197 is being adopted to support the Microenterprise Development Act passed by the Oregon Legislature during the 2001 legislative session.

Rule 461-145-0130 is being amended to exclude the earned income of a child too young to attend elementary school from the food stamp benefit computation.

Rule 461-145-0330 is being amended to allow for oral loans in the OSIP, OSIPM and QMB programs.

Rule 461-145-0380 is being amended to incorporate policy clarification received by the Food and Nutrition Service on when a retirement or pension plan is an excluded resource and when it must be counted for the Food Stamp program.

Rule 461-155-0150 is being amended to clarify that the monthly limit for child care payments applies to each child, not to each provider.

Rule 461-160-0120 is being amended to clarify that, in determining eligibility for Medical Assistance for Families (MAF) involving a father of an unborn or an ineligible non-citizen, a \$90 earned deduction is also included in income calculation. When this rule was amended effective July 1, 2002, the reference to the earned income deduction was inadvertently omitted.

Rule 461-160-0410 is being amended to incorporate a policy option available for computing income and deductions for qualified noncitizens in the food stamp benefit computations.

Rule 461-160-0620 is being amended to reflect a calculation for community spousal support which is already being used within the Department. This rule is also being amended to conform with Section 1924(d)(3)(B) of the Social Security Act which requires indexing the community spouse income allowance to a percentage of the federal poverty level every July. The state is required to provide an income allowance for a spouse who has a husband or wife in a nursing facility or covered under a home and community based waiver outlined in Section 1915 (c) of the Social Security Act. The amount indexed is 150% of the federal poverty level for a household of two.

## NOTICES OF PROPOSED RULEMAKING

This rule is also being amended to comply with 42 CFR 435.726(c)(3)(iii) which requires an income allowance to individuals who have eligible dependents in the same living arrangements listed above without a spouse. The allowance is based on the higher amount of the state's medically needy income standard or the state's AFDC (TANF) income standard. The medically needy program ceased to offer coverage under that program on January 31, 2003 and therefore the higher of the two standards defaults to AFDC (TANF).

Rule 461-170-0010 is being amended to incorporate a policy option available for determining when a change in employment status or a new rate of pay is received.

Rule 461-170-0020 is being amended to incorporate a change in federal regulations that requires clients to report a change in the amount of unearned income greater than \$50 a month. This rule is also being amended to require TANF and MAA clients to report when a member of the Filing Group becomes pregnant.

Rule 461-175-0200 is being amended to clarify that, for OHP medical assistance programs, a timely continuing benefit decision notice is not always used when benefits are reduced or closed.

Rule 461-175-0305 is being amended to clarify that, for OHP medical assistance programs, a basic decision notice is used when a child is removed from the benefit group as a result of a court order or a voluntary placement in foster care by the child's caretaker relative.

Rule 461-175-0340 is being amended to allow clients to voluntarily reduce benefits.

Rule 461-180-0090 is being amended to clarify that the effective date for starting medical benefits under the Oregon Health Plan programs is dependent on the client providing information to determine eligibility within the application time frames.

Rule 461-195-0521 is being amended to delete the provision allowing for a credit against the overpayment in the amount that the client could use unreported resources to establish a resource reserve.

Rule 461-195-0541 is being amended to make an ineligible student who is a member of the household group responsible for repayment of food stamp overpayments caused by that person's failure to correctly report the household situation.

(If you plan to attend the hearing and need auxiliary aids and services such as assistive listening devices or interpreters for the hearing impaired, please contact the Rules Coordinator as soon as possible about the type of aid or service needed. The hearing site is accessible for individuals with mobility impairments.)

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E48, Salem, OR 97301-1066

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

\*\*\*\*\*

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-22-03	10 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 411.060

**Stats. Implemented:** ORS 411.060 & 411.070

**Proposed Amendments:** 461-150-0050, 461-155-0250

**Last Date for Comment:** 8-22-03

**Summary:** Rule 461-150-0050 is being amended to incorporate the new prospective and retrospective eligibility and quarterly budgeting process for the OSIP-EPD and OSIPM-EPD programs.

Rule 461-155-0250 is being amended to add the amount of earned income needed for someone to be considered Attached to the Workforce.

(If you plan to attend the hearing and need auxiliary aids and services such as assistive listening devices or interpreters for the hearing impaired, please contact the Rules Coordinator as soon as possible about the type of aid or service needed. The hearing site is accessible for individuals with mobility impairments.)

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E48, Salem, OR 97301-1066

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

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**Department of Justice**

**Chapter 137**

**Stat. Auth.:** ORS 25.270 - 25.290 & 180.340; Other Auth.: Sec. 3, Ch. ##, Oregon Laws 2003 (HB 2095)

**Stats. Implemented:** ORS 25.270-25.290, 107.135 & Sec. 3, Ch. ##, Oregon Laws 2003 (HB 2095)

**Proposed Amendments:** 137-050-0320, 137-050-0330, 137-050-0335, 137-050-0360, 137-050-0405, 137-050-0410, 137-050-0455, 137-050-0475

**Last Date for Comment:** 9-6-03

**Summary:** The proposed amendments to OAR 137-050-0320 are to correct grammatical errors, renumber, remove the definition of "apportioned Veterans' benefits", change the reference to "adjusted" gross income to "modified" gross income within the definition of low income adjustment, and add a definition of "Veterans' benefits". In the new definition of "Veterans' benefits", the term "apportioned" is being removed in anticipation of policy guidance by the legislature. This definitional change will allow all Veterans' benefits received by a child to be considered when calculating a child support obligation, to include apportioned Veterans' benefits and Survivors' and Dependents' Educational Assistance under 38 USC chapter 35. The word "adjusted" is being replaced with "modified", as this is the correct type of gross income to use when applying the low income adjustment.

The proposed amendments to OAR 137-050-0330 and 137-050-0405 are to correct grammatical errors and remove the term "apportioned" and add the phrase "Survivors' and Dependents' Educational Assistance under 38 USC chapter 35", in anticipation of policy guidance by the legislature. This will allow all Veterans' benefits received by a child to be considered when calculating a child support obligation.

The proposed amendment to OAR 137-050-0335 is to clarify which set of child support guidelines to use when calculating past support.

The proposed amendment to OAR 137-050-0360 and 137-050-0475 to amend the reference to OAR 461-200-3300 to the newly amended citation, OAR 137-055-3300.

The proposed amendments to OAR 137-050-0410 are to adopt the requirements as set out in the National Medical Support Notice legislation, due to the anticipated passage of 2003 Session's HB 2095.

The proposed amendment to OAR 137-050-0445 is to correct the amount of overall parenting time that will be calculated from "more than 20 percent" to "20 percent or more" to correspond correctly to the rest of the rule.

**Rules Coordinator:** Shani Fuller

**Address:** Division of Child Support Administration, 494 State St., Ste 300, Salem, OR 97301

**Telephone:** (503) 986-6232

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**Stat. Auth.:** Sec. 2, 25 & 35, ch. 73, OL 2003

**Stats. Implemented:** Sec. 2, 25 & 35, ch. 73, OL 2003, ORS 18, 25, 107, 109, 110, 180, 183 & 416

**Proposed Adoptions:** 137-055-3410, 137-055-6200

**Proposed Repeals:** 137-050-0595

**Proposed Ren. & Amends:** 461-200 to 137-055, 137-050-0300 to 137-055-2170, 137-050-0605 to 137-055-4130

**Last Date for Comment:** 9-6-03

## NOTICES OF PROPOSED RULEMAKING

**Summary:** The Division proposes to renumber all rules in OAR Chapter 461, Division 200 pertaining to the Oregon Child Support Program and move these rules into a new OAR agency and division which is OAR Chapter 137, Division 055. Section 2, chapter 73, Oregon Laws 2003 consolidates the Child Support Program Director's Office of the Department of Human Services (DHS) to the Department of Justice (DOJ), Division of Child Support. The law transfers rulemaking authority for the Child Support Program from DHS to DOJ. There is an emergency clause for a July 1, 2003 effective date.

The Division also proposes to renumber two rules in OAR Chapter 137, Division 050 pertaining to the Oregon Division of Child Support and move these rules into a new OAR agency and division for the Child Support Program, which is OAR Chapter 137, Division 055.

In doing this renumbering, the Division also proposes to amend the text of these rules to the following extent.

1) Renumber cross-references to these rules that are contained in other rules in OAR Chapter 461, Division 200, to correspond to the renumbering being assigned under the proposed new OAR Chapter 137, Division 055.

2) Update obsolete references to organizational entities that perform functions under these rules and changing the name of an agency by reason of a name change prescribed by law.

3) Correcting statutory references.

4) Correcting spelling and correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule.

In addition to the renumbering and technical rule amendments, the Division also proposes the following:

The proposed adoption of OAR 137-055-3410 is to set out when the Child Support Program will establish a support order rather than issue a modification when the existing order does not order child support.

The proposed adoption of OAR 137-055-6200 is to set out what the Child Support Program will do when an error is identified on a support case which requires adjusting the arrears on the case.

The proposed amendments to OAR 137-055-1020, are to bring child support definitions up-to-date.

The proposed amendments to OAR 137-055-1340 and 137-055-1360 are to remove references to the State Parent Locator Service in order to be in compliance with federal law and regulation.

The proposed amendments to OAR 137-055-2170 are to clarify that the administrator has the authority to represent the agency in certain administrative hearings and lists the types of hearings in which the administrator is authorized to represent the agency.

The proposed amendments to OAR 137-055-3340, OAR 137-055-4620 and 137-055-4640 are to implement 2003 House Bill 2095 which is regarding the establishment of orders to provide satisfactory health care coverage and the enforcement of orders with include a provision for health care coverage by way of issuing a National Medical Support Notice.

The proposed amendments to OAR 137-055-4320 are to bring the rule on state tax refund offset for child support in line with current process.

The proposed amendments to OAR 137-055-5520 are to make the rule consistent with the recently amended child support guidelines by giving dollar for dollar credit against child support arrears up to the amount of the arrears on the case. Additionally, the type of Veterans' benefits for which credit may be given is broadened in anticipation of policy guidance by the legislature. This change will allow all types of Veterans' benefits to be considered, including Survivors' and Dependents' Educational Assistance under 38 USC chapter 35.

The proposed amendment to OAR 137-055-6020 is to specify distribution of support payments assigned to the state.

The proposed repeal of OAR 137-050-0595 is because the form to be prescribed by the administrator in a modification pursuant to ORS 416.425 is addressed by OAR 137-055-3420.

**Rules Coordinator:** Shani Fuller

**Address:** Division of Child Support Administration, 494 State St., Ste 300, Salem, OR 97301

**Telephone:** (503) 986-6232

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

**Stat. Auth.:** ORS 184.616, 184.619, 806.011 & 806.012

**Stats. Implemented:** ORS 806.011 & 806.012

**Proposed Amendments:** 735-050-0120

**Proposed Repeals:** 735-050-0110, 735-050-0115

**Last Date for Comment:** 9-9-03

**Summary:** Chapter 175, Oregon Laws 2003 (SB 247) repeals the statutes or parts of statutes that allow a person to file a bond or cash deposit in lieu of insurance to meet the state's financial responsibility requirements associated with the ownership or operation of a motor vehicle. OAR 735-050-0110 establishes the use of bond in lieu of insurance. OAR 735-050-0115 establishes the use of deposit in lieu of insurance. Both of these rules must be repealed as the statutory authority of the department to accept either a bond or deposit to comply with the financial responsibility requirements is repealed. OAR 735-050-0120 is being amended to remove the references to bond and deposit as proof of compliance with financial responsibility.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/rules/>

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

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**Stat. Auth.:** ORS 184.616, 184.619 & 820.510; Other Auth.: OL 2001 Ch. 675 & OL 2003 Ch. 189 Sec. 1 & 2 (SB 328)

**Stats. Implemented:** ORS 308.865, 308.875, 820.500, 820.510, OL 2001 Ch. 675 & OL 2003 Ch. 189

**Proposed Amendments:** 735-140-0000, 735-140-0010, 735-140-0015, 735-140-0020, 735-140-0025, 735-140-0030, 735-140-0040, 735-140-0060, 735-140-0070, 735-140-0080, 735-140-0090, 735-140-0100, 735-140-0110, 735-140-0120, 735-140-0130, 735-140-0140

**Last Date for Comment:** 9-9-03

**Summary:** The need to amend these rules is necessitated by SB 328, passed by the 2003 Legislative Assembly, which amended ORS 820.510. The amendment authorizes the owner of a manufactured structure who holds a recorded leasehold estate of 20 years or more to obtain an exemption from title and registration requirements under ORS 820.510 & OAR 735-140-0010, if the lease specifically permits the structure owner to do so. DMV proposes to make revisions to its manufactured structure rules to conform them to amended ORS 820.510. Temporary amendments were filed in July 2003. The proposed permanent amendments add or modify terms, requirements, qualifications and conditions associated with the law change. Additional non-substantive changes are proposed to Division 140 rules to simplify the rule language.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/rules/>

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

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

**Stat. Auth.:** ORS 184.616, 184.619, 802.012, 825.212 & 825.502

**Stats. Implemented:** ORS 802.012, 825.212, 825.472, 825.490, 825.502 & 825.515

# NOTICES OF PROPOSED RULEMAKING

**Proposed Adoptions:** 740-015-0010, 740-015-0020, 740-015-0030, 740-015-0040, 740-015-0050, 740-015-0060, 740-015-0070, 740-015-0080, 740-015-0090, 740-015-0100, 740-015-0110

**Last Date for Comment:** 9-9-03

**Summary:** The proposed rules are needed to specify the procedures and requirements, under which a motor carrier may, by electronic means, conduct business transactions with the Motor Carrier Transportation Division (MCTD). The rules provide a means for acceptance of information or statements given mechanically by electronic data entry, and the use of mechanically produced equivalents in lieu of handwritten signatures. In addition, the rules describe guidelines under which MCTD's Trucking Online transactions are conducted, such as issuance and use of personal identification numbers (PIN's), unique identifiers, payment of taxes or fees, acceptable forms of payment, electronic records, etc.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/rules/>

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Motor Carrier Transportation Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

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**Division of State Lands**  
**Chapter 141**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-9-03	9 a.m.-12 p.m.	Division of State Lands Mill Creek Rm. 775 Summer St. NE Salem, OR 97310

**Hearing Officer:** John E. Lilly or designate

**Stat. Auth.:** ORS 183, 273.045 & 526.816; Other Auth.: Or Const, Art VIII §§ 2 & 5

**Stats. Implemented:** ORS 273.522 et seq, 526.801 et. seq, 530.450 et seq

**Proposed Amendments:** 141-016-0010, 141-016-0020

**Last Date for Comment:** 9-19-03, 5 p.m.

**Summary:** OAR chapter 141, division 16, is applicable to the Common School Forest Lands and to other lands from which the Division of State Lands may sell forest products. Most such lands were granted to the state of Oregon for the benefit of the common schools and they are subject to the provisions of Article VIII, sections 2 and 5, of the Oregon Constitution (hereinafter "forest trust lands"). The constitutional provisions require that the Land Board use forest trust lands for the benefit of the schools of the state. Accordingly, the Land Board must receive full market value from the resources that are derived from such lands. That duty requires that the Land Board consider the risks, make predictions of future developments, and generally take into account all factors which affect risk and return and which may affect risk and return in the future. Consideration of the present and predicted market competition in the region is appropriate with respect to evaluating risk and return. In every case, the consideration must be directed to determination of the appropriate action to be taken to achieve both short-term and long-term benefits to the Common School Fund.

OAR chapter 141, division 16, controls the export of unprocessed timber from the forest trust lands. OAR 141-016-0010 includes an exemption that allows persons that export softwood logs from lands within Oregon to purchase under some circumstances the hardwood logs that originate from timber sales on forest trust lands. A parallel provision applies to logs that originate from other lands that are owned by the state of Oregon that are not forest trust lands.

In May 2003, a group of seven present or former owners of alder sawmills submitted a Petition for Rulemaking to the Land Board. The Petition focused on the exemption in OAR 141-016-0010 and presented two requests for rulemaking. First, that the Land Board adopt a temporary rule amending OAR 141-016-0010 to remove the exemption. Second, that the Land Board initiate permanent rule-making procedures to remove the exemption. (A duplicate Petition

was submitted to the Board of Forestry regarding OAR 629-031-0010 and it is being addressed by the Oregon Department of Forestry). At its meeting on June 10, 2003, the Land Board denied the first request and granted the second request to the extent that the Land Board will consider whether to remove the exemption.

This notice of rulemaking and hearing implements the decisions made by the Land Board on June 10, 2003. If adopted, the proposed amendments would remove the exemption in OAR 141-016-0010. Removal of the exemption could have several impacts. For instance, it could mean that persons who export any unprocessed softwood or hardwood logs that originate from private or public lands in Oregon would not be allowed to purchase directly or indirectly any hardwood logs that originate from forest trust lands. It could mean that persons who are currently selling hardwood logs to persons who export unprocessed logs would have fewer purchasers competing for the logs. And it could mean that either less or more money would be distributed to common schools in the short-term or long-term.

The Land Board requests that persons interested in the management of forest trust lands submit any information that the person considers important to the issue of whether the exemption in OAR 141-016-0010 makes it easier or more difficult for the Land Board to receive the full market value of the resources that are derived from forest trust lands, both in the short-term and in the long-term. The Land Board also specifically requests that persons submit information regarding current and future trends in market competition for hardwood logs originating from forest trust lands. The state may use the relevant information that is submitted to develop an economic analysis of whether the Land Board is maximizing both the short-term and long-term prices that it receives for hardwood logs.

The Oregon Department of Forestry is considering a similar set of amendments that would apply to forest lands owned by the state of Oregon that are not forest trust lands. The Land Board and the Oregon Department of Forestry are coordinating their rulemaking procedures. Any information submitted to one entity will be included in the rulemaking records of both entities. Persons are requested to submit 4 copies of any written comments. The hearing noticed above will be conducted by a single hearing officer appointed by both entities. The Land Board and the Oregon Department of Forestry will make independent decisions.

The Land Board is also proposing an amendment of OAR 141-016-0020. The amendment correctly cross-references the definition of "unprocessed timber" in OAR 629-031-0005(9).

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** June LeTarte

**Address:** Division of State Lands, 775 Summer St. NE, Salem, OR 97303

**Telephone:** (503) 378-3805, ext. 239

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-17-03	2-4 p.m.	Division of State Lands 775 Summer Street NE Suite 100 Salem, OR 97303

**Hearing Officer:** Jeff Kroft

**Stat. Auth.:** ORS 98.302 - 98.436, 98.992, 111 - 119, HB 3344, SB 64, SB 216 & Sec. 1-26 SB 311; Other Auth.: ORS 183 & 273

**Stats. Implemented:** ORS 98.302 - 98.436, 98.992, 111 - 119, HB 3344, SB 64, SB 216 & SB 311

**Proposed Amendments:** Rules in 141-030, 141-035, 141-040, 141-045

**Last Date for Comment:** 10-17-03, 5 p.m.

**Summary:** Following a lengthy rule updating process, the Division adopted major revisions to Chapter 141-030, 141-035, 141-040 and 141-045. Since the adoption of the new rules in January 2003, the 2003 Legislative Assembly has enacted several bills that now require in a number of clarifications and changes to be made to the rules.

# NOTICES OF PROPOSED RULEMAKING

Changes incorporate modifications to existing language and/or new provisions, including:

- (1) Changes to dormancy periods for reporting unclaimed property;
- (2) Definitions;
- (3) Clarifications to appeal processes for disputes related to unclaimed property;
- (4) Changes to permissible methods for disposing of unclaimed property;
- (5) Changes to the estates administration process for escheated estates; and
- (6) Changes the name of the Division of State Lands to Department of State Lands.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** June LeTarte  
**Address:** Division of State Lands, 775 Summer St. NE, Salem, OR 97303  
**Telephone:** (503) 378-3805, ext. 239

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**Land Conservation and Development Department  
Chapter 660**

Date:	Time:	Location:
9-18-03	9 a.m.	Holiday Inn Sawtooth Conference Rm. 1249 Tapadera Ave. Ontario, OR

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 183.355(5), 183.355(6), 197.040 & 197.245  
**Stats. Implemented:** ORS 197.040  
**Proposed Amendments:** 660-022-0030  
**Last Date for Comment:** 9-18-03

**Summary:** Proposed rule amendment provides no building size limitation on the siting of new industrial uses on abandoned or diminished mill sites located within Unincorporated Communities, increases the building size limitations for new industrial uses within unincorporated communities; and clarifies certain provisions.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Victoria J. Schiller  
**Address:** Land Conservation and Development Department, 635 Capitol St. NE - Suite 150, Salem, OR 97301-2540  
**Telephone:** (503) 373-0050, ext. 231

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**Office of Energy  
Chapter 330**

Date:	Time:	Location:
8-26-03	10 a.m.	Oregon Office of Energy Room C/D Salem, OR

**Hearing Officer:** Suzanne Dillard  
**Stat. Auth.:** ORS 469.040, 469.673 & 469.710  
**Stats. Implemented:** ORS 469.673 & 469.710  
**Proposed Amendments:** Rules in 330-060, 330-061, 330-100  
**Proposed Repeals:** Rules in 330-060  
**Last Date for Comment:** 8-29-03

- Summary:** The purposes of the proposed rule changes are to:
1. Continue State Home Oil Weatherization (SHOW) program rebates, although some are at a reduced level, for certain energy conservation measures and discontinue the rebate for replacement heating oil tanks, all of which were previously eligible for rebates only under a pilot program;
  2. Qualify new energy conservation measures for the rebates;
  3. Allow persons informed about energy conservation measures to perform energy audits required for customers to receive rebates; and
  4. Update the rules, make them simpler and clearer, and make housekeeping changes.
  5. Update Model Rules reference.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Kathy Stuttaford  
**Address:** Office of Energy, 625 Marion St. NE, Ste. 1, Salem, OR 97301-3742  
**Telephone:** (503) 378-4128

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**Office of Energy,  
Energy Facility Siting Council  
Chapter 345**

Date:	Time:	Location:
8-20-03	10 a.m.	Oregon Office of Energy Salem, OR

**Hearing Officer:** David Stewart-Smith  
**Stat. Auth.:** ORS 469.470 & 469.992; Other Auth.: OAR 345-001-0000

**Stats. Implemented:** ORS 469.300 - 469.619 & 469.992  
**Proposed Adoptions:** 345-024-0680  
**Proposed Amendments:** 345-001-0010, 345-001-0090, 345-015-0085, 345-015-0110, 345-015-0190, 345-015-0310, 345-015-0320, 345-015-0350, 345-015-0360, 345-020-0011, 345-021-0000, 345-021-0010, 345-021-0090, 345-022-0000, 345-022-0022, 345-022-0030, 345-022-0040, 345-022-0080, 345-024-0550, 345-024-0560, 345-024-0590, 345-024-0600, 345-024-0620, 345-024-0630, 345-026-0080, 345-026-0390, 345-027-0023, 345-027-0060, 345-027-0070, 345-027-0110

**Last Date for Comment:** 8-20-03  
**Summary:** This notice amends the Notice of Proposed Rulemaking hearing published June 1, 2003.

In this rulemaking, the Energy Facility Siting Council (Council) would adopt of rules relating to carbon dioxide (CO2) offset projects. Under current Council rules, a site certificate applicant may satisfy the CO2 emissions standard by proposing to implement offset projects. Proposed amendments in Division 21 would address information requirements for a CO2 offset project. Proposed amendments in Division 24 would explain how the Council would evaluate a proposed offset project.

Other proposed rule amendments would correct minor errors in the Council's rules, clarify rules and make a limited number of substantive rule changes based on knowledge gained from recent energy facility siting experience. Amendments to accomplish these purposes would affect the rules listed above and may affect other rules or divisions in OAR Chapter 345.

A public hearing will be held August 20, 2003, at 10:00 AM. The deadline for submission of written comments is the close of the hearing by the hearing officer. In addition, the Council will accept oral public comments, but no further written comments, at a later Council meeting when the Council takes final action on the proposed amendments.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Loretta Kohanes  
**Address:** Energy Facility Siting Council, 625 Marion St. NE, Salem, OR 97301-3742  
**Telephone:** (503) 378-2843

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**Oregon Department of Education  
Chapter 581**

Date:	Time:	Location:
8-19-03	3 p.m.	Public Service Bldg. 255 Capitol St. NE Salem, OR Rm. 251-A

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 326.603  
**Stats. Implemented:** ORS 326.603  
**Proposed Amendments:** 581-022-1730, 581-022-1732  
**Last Date for Comment:** 8-19-03

# NOTICES OF PROPOSED RULEMAKING

**Summary:** Oregon Revised Statute 326.603 and 326.607 authorizes the Department of Education to conduct on behalf of a school district or a private school criminal records checks of potential school employees, other than teachers, who will have direct, unsupervised contact with children. Districts are prohibited from hiring individuals who have been convicted of offenses listed in ORS 342.143 or who lie about any conviction. The amendments will clarify the definition of "conviction" allowing a consistent and thorough interpretation and application of the results of a criminal records checks.

For questions regarding these rules, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail [randy.harnisch@state.or.us](mailto:randy.harnisch@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan

**Address:** Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203

**Telephone:** (503) 378-3600, ext. 2348

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Date:	Time:	Location:
8-19-03	3 p.m.	Public Service Bldg. 255 Capitol St. NE Salem, OR Room 251-A

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326.051 & 339.430

**Stats. Implemented:** ORS 339.430

**Proposed Amendments:** 581-021-0035

**Last Date for Comment:** 8-19-03

**Summary:** The language in the current rule is unclear as to the ability of the State Board of Education to hear appeals of decisions regarding eligibility from local school district boards. The amendments proposed here would make clear that the State Board's authority is limited to appeals of decisions of interscholastic activity organizations and does not extend to decisions of local school district boards.

For questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail [randy.harnisch@state.or.us](mailto:randy.harnisch@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan

**Address:** Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203

**Telephone:** (503) 378-3600, ext. 2348

\*\*\*\*\*

Date:	Time:	Location:
8-19-03	3 p.m.	Public Service Bldg. 255 Capitol St. NE Salem, OR Room 251-A

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326.051 & 338.025

**Stats. Implemented:** ORS 338.035 & 338.075

**Proposed Adoptions:** 581-020-0332

**Last Date for Comment:** 8-19-03

**Summary:** ORS 338.035 prohibits private, tuition-based schools from converting to public charter schools. The proposed rule defines the circumstances under which the State Board would consider an application from a private school that had ceased operation to pursue a charter.

For questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail [randy.harnisch@state.or.us](mailto:randy.harnisch@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan

**Address:** Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203

**Telephone:** (503) 378-3600, ext. 2348

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## Oregon Housing and Community Services

### Chapter 813

Date:	Time:	Location:
8-18-03	10 a.m.	1600 State St. Salem, OR

**Hearing Officer:** David Foster

**Stat. Auth.:** ORS 456.555, 456.625 & 458.700

**Stats. Implemented:** ORS 458.670 - 458.700

**Proposed Amendments:** 813-300-0010, 813-300-0120

**Last Date for Comment:** 9-2-03

**Summary:** 813-300-0010 amends definitions for terms found within the program. 813-300-0120 sets forth how the individual development account may be used within the scope of the program to better accommodate access to the program by federally recognized tribes in Oregon.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Sandy McDonnell

**Address:** Housing and Community Services, 1600 State St., Salem, OR 97301-4246

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

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## Oregon Liquor Control Commission

### Chapter 845

Date:	Time:	Location:
9-2-03	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

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

**Stats. Implemented:** ORS 471.375

**Proposed Amendments:** 845-009-0015

**Last Date for Comment:** 9-16-2003

**Summary:** This rule describes the procedures on-premises licensees must follow before allowing an employee to begin work mixing, selling, or serving alcohol. New rule language would clarify that licensees have a continuing duty to verify that the employee has taken and passed a Server Education course, and that the person's service permit has been issued.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Katie Hilton

**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222-7355

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

\*\*\*\*\*

**Stat. Auth.:** ORS 183, 471, 183.341(2), 471.730(1) & 471.730(5)

**Stats. Implemented:** ORS 183.341(2), 471.730(5) & 471.730(6)

**Proposed Amendments:** 845-003-0670

**Last Date for Comment:** 9-1-03

**Summary:** This is the rule wherein the Commission describes the authority it holds and the authority it delegates in regard to contested cases. The rule needs to be amended to clarify that stay requests based on request for reconsideration or rehearing are delegated to the agency Administrator.

**Rules Coordinator:** Katie Hilton

**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222-7355

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

# NOTICES OF PROPOSED RULEMAKING

## Oregon Youth Authority Chapter 416

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

**Stats. Implemented:**

**Proposed Repeals:** 416-390-0000 - 416-390-0360

**Last Date for Comment:** 9-2-03

**Summary:** This rule no longer applies to the Oregon Youth Authority.

**Rules Coordinator:** Debbie Rios

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

**Telephone:** (503) 378-3992

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

**Stats. Implemented:** ORS 419C, 420 & 420A

**Proposed Amendments:** 416-460-0000, 416-460-0010, 416-460-0020, 416-460-0030

**Proposed Repeals:** 416-470-0040

**Last Date for Comment:** 9-2-03

**Summary:** The OYA has amended this rule to update language and reorganize its rule divisions. Interested persons may request a copy of this rule from Debbie Rios, OYA Assistant Director for the Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3992

**Rules Coordinator:** Debbie Rios

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

**Telephone:** (503) 378-3992

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

**Stats. Implemented:** ORS 419C, 420 & 420A

**Proposed Amendments:** 416-470-0000, 416-470-0010, 416-470-0020, 416-470-0030, 416-470-0040, 416-470-0050

**Proposed Repeals:** 416-470-0060, 416-470-0070, 416-470-0080, 416-470-0090, 416-470-0100

**Last Date for Comment:** 9-2-03

**Summary:** The OYA has amended this rule to update language and reorganize its rule divisions. Interested persons may request a copy of this rule from Debbie Rios, OYA Assistant Director for the Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3992

**Rules Coordinator:** Debbie Rios

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

**Telephone:** (503) 378-3992

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

**Stats. Implemented:** ORS 420A.030

**Proposed Amendments:** 416-610-0000 - 416-610-0200

**Last Date for Comment:** 9-2-03

**Summary:** The OYA has amended this rule to update language and reorganize its rule divisions. Interested persons may request a copy of this rule from Debbie Rios, OYA Assistant Director for the Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3992

**Rules Coordinator:** Debbie Rios

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

**Telephone:** (503) 378-3992

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## Parks and Recreation Department Chapter 736

**Stat. Auth.:** ORS 390.660

**Stats. Implemented:** ORS 390.124 & 390.660

**Proposed Amendments:** 736-030-0010

**Last Date for Comment:** 9-1-03

**Summary:** The proposed rule amendment will change the existing regulations for dogs on the ocean shore within the City Limits of Cannon Beach. Currently, dogs are prohibited on the ocean shore within Cannon Beach except on a maximum six-foot leash. Under the proposed amendment, dogs would be prohibited except on a maximum six-foot leash or under voice or signal command.

**Rules Coordinator:** Angie Springer

**Address:** Parks and Recreation Department, 1115 Commercial St. NE, Salem, OR 97301

**Telephone:** (503) 378-5516

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## Public Utility Commission Chapter 860

**Stat. Auth.:** ORS 183, 756, 757 & 758

**Stats. Implemented:** ORS 756.040, 756.105, 756.500, 756.512, 757.020, 757.035, 757.061, 757.120, 757.125, 757.135, 757.225, 757.250, 757.480, 757.750, 757.755 & 758.300 - 758.320

**Proposed Adoptions:** 860-036-0407

**Proposed Amendments:** 860-036-0010, 860-036-0015, 860-036-0025, 860-036-0030, 860-036-0045, 860-036-0060, 860-036-0080, 860-036-0105, 860-036-0210, 860-036-0240, 860-036-0245, 860-036-0305, 860-036-0405, 860-036-0410, 860-036-0620, 860-036-0710, 860-036-0900, 860-036-0905

**Last Date for Comment:** 8-21-03

**Summary:** 860-036-0010 Adds new definitions and amends other definitions to clarify, in particular, what a service connection is.

860-036-0015 and 860-036-0025 Housekeeping changes only.

860-036-0030 Establishes regulatory rate thresholds for small and large commercial customers.

860-036-0045 Adds language relating to theft of service.

860-036-0060 Clarifies service connections and who is responsible for such.

860-036-0080 Clarifies requirements for company refusal to provide service to customers.

860-036-0105 Clarifies meter installation and charge.

860-036-0210 Adds clarifying language stating that no water utility is required to offer seasonal water rates and formalizes PUC's water regulation policy that water utilities may charge the monthly base rate to customers who voluntarily request to be disconnected and reconnected within the same 12 month period.

860-036-0240 Clarifies that water utilities may charge customers a reconnection fee.

860-036-0245 Clarifies disconnection procedures, in particular, for failure to abide by a time-payment agreement.

860-036-0305 Clarifies maintenance and repair of plant and equipment, and record keeping requirements.

860-036-0405 Adds customer notification requirements for a water utility serving less than 500 customers proposing to increase its residential rate or charges above threshold levels. Provides a new requirement that water utilities sending such notice must provide the Commission with a draft copy seven-business-days prior to official mailing to customers.

860-036-0407 This is a new rule number. It revises the notice requirements a water utility (serving less than 500 customers) must provide to all customers for a proposed rate increase to other customers, not residential customers, above threshold levels. To avoid confusion with the residential rate increase notice requirements, the language has been moved from 860-036-0405 into a separate rule 860-036-0407. It provides a new requirement that water utilities sending such notice must provide the Commission with a draft copy of the notice seven-business-days prior to official customer mailing.

860-036-0620 Provides simplified requirements for company announcement to customers of proposed tariff changes. Also provides a requirement that water utilities sending such notice must provide the Commission with a draft copy seven-business-days prior to official mailing to customers.

## NOTICES OF PROPOSED RULEMAKING

860-036-0710 Clarifies requirements for the company to abandon, terminate, or "otherwise dispose" of the water utility. Simplifies language regarding different applications and notification requirements for sales, mergers, and transfers of utility.

860-036-0900 Adds a definition reference to subsection 1(c) of the rule.

860-036-0905 Adds notice requirements for utilities filing for service territories.

**Rules Coordinator:** Lauri Salsbury

**Address:** Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551

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

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**Racing Commission**  
**Chapter 462**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-21-03	1:30 p.m.	Room 140 Portland State Office Bldg. 800 NE Oregon Street Portland, OR 97232

**Hearing Officer:** Jodi N. Hansen, Exec. Director

**Stat. Auth.:** ORS 462.270(3)

**Stats. Implemented:** ORS 462.270(3), 462.020 & 462.270

**Proposed Amendments:** 462-140-0390

**Last Date for Comment:** 8-21-03

**Summary:** Amend greyhound racing rule to be consistent with horse racing rule as it relates to having a financial interest in racing animals by employees, officers or directors of a race meet licensee.

**Rules Coordinator:** Carol N. Morgan

**Address:** Oregon Racing Commission, 800 NE Oregon St. #11, Suite 405, Portland, OR 97232

**Telephone:** (503) 731-4052

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**Secretary of State,**  
**Elections Division**  
**Chapter 165**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-4-03	9-10 a.m.	Public Service Bldg. 255 Capitol St. Basement A Salem, OR

**Hearing Officer:** Brenda Bayes

**Stat. Auth.:** ORS 246.150; Other Auth.: OR Const., Article IV, § 1b

**Stats. Implemented:** ORS 250.045 & 260.995

**Proposed Adoptions:** 165-014-0260

**Last Date for Comment:** 9-4-03

**Summary:** At the November 5, 2002, General Election the voters approved Measure 26, now codified as Article IV, section 1b of the Oregon Constitution. Section 1b prohibits the payment or receipt of payment on a per-signature basis for signatures obtained on an initiative or referendum petition. This rule is adopted to interpret Section 1b, by providing guidance about the petitions subject to the measure, describing allowable practices for signature collection and providing for penalties for violations.

**Rules Coordinator:** Brenda Bayes

**Address:** Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722

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

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**Water Resources Department**  
**Chapter 690**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-25-03	6:30-7:30 p.m.	Deschutes Co. Commission Hearing Rm. Administration Bldg. 1130 NW Harriman Ave. Bend, OR

**Hearing Officer:** OWRD Commissioner

**Stat. Auth.:** ORS 536.027, 536.300, 536.340, 537.130 - 537.211 & 537.535 - 537.629

**Stats. Implemented:** ORS 390.835 & 537.746

**Proposed Amendments:** 690-505-0500, 690-505-0600, 690-505-0605, 690-505-0610, 690-505-0615, 690-521-0300

**Last Date for Comment:** 9-8-03

**Summary:** In September 2002, the Oregon Water Resources Commission (Commission) adopted the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, and the Deschutes Basis Mitigation Bank and Mitigation Credit Rules, OAR Chapter 690, Division 521. The Division 505 rules provide guidance to holders of existing conditioned ground water rights and holders of ground water permit applications on mitigation options in the Deschutes Basin. The Division 521 rules implement Chapter 659, 2001 Oregon Laws (HB 2184), which provide for the creation of a system of mitigation credits and recognition of mitigation banks.

The Department is proposing to modify the rules to allow for additional flexibility with regard to the use of time-limited instream transfers, to affirm that new ground water permits issued subject to the mitigation rules would not be subject to regulation under the Scenic Waterway Act and to add an additional mitigation option for small water users.

Under the current rules in Divisions 505 and 521, the Commission limited mitigation projects and credits associated with instream leases and time-limited instream transfers to mitigation banks. In addition, a bank assigning mitigation credits from instream leases or time-limited transfers is required to hold in reserve an amount of mitigation credits equal to those assigned. During rule implementation it has become apparent that limiting the use and requiring "double coverage" of time-limited transfers in the same manner as instream leases may not be necessary under certain circumstances. For example, in the Deschutes Basin there may be a number of opportunities for a municipality and an irrigation district to enter into an agreement over a mitigation project that involves a time-limited instream transfer of 20 years or more. In this situation, where a mitigation project involves two public entities and the terms are for a long duration, it may be unduly restrictive to limit time-limited transfers to mitigation banks and to require a double coverage reserve. The Department is proposing that, under certain circumstances, the use of time-limited transfer would not be limited to mitigation banks with "double coverage".

The Division 505 rules currently provide that holders of existing ground water permits and associated certificates, who choose to provide mitigation as required by the rules, are not subject to regulation under the Scenic Waterway Act (ORS 390.835). However, a similar provision is not associated with new ground water permits issued subject to the mitigation rules. The Department is proposing to amend the Division 505 rules to clarify and affirm that ground water users providing the required mitigation would not be subject to regulation under the Scenic Waterway Act (ORS 390.835).

Finally, the Department is proposing to amend the Division 505 rules to increase access to mitigation for small ground water users by adding an additional mitigation option. Presently ground water users and applicants may mitigate for small ground water users by adding an additional mitigation option. Presently ground water users and applicants may mitigate for their ground water use by completing a mitigation project or by obtaining mitigation credits. The Department is proposing to add a "payment to provide" option under which small ground water users and applicants could make payments to a qualified entity, which would then use funds generated under this option to implement flow restoration projects within the Deschutes Basin.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Adam Sussman

**Address:** Water Resources Department, 158 12th St. NE, Salem, OR 97301

**Telephone:** (503) 378-8455, ext. 297



## NOTICES OF PROPOSED RULEMAKING

**Date:** 8-26-03  
**Time:** 7-8:30 p.m.  
**Location:** Amity Middle School  
115 Church St.  
Amity, OR

**Hearing Officer:** Water Resources Commissioner

**Stat. Auth.:** ORS 536.027, 536.300, 536.340, 537.525, 537.535

**Stats. Implemented:**

**Proposed Adoptions:** 690-502-0210

**Proposed Amendments:** 690-502-0160

**Proposed Ren. & Amends:** 690-502-0160 to 690-502-0170 - 690-502-0260

**Last Date for Comment:** 9-9-03

**Summary:** The Water Resources Department is proposing to amend the Willamette Basis Program (OAR Chapter 690, Division 502) to designate the Amity Hills/Walnut Hill Ground Water Limited Area (GWLA). The proposed rules would limit the new use of ground water in the Columbia River Basalt Group and marine sediments aquifers to uses that are statutory exempt from the requirement to obtain a permit. The proposed rules do not effect current existing uses of ground water.

The proposed Amity Hills/Walnut Hill GWLA is located just east of the City of Amity, between Hwy 99W and the Willamette River. The southern boundary is approximately seven miles north of the Yamhill/Polk County Line.

There are three main hydrogeologic units in the Amity Hills/Walnut Hill area. The oldest and deepest unit is composed of marine deposited claystones, siltstones, and sandstones. The marine sediments generally provide adequate water supply for limited domestic uses. Deeper wells are likely to encounter brackish or saline water. Overlying the marine sediments are eastward dipping basalt flows of the Columbia River Basalt Group. The basalts may be as thick as 900 feet in parts of the Willamette Valley, but are generally much thinner in the Amity Hills/Walnut Hill area. Basalt wells in this area generally produce adequate water supply for domestic uses. Silt, sand and gravel make up the basin-fill sediments that overlie the basalts as they extend eastward under the Willamette Valley.

The Department has been monitoring ground water levels in the Amity Hills/Walnut Hills area since 1995. The monitored wells are completed in aquifers within the marine sediments or the Columbia River Basalts. The data indicate a strong correlation between precipitation and ground water levels and that existing use is very close to a balance with natural recharge. There are two areas of concern for ground water stability in the basalt aquifers: (1) an area of low storage that showed significant declines related to the 2001 drought; and (2) an area of water level declines where water levels have dropped 5 to 12 feet despite above-average precipitation. Basalt aquifers adjacent to these areas of concern are likely to experience instability as development of the ground water resource proceeds. In general, ground water levels in the marine sediments are stable at this time.

Given the Department's current knowledge of the Amity Hills/Walnut Hill ground water resource, under the current rural residential land use patterns (minimum of five acre lots), the ground water resource appears capable of sustaining some additional domestic uses. However, in order to protect existing ground water users and to minimize additional pressure on the resource, the Department is proposing rules that would designate the Amity Hills/Walnut Hill Ground Water Limited Area and limit the new use of the Columbia River Basalt and marine sediment aquifers to ground water uses that are exempt from the requirement to obtain a permit.

The proposed rules would stabilize the ground water resource; preserve the marine sediment aquifer for limited "new" domestic use; provide for future rule modifications if necessary; and would require Yamhill County to consider the ground water limited area under Goal 5 when modifying their Comprehensive Plan. (See OAR Chapter 660, Division 15).

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Adam Sussman

**Address:** Water Resources Department, 158 12th St. NE, Salem, OR 97301

**Telephone:** (503) 378-8455, ext. 297

# ADMINISTRATIVE RULES

## Appraiser Certification and Licensure Board Chapter 161

**Adm. Order No.:** ACLB 4-2003(Temp)

**Filed with Sec. of State:** 6-25-2003

**Certified to be Effective:** 7-1-03 thru 12-28-03

**Notice Publication Date:**

**Rules Amended:** 161-006-0025, 161-020-0045, 161-020-0055, 161-020-0140

**Subject:** Amends Oregon Administrative Rule 161, Division 006, Rule 0025, regarding the Board's budget for the 2003-2005 biennium; Division 20, Rule 0045 and 0055 regarding criteria for approval of qualifying and continuing education courses; and Division 20, Rule 0140 regarding distance education.

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

### 161-006-0025

#### Budget

The Board hereby adopts by reference the Board's 2003-2005 Biennium Budget of \$800,713 covering the period from July 1, 2003 through June 30, 2005. The Board will amend budgeted accounts as necessary within the approved budget of \$800,713 for the effective operation of the Board. The Board will not exceed the approved 2003-2005 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

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

Stats. Implemented: ORS 674

Hist.: ACLB 4-2001(Temp), f. & cert. ef. 9-12-01 thru 3-1-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-11-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03

### 161-020-0045

#### Criteria for Approval of Course as Qualifying Education

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

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

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

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

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

- (a) Are appropriate for a qualifying education course;
- (b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;
- (c) Are consistent with the course description;
- (d) Are consistent with the textbook and/or other instructional materials; and
- (e) Are reasonably achievable within the number of classroom hours allotted for the course.

(6) Work Assignments — The course materials or syllabus shall provide for in-class work assignments and/or out-of-class work/reading assignments, if necessary, to accomplish the stated learning objectives.

(7) Instructional Materials — Instructional materials to be used by students in the course shall:

- (a) Cover the subject matter in sufficient depth to achieve the stated course learning objectives;
- (b) Provide appropriately balanced coverage of the subject matter in view of the stated course learning objectives;
- (c) Reflect current knowledge and practice;
- (d) Contain no significant errors;
- (e) Reflect correct grammatical usage and spelling;
- (f) Effectively communicate and explain the information presented;
- (g) Be suitable in layout and format; and
- (h) Be suitably bound/packaged and be produced in a quality manner.

(8) Examination(s) — Course examinations shall consist of either a series of examinations or a comprehensive final examination or both. The course examination(s) shall comply with the following criteria:

(a) The examination(s) contains a sufficient number of questions to adequately test the subject matter covered in the course;

(b) The amount of time devoted to the examination(s) is appropriate for the course;

(c) The examination questions, individually and collectively, test at a difficulty level appropriate to measure student achievement of the stated course learning objectives;

(d) The subject matter tested by examination questions is adequately addressed in the course instructional materials;

(e) The examination questions are written in a clear and unambiguous manner; and

(f) The examination questions are accurate and the intended correct answer is clearly the best answer choice.

(9) Prerequisites — The course owner/affiliated entity must have established appropriate prerequisites for any course other than an introductory course on Basic Real Estate Appraisal Principles and Practices or a course on Appraisal Standards and Ethics.

(10) Instructor Qualifications — The course owner/affiliated entity shall keep records documenting that their instructors meet the Board qualifications as follows:

(a) A baccalaureate degree in any field and three years of experience directly related to the subject matter to be taught; or

(b) A masters degree in any field and two years of experience directly related to the subject matter to be taught; or

(c) A baccalaureate degree in a field that is directly related to the subject matter to be taught and one year of experience directly related to the subject matter to be taught; or

(d) An associate degree in a field that is directly related to the subject matter to be taught and three years of experience directly related to the subject matter to be taught; or

(e) A masters or higher degree in a field that is directly related to the subject matter to be taught; or

(f) Five years of real estate appraisal teaching experience directly related to the subject matter to be taught; or

(g) Seven years of real estate appraisal experience directly related to the subject matter to be taught.

(h) For those instructing the Appraisal Foundation's National USPAP Course:

(A) At least one instructor must be a certified residential or certified general appraiser and;

(B) The instructor must be an AQB certified USPAP instructor.

(i) For those instructing a course equivalent to the Appraisal Foundation's National USPAP Course:

(A) At least one instructor must be a certified residential or certified general appraiser.

(11) Attendance Policy — The course owner/affiliated entity shall have a written attendance policy that requires student attendance to be verified. Policy must:

(a) Stipulate the percentage of attendance required by the student;

(b) Include, on the attendance records form, the instructor(s) name and the criteria under which they qualified;

(c) Provide that non-members of the course provider's association or organization may apply for the course without membership in the association;

(d) Provide for retention of attendance records for a minimum of five years.

(12) Course Scheduling Policy — The course owner/affiliated entity shall have an established policy on course scheduling that provides a maximum of eight (8) classroom hours of instruction in any given day and appropriate breaks during each class session.

(13) Course Completion Certificate Policy — The course owner/affiliated entity shall have an established policy assuring prompt issuance of signed course completion certificates to attendees which shall include information regarding the number of classroom hours, and whether there was successful passage of the course examination.

(14) Audit Policy — The course owner/affiliated entity shall permit the Administrator, or the Administrator's representative, to audit the course and course material, at no cost to the Administrator or the Administrator's representative, in order to evaluate the instruction. The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to review records appropriate to selected course offerings.

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

Stats. Implemented: ORS 674.310

# ADMINISTRATIVE RULES

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 2-1993(Temp), f. & cert. ef. 4-28-93; ACLB 1-1994, f. & cert. ef. 2-1-94; Renumbered from 161-020-0010 & 161-020-0040; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-2000; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03

## 161-020-0055

### Criteria for Approval of Course as Continuing Education

In order to be approved as continuing education, the course must satisfy all criteria described in this rule.

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

(2) Course Length and Content — The course shall involve a minimum of two classroom hours with the "Continuing Education Course Content Guidelines" in these rules.

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

(4) Summary Outline — If more than one major topic is to be covered in the course, the course materials or syllabus shall include a summary outline of major topics to be covered and the number of classroom hours devoted to each major topic.

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

- (a) Are appropriate for a continuing education course;
- (b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;
- (c) Are consistent with the course description;
- (d) Are consistent with the instructional materials; and
- (e) Are reasonably achievable within the number of classroom hours allotted for the course.

(6) Instructional Materials — Instructional materials for students shall be provided unless the applicant demonstrates to the satisfaction of the Administrator that such materials are not needed to accomplish the stated course learning objectives. Any such instructional materials shall:

- (a) Be appropriate in view of the stated course learning objectives;
- (b) Reflect current knowledge and practice;
- (c) Contain no significant errors;
- (d) Reflect correct grammatical usage and spelling;
- (e) Effectively communicate and explain the information presented;
- (f) Be suitable in layout and format; and
- (g) Be suitably bound or packaged, and be produced in a quality manner.

(7) Instructor Qualification — Course provider shall keep written records documenting that their instructors meet the Board qualifications as set forth below:

- (a) Three years of experience directly related to the subject matter to be taught; or
- (b) A baccalaureate or higher degree in a field directly related to the subject matter to be taught; or
- (c) Three years of experience teaching the subject matter to be taught; or
- (d) A combination of education and experience equivalent to (a), (b) or (c) of this section
- (e) For those instructing the Appraisal Foundation's National USPAP Course, and/or the seven-hour Appraisal Foundation's National USPAP Update Course:
  - (A) At least one instructor must be a certified residential or certified general appraiser and;
  - (B) The instructor must be an AQB certified USPAP instructor.
  - (f) For those instructing courses equivalent to either the Appraisal Foundation's National USPAP Course or the seven-hour Appraisal Foundation's National USPAP Update course:
    - (A) At least one instructor must be a certified residential or certified general appraiser.

(8) Attendance Policy — The course owner/affiliated entity shall have a written attendance policy that requires student attendance to be verified. Policy must:

- (a) Stipulate as to a percentage of attendance required by the student;
- (b) Include on the attendance records form the Instructor(s) name and the criteria under which they qualified;
- (c) Provide that non-members of the association or organization may apply for the course without membership in the association;

(d) Provide for retention of attendance records for a minimum of five years.

(9) Course Scheduling Policy — If the course involves more than eight classroom hours, the course owner/affiliated entity shall have an established policy on course scheduling that provides for a maximum of eight (8) classroom hours of instruction in any given day and for appropriate breaks during each class session.

(10) Course Completion Certificate Policy — The course owner/affiliated entity shall have an established policy assuring prompt issuance of course completion certificates to attendees which should include information regarding the number of classroom hours, and whether there was successful passage of the course examination (if applicable).

(11) Audit Policy The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to audit the course and course materials at no cost to the Administrator or the Administrator's representative in order to evaluate the instruction. The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to review their records appropriate to selected course offerings.

Stat. Auth.: ORS 674-305(8) & ORS 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 3-1992(Temp), f. & cert. ef. 11-25-92; ACLB 4-1992(Temp), f. & cert. ef. 12-2-92; ACLB 1-1994, f. & cert. ef. 2-1-94; Renumbered from 161-020-0020 and 161-020-0060; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03

## 161-020-0140

### Distance Education Courses (On-line/Compact Disc (CD)), Correspondence Courses and Video Remote TV Educational Offerings

In order to be approved, the course must satisfy all criteria described in this rule and meet current requirements as defined by OAR 161-020-0110 and 161-020-0120.

(1) Distance education courses offered on-line via the internet must be pre-approved by both the Appraiser Qualifications Board and the International Distance Education Certification Center (IDECC), with the exception of courses offered by a community college or university. In addition:

- (a) The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.
- (b) For qualifying education courses, the individual must successfully pass a written final examination.

(2) Distance education courses offered via CD:

- (a) The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.
- (b) For qualifying education courses, the individual must successfully pass a written final examination.

(3) Correspondence courses:

- (a) The course is presented by an accredited college or university which also offers correspondence programs in other disciplines or has received the American Council on Education's Programs on Non-collegiate Sponsored Instruction (PONSI) approval for college credit;
- (b) For qualifying education courses, a written final examination is administered at a location and by an official approved by the college or university; and

- (c) The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.
- (4) Video and remote TV educational offerings are acceptable to meet the education classroom hour requirements provided each offering is approved by the Administrator and meets the following conditions:

(a) The offering is presented by an accredited college or university which offers similar programs in other disciplines. The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.

(b) For qualifying education courses, a written final examination is administered at a location and by an official approved by the college or university. An examination is not necessary for continuing education credit.

Stat. Auth.: ORS 674.305 & ORS 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03

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### Board of Massage Therapists Chapter 334

Adm. Order No.: BMT 2-2003

Filed with Sec. of State: 6-17-2003

# ADMINISTRATIVE RULES

**Certified to be Effective:** 6-17-03  
**Notice Publication Date:** 5-1-03  
**Rules Amended:** 334-001-0012  
**Subject:** To adopt the 2003-2005 biennial budget.  
**Rules Coordinator:** Michelle Sherman—(503) 365-8657

## 334-001-0012

### Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2003-2005 Biennium budget of \$696,183.

Stat. Auth.: SB 1127, ORS 183 & ORS 687.121

Stats. Implemented: Section 6, (1) & (2)

Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03

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## Board of Medical Examiners Chapter 847

**Adm. Order No.:** BME 11-2003  
**Filed with Sec. of State:** 7-15-2003  
**Certified to be Effective:** 7-15-03  
**Notice Publication Date:** 6-1-03  
**Rules Amended:** 847-020-0190

**Subject:** The adopted administrative rules change the language that an applicant "shall" not be granted a license if they have had their license revoked or suspended in another state to language stating that they "may" not be granted a license if they have had their license revoked or suspended in another state. The Medical Practice Act (ORS 677.190) uses the word may and not shall, so the administrative rules are being changed to use the same word as the statute.

**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

## 847-020-0190

### Denial of Licensure

An applicant may not be entitled to a license by reciprocity, endorsement, or written examination who:

(1) Has failed to pass a medical licensure examination required for licensure in the State of Oregon (OAR 847-020-0170);

(2) Has had a license revoked or suspended in this or any other state unless the said license has been restored or reinstated and the applicant's license is in good standing in the state which had revoked the same;

(3) Has been refused a license or certificate in any other state or country on any grounds other than failure in a medical licensure examination;

(4) Has been guilty of conduct similar to that which would be prohibited by or to which ORS 677.190 would apply; or

(5) Has been guilty of cheating or subverting the medical licensing examination process. Medical licensing examination means any examination given by the Board to an applicant for registration, certification or licensure under this act. Evidence of cheating or subverting includes, but is not limited to:

(a) Copying answers from another examinee or permitting one's answers to be copied by another examinee during the examination;

(b) Having in one's possession during the examination any books, notes, written or printed materials or data of any kind, other than examination materials distributed by board staff, which could facilitate the applicant in completing the examination;

(c) Communicating with any other examinee during the administration of the examination;

(d) Removing from the examining room any examination materials;

(e) Photographing or otherwise reproducing examination materials.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.190

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 11-2003, f. & cert. ef. 7-15-03

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**Adm. Order No.:** BME 12-2003  
**Filed with Sec. of State:** 7-15-2003  
**Certified to be Effective:** 7-15-03  
**Notice Publication Date:** 6-1-03  
**Rules Amended:** 847-035-0030

**Subject:** The adopted rules delete repetitious language, adds a general statement that First Responders and EMTs may use noninvasive diagnostic devices in accordance with manufacturer's recommen-

dation, substitutes "dual lumen or laryngeal mask airway" for pharyngeal esophageal airway in the EMT-Intermediate scope of practice, adds morphine for pain management to the EMT-Intermediate scope of practice, and adds some clarifying language to the section on the treatment of patients with life-sustaining treatment orders.

**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

## 847-035-0030

### Scope of Practice

(1) The Board of Medical Examiners has established a scope of practice for emergency and nonemergency care for First Responders and EMTs. First Responders and EMTs may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the operation of ambulance and as incidents of other public or private safety duties, but is not limited to "emergency care" as defined in OAR 847-035-0001(5).

(2) The scope of practice for First Responders and EMTs is not intended as statewide standing orders or protocols. The scope of practice is the maximum functions which may be assigned to a First Responder or EMT by a Board-approved supervising physician.

(3) Supervising physicians may not assign functions exceeding the scope of practice; however, they may limit the functions within the scope at their discretion.

(4) Standing orders for an individual EMT may be requested by the Board or Section and shall be furnished upon request.

(5) No EMT may function without assigned standing orders issued by Board-approved supervising physician.

(6) An Oregon-certified First Responder or EMT shall respect the patient's wishes including life-sustaining treatments. First Responders and EMTs shall request and honor life-sustaining treatment orders executed by a physician or a nurse practitioner, if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

(7) The scope of practice for emergency and nonemergency care established by the Board for First Responders is intended as authorization for performance of procedures by First Responders without direction from a Board-approved supervising physician, except as limited by subsection (2) of this rule. A First Responder may perform the following emergency care procedures without having signed standing orders from a supervising physician:

(a) Conduct primary and secondary patient examinations;

(b) Take and record vital signs;

(c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendations;

(d) Open and maintain an airway by positioning the patient's head;

(e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(f) Provide care for soft tissue injuries;

(g) Provide care for suspected fractures;

(h) Assist with prehospital childbirth; and

(i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.

(8) A First Responder may perform the following procedures only when the First Responder is providing emergency care as part of an agency which has a Board-approved supervising physician who has issued written standing orders to that First Responder authorizing the following:

(A) Administration of medical oxygen;

(B) Open and maintain an airway through the use of an oropharyngeal and nasopharyngeal airway and pharyngeal suctioning devices;

(C) Operate a bag mask ventilation device with reservoir;

(D) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and

(E) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the First Responder:

(A) Has successfully completed a Section-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and

(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Section.

(9) An Oregon-certified EMT-Basic may perform emergency and nonemergency procedures. Emergency care procedures shall be limited to the following basic life support procedures:

(a) Perform all procedures that an Oregon-certified First Responder can perform;

(b) Ventilate with a non-invasive positive pressure delivery device;

(c) Insert a dual lumen airway device in the practice of airway maintenance after completing a Section-approved course;

# ADMINISTRATIVE RULES

(d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;

(g) Provide care for suspected medical emergencies, including:

(A) Obtaining a peripheral blood specimen for blood glucose monitoring, obtained via fingerstick, heelstick, or earlobe puncture;

(B) Administer epinephrine by subcutaneous or automatic injection device for anaphylactic shock;

(C) Administer activated charcoal for poisonings, following local written standing orders; and

(D) Administer aspirin for suspected myocardial infarction after completing a Section approved course in the administration of aspirin.

(E) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(i) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(j) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(k) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(l) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT-Basic is summoned to assist that patient; and

(m) In the event of a release of military chemical warfare agents from the Umatilla Army Depot, the EMT-Basic who is a member or employee of an EMS agency serving the DOD-designated Immediate Response Zone who has completed a Section-approved training program may administer atropine sulfate and pralidoxime chloride from a Section-approved preloaded auto-injector device, and perform endotracheal or pharyngo-esophageal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline.

(n) In the event of a release of chemical agents the EMT-Basic, who has completed Section-approved training, may administer atropine sulfate and pralidoxime chloride, using protocols approved by the Section and adopted by the supervising physician, if:

(A) The supervising physician provides the EMT-Basic with a direct, verbal order through radio or telephone contact, or

(B) The EMT-Basic is under the direction of an EMT-Paramedic who is on the scene.

(10) An Oregon-certified EMT-Intermediate may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to the following:

(a) Perform all procedures that an Oregon-certified EMT-Basic can perform;

(b) Initiate and maintain peripheral intravenous (I.V.) lines;

(c) Initiate and maintain an intraosseous infusion;

(d) Initiate saline or similar locks when specifically authorized by the physician;

(e) Infuse any physiologic isotonic crystalloid solution;

(f) Draw peripheral blood specimens;

(g) Initiate or administer the following medications:

(A) Epinephrine 1:10,000;

(B) Atropine sulfate;

(C) Lidocaine bolus for ventricular fibrillation, post ventricular fibrillation/ventricular tachycardia cardiac arrest, ventricular tachycardia, or wide complex tachycardia;

(D) Naloxone hydrochloride;

(E) Hypertonic glucose;

(F) Nitroglycerine for chest pain;

(G) Beta-2-specific nebulized bronchodilators;

(H) Morphine for pain management;

(h) Insert a dual lumen airway or laryngeal mask airway (LMA) device in the practice of airway maintenance;

(i) Insert an orogastric tube;

(j) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and

understandable written and verbal instructions for such maintenance have been provided by the personnel at the sending medical facility.

(k) Perform cardiac defibrillation with a manual defibrillator if the EMT-Intermediate has satisfactorily completed a Section-approved training course in manual defibrillation, including written and practical examinations and the EMT-Intermediate is, at the time of performing manual defibrillation, in the service of an agency which has been granted an "EMT-Intermediate Manual Defibrillation Waiver" by the Section.

(11) An Oregon-certified EMT-Paramedic may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to:

(a) Perform all procedures that an Oregon-certified EMT-Intermediate can perform;

(b) Initiate the following airway management techniques:

(A) Endotracheal intubation;

(B) Tracheal suctioning techniques;

(C) Needle cricothyrotomy; and

(D) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway.

(c) Initiate a nasogastric tube;

(d) Initiate electrocardiographic monitoring and interpret presenting rhythm;

(e) Provide advanced life support in the resuscitation of patients in cardiac arrest;

(f) Perform emergency cardioversion in the compromised patient;

(g) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

(h) Initiate needle thoracentesis for tension pneumothorax in a pre-hospital setting;

(i) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;

(j) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and

(k) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

(12) The Board has delegated to the Section the following responsibilities for ensuring that these rules are adhered to:

(a) Designing the supervising physician and agent application;

(b) Approving a supervising physician or agent; and

(c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.

(d) The Section shall provide copies of any supervising physician or agent applications and any EMT or First Responder disciplinary action reports to the Board upon their request.

(13) The Section shall immediately notify the Board when questions arise regarding the qualifications or responsibilities of the supervising physician or agent of the supervising physician.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988, f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93; ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03

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**Adm. Order No.:** BME 13-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-15-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 847-050-0005, 847-050-0010, 847-050-0023, 847-050-0025, 847-050-0027, 847-030-0041

**Subject:** The adopted rule clarifies that the supervising physician of a physician assistant must be licensed under ORS Chapter 677, and be actively registered and in good standing with the Board as an MD or DO. Proposed rules also clarifies that the name of the national physician assistant certification examination is the Physician Assis-

# ADMINISTRATIVE RULES

tant National Certifying Examination (PANCE) which is the entry level certification examination.

**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

## 847-050-0005

### Preamble

(1) A physician assistant is a person qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of a physician licensed under ORS Chapter 677, in active practice and in good standing with the Board. The purpose of the physician assistant program is to enable physicians licensed under ORS 677 to extend high quality medical care to more people throughout the state.

(2) The licensed physician shall in all cases be regarded as the supervisor of the physician assistant.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.495 - ORS 677.535

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 13-2003, f. & cert. ef. 7-15-03

## 847-050-0010

### Definitions

As used in OAR 847-050-0005 to 847-050-0065:

(1) "Agent" means a physician designated by the supervising physician who provides direction and regular review of the medical services of the physician assistant when the supervising physician is unavailable for short periods of time.

(2) "Board" means the Board of Medical Examiners for the State of Oregon.

(3) "Committee" means Physician Assistant Committee.

(4) "Grandfathered physician assistant" means the physician assistant registered prior to July 12, 1984 who does not possess the qualifications of OAR 847-050-0020. Grandfathered physician assistants may retain all practice privileges which have been granted prior to July 12, 1984. All changes in practice descriptions after July 12, 1984 by grandfathered physician assistants must be pre-approved by the Board.

(5) "Physician assistant" means a person who is licensed as such in accordance with ORS 677.265, 677.495, 677.0505, 677.510, 677.515, 677.520, and 677.525.

(6) "Practice description" means a written description submitted by the supervising physician and the physician assistant to the Board of the duties and functions of the physician assistant in relation to the physician's practice.

(7) "Supervising physician" means a physician licensed under ORS Chapter 677, actively registered and in good standing with the Board as a Medical Doctor or Doctor of Osteopathic Medicine, who provides direction and regular review of the medical services provided by the physician assistant as determined to be appropriate by the Board.

(8) "Supervision" means the routine review by the supervising physician or designated agent, as described in the practice description and as determined to be appropriate by the Board, of the medical services provided by the physician assistant. The supervising physician or designated agent and the physician assistant shall maintain direct communication, either in person or by telephone, radio, radiotelephone, television or similar means. There are three categories of supervision based on the practice situation of the supervising physician or designated agent and the physician assistant:

(a) "Direct Supervision" means the supervising physician or designated agent must be in the facility when the physician assistant is practicing.

(b) "General Supervision" means the supervising physician or designated agent is not on-site with the physician assistant, but is available for direct communication, either in person or by telephone, radio, radiotelephone, television or similar means.

(c) "Personal Supervision" means the supervising physician or designated agent must be at the side of the physician assistant at all times, personally directing the action of the physician assistant.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2003, f. & cert. ef. 7-15-03

## 847-050-0023

### Limited License, Postgraduate

(1) An applicant for a Physician Assistant license who has successfully completed a course in physician assistant training approved by the American Medical Association Council on Allied Health Education and Accreditation (C.A.H.E.A.), or the Commission on Accreditation for Allied Health Education Programs (C.A.A.H.E.P.), or the Accreditation Review Commission on Education for the Physician Assistant (A.R.C.P.A.) but has not yet passed the Physician Assistant National Certifying Examination (PANCE) given by the National Commission for the Certification of Physician Assistants (N.C.C.P.A.) may be issued a Limited License, Postgraduate, if the following are met:

(a) The application file is complete;

(b) Certification by the N.C.C.P.A. is pending;

(c) The physician assistant's practice description has been submitted;

(d) The supervising physician is in good standing with the Board; and

(e) The applicant has submitted the appropriate form and fee prior to being issued a Limited License, Postgraduate.

(2) Prescription privileges may be granted with a Limited License, Postgraduate if the supervising physician requests prescription privileges for the physician assistant in the practice description;

(3) A Limited License, Postgraduate may be granted for one year, and may not be renewed.

(4) Upon receipt of verification that the applicant has passed the N.C.C.P.A. examination, and if their application file is otherwise satisfactorily complete, the applicant will be reviewed at the next regularly scheduled Board meeting for permanent licensure.

(5) The Limited License, Postgraduate will automatically be canceled if the applicant fails the N.C.C.P.A. examination.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.132 & ORS 677.535

Hist.: ME 5-1993, f. & cert. ef. 4-22-93; ME 9-1995, f. & cert. ef. 7-28-95; BME 14-2002, f. & cert. ef. 10-25-02; BME 13-2003, f. & cert. ef. 7-15-03

## 847-050-0025

### Interview and Examination

In addition to all other requirements, the Board may require prior to original licensure the applicant and the applicant's supervising physician to appear for a personal interview if there are questions concerning the application or the practice description. In addition to the interview, if there is reasonable cause to question the qualifications of the applicant, or if the applicant has not worked as a physician assistant for a period of 12 or more consecutive months, the Board may require the applicant to do one or more of the following:

(1) Pass the the Physician Assistant National Certifying Examination (PANCE) given by the National Commission on the Certification of Physician Assistants (N.C.C.P.A.);

(2) Provide documentation of current N.C.C.P.A. certification;

(3) Document 25 hours of Category I continuing medical education acceptable to the Board for every year the applicant has ceased practice prior to application for Oregon licensure. Category I continuing education that meets N.C.C.P.A.'s recertification requirements would qualify as Board approved continuing education.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.545

Hist.: ME 23(Temp), f. & ef. 1-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 9-1995, f. & cert. ef. 7-28-95; BME 11-1998, f. & cert. ef. 7-22-98; BME 13-2003, f. & cert. ef. 7-15-03

## 847-050-0027

### Temporary Approval of Registration and Practice Changes

Under the authority of the Board of Medical Examiners, the Physician Assistant Committee may grant to physician assistants registration and/or practice description changes, subject to final Board approval, if the following criteria are met:

(1) Temporary approval of physician assistants currently licensed in the state who wish a change in the supervising physician require the following before approval may be granted:

(a) Letters of termination of previous supervision have been submitted to the Board as required in OAR 847-050-0050;

(b) There is no significant change in the practice description;

(c) The supervising physician has submitted a written request to be appointed as the supervising physician;

(d) The new supervising physician is in good standing with the Board.

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(2) Prescription privileges may be granted under temporary privileges only if the following conditions are met:

(a) The physician assistant has met the requirements of OAR 847-050-0020(1); or is an Oregon grandfathered physician assistant who has passed the Physician Assistant National Certifying Examination (PANCE) or other specialty examination approved by the Board prior to July 12, 1984; and

(b) The supervising physician requests prescription privileges for the physician assistant in the practice description.

(3) No temporary privileges will be granted for a period longer than four months.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510

Hist.: ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 5-1984, f. & ef. 1-20-84; ME 8-1985, f. & ef. 8-5-85; ME 5-1986, f. & ef. 4-23-86; ME 21-1989, f. & cert. ef. 10-20-89; ME 2-1990, f. & cert. ef. 1-29-90; ME 5-1994, f. & cert. ef. 1-24-94; ME 9-1995, f. & cert. ef. 7-28-95; BME 13-2003, f. & cert. ef. 7-15-03

## 847-050-0041

### Prescription Privileges

(1) A physician assistant may issue written or oral prescriptions for medications, Schedule III-V, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice description and approved by the Board if the following conditions are met:

(a) The physician assistant has met the requirements of OAR 847-050-0020(1); or is an Oregon grandfathered physician assistant who has passed the Physician Assistant National Certifying Examination (PANCE) or other specialty examination approved by the Board prior to July 12, 1984;

(b) The applicant must document adequate training and/or experience in pharmacology commensurate with the practice description;

(c) The Board may require the applicant to pass a pharmacological examination which may be written, oral, practical, or any combination thereof based on the practice description.

(2) The prescribing physician assistant, to be authorized to issue prescriptions for Schedules III through V controlled substances, must be registered with the Federal Drug Enforcement Administration.

(3) Written prescriptions shall be on a blank which includes the printed or handwritten name, office address, and telephone number of the supervising physician and the printed or handwritten name of the physician assistant. The prescription shall also bear the name of the patient and the date on which the prescription was written. The physician assistant shall sign the prescription and the signature shall be followed by the letter "P.A." Also the physician assistant's Federal Drug Enforcement Administration number shall be shown on prescriptions for controlled substances.

(4) A licensed physician assistant may make application to the Board for emergency administering and dispensing authority. The application must be submitted in writing to the Board by the supervising physician and must explain the need for the request, as follows:

(a) Location of the practice site;

(b) Accessibility to the nearest pharmacy, and

(c) Medical necessity for emergency administering or dispensing.

(5) The dispensed medication must be pre-packaged by a licensed pharmacist, manufacturing drug outlet or wholesale drug outlet authorized to do so under ORS 689 and the physician assistant shall maintain records of receipt and distribution.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.495, 677.510, 677.515, 677.535

Hist.: ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 6-1982, f. & ef. 10-27-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 16-1987, f. & ef. 8-3-87; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1994, f. & cert. ef. 1-24-94; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2003, f. & cert. ef. 7-15-03

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## Board of Nursing Chapter 851

**Adm. Order No.:** BN 6-2003

**Filed with Sec. of State:** 7-7-2003

**Certified to be Effective:** 7-7-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 851-002-0010, 851-002-0040

**Subject:** These rules cover the basic licensure fees for the Oregon State Board of Nursing.

**Rules Coordinator:** KC Cotton—(503) 731-4754

## 851-002-0010

### RN/LPN Schedule of Fees

(1) License Renewal — \$85

(2) Delinquent Renewal — \$12

(3) License by Endorsement — \$135

(4) Licensure by Examination — \$100

(5) Written Verification of License — \$12

(6) Duplicate License — \$12

(7) Limited Licenses:

(a) License Memorandum — \$25

(b) Reentry — \$95

(c) Extension of Reentry — \$25

(8) Limited Licenses for Educational Experience:

(a) International Graduate Nursing Students — \$65

(b) Extension of International Graduate Nursing Students — \$25

(c) International RN in Short-Term Educational Experience — \$35

(d) International Exchange Students — \$25

(e) U.S. RNs in Distance Learning — \$15

(f) Extension of Distance Learning — \$25

(9) Reexamination for Licensure — \$25

(10) Reactivation — \$100

(11) Reinstatement — \$100

(12) Retired Nurse Status — \$20

Stat. Auth.: ORS 678.150, ORS 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 11-1999, f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 17-2002, f. & cert. ef. 10-18-02; BN 6-2003, f. & cert. ef. 7-7-03

## 851-002-0040

### Nursing Assistant Schedule of Fees

(1) Certification by Examination — \$106

(2) Certification by Endorsement — \$40

(3) Reexamination — Manual Skills — \$45

(4) Reexamination — Written — \$25

(5) Oral Administration of Written Examination — \$35

(6) Written Verification of Certification — \$10

(7) Duplicate Certificate — \$10

(8) Biennial CNA Certificate Renewal — \$40

(9) CNA Renewal Late Fee — \$5

(10) CNA Certification for RN or LPN — \$40

(11) CNA Certification for Student Nurses — \$40

(12) Initial Approval CNA Training Program. — \$100

(13) Approval of Revised CNA Training Program — \$75

(14) Biennial Reapproval of CNA Training Program — \$50

(15) CNA Primary Instructor Approval — \$10

(16) Initial Approval of CNA Program Director — \$25

Stat. Auth.: ORS 678.150, ORS 678.410

Stats. Implemented: ORS 678.410

Hist.: NB 9-1989(Temp), f. & cert. ef. 11-24-89; NB 5-1990, f. & cert. ef. 5-7-90; NB 7-1990(Temp), f. & cert. ef. 7-11-90; NB 9-1990, f. & cert. ef. 10-9-90; NB 5-1991(Temp), f. & cert. ef. 10-15-91; NB 3-1992, f. & cert. ef. 2-13-92; NB 12-1992, f. 12-15-92, cert. ef. 1-1-93; NB 2-1993, f. 2-8-93, cert. ef. 2-16-93; NB 15-1993, f. 12-27-93, cert. ef. 6-1-94; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-060-0300; BN 7-1999, f. 8-10-99, cert. ef. 11-1-99; BN 10-1999, f. & cert. ef. 12-1-99; BN 6-2003, f. & cert. ef. 7-7-03

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**Adm. Order No.:** BN 7-2003

**Filed with Sec. of State:** 7-7-2003

**Certified to be Effective:** 7-7-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 851-021-0010, 851-021-0040

**Subject:** This rule amendment to Division 21 would accept an entity approved by the United States Department of Education as an accrediting agency meeting the required standards for approval of a nursing education program.

**Rules Coordinator:** KC Cotton—(503) 731-4754

# ADMINISTRATIVE RULES

## 851-021-0010

### Approval of Nursing Education Programs

- (1) Application and Developmental Approval:
- (a) An institution wishing to establish a new program in nursing shall make application to the Board at least 15 months in advance of expected opening date;
- (b) The application shall include a statement of intent and a feasibility study with at least the following information:
- (A) Evidence of accreditation of the institution by the Northwest Association of Schools and Colleges, or another appropriate U.S. Department of Education approved accrediting agency ;
- (B) Studies documenting the statewide need for the program. The study should also specifically address the need for the program in relation to the nursing needs of the geographical area to be served;
- (C) Purpose, size and type of program;
- (D) Administration and organizational plan delineating lines of authority and decision-making;
- (E) Availability of and ability to recruit and retain qualified faculty members;
- (F) Projected number of faculty positions;
- (G) Description of available physical facilities and description of proposed facilities with dates of availability;
- (H) Availability of adequate practice sites for the program;
- (I) Availability of adequate educational facilities, services, and resources for the program;
- (J) Evidence of financial resources adequate for planning, implementation and continuation of the program, including proposed operating costs;
- (K) Anticipated student enrollment and proposed date of enrollment;
- (L) Tentative time schedule for planning and initiating the program;
- (M) Current institution and program catalog.
- (c) The institution shall respond to the Board's request(s) for additional information;
- (d) A site visit may be conducted by a representative(s) of the Board;
- (e) The Board, after timely review and consideration of the information contained in the application and any supplementary information, shall either approve or deny the application and notify the applicant, including rationale for the decision;
- (f) If developmental approval is denied, the institution may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply;
- (g) If the institution does not submit an application for initial approval within 12 months after the date designated for initiating the program in the approved plan, the developmental approval shall expire.
- (2) Initial Approval:
- (a) Initial approval status may be applied for when the following conditions have been met:
- (A) Application as described in OAR 851-021-0010(1) has received Board approval;
- (B) Evidence of approval for the new program has been obtained from the appropriate agencies or bodies that review and approve new programs for public and private educational institutions. The institution shall provide one copy of the report that was submitted to each agency and a copy of the letter(s) indicating that approval for the program has been granted;
- (C) A qualified nurse administrator has been appointed and provided with necessary administrative supports a minimum of nine months prior to the beginning of courses;
- (D) There are sufficient qualified faculty and administrative support services to initiate the program a minimum of six months prior to the beginning of the courses;
- (E) A tentative written proposed program plan, including curriculum developed in accordance with the Standards for Approval, has been submitted a minimum of three months prior to the offering of the first course to nursing students.
- (F) There is evidence of readiness for admission of students in educational and clinical facilities and policies for admission and progression.
- (b) Following Board receipt and review of the information required in OAR 851-021-0010(2)(a), the Board may grant or deny initial approval;
- (c) Initial approval must be received by a program prior to the admission of the first class of nursing students;
- (d) If initial approval is denied, the institution may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply;
- (e) Interim visits and/or progress reports may be requested by the Board at any time during the initial approval phase and/or following initial approval as deemed necessary by the Board.

(f) if the institution does not admit a class within 12 months after the date designated for initiating the program in the initial approval application, the initial approval shall expire.

(3) Approval:

(a) Eligibility for approval occurs after the graduation of the first class of students;

(b) Within six months following graduation of the first class, the institution shall submit a self-study report of compliance with the Standards for Approval and a survey visit shall be made for consideration of approval of the program;

(c) The decision of the Board to grant or deny approval shall be based upon review of a self-evaluation report submitted by the program addressing compliance with Board standards, of the success rate of graduates on the national licensure examination, and of a survey report by a representative(s) of the Board;

(d) If approval is denied, the institution may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

Stat. Auth.: ORS 678.150, ORS 678.340 & ORS 678.360

Stats. Implemented: ORS 678.150 & ORS 678.360

Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NB 3-1988, f. & cert. ef. 7-5-88; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0021; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2003, f. & cert. ef. 7-7-03

## 851-021-0040

### Standards for Approval: Organization and Administration

(1) The controlling body shall be accredited by the Northwest Association of Schools and Colleges or another appropriate U.S. Department of Education accrediting agency and meet all current standards of the agency.

(2) There shall be a description or organizational chart that clearly illustrates communication and decision making processes within the nursing program, and accountability and communication of the nursing program to the controlling body.

(3) There shall be adequate financial support for the development, stability and continuation of the program.

(4) The authority and responsibility for the direction of the program shall be vested in a qualified nurse administrator who is accountable to the controlling body, either directly or through appropriate administrative channels.

(5) The nurse administrator shall be responsible for administration of the program, including:

(a) Leadership within the faculty for the development, implementation, and evaluation of the program, including curriculum;

(b) Creation and maintenance of an environment conducive to teaching and learning;

(c) Liaison with the central administrator and other units of the institution;

(d) Participation in preparation of the budget;

(e) Administration of the budget;

(f) Facilitation of faculty and faculty member development;

(g) Participation in faculty member performance review;

(h) Recommendation for faculty member appointment, promotion, tenure and retention;

(i) Liaison with the Board related to the program's continuing compliance with the required elements of these rules.

(6) The nurse administrator shall have sufficient time provided for carrying out administrative responsibilities. Instructional responsibilities and responsibilities for administration of other programs shall be consistent with the scope of the administrative responsibility for the nursing program.

(7) Nursing education program policies and procedures shall be in written form, congruent with those of the institution, and shall be reviewed periodically.

Stat. Auth.: ORS 678.150 & ORS 678.340

Stats. Implemented: ORS 678.150 & ORS 678.360

Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 3-1983, f. & ef. 12-1-83; NER 2-1985, f. & ef. 4-5-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0051; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2003, f. & cert. ef. 7-7-03

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**Adm. Order No.:** BN 8-2003

**Filed with Sec. of State:** 7-7-2003

**Certified to be Effective:** 7-7-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 851-050-0131

**Subject:** The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included



# ADMINISTRATIVE RULES

in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. The amendments add the April and May 2003 updates to Drug Facts and Comparisons to the formulary.

**Rules Coordinator:** KC Cotton—(503) 731-4754

## 851-050-0131

### Formulary for Nurse Practitioners with Prescriptive Authority

(1) The following definitions apply for the purpose of these rules:

(a) "Appliance or device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurse practitioners with prescriptive authority shall be all the drugs in the Drug Facts and Comparisons dated May 2003 with the exception of certain drugs and drug groups which are listed below.

(c) "Board" means the Oregon State Board of Nursing.

(2) The Board as authorized by ORS 678.385 (1993), shall determine the drugs which nurse practitioners may prescribe, shall periodically revise the formulary by rulemaking hearing at each regular Board meeting and shall transmit the list of those drugs which are exceptions to the formulary, and which nurse practitioners may not prescribe, to nurse practitioners with prescriptive authority and other interested parties.

(3) The formulary is constructed based on the following premises:

(a) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;

(b) Nurse practitioner prescribing is limited by the nurse practitioner's scope of practice and knowledge base within that scope of practice;

(c) Nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005;

(d) Nurse practitioners may prescribe drugs for conditions the nurse practitioner does not routinely treat within the scope of their practice provided there is ongoing consultation/ collaboration with another health care provider who has the authority and experience to prescribe the drug(s);

(e) Nurse practitioners shall be held strictly accountable for their prescribing decisions;

(f) All drugs on the formulary shall have Food and Drug Administration (FDA) approval.

(4) Nurse practitioners with prescriptive authority are authorized to prescribe:

(a) All over the counter drugs;

(b) Appliances and devices.

(5) Nurse Practitioners are authorized to prescribe the following drugs as listed in Drug Facts and Comparisons dated May 2003:

(a) Nutrients and Nutritional Agents — all drugs;

(b) Hematological Agents — all drugs except Drotrecogin Alfa (Xigris);

(c) Endocrine and Metabolic Agents — all drugs except:

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam);

(C) Dofetilide (Tikosyn); and

(D) Bosentan (Tracleer).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

(g) Central Nervous System Agents:

(A) Class II Controlled Substances — Only the following drugs:

(i) Tincture of opium;

(ii) Codeine;

(iii) Hydromorphone;

(iv) Morphine;

(v) Oxycodone, Oxymorphone;

(vi) Topical Cocaine Extracts and Compounds;

(vii) Fentanyl;

(viii) Meperidine;

(ix) Amphetamines;

(x) Methylphenidates;

(xi) Pentobarbital;

(xii) Secobarbital;

(xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-050-0170); and

(xiv) Levorphanol.

(B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide; and

(C) Chymopapain is excluded.

(h) Gastrointestinal Agents — all drugs except: Monoctanoin;

(i) Anti-infectives, Systemic — all drugs;

(j) Biological and Immunologic Agents—all drugs except Basiliximab (Simulect);

(k) Dermatological Agents — all drugs except Psoralens;

(l) Ophthalmic and Otic Agents — all drugs except:

(A) Punctal plugs;

(B) Collagen Implants;

(C) Indocyanine Green;

(D) Hydroxypropal (Methyl) Cellulose;

(E) Polydimethylsiloxane;

(F) Fomivirsin Sodium (Vitravene);

(G) Verteporfin;

(H) Levobetaxolol HCL (Betaxon);

(I) Travoprost (Travatan);

(J) Bimatoprost (Lumigan); and

(K) Unoprostone Isopropyl (Rescula).

(m) Antineoplastic Agents — all drugs except:

(A) NCI Investigational Agents;

(B) Samarium Sm53;

(C) Denileukin Diftitox (Ontak);

(D) BCG, Intravesical (Pacis);

(E) Arsenic Trioxide (Trisenox); and

(F) Ibritumomab Tiuxetan (Zevalin).

(n) Diagnostic Aids:

(A) All drugs except Arbutamine (GenESA);

(B) Thyrotropin Alfa (Thyrogen);

(C) Miscellaneous Radiopaque agents — no drugs from this category except:

(i) Iopamidol;

(ii) Iohexol; and

(iii) Ioxilan (Oxilan).

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

Stat. Auth.: ORS 678.375 & ORS 678.385

Stats. Implemented: ORS 678.385

Hist.: NB 11-1993(Temp), f. 10-26-93, cert. ef. 11-4-93; NB 2-1994, f. & cert. ef. 4-15-94; NB 7-1994, f. & cert. ef. 9-28-94; NB 3-1995, f. & cert. ef. 4-12-95; NB 6-1995(Temp), f. & cert. ef. 6-15-95; NB 8-1995, f. & cert. ef. 6-29-95; NB 11-1995, f. & cert. ef. 10-9-95; NB 1-1996, f. & cert. ef. 2-29-96; NB 3-1996, f. & cert. ef. 6-11-96; NB 8-1996, f. & cert. ef. 10-30-96; NB 10-1996, f. & cert. ef. 12-2-96; NB 5-1997, f. & cert. ef. 3-6-97; NB 7-1997, f. & cert. ef. 5-13-97; NB 8-1997, f. & cert. ef. 7-1-97; NB 13-1997, f. & cert. ef. 9-29-97; NB 14-1997, f. & cert. ef. 12-11-97; NB 4-1998, f. & cert. ef. 3-13-98; NB 5-1998, f. & cert. ef. 5-11-98; NB 8-1998, f. & cert. ef. 7-16-98; NB 12-1998, f. & cert. ef. 9-22-98; NB 13-1998, f. & cert. ef. 12-1-98; NB 1-1999, f. & cert. ef. 3-4-99; NB 3-1999, f. & cert. ef. 5-4-99; NB 5-1999, f. & cert. ef. 7-1-99; NB 9-1999, f. & cert. ef. 10-20-99; NB 13-1999, f. & cert. ef. 12-1-99; NB 3-2000, f. & cert. ef. 2-25-00; NB 5-2000, f. & cert. ef. 4-24-00; NB 8-2000, f. & cert. ef. 7-3-00; NB 9-2000, f. & cert. ef. 9-18-00; NB 10-2000, f. & cert. ef. 12-15-00; NB 2-2001, f. & cert. ef. 2-21-01; NB 6-2001, f. & cert. ef. 4-24-01; NB 9-2001, f. & cert. ef. 7-9-01; NB 13-2001, f. & cert. ef. 10-16-01; NB 4-2002, f. & cert. ef. 3-5-02; NB 11-2002, f. & cert. ef. 4-25-02; NB 14-2002, f. & cert. ef. 7-17-02; NB 19-2002, f. & cert. ef. 10-18-02; NB 21-2002, f. & cert. ef. 12-17-02; NB 2-2003, f. & cert. ef. 3-6-03; NB 4-2003, f. & cert. ef. 4-23-03; NB 8-2003, f. & cert. ef. 7-7-03

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## Bureau of Labor and Industries

### Chapter 839

**Adm. Order No.:** BLI 4-2003

**Filed with Sec. of State:** 6-26-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:**

**Rules Amended:** 839-016-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the commissioner of Bureau of Labor and industries for the period beginning July 1, 2003

**Rules Coordinator:** Marcia Ohlemiller—(503) 731-4212

## 839-016-0700

### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279.359, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in a publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* dated July 1, 2003 are the prevailing

# ADMINISTRATIVE RULES

rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2003, and the effective date of the applicable special wage determination:

(a) Marine Rates for Public Works Contracts in Oregon (effective January 18, 2002).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* dated July 1, 2003, and special wage determinations are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.boli.state.or.us](http://www.boli.state.or.us) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #32, Portland, Oregon 97232; (503) 731-4723

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS.279.359

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03

## Columbia River Gorge Commission Chapter 350

**Adm. Order No.:** CRGC 1-2003

**Filed with Sec. of State:** 6-23-2003

**Certified to be Effective:** 8-1-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 350-060-0042, 350-060-0045, 350-060-0055, 350-060-0075, 350-060-0205, 350-060-0240

**Rules Amended:** 350-060-0020, 350-060-0040, 350-060-0050, 350-060-0060, 350-060-0070, 350-060-0080, 350-060-0090, 350-060-0100, 350-060-0120, 350-060-0130, 350-060-0150, 350-060-0160, 350-060-0170, 350-060-0180, 350-060-0190, 350-060-0200, 350-060-0210, 350-060-0220

**Rules Repealed:** 350-060-0140

**Subject:** Division 60 governs the Gorge Commission's procedure for hearing appeals of county land use decisions in the Columbia River Gorge National Scenic Area. The rule also specifies filing and other procedural requirements for appellant and other participants in an appeal. The proposed amendments incorporate changes identified by the Gorge Commission and users of the rules to clarify, simplify and expedite the process.

Significant changes include: allowing filing by fax for uncontested motions (350-060-0040(5)); allowing filing to be accomplished by mail, instead of by receipt at the Commission office (350-060-0040(5)); allowing shortened records as stipulated by parties (350-060-0060(1)(f)); requiring parties to note whether they believe the case could be resolved using ADR, in which case the Gorge Commission would facilitate ADR (350-060-0075); Clarifying the process for oral argument to provide a time for questions prior to argument, uninterrupted oral argument, and a time for questions after oral argument (350-060-0120(4)); A process for filing motions and responses to motions, and for expedited motions (350-060-0130); that Gorge Commission will issue orders on motions for intervention (350-060-0160(7)); allowing stipulated motions for extensions of time to be automatic for the first one, and presumed granted for all subsequent extensions (350-060-0190(4)-(6)); allowing for involuntary dismissal of an appeal by the Commission when the appeal is moot or not diligently prosecuted (350-060-0125); allowing a county to request a voluntary remand of a case under certain circumstances (350-060-0220(2)); A special process for filing of an appeal after expiration of the appeal period under certain extraordinary and rare circumstances (350-060-0240).

**Rules Coordinator:** Nancy Andring—(509) 493-3323

### 350-060-0020

#### Scope

Scope of Rules: All proceedings commenced by Notice of Appeal shall be governed by these rules. Where this division is silent, divisions 11, 12, 14, and 16 of the Commission's rules shall be applicable provided that the specific provisions are applied in a manner that does not conflict with the provisions of this division.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544(b) et seq.16, U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

### 350-060-0040

#### Definitions

In these rules, unless the context or subject matter requires otherwise:

(1) "Applicant" means the person who requested that the governing body take an action which resulted in a land use decision.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco counties, Oregon; and Clark, Skamania and Klickitat counties, Washington.

(4) "Days" means calendar days.

(5) "File" means to deliver to Commission offices by personal delivery or by mail. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, or the date that it is mailed.

(a) A motion filed with the consent of all parties may be filed by fax. When a motion is filed by fax, the original shall be mailed or delivered in person to the Commission offices on the same day or on the next business day. A motion filed by fax shall be considered filed on the date it is faxed if the fax is received at Commission office by 5:00 p.m.

(b) Any document filed with the Commission shall include a certification that the document was served on all parties on the same or earlier date and in the same manner that the document was filed.

(6) "Final decision": A decision is final when it is reduced to writing and bears the necessary signatures of the governing body decisionmaker(s).

(7) "Governing body" means a county governing body.

(8) "Land use decision" means a final decision by the governing body of a county in the National Scenic Area based on the National Scenic Act.

(9) "Notice" means the Notice of Appeal and refers to the document that must be filed with the Commission in order to begin an appeal.

(10) "Party" means the appellant, the governing body, or any intervenor.

(11) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(12) "Serve" or "Service" means to send with the United States Postal Service by first class mail or to deliver in person, a copy of the original to all parties, including intervenors and persons who have a pending motion to intervene before the Commission.

(a) Only motions that are filed by fax may be served by fax. If a motion is served by fax, then it shall also be served by mailing or delivering a copy of the original to all parties on the same or next day.

(b) All documents served on the other parties shall include a certification that the document was served on the same or earlier date that the document was filed. Service shall occur on all parties in the same manner, but need not occur in the manner which the original document was filed (**Exhibit 4**).

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544(c)(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

### 350-060-0042

#### Delegation of Authority to the Chair of the Commission

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case setting, requests for intervention, preliminary motions, and other procedural matters. The Chair of the Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0045

### Time

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period of time after service of a notice or other paper, and the service of the notice or other paper is by mail, three (3) days shall be added to the prescribed time period. This does not apply to documents mailed when filing and service is accomplished by fax.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0050

### Notice of Appeal

(1) Filing: Except as provided in 350-060-0240 below, an appellant shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. Except as provided in 350-060-0240 below, a Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The appellant shall serve the Notice of Appeal on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(h) of this rule on or before the date the Notice of Appeal is filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in **Exhibit 1** and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as appellant(s), and the name of the governing body, identifying the governing body as respondent;

(b) Adjacent to the caption the heading "Notice of Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed;

(f) A brief "ADR Statement" stating whether the appellant is willing to attempt to resolve the case through alternative dispute resolution ("ADR"), including but not limited to mediation. This statement shall not be used to argue the merits of the appeal.

(g) A statement whether the appellant is willing to consider a shortened record in accordance with 350-60-060(f).

(h) The name, address and telephone number of each of the following:

(A) The Appellant. If the appellant is not represented by an attorney, the appellant's name, address and telephone number shall be included. If an attorney represents the appellant, the attorney's name, address and telephone number shall be substituted for that of the appellant.

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the appellant). If an applicant was represented by an attorney before the governing body, the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;

(D) Any other person to whom written notice of the land use decision was mailed as shown on the governing body's records. The telephone number may be omitted for any such person.

(i) A statement advising all persons other than the governing body, that in order to participate in the review proceeding a person must file at the Commission office and serve a motion to intervene pursuant to 350-060-0160.

(j) A statement advising all persons other than the governing body, that in order to present oral argument at the hearing before the Commission, a person must intervene and file a brief pursuant to 350-060-0120(1).

(k) Proof of service upon all persons required to be named in the Notice. See **Exhibit 1**.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the average cost to the Commission of handling appeals under this rule.

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

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0055

### Respondent's ADR Statement

Within 10 days after filing of a Notice of Appeal, the governing body shall file at the Commission office and serve a "Respondent's ADR Statement" stating whether the respondent is willing to attempt to resolve the case through alternative dispute resolution means. This statement shall not be used to argue merits of the appeal.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0060

### Record

(1) Contents of Record: The record on appeal from a governing body shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the governing body's proceeding.

(c) Photos, maps, and exhibits that were presented to the governing body in color shall be provided to the Commission in color in the original or certified copy of the record;

(d) Minutes of the meetings conducted by the governing body as required by law. A verbatim transcript of audiotape recordings shall not be required, but if a transcript has been prepared, it shall be included.

(e) The governing body may retain the audiotape recording, any large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The governing body shall make these items reasonably available for inspection and duplication by the parties during the pendency of the appeal, and shall specify in its filing of the record the available times and procedure for reviewing for these items.

(f) The Gorge Commission encourages parties to stipulate to a shortened record.

(A) A shortened record may eliminate duplicates of documents, letters that do not include substantive information, documents related to issues that are not being appealed, or other documents that the parties do not believe are necessary for the Gorge Commission to decide the issues raised in the appeal.

(B) Notwithstanding subsection (A) above, a shortened record shall include the documents referred to in subsections (1)(a) and (d) above, and any document submitted in a shortened record shall comply with subsection (1)(c) and (e) above.

(C) A shortened record may be submitted only as agreed upon by all parties. The record shall contain any document that one or more parties desires to include in the record.

(D) Any party that desires to refer to a document that was eliminated by agreement of the parties in a shortened record may at any time file at the Commission office and serve a motion to supplement the record with that document, and shall include the document as part of its motion. A motion to supplement the record under this section shall comply with 350-060-0130.

(E) The shortened record shall be considered the complete record before the Gorge Commission for the purpose of any judicial review of the Gorge Commission's decision.

(2) Filing of Record: The governing body shall within 30 days after service of the Notice on the governing body, file at the Commission office, the original or a certified copy, and two copies of the record of the proceeding under review.

(3) Service of Record: Contemporaneously with filing the record at the Commission office, the governing body shall serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents which are difficult to duplicate, on the appellant and all other parties, including intervenors. If intervention is granted after the record is filed and served, then the governing body shall serve a copy of record as soon as possible after intervention is granted.

# ADMINISTRATIVE RULES

## (4) Specifications of Record:

### (a) The record shall:

(A) Include a cover bearing the title of the case as it appears in the Notice, and the Commission's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the governing body;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see **Exhibit 2**), and listing each audiotape recording, large map or other exhibit or document retained by the governing body;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(F) Indicate whether it is a shortened record. The governing body is not required to indicate documents that were excluded by stipulation of all parties to produce the shortened record.

(b) A record which does not conform to the preceding requirements shall not be accepted by the Commission.

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0070

### Objections to the Record

(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the party filing the objection. The party filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the governing body and attempted to resolve the objection. Objections may be made on the following grounds:

(a) The record does not include all materials included as part of the record during the proceedings before the governing body. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included as part of the record during the proceedings before the governing body. The item(s) not included as part of the record during the proceedings before the governing body shall be specified, as well as the basis for the claim that the item(s) are not part of the record.

(c) The minutes do not accurately reflect the proceedings, or the transcripts of the meetings or hearings are incomplete.

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the governing body to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is in an audiotape recording, a transcript of the relevant portion shall be submitted.

(4) The Chair of the Commission may conduct a telephone conference with the parties to consider any objections to the record.

(5) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of the Chair's letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0075

### Alternative Dispute Resolution and Settlement

The Commission recognizes that: many of the matters that come before the Commission on appeal may be resolved through alternative dispute resolution (ADR), such as mediation; ADR may be a faster and less expensive process than appeal pursuant to these rules and beyond to the states' courts; agreements reached through ADR may be more lasting and

acceptable to the parties than a decision on the merits by the Commission or the states' courts; and, ADR is a voluntary process.

(1) The Executive Director of the Commission shall review the parties' ADR statements as soon as practicable.

(2) If, after reviewing the parties' ADR statements, the Executive Director believes that ADR may be successful in resolving or partially resolving the matter, then the Director shall send a letter to the parties and offer assistance to the parties to obtain information about ADR or to identify possible ADR neutrals, specifically the states' and other government-funded dispute resolution programs, community mediation programs, or other qualified neutrals; however, the Commission shall not be required to pay the cost of ADR. This subsection shall not be construed to prevent the parties from requesting the Commission's assistance to resolve the matter through settlement or ADR at any time, or to limit the Commission's authority to recommend to the parties that they attempt to resolve the matter through ADR.

(3) Upon motion, the Chair of the Commission shall place the appeal in abeyance or shall grant all necessary extensions of time to facilitate the parties' attempts to resolve the matter through settlement or ADR. Should settlement or ADR be unsuccessful, any party may file a motion to reinstate the matter and reset the applicable time periods.

(4) Any oral discussion, written documents, or other record produced exclusively for the purpose of settlement or ADR, whether or not pursuant to this section, shall be confidential and not part of the record on appeal from the governing body (to the Gorge Commission) nor part of the Gorge Commission's record to any reviewing court.

(5) The Commission shall not consider, as a basis for any decision pursuant to this division, a party's decision to not participate in settlement or ADR, or knowledge that the matter was not resolved through settlement or ADR.

### (6) Settlement:

(A) If a settlement changes the proposed development or any conditions of approval, the governing body shall provide notice of the changes to all persons entitled to receive notice of the original application. If the changes are substantial, then the governing body shall conduct a complete review of the changes in the same manner as if the settlement was a new land use application.

(B) When an appeal, or any issue in an appeal, is settled by the parties, the Commission shall not be required to review the settlement as a condition of the settlement. The Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

(C) Upon settlement of a case, the appellant shall dismiss the appeal in accordance with 350-060-0205.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0080

### Appellant's Brief

(1) Filing and Service of Brief: The Appellant's Brief shall be filed at the Commission office and served no later than 30 days after the record is filed, or settled if a party files an objection to the record. Failure to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal.

(2) Specifications of Brief: The Appellant's Brief shall:

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If a brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed and served within three (3) days of notification.

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. An intervenor shall be designated as either appellant or respondent.

(d) If there is more than one appellant, the cover page shall specify the appellant(s) filing the brief.

(e) Be typewritten, in 12-point pica type, and double spaced;

(f) Be signed on the last page by the author.

(3) Contents of Brief: The Appellant's Brief shall:

(a) State the facts that establish appellant's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

# ADMINISTRATIVE RULES

(A) The nature of the land use decision and the relief sought by the appellant;

(B) A summary of the arguments appearing under the assignments of error in the body of the brief;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

(c) State why the challenged decision is a land use decision subject to the Commission's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law;

(f) Contain a copy of any management plan provisions, comprehensive plan provision, ordinance or other provision of local law cited in the brief, unless the provision is quoted verbatim in the brief.

(4) Copies of example Appellant's briefs are available at the Commission office for parties to review for form.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0090

### Special Review

(1) Where the appellant contends the land use decision eliminates all economic or beneficial use of the property, the appellant must meet the requirements for the Appellant's Brief in Rule 350-060-0080 and the requirements for Special Review as follows:

- (a) Set out the pertinent portions of the ordinance that apply;
- (b) Describe how the ordinance impacts the use of the property;
- (c) Attach copies of any documents (maps, deeds, easements, etc.) that are relevant; and

(d) Explain why the requested use must be allowed to provide economic or beneficial use of the property.

(2) All other parties shall have the opportunity to specifically respond to the appellant's submittal under this section in their briefs and the Executive Director or his or her designee shall also respond.

(3) The Commission, in its "Final Opinion and Order", shall

(a) Address the subject of economic or beneficial use in its findings of fact and conclusions.

(b) Specify the factual and/or legal principles relied on in support of the decision.

(c) Where appropriate, propose options for use for the property owner, or other options available to the appellant consistent with the ordinance.

(d) Where the Commission finds that enforcement of the land use ordinance will deprive the landowner of all economic or beneficial use of the property, the Commission shall remand the matter to the county for the county to allow a use as provided for by the order of the Commission. The economic or beneficial use allowed shall be the use that on balance best protects the affected resources. This section applies:

(A) If the Forest Service or the federal government does not provide just compensation for a Special Management Area designation it made; or

(B) For a General Management Area designation made by the Gorge Commission.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0100

### Respondent's Brief

(1) Filing and Service of Brief: The Respondent shall file at the Commission office and serve a Respondent's brief no later than 20 days after the date the Appellant's Brief is filed.

(2) Specifications of Brief: The Respondent's brief shall conform to the specifications of the Appellant's Brief, except that the brief shall have a red cover. If there is more than one respondent, the cover page shall specify which respondent is filing the brief.

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the Appellant's Brief. The respondent shall specifically accept the appellant's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The state-

ment shall be in narrative form with citations to the pages of the record where support for the facts alleged can be found.

(b) The Respondent shall accept or challenge the appellant's statement of the Commission's jurisdiction and the appellant's statement of standing. The basis for any challenge shall be stated. If the respondent contends that the facts alleged by the appellant in support of standing are not true, the respondent shall specify which allegations are contested.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0120

### Oral Argument

(1) The hearing before the Commission shall be on the record submitted by the county, as long as the county has based its decision upon a record made at an adjudicative hearing open to participation by persons adversely affected or aggrieved. Only parties who have submitted briefs shall be allowed to present oral argument to the Commission.

(2) If the county did not base its decision upon a record made in an adjudicated hearing open to participation by persons adversely affected or aggrieved, then anyone adversely affected or aggrieved may participate in a hearing before the Commission.

(3) If a party waives the right to present oral argument, the Commission shall consider the case based on that party's brief and the brief and oral arguments presented by other parties. The parties may, with consent of the Commission, stipulate to submit a case to the Commission on briefs without oral argument.

(4) The Commission shall inform the parties of the time and place of oral argument. Unless the Commission otherwise orders, the procedure for oral argument shall be as follows:

(a) Members of the Commission shall have an opportunity to ask questions that they wish the parties to address in their oral arguments.

(b) The appellant(s) shall be allowed 20 minutes for oral argument, which may be divided between the initial presentation and rebuttal, and which shall be uninterrupted by questions asked by members of the Commission. Multiple appellants shall share the twenty minutes for argument.

(c) The respondent(s) shall be allowed 20 minutes to respond, which shall be uninterrupted by questions asked by members of the Commission. Multiple respondents shall share the twenty minutes for argument.

(d) After the parties uninterrupted arguments, members of the Commission may ask brief questions of the parties concerning the facts of the case, the arguments made, and applicable law. Appellant(s) and respondent(s) shall each have 2 minutes to answer each question, except that the Chair may allow a longer time provided that both sides are afforded the same time to answer the question. Multiple petitioners or respondents shall share the allotted time to answer a question.

(5) The Commission shall tape record all arguments, but any party may also arrange at its own expense to record the argument in the same or other manner.

(6) The governing body shall ensure that all audiotape recordings, large maps, or exhibits and documents, which were not included in the duplicated record pursuant to 350-060-0060(1)(d), are present at the oral argument, even if the governing body chooses not to participate in oral argument. All other parties are encouraged to remind the governing body of this requirement. The governing body shall transmit such items to the Commission at the beginning of the hearing. The Commission shall have broad authority to redress a governing body's failure to transmit such items, including but not limited to, postponing the hearing, exclusion of the item from the record before the Commission, or judicial notice of the contents of the record.

(7) The Commission may consult with its staff and counsel regarding facts, legal analysis, issues and matters in the appeal. The Commission may allow, but shall not be required to allow the parties to respond to the staff and counsel's statements to the Commission.

(8) The Commission's rules concerning ex parte contact and appearance of fairness, Commission Rules 350-016-0016 and 350-016-0017 shall apply.

(9) The Commission shall send a Notice of Hearing in accordance with Commission Rule 350-016, which shall also include a summary of the requirements and procedures for oral argument in this section.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

# ADMINISTRATIVE RULES

## 350-060-0130

### Motions, Generally and Procedural Orders

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

(2) A motion shall be filed at the Commission office by mail or personal delivery, except that motions to which all parties consent may be filed by fax as provided in 350-060-0040.

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responsive briefs. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0150

### Evidentiary Hearings

(1) Grounds for Hearing: The Commission may, upon written motion, conduct an evidentiary hearing in the case of disputed allegations in the parties' briefs concerning standing, ex parte contacts or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. An evidentiary hearing may also be held upon motion or at the direction of the Commission to consider disputes regarding the content of the record or requests for stays.

(2) Motions for Hearings: A motion for an evidentiary hearing shall be filed at the Commission office and served on all parties at least 60 days in advance of oral argument, or less upon a demonstration of good cause. The motion shall contain a statement explaining with particularity what facts the moving party will present at the hearing and how those facts will affect the outcome of the review proceeding. Whenever possible such facts shall be presented by affidavit with the motion.

(3) Conduct of hearing:

(a) Insofar as the Commission finds it practical, the hearing shall be conducted in the following order:

(A) The moving party shall present its evidence including that of any witnesses;

(B) The other party(ies) shall have the opportunity to present evidence disputing that of the moving party;

(C) The moving party shall present rebuttal evidence;

(b) Any witness is subject to cross examination by opposing parties;

(c) Any member of the Commission may question any witness;

(d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

(e) The Commission may continue a hearing, and may set time limits for any hearing;

(f) Exhibits shall be marked to identify the party offering the exhibits. The exhibits shall be preserved by the Commission as part of the record.

(4) Evidentiary Rules:

(a) Evidence of a type commonly relied upon reasonably prudent person in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All evidence not objected to, shall be received by the Commission, subject to the Commission's power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Commission. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

(5) Prehearing Conference: The Commission, on its own motion or at the request of any party, may call a prehearing conference to consider:

(a) Simplification of the issues;

(b) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(c) Limitation of the number of witnesses;

(d) The form and substance of any prehearing order;

(e) Such other matters as may aid in the disposition of the appeal.

(6) Proposed Prehearing Order: The Commission with or without a prehearing conference, may require that the parties prepare and sign a proposed prehearing order to be filed with the Commission on or before a date specified by the Commission. The order shall contain:

(a) A statement of contentions of law of each party;

(b) A concise statement of all contentions of fact to be proved by each party;

(c) A statement of all agreed facts;

(d) A list of witnesses and a summary of their testimony;

(e) A list of exhibits and a statement of the contents of each;

(f) Such other matters as the Commission may require in order to expedite the hearing and appeal.

(7) Effect on Time Limits: The filing of a motion for evidentiary hearing shall suspend the time limits for all other events in the review proceedings, including the issuance of the Commission's final order. If the Commission grants an evidentiary hearing, the time limits for other events shall remain suspended until the close of the hearing. Unless the parties agree otherwise, the Commission shall schedule any evidentiary hearing after the order granting the motion for evidentiary hearing is issued. If the Commission denies a motion for an evidentiary hearing, the time for all other events will begin to run on the date the Commission issues its order denying the motion, or on such other date as is specified in that order.

(8) Depositions: On petition of any party at least 14 days before an evidentiary hearing, the Commission may order testimony of any witness to be taken by deposition in the same manner prescribed for depositions in civil actions. Depositions may also be taken by the use of audio or audio visual recordings. The petition for deposition shall set forth:

(a) The name and address of the witness whose testimony is desired;

(b) A showing of relevance and materiality of the testimony;

(c) A request for an order that the testimony of the witness be taken.

(9) Subpoenas: If the Commission orders an evidentiary hearing, the Commission shall issue subpoenas to any party to the appeal upon written request and upon a showing that the witness or the documents to be subpoenaed will provide relevant evidence. Subpoenas may also be issued under the signature of the attorney of record of a party. Witnesses appearing pursuant to subpoena, other than parties or employees of the Commission, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0160

### Intervention

(1) Standing to Intervene: The applicant and any person who appeared before the county may intervene in a review proceeding before the Commission. An intervenor shall be entitled to receipt of all matters requiring service upon the parties beginning on the date the motion to intervene is filed, regardless of whether an objection is filed.

(2) If the county review process is not open to persons adversely affected or aggrieved, any person adversely affected or aggrieved may intervene in a review proceeding before the Commission.

(3) Motion to Intervene: In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed at the Commission office and served within 14 days after the Notice of Appeal is filed pursuant to 350-060-0050. The motion to intervene (**exhibit 3**) shall:

(a) State whether the party is intervening on the side of the appellant or the respondent;

(b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits, citations to the record or other proof;

(c) Include a brief "Intervenor's ADR Statement" stating whether the proposed intervenor is willing to attempt to resolve the case through alternative dispute resolution means. This statement shall not be used to argue merits of the appeal;

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(d) Include a brief statement about whether the proposed intervenor is willing to consider a shortened record in accordance with 350-060-0060(f); and

(4) Objections to a motion to intervene shall be filed and served within 7 days of the motion.

(5) The intervenor shall be entitled to participate in developing the record, including shortening the record and filing objections to the record.

(6) The Chair of the Commission may conduct a telephone conference with the parties to consider an objection to a motion to intervene.

(7) The Chair of the Commission shall issue a written decision on the motion to intervene, which shall be served on all the parties. The Chair of the Commission shall not consider the ADR statement for the purpose of deciding whether to grant the motion to intervene.

(8) Intervenor's Brief:

(a) If intervention is sought as an appellant, the brief shall be filed and served within the time limit for filing the Appellant's Brief, and shall satisfy the requirements for the Appellant's Brief in 350-060-0080.

(b) If intervention is sought as a respondent, the brief shall be filed and served within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in 350-060-0100.

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0170

### Amicus Participation

(1) A person or organization may appear as amicus only by permission of the Commission on written motion. The motion shall set forth the specific interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding.

(2) Appearance as amicus shall be by brief only, unless the Commission specifically requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal and shall be filed and served within the time required for filing respondent's brief. An amicus brief shall be submitted at the time the respondent's brief is due unless a later date is authorized by the Chair of the Commission. No filing fee is required. An amicus brief shall have a green cover.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2).

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0180

### Consolidation

The Chair of the Commission, at the request of any party or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s).

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0190

### Extensions of Time

(1) In no event shall the time limit for the filing of the Notice of Appeal be extended.

(2) All other time limits may be extended upon written consent of all parties, the Commission's motion or motion of a party.

(3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.

(4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by all parties, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the parties.

(5) Any other motion for extension of time that is stipulated to by all parties shall be presumed granted for a period of 14 days. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

(6) Any motion for extension of time that is stipulated to by all parties may be filed and served by fax.

(7) Any motion for extension of time that is not stipulated to by all parties shall be treated as a contested motion pursuant to 350-060-0130 above.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0200

### Stays

(1) A motion for a stay of a land use decision shall include:

(a) A statement setting forth movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) A copy of a motion for stay shall be served on the governing body and the applicant for the land use decision, on the same day the motion is filed with the Commission.

(3) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(4) The Chair of the Commission shall base its a decision on the stay, including the right to a stay, or conditions of any stay order, upon evidence presented. Evidence may be attached to the motion in the form of affidavits, documents or other materials, or presented at an evidentiary hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-060-0150.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2).

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0205

### Dismissal by the Commission

(1) Voluntary dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant. The dismissal shall be considered with prejudice and shall be effective on the date it is filed.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal upon or without motion by any other party when it appears to the Chair that the Appellant and all intervenors on the side of the Appellant have failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust to the responding parties. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The parties shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

(3) The Chair of the Commission shall issue and serve on the parties an order of dismissal, which shall be an appealable action by the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the parties have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0210

### Final Order of Commission

(1) An Order of the Commission shall:

(a) Have a cover page that contains the caption of the appeal and states "Final Opinion and Order";

(b) Specify of the the items of the record that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.

(c) Address the Special Review under Rule 350-060-0090, where applicable.

(d) Indicate whether the decision being reviewed is dismissed, affirmed, reversed or remanded;

(e) Contain the date of the final order;

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(f) Contain a statement of the right to appeal the Commission's Order in the following or substantially similar form, "NOTICE: You are entitled to judicial review of this order within 60 days of the date of this order, pursuant to section 15(b)(4) of the Scenic Area Act, P.L. 99-663."; and

(g) Be signed by the Chair of the Commission, or his/her delegate.

(2) The final order shall be served on all parties. The parties are not afforded an opportunity to comment on the order before it is made final by the Commission.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

(4) No dissenting opinions by members of the Commission are allowed.

(5) For the purpose of calculating the time for judicial review of the Commission's order, the date of the order shall be the date the order is served on the parties even if that date is later than the date that the order is signed.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0220

### Reversal or Remand of Land Use Decisions

(1) The Commission shall reverse or remand a land use decision for further proceedings when:

(a) The governing body exceeded its jurisdiction;

(b) The decision is unconstitutional;

(c) The decision violates a provision of applicable law and is prohibited as a matter of law; or

(d) The decision was clearly erroneous or arbitrary and capricious.

(e) The findings are insufficient to support the decision;

(f) The decision is not supported by substantial evidence in the whole record;

(g) The decision is flawed by procedural errors that prejudice the substantial rights of the appellant(s);

(h) The decision improperly construes the applicable law; or

(i) A remand is required pursuant to 350-060-0090(3)(d).

(2) The Chair of the Commission may grant a stipulated motion for a voluntary remand of a land use decision, or may order a remand upon motion by the governing body upon finding that all of the following criteria are met. When the Chair orders a remand pursuant to this section, it shall remand back to the last local decision maker that issued the appealed decision.

(a) The governing body shall either rescind the land use decision that is the subject of the appeal or provide that any new or modified land use decision shall supercede the remanded decision;

(b) The governing body shall not be required to issue a subsequent land use decision, but if it does, then it shall agree to address all of the issues raised in the appeal in that subsequent land use decision.

(c) The governing body shall follow all applicable notice and review procedures in modifying the remanded decision or issuing a new land use decision.

(d) An oral decision of the Commission has not been rendered in the matter.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-060-0240

### Special Rules for Filing of Appeal After Expiration of Appeal Period

(1) This section is intended to prevent manifest injustice that would result by a local government's failure to comply with all procedural requirements such that an interested person was unable to meaningfully participate in a land use decision process. This section shall not be used to redress problems that may be redressed through a county or Gorge Commission enforcement action, whether or not any enforcement action is actually undertaken.

(2) If the local government approves a development that is materially different from the proposal described in the notice of development to such a degree that a reasonable person could not have understood the notice of development to describe the local government's final actions, then an adversely affected person may file an appeal of the decision within 30 days of actual notice of the decision.

(3) If the development constructed is materially different from the development allowed in the local government's decision to such a degree that a reasonable person could not have understood the decision to allow the actual development constructed, then an adversely affected person may file an appeal within 30 days after actual notice of the material difference, or within 30 days after the person reasonably should have known about the material difference, whichever is sooner.

(4) If the local government fails to provide notice of the proposed development or a copy of the final decision to a person who is legally entitled to the notice or decision, or has requested to receive the notice or decision, then that person may file an appeal within 30 days after actual notice of the approved development.

(5) In no event shall the time for appeal exceed the time period that the local government's decision is valid.

(6) A person intending to file an appeal pursuant to this section shall first attempt to resolve that person's concern with the local government. The local government shall give due consideration to the concerns raised and shall not rely solely on whether the concerns were timely raised. The local government may choose to allow the person to file an appeal with the local government.

(7) If the local government does not allow the appeal to be filed with the local government within 25 days, then the person may file the appeal directly with the Commission. In addition to the requirements for the Notice of Appeal specified in 350-060-0050, the appellant shall file a motion for an evidentiary hearing pursuant to 350-060-0150 to establish standing to maintain the appeal.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. § 544c(b); 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

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**Adm. Order No.:** CRGC 2-2003

**Filed with Sec. of State:** 6-23-2003

**Certified to be Effective:** 8-1-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 350-070-0042, 350-070-0045, 350-070-0047, 350-070-0085, 350-070-0225, 350-070-0240

**Rules Amended:** 350-070-0000, 350-070-0020, 350-070-0040, 350-070-0050, 350-070-0060, 350-070-0070, 350-070-0080, 350-070-0090, 350-070-0110, 350-070-0120, 350-070-0130, 350-070-0140, 350-070-0150, 350-070-0160, 350-070-0170, 350-070-0190, 350-070-0200, 350-070-0210, 350-070-0220, 350-070-0230

**Rules Repealed:** 350-070-0100, 350-070-0180

**Subject:** Division 70 governs the Gorge Commission's procedure for hearing appeals of land use decisions by the Commission's Executive Director. The rule also specifies filing and other procedural requirements for appellant and other participants in an appeal. The proposed amendments incorporate changes identified by the Gorge Commission and users of the rules to clarify, simplify and expedite the process.

Significant changes include: changing the role of the Executive Director from being a "party" to the appeal, to being the staff of the Commission; allowing filing by fax for uncontested motions (350-070-0040(6)); allowing filing to be accomplished by mail, instead of by receipt at the Commission office (350-070-0040(6)); requiring appellants to note whether they are willing to try ADR to settle the case, in which case the Gorge Commission would facilitate ADR (350-070-0085); including a process for filing motions and responses to motions, and for expedited motions (350-070-0120); revising the appeal hearing to resemble a local government de novo appeal hearing (350-070-0140); allowing any person to testify at the appeal hearing instead of only persons who have intervened; allowing intervention to participate in pre-hearing matters (350-070-0170); allowing stipulated motions for extensions of time to be automatic for the first one, and presumed granted for all subsequent extensions (350-070-0200(4)-(6)); allowing for involuntary dismissal of an appeal by the Commission when the appeal is moot or not diligently prosecuted (350-070-0225); allowing the Executive Director to request a voluntary remand of a case under certain circumstances and deleting the requirement that the Commission identify "error" in the



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Executive Director's decision. (350-070-0230); allowing special appeals under certain circumstances (350-070-240).

**Rules Coordinator:** Nancy Andring—(509) 493-3323

## 350-070-0000

### Purpose

The purpose of this division is to define the process and standards used by the Columbia River Gorge Commission in hearing appeals from decisions relating to the implementation of the Columbia River Gorge National Scenic Area Act ("National Scenic Act" or "Act"). The rule applies to appeals from decisions by the Executive Director under ordinances adopted by the Gorge Commission. This rule is intended to permit the appellant to build a more complete record than was before the Executive Director through briefing, and oral presentation of evidence and argument, and to allow interested persons to participate in that process.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0020

### Scope

Scope of Rules: All proceedings commenced by Notice of Appeal shall be governed by these rules. Where this division is silent, divisions 11, 12, 14 and 16 of the Commission's rules shall be applicable provided that the specific provisions are applied in a manner that does not conflict with the provisions of this division.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0040

### Definitions

In these rules, unless the context or subject matter requires otherwise:

(1) "Applicant" means the person who requested that the Executive Director of the Gorge Commission take an action which resulted in a land use decision.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco Counties, Oregon, and Clark, Skamania, and Klickitat Counties, Washington.

(4) "Days" means calendar days.

(5) "Executive Director" or "Director" means the director of the Gorge Commission.

(6) "File" means to deliver to Commission offices by personal delivery or by mail. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, or the date that it is mailed.

(a) A motion filed with the consent of all parties may be filed by fax. When a motion is filed by fax, the original shall be mailed or delivered in person to the Commission offices on the same day or on the next business day. A motion filed by fax shall be considered filed on the date it is faxed if the fax is received at Commission office by 5:00 p.m.

(b) Any document filed with the Commission shall include a certification that the document was served on all parties on the same or earlier date and in the same manner that the document was filed.

(7) "Final decision": A decision is final when it is reduced to writing and bears the signature of the Executive Director of the Gorge Commission.

(8) "Land use decision" means a final decision by the Executive Director based on the National Scenic Act.

(9) "Notice" means the Notice of Appeal and refers to the document which must be filed with the Commission in order to begin a review proceeding.

(10) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(11) "Serve" or "Service" means to send with the United States Postal Service by first class mail or to deliver in person, a copy of the original to all parties, including intervenors.

(a) Only motions that are filed by fax may be served by fax. If a motion is served by fax, then it shall also be served by mailing or delivering a copy of the original to the appellant and intervenors on the same or next day.

(b) All documents served on the other parties shall include a certification that the document was served on the same or earlier date that the document was filed. Service shall occur on all parties in the same manner,

but need not occur in the manner which the original document was filed (**Exhibit 3**).

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0042

### Delegation of Authority to the Chair of the Commission

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case setting, preliminary motions, and other procedural matters. The Chair of the Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0045

### Time

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a person has the right or is required to do some act or take some proceedings within a prescribed period of time after service or a notice or other paper, and the service of the notice or other paper is by mail, three (3) days shall be added to the prescribed time period. This does not apply to documents mailed when filing and service is accomplished by fax.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0047

### Who May Appeal

(1) The applicant, any person who submitted a timely written comment on a land use application, or any person entitled under 350-070-0240 may appeal the final decision of an application.

(2) Notwithstanding subsection (1) above, any person may participate in the appeal as provided in this division.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0050

### Notice of Appeal

(1) Filing: A person wishing to appeal a decision by the Director shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. A Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Appellant shall serve a copy of the Notice of Appeal on all persons identified in the Notice as required by subsection (3)(g) of this rule on or before the date the Notice of Appeal is required to be filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in **Exhibit 1** and shall contain:

(a) A caption, which specifies the title of the appeal as "In the matter of an appeal of Development Review Decision No. (FILE NUMBER) by (APPELLANT'S NAME)."

(b) Adjacent to the caption, the heading "Notice of Appeal";

# ADMINISTRATIVE RULES

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the appellant's reasons for appealing the decision including citations to the findings of fact, conclusions of law and conditions of approval in the decision and to provisions of the land use ordinance, sufficient to permit a person to understand the issues the appellant is raising to the Commission;

(f) A brief "ADR Statement" stating whether the appellant is willing to attempt to settle the case through negotiation with the Executive Director and other interested persons, or through alternative dispute resolution (including but not limited to mediation), and specifying the potentially interested persons (if applicable). This statement shall not be used to argue the merits of the appeal.

(g) The name, address and telephone number of each of the following:

(A) The Appellant, except that if an attorney represents the appellant, then the attorney's name, address and telephone number shall be substituted for that of the appellant.

(B) The applicant, if other than the appellant. If the applicant is represented by an attorney, then the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;

(C) Any other person to whom written notice of the land use decision was mailed as shown on the Executive Director's records. The telephone number may be omitted for any such person.

(h) A statement advising that all persons may give testimony at the hearing on the appeal; however, if a person wishes to receive a copy of the record an/or participate in the proceedings prior to the hearing, then that person must file and serve a Notice of Intervention pursuant to 350-70-170.

(i) A statement that the Commission will set the date, time, and place for a hearing on the appeal and provide notice of the hearing approximately 20 days prior to the date of the hearing.

(j) A statement that written comments on the appeal will be accepted by the Commission until the close of the public hearing, but that persons are encouraged to submit written comments within 60 days from the date of the Notice of Appeal.

(k) Proof of service upon all persons required to be named in the Notice.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the true cost to the Commission of handling the appeal.

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0060

### Special Review Process

(1) In any development review decision by the Executive Director where the applicant contends the result eliminates all beneficial use of the property, the applicant must request special review as follows:

(a) Make the request in writing.

(b) Set out the pertinent portions of the ordinance that apply;

(c) Describe how the ordinance impacts the use of the property;

(d) Attach copies of any documents (maps, deeds, easements, etc.) that are relevant; and

(e) Explain why the requested use must be allowed to provide economic or beneficial use of the property.

(f) The request for special review shall be served, concurrently with the Notice of Appeal, on the Executive Director and all persons entitled to service of the Notice of Appeal. If a person who was not served with a copy of the request for special review intervenes, then the applicant shall, as soon as possible, serve a copy of the request for special review on the intervenor.

(g) An intervenor shall have the opportunity to specifically respond to the request and any response shall be filed and served within 14 days after the applicant serves the request for special review on the intervenor.

(2) The Director, on receipt of a request for special review and intervenors' responses (if any), shall take the following steps:

(a) Evaluate the request for special review and intervenors' responses.

(b) Take one of the following steps:

(A) Where appropriate, recommend options for use of the property that are consistent with the ordinance, or

(B) Where the Director finds that enforcement of the land use ordinance will deprive the landowner of all economic or beneficial use of the property, the Director shall recommend the Commission allow a use for the property. The economic or beneficial use recommended shall be the use that on balance best protects the affected resources. This section applies:

(i) if the Forest Service or the federal government does not provide just compensation for a Special Management Area designation it made; or

(ii) for a General Management Area designation made by the Gorge Commission.

(c) Include proposed findings of fact in the recommendation. This shall be completed within 30 days after the last due date for the filing of an intervenor's response; and

(d) Specify the factual and/or legal principles relied on in support of the recommendations.

(3) The Executive Director shall serve the recommendation on the request for special review on the applicant and all intervenors.

(4) The filing of a request for special review shall toll all subsequent time periods specified in these rules, except for intervention specified in 350-070-0170. The time periods, beginning with the filing of the record pursuant to 350-070-0070 shall begin to run on the date that the Executive Director serves the recommendation on the request for special review.

(5) The recommendation on a request for special review shall not be construed as an approval or denial of any land use. The applicant may continue the appeal or may submit a new land use application for the recommended land use(s).

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0070

### Record

(1) Contents of Record: The record shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All evidence, exhibits, maps, documents or other written materials included in the Executive Director's land use application file; photos, maps, and exhibits that were prepared by or presented to the Executive Director in color shall be provided to the Commission in color in the original or certified copy of the record and all duplicate copies of the record;

(c) Minutes of any meetings conducted by the Executive Director as required by law.

(d) All documents relating to an applicant's request for special review, including the applicant's request, the Executive Director's recommendation, and all documents relied on by the Executive Director in making the recommendation.

(e) The Executive Director may retain any audiotape recording, large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The Executive Director shall make these items reasonably available for inspection and duplication by any person during the pendency of the appeal, and shall specify in its filing of the record the procedure for reviewing for these items.

(2) Preparation and Service of Record: Within 30 days after the Notice of Appeal is filed, the Executive Director shall prepare and serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents which are difficult to duplicate, on the appellant and intervenors.

(3) Specifications of Record:

(a) The record shall:

(A) Include a cover bearing the title of the case as it appears in the Notice;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins and listing each audiotape recording, large map or other exhibit or document retained by the Executive Director;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

# ADMINISTRATIVE RULES

## 350-070-0080

### Objections to the Record

(1) Before filing an objection to the record, a person shall attempt to resolve the matter with the Executive Director.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the person filing the objection. The person filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the Executive Director and attempted to resolve the objection. Objections may be made on the following grounds:

(a) The record does not include all materials in the Executive Director's land use application file. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included in the Executive Director's land use application file. The item(s) not included shall be specified, as well as the basis for the claim that the item(s) are not part of the record. A document that is excluded from the record under this subsection may still be submitted to the Commission as otherwise provided in this division.

(c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceedings. An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the Executive Director to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is an audio-tape recording, a transcript of the relevant portion shall be submitted.

(3) The Chair of the Commission may conduct a telephone conference to consider and resolve any objections to the record.

(4) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order settling the record and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of the letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0085

### Alternative Dispute Resolution

The Commission recognizes: that many of the matters that come before the Commission on appeal may be resolved through alternative dispute resolution (ADR), such as mediation; that ADR may be a faster and less expensive process than appeal pursuant to these rules and beyond to the states' courts; that agreements reached through ADR may be more lasting and acceptable than a decision on the merits by the Commission or the states' courts; and, that ADR is a voluntary process.

(1) If, after reviewing the ADR statements and evaluating the matter itself, the Executive Director believes that ADR may be successful in resolving or partially resolving the matter, then it shall initiate ADR. This subsection shall not be construed to mean that participation in settlement or ADR is mandatory.

(2) Upon motion by any person or her own motion the Chair of the Commission shall place the appeal in abeyance or shall grant all necessary extensions of time to facilitate resolution through settlement or ADR. Should settlement or ADR be unsuccessful, the Chair of the Commission shall reinstate the matter or reset the applicable time periods.

(3) Any oral discussion, written documents, or other record produced exclusively for the purpose of settlement or ADR, whether or not pursuant to this section, shall be confidential and not part of the record on appeal to the Gorge Commission, nor part of the Gorge Commission's record to any reviewing court.

(4) The Commission shall not consider, as a basis for any decision pursuant to this division, a person's decision to not participate in settlement or ADR, or knowledge that the matter was not resolved through settlement or ADR.

(5) Settlement:

(a) If a settlement changes the proposed development or any conditions of approval, the Executive Director shall provide notice of the changes to all persons entitled to receive notice of the original application. If the changes are substantial, then the Executive Director shall conduct a

complete review of the changes in the same manner as if the settlement was a new land use application.

(b) When an appeal, or any issue in an appeal, is settled, the Commission shall not be required to review the settlement as a condition of the settlement. The Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

(c) Upon settlement of a case, the appellant shall dismiss the appeal in accordance with 350-070-0225.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0090

### Appellant's Brief

(1) Filing and Service of Brief: The appellant shall file at the Commission office and serve an Appellant's Brief within 30 days after the date the record is filed under subsection .070 above, or settled under section .080 above. The Brief shall also be served on intervenors. Failure by the Appellant to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the Gorge Commission.

(2) Specifications of Brief: The Brief shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If an Appellant's Brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed and served within three (3) days of notification.

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of the appellant and all intervenors. If any of the above is represented by an attorney, the name, address and telephone number of the attorney shall be substituted.

(d) If there is more than one appellant, the cover page shall specify the appellant(s) that are filing the Brief.

(e) Be typewritten, in pica type, and double spaced;

(f) Be signed on the last page by the author.

(3) Contents of Brief: The Appellant's Brief shall:

(a) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The relief sought by the appellant;

(B) A summary of the arguments;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found, or other documents that the appellant intends to introduce at the hearing.

(b) Set forth each issue under a separate heading. Where several issues present essentially the same legal questions, the argument in support of those issues shall be combined;

(c) Contain, each as separate appendices, copies of all management plan provisions, comprehensive plan provisions, and all local state, regional, and federal laws cited in the brief, unless the provision is quoted verbatim in the Brief.

(d) Contain, each as separate appendices, copies of any documents and evidence, not contained in the record, that are referred to in the Brief.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0110

### Response and Reply Briefs

Response and reply briefs shall not be filed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0120

### Motions, Generally and Procedural Orders

For the purpose of this section only, the term "party" shall refer to the appellant and any intervenor.

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

# ADMINISTRATIVE RULES

(2) A motion shall be filed at the Commission office by mail or personal delivery, except that motions to which all parties consent may be filed by fax as provided in 350-070-0040.

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responsive briefs. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0130

### Notice of Hearing

(1) The Commission shall send a notice of hearing in accordance with Commission Rule 350-016-0009, and shall also include in the Notice of Hearing the due date and procedure for submitting written comments on the appeal, and the procedure that will be used for the hearing.

(2) The Commission shall provide the Notice of Hearing by first class mail to the appellant, all intervenors, and the applicant (if different from the appellant) at least 20 days prior to the hearing. The Commission shall publish notice of the hearing on or before the date the Notice of Hearing is mailed.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0140

### Hearing

(1) The hearing before the Commission shall be “de novo” but shall include the record submitted by the Executive Director.

(2) Conduct of hearing:

(a) The hearing shall be conducted in the following order:

(A) The Executive Director shall briefly summarize the decision on appeal and any recommendation if different from the decision on appeal;

(B) The appellant shall present its evidence including that of any witnesses;

(C) Any person supporting the appellant shall present his or her testimony and evidence in support of the appellant;

(D) Any person opposing the appellant shall present his or her testimony and evidence opposing the appellant;

(E) Any person who wishes to offer evidence or testify but neither supports nor opposes the appellant shall present his or her testimony.

(F) The Executive Director may respond to the testimony and evidence presented raised by the testimony and evidence presented by the written and oral testimony, including exhibits.

(G) The appellant shall be allowed to present rebuttal evidence limited to the specific issues raised by the testimony and evidence presented by the written and oral testimony, including exhibits, and the Executive Director;

(H) The applicant, if different than the appellant and if an intervenor, shall be allowed to present rebuttal evidence limited to the specific issues raised by the testimony and evidence presented by the written and oral testimony, including exhibits, and the Executive Director.

(b) The appellant and members of the Gorge Commission may ask questions orally of the persons testifying. Any other person who desires to ask a question shall submit that question in writing to the Chair of the Commission, who shall ask the question on behalf of the person. The Chair of the Commission may choose not to ask any question that is repetitious, unduly prejudicial, or unrelated to the testimony and issues raised in the appeal. The Chair of the Commission may also limit the number of ques-

tions, including from members of the Commission and the appellant to ensure hearings proceed on schedule with the Commission’s agenda.

(c) Any member of the Commission may question any person testifying, including witnesses;

(d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

(e) The Commission may continue a hearing, may leave open the record for submission of additional evidence necessary to address issues raised at the hearing, and may set time limits for any hearing, including time limits for oral presentations;

(f) Exhibits shall be marked to identify the person offering the exhibits. The Appellant shall mark his or her exhibits as “Appellant’s Exhibit (n).” All other participants shall mark their exhibits as “(PARTICIPANT’S NAME’S) Exhibit (n).” The exhibits shall be preserved by the Commission as part of the record.

(3) Evidentiary Rules:

(a) Evidence of a type commonly relied upon by a reasonably prudent person in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All evidence not objected to, shall be received by the Commission, subject to the Commission’s power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Commission. The Chair of the Commission shall rule on all offers of evidence, including objections to testimony. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0150

### Depositions

On petition of any person, the Chair of the Commission may order testimony of any witness to be taken by deposition in the same manner prescribed for depositions in civil actions. Depositions may also be taken by the use of audio or audio visual recordings. The petition for deposition shall set forth:

- (1) The name and address of the witness whose testimony is desired;
- (2) A showing of relevance and materiality of the testimony;
- (3) A request for an order that the testimony of the witness be taken.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0160

### Subpoenas

The Chair of the Commission shall issue subpoenas to any person upon written request and upon a showing that the witness or the documents to be subpoenaed will provide relevant evidence generally not available without subpoena. Subpoenas may also be issued under the signature of the attorney of record for a person. Witnesses appearing pursuant to subpoena, other than the appellant, any person providing written or oral testimony, or employees of the Commission, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The person requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0170

### Intervention

(1) The applicant and any person may intervene in an appeal proceeding before the Commission. Status as an intervenor shall be recognized upon filing a Notice of Intervention.

(2) Notice of Intervention: In the interests of promoting timely resolution of appeals, a Notice of Intervention shall be filed at the Commission office within 14 days after the Notice of Appeal is filed pursuant to 350-070-0050. The Notice of Intervention (**exhibit 2**) shall:

(a) State whether the person supports or opposes the appellant, or whether the person neither supports nor opposes the appellant;

# ADMINISTRATIVE RULES

(b) Include a brief statement of the reasons for filing the motion for intervention, including citations to the decision and land use ordinance, if different than the reasons set forth in the Notice of Appeal.

(c) Include a brief "Intervenor's ADR Statement" stating whether the intervenor is willing to attempt to participate in resolving the case through negotiation or alternative dispute resolution, such as mediation. This statement shall not be used to argue merits of the appeal.

(d) Be served on the appellant and all other persons who have filed a Notice of Intervention.

(3) A person who files a Notice of Intervention shall be entitled to receive a copy of all matters that are filed with the Commission.

#### (4) Intervenor's Brief:

(a) An intervenor who supports the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-070-0090, except that the Brief shall be entitled, "Intervenor (NAME's) Brief in Support of Appellant".

(b) An intervenor who opposes the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-070-0090, except that the Brief shall be entitled, "Intervenor (NAME's) Brief Opposing Appellant", and shall have a red cover.

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

### 350-070-0190

#### Consolidation

The Commission, at the request of any person or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s).

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

### 350-070-0200

#### Extensions of Time

(1) In no event shall the time limit for the filing of the Notice of Appeal be extended.

(2) All other time limits may be extended upon written consent of the appellant and participants, the Commission's motion, or the motion of the appellant or a participant.

(3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.

(4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by all the appellant and all intervenors, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the appellant and all intervenors.

(5) Any other motion for extension of time that is stipulated to by all the appellant and all intervenors shall be presumed granted for a period of 14 days. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

(6) Any motion for extension of time that is not stipulated to by the appellant and all intervenors shall be treated as a contested motion pursuant to 350-070-0130 above.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

### 350-070-0210

#### Stays

(1) Only an appellant or intervenor who would have standing to appeal a land use decision may file a motion for a stay. The movant may file a Notice of Intervention concurrently with the motion for a stay. A motion for a stay of a land use decision shall include:

(a) A statement setting forth the movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) A copy of a motion for stay shall be served on the same day the motion is filed with the Commission.

(3) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(4) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon the motion presented. Documents may be attached to the motion in the form of affidavits, maps or other materials, or presented at a hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-070-0140.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

### 350-070-0220

#### Final Order of Commission

(1) A Final Order of the Commission shall:

(a) Contain the caption of the appeal and state "Final Opinion and Order";

(b) Contain findings of fact and conclusions of law or incorporates them from the record below.

(c) Indicate the Commission's decision;

(d) Contain the date of the final order; and

(e) Be signed by the Chair of the Commission.

(2) The order shall be served on all parties.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

### 350-070-0225

#### Dismissal by the Commission

(1) Voluntary dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant. The dismissal shall be considered with prejudice and shall be effective on the date it is filed.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal when it appears to the Chair that the Appellant has failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The Appellant and intervenors shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

(3) The Chair of the Commission shall issue and serve on the Appellant and intervenors an order of dismissal, which shall be an appealable action by the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the Appellant and intervenors have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

### 350-070-0230

#### Reversal or Remand of Land Use Decisions

(1) The Chair of the Commission may grant a stipulated motion for a voluntary remand of a land use decision, or may order a remand upon motion by the Executive Director upon finding that all of the following criteria are met.

(a) The Executive Director shall either rescind the land use decision that is the subject of the appeal or provide that any new or modified land use decision shall supercede the remanded decision;

# ADMINISTRATIVE RULES

(b) The Executive Director shall not be required to issue a subsequent land use decision, but if he or she does, then he or she shall agree to address all of the issues raised in the appeal in that subsequent land use decision.

(c) The Executive Director shall follow all applicable notice and review procedures in modifying the remanded decision or issuing a new land use decision.

(d) An oral decision of the Commission has not been rendered in the matter.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 1-1993 (Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## 350-070-0240

### Special Rules for Filing of Appeal After Expiration of Appeal Period

(1) This section is intended to prevent manifest injustice that would result by the Executive Director's failure to comply with all procedural requirements such that an interested person was unable to meaningfully participate in a land use decision process. This section shall not be used to redress problems that may be redressed through an enforcement action, whether or not any enforcement action is actually undertaken.

(2) If the Executive Director approves a development that is materially different from the proposal described in the notice of development to such a degree that a reasonable person could not have understood the notice of development to describe the Executive Director's final actions, then an adversely affected person may file an appeal of the decision within 30 days of actual notice of the decision.

(3) If the development constructed is materially different from the development allowed in the Executive Director's decision to such a degree that a reasonable person could not have understood the decision to allow the actual development constructed, then an adversely affected person may file an appeal within 30 days after actual notice of the material difference, or within 30 days after the person reasonably should have known about the material difference, whichever is sooner.

(4) If the Executive Director fails to provide notice of the proposed development or a copy of the final decision to a person who is legally entitled to the notice or decision, or has requested to receive the notice or decision, then that person may file an appeal within 30 days after actual notice of the approved development.

(5) In no event shall the time for appeal exceed the time period that the Executive Director's decision is valid.

(6) A person intending to file an appeal pursuant to this section shall first attempt to resolve that person's concern with the Executive Director. The Executive Director shall give due consideration to the concerns raised and shall not rely solely on whether the concerns were timely raised. The Executive Director may choose to address that person's concerns administratively.

(7) If the Executive Director does not agree to address the person's concerns administratively within 25 days, then the person may file the appeal directly with the Commission. In addition to the requirements for the Notice of Appeal specified in 350-070-0050, the appellant shall state the relevant facts and argument to establish standing to maintain the appeal.

Stat. Auth.: ORS 196.150  
Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 U.S.C. § 544c(b), 16 U.S.C. § 544m(a)(2)  
Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

## Construction Contractors Board Chapter 812

**Adm. Order No.:** CCB 6-2003(Temp)

**Filed with Sec. of State:** 7-9-2003

**Certified to be Effective:** 7-9-03 thru 1-3-04

**Notice Publication Date:**

**Rules Amended:** 812-002-0420

**Subject:** ORS 812-002-0420 is amended to include suspended licenses under the definition of "lapse in license".

**Rules Coordinator:** Cathy Heine—(503) 378-4621, ext. 4077

### 812-002-0420

#### Lapse in License

"Lapse in license" as used in ORS 701.065(2)(b)(A), 701.075(6) and 701.115(4) commences at the time that a license expires, suspends or is terminated for any reason and ends when the license is renewed or reinstated by the agency.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.065, ORS 701.115 & ORS 701.225  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2003(Temp), f. & cert. ef. 7-9-03 thru 1-3-04

## Department of Administrative Services Chapter 125

**Adm. Order No.:** DAS 3-2003

**Filed with Sec. of State:** 6-27-2003

**Certified to be Effective:** 6-27-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 125-055-0100, 125-055-0105, 125-055-0110, 125-055-0115, 125-055-0120, 125-055-0125, 125-055-0130

**Subject:** Chapter 125 Division 055 rules above govern the contract requirements necessary to comply with the Business Associate provisions of the Privacy Rule under The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d - 1320d-8, Public Law 104-191, sec. 262 and sec. 264 ("HIPAA"). "Business Associate" is a term developed by the U.S. Department of Health and Human Services under the Administrative Simplification title of HIPAA. Business Associate is defined in 42 CFR 160.103(2002).

The Business associate requirements that cover the use and disclosure of protected health information between agencies and certain contractors are found in the U.S. Department of Health and Human Services privacy regulation contained in 45 CFR parts 160 and 164 (the "Privacy Rule"). The Privacy Rule imposes certain compliance requirements specified in Sections 164.502(e) and 164.504(e) on contracts between a covered entity (as defined in the Privacy Rule) and its business associates. Certain public contracting agencies are covered entities under the Privacy Rule and must comply with the business associate contracting requirements.

**Rules Coordinator:** Mary Unger—(503) 378-2349

### 125-055-0100

#### Purpose — HIPAA Privacy Rule Implementation

The purpose of these rules is to set forth the contract requirements to comply with the Business Associate provisions of The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, Public Law 104-191, sec. 262 and sec. 264 and the implementing Privacy Rule at **45 CFR part 160** and **164**, subparts A and E. The Privacy Rule requires a Covered Entity to obtain certain written assurances from a Business Associate before the Business Associate may disclose, use, or create Protected Health Information. This Rule contains the written assurances that an Agency must include in its Contract with a Business Associate. Before applying this Rule, Agencies must determine if a Business Associate relationship exists between the Contractor and the Agency as defined in HIPAA and the Privacy Rule. The requirements contained in this Rule apply both to Contracts for trade services, as defined in OAR 125-030-0000(57), and to Contracts for personal services, as defined in OAR 125-020-0130

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

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

### 125-055-0105

#### Definitions

For purposes of rules 125-055-0100 through 125-055-0130 the following terms shall have the meanings set forth below. Capitalized terms not defined herein shall have the same meaning as those terms in the Privacy Rule.

(1) "**Agency**" means any state officer, board, commission, department, institution, branch or agency of the state government that is a Covered Entity under the Privacy Rule and whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts and their officers and committees, and except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(2) "**Business Associate**" means a person or entity who performs or assists a Covered Entity in performing the specific services listed in the HIPAA Privacy Rule, 45 CFR 160.103, where the provision of services involves the use, disclosure, or creation of Protected Health Information by the Contractor. The workforce, as defined in 45 CFR 160.103, of the

# ADMINISTRATIVE RULES

Covered Entity is not considered to be a Business Associate nor do their activities create a Business Associate relationship with their employer.

(3) “**Contract**” means the written agreement between an Agency and a Business Associate setting forth the rights and obligations of the parties.

(4) “**Covered Entity**” means a health plan, a clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction.

(5) “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d - 1320d-8, Public Law 104-191, sec. 262 and sec. 264.

(6) “**Privacy Rule**” means the Standards for Privacy of Individually Identifiable Health Information at **45 CFR part 160 and 164**, subparts A and E (2002).

(7) “**Rule**” means this Oregon Administrative rule 125-055-0100 through 1225-055-0130.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712  
Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.  
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0110

### References to Privacy Rule

For purposes of this Rule, references to the Privacy Rule mean the final rule published on December 28, 2000 in 65 Fed. Reg. 82,462-82,829, as amended on May 31, 2002 in 67 Fed. Reg. 38,009-38,020 (Part 160) and as amended on August 14, 2002 in 67 Fed. Reg. 53,182-53,273 (Part 160 and 164).

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712  
Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.  
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0115

### Business Associate Contract Provisions

A Contract that is subject to the Business Associate requirements of the Privacy Rule shall contain the following provisions, effective April 14, 2003:

(1) **Obligations and Activities of Business Associate:** Business Associate agrees to:

(a) Not use or disclose Protected Health Information other than as permitted or required by this Rule and the Contract, or as Required By Law.

(b) Use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Rule and the Contract.

(c) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Rule and the Contract.

(d) Report to Agency, as promptly as possible, any use or disclosure of the Protected Health Information not provided for by this Rule and the Contract of which it becomes aware.

(e) Ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Agency agrees to the same restrictions and conditions that apply through this Rule and the Contract to Business Associate with respect to such information.

(f) Provide access, at the request of Agency, and in the time and manner designated by Agency, to Protected Health Information in a Designated Record Set, to Agency or, as directed by Agency, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Make any amendment(s) to Protected Health Information in a Designated Record Set that the Agency directs or agrees to pursuant to 45 CFR 164.526 at the request of Agency or an Individual, and in the time and manner designated by Agency.

(h) Make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Agency available to Agency and to the Secretary, in a time and manner designated by Agency or the Secretary, for purposes of the Secretary determining Agency’s compliance with the Privacy Rule.

(i) Document such disclosures of Protected Health Information and information related to such disclosures as would be required for Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Provide to Agency or an Individual, in a time and manner to be designated by Agency, information collected in accordance with subparagraph (i) of this section 1, to permit Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

### (2) Permitted Uses and Disclosures by Business Associate:

(a) **General Use and Disclosure Provision.** Except as otherwise limited in this Rule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Agency as specified in the Contract and this Rule, provided that such use or disclosure would not violate the Privacy Rule if done by Agency or the minimum necessary policies and procedures of the Agency.

### (b) Specific Use and Disclosure Provision.

(A) Except as otherwise limited in this Rule, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(B) Except as otherwise limited in this Rule, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

(D) Business Associate may not aggregate or compile Agency’s Protected Health Information with the Protected Health Information of other Covered Entities unless the Contract permits Business Associate to perform Data Aggregation services. If the Contract permits Business Associate to provide Data Aggregation services, Business Associate may use Protected Health Information to provide Data Aggregation services requested by Agency as permitted by 45 CFR 164.504(e)(2)(i)(B) and subject to any limitations contained in this Rule. If Data Aggregation services are requested by Agency, Business Associate is authorized to aggregate Agency’s Protected Health Information with Protected Health Information of other Covered Entities that the Business Associate has in its possession through its capacity as a business associate to such other Covered Entities provided that the purpose of such aggregation is to provide Agency with data analysis relating to the Health Care Operations of Agency. Under no circumstances may Business Associate disclose Protected Health Information of Agency to another Covered Entity absent the express authorization of Agency.

### (3) Obligations of Agency:

(a) Agency shall notify Business Associate of any limitation(s) in its notice of privacy practices of Agency in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of Protected Health Information. Agency may satisfy this obligation by providing Business Associate with Agency’s most current Notice of Privacy Practices.

(b) Agency shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate’s use or disclosure of Protected Health Information.

(c) Agency shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Agency has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of Protected Health Information.

(4) **Permissible Requests by Agency.** Agency shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Agency, except as permitted by section 2(b) above.

### (5) Termination of Contract:

(a) **Termination for Cause.** Upon Agency’s knowledge of a material breach by Business Associate of the requirements of this Rule, Agency shall either:

(A) Notify Business Associate of the breach and specify a reasonable opportunity in the notice for Business Associate to cure the breach or end the violation, and terminate the Contract if Business Associate does not cure the breach of the requirements of this Rule or end the violation within the time specified by Agency;

# ADMINISTRATIVE RULES

(B) Immediately terminate the Contract if Business Associate has breached a material term of this Rule and cure is not possible in Agency's reasonable judgment; or

(C) If neither termination nor cure is feasible, Agency shall report the violation to the Secretary.

(D) The rights and remedies provided herein are in addition to the rights and remedies provided in the Contract.

(b) Effect of Termination.

(A) Except as provided in paragraph (B) of this subsection (b), upon termination of the Contract, for any reason, Business Associate shall return or destroy all Protected Health Information received from Agency, or created or received by Business Associate on behalf of Agency. This provision shall apply to Protected Health Information that is in the possession of sub-contractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(B) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Agency notification of the conditions that make return or destruction infeasible. Upon Agency's written acknowledgement that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Rule to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

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

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0120

### Order of Precedence

In the event of a conflict between this Rule and the provisions of the Contract, this Rule shall control. In the event of a conflict between this Rule and the Privacy Rule or the provisions of the Contract and the Privacy Rule, the Privacy Rule shall control. The requirements set forth in this Rule are in addition to any other provisions of law applicable to the Contract. Provided, however, this Rule shall not supercede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA pre-empts those laws or regulations. Any ambiguity in the Contract shall be resolved to permit Agency and Business Associate to comply with the Privacy Rule.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0125

### Methods of Compliance

In addition to incorporating the Business Associate requirements contained in this Rule in its Contracts with Business Associates, Agency may comply with this Rule in either of the following ways:

(1) **Memorandum of Understanding.** If Agency's Business Associate is also a government entity, the parties may comply with the requirements of this Rule by entering into a memorandum of understanding that accomplishes the objectives of this Rule and meets the Business Associate requirements of the Privacy Rule.

(2) **Amendment.** Agency may comply with the requirements of this Rule by executing an amendment or rider that amends Agency's Contract with its Business Associate and that contains the contract provisions required by this Rule.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

## 125-055-0130

### Standards in Individual Contracts

(1) Agency and Business Associate may enter into a Contract that contains more stringent standards than those set forth in this Rule as long as such standards do not violate the requirements of the Privacy Rule.

(2) State agencies subject to ORS 279.712 shall use the form Contract provided by the State Procurement Office of the Procurement, Fleet, and Surplus Services Division of the Department of Administrative Services

(Division). A state agency may request the Division to approve a revised form Contract for repeated use for a specific class or classes of transactions.

Stat. Auth.: ORS 184.305, ORS 184.340, ORS 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264.

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03

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## Department of Administrative Services, Budget and Management Division Chapter 122

**Adm. Order No.:** BMD 2-2003(Temp)

**Filed with Sec. of State:** 6-25-2003

**Certified to be Effective:** 6-25-03 thru 7-31-03

**Notice Publication Date:**

**Rules Adopted:** 122-001-0025

**Subject:** This rule establishes expenditure limits allowing state agencies with out a 2003-05 legislatively adopted budget to continue operating after June 30, 2003.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 122-001-0025

### Continuing Resolution for State Agency Expenditure Limitations

(1) A state agency, as defined in House Bill 5065 (Oregon Laws 2003), may incur obligations and authorize expenditures to continue operations into the 2003-2005 biennium at:

(a) The agency's 2001-2003 eighth quarter allotment level; or

(b) A higher or lower level as approved by the Budget and Management Division.

(c) In establishing an alternative expenditure level, the Budget and Management Division shall consider pending legislative budget direction.

(2) Each state agency without a legislatively adopted budget as of June 30, 2003, shall send a signed letter of verification to the Budget and Management Division on or before July 1, 2003, acknowledging:

(a) The agency does not have a legislatively adopted budget as of June 30, 2003;

(b) The continuing resolution ends July 31, 2003 or when an adopted budget is signed by the Governor;

(c) Expenditures will not be authorized above the level established pursuant to section (1) of this rule;

(d) Expenditures incurred under the continuing resolution will be part of the 2003-2005 adopted budget and not permanently charged against 2001-2003 expenditure limitation or appropriation; and

(e) The agency will not begin new programs or hire new staff positions until an adopted budget is signed by the Governor.

(3) Upon receipt of the signed verification letter, the Budget and Management Division shall establish an allotment level pursuant to section (1) of this rule. The Budget and Management Division shall notify each agency of the action taken.

Stat. Auth.: ORS 184.340

Stats. Implemented: OL 2003 (House Bill 5065)

Hist.: BMD 2-2003(Temp), f. & cert. ef. 6-25-03 thru 7-31-03

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## Department of Administrative Services, Human Resource Services Division Chapter 105

**Adm. Order No.:** HRSD 11-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-21-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 105-040-0001

**Subject:** 105-040-0001 The Applicability statement was deleted because it was deemed unnecessary.

105-040-0001(1) This section was revised with minor grammatical changes.

105-040-0001(1)(a)(B)(ii) This section was revised with minor grammatical changes.

105-040-0001(2) "Rule Clarification:" was deleted to create consistency throughout OAR chapter 105.

105-040-0001(2)(d) The section was deleted because it duplicates section 105-040-0001(1)(c).



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105-040-0001(4) Language changed to clarify that “EEO” means “equal employment opportunity”.

105-040-0001(5) The word “grievance” was deleted to help clarify the intent of the section. Language was modified to allow an individual to file a claim with the appropriate state or federal agency.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0001

### Equal Employment Opportunity and Affirmative Action

(1) The State of Oregon is committed to achieving a workforce that represents the diversity of the Oregon community and being a leader in providing its citizens with fair and equal employment opportunities. Accordingly:

(a) State agency heads shall insure:

(A) Equal employment opportunities are afforded to all applicants and employees by making employment related decisions that are non-discriminatory;

(B) Employment practices are consistent with the state’s Affirmative Action Plan and state and federal laws to:

(i) Promote good faith efforts to achieve established affirmative action goals, which include persons with disabilities; and

(ii) Take proactive steps to develop diverse applicant pools for position vacancies and assess the diversity of each applicant pool prior to closing a job announcement.

(b) The Department of Administrative Services shall:

(A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action goals for each state agency. The system shall also communicate goals for hiring persons with disabilities as required by state and federal law;

(B) Produce periodic reports showing hiring opportunities and each agency’s progress toward achieving established affirmative action goals as identified in the state wide automated system.

(c) Persons, who believe they have been subjected to discrimination by an agency in violation of this rule, may file a complaint with the agency’s designated office within 30 calendar days of the alleged act or upon knowledge of the occurrence.

(2) Employment related decisions include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations;

(3) Diverse applicant pools are developed by using proactive steps in outreach strategies which generally include targeted newspapers, professional organizations, employee networks, community organizations, and resume banks;

(4) The statewide automated affirmative action system establishes goals for each equal employment opportunity category and ethnic group for each state agency;

(5) Nothing in this rule precludes any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250

Stats. Implemented: ORS 240.306 & ORS 243.305

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03

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**Adm. Order No.:** HRSD 12-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-21-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 105-040-0010

**Subject:** 105-040-0010 Applicability Statement to clarify application of the rule.

105-040-0010(1) Language was added to clarify that an applicant must “submit” their completed application.

105-040-0010(1)(a) Language was added to clarify that a Veteran must submit a copy of their Veteran’s disability preference letter with their application unless the information is included in the Form DD 214/215.

105-040-0010(1)(b) Housekeeping change to update the skill code from “DHR” to “AFS”.

105-040-0010(2) Housekeeping change to update title of Employment Department’s website.

105-040-0010(2)(a) Language was added to this section to include minimum qualifications to the recruitment announcement and to clarify what minimum qualifications are.

105-040-0010(4)(a) Housekeeping change to update title of Employment Department’s website.

105-040-0010(4)(b) Language was added to clarify that the request for a review of disqualification within 10 days is from the date of the graded notice.

105-040-0010(4)(c) Language was added to indicate that a request for review of test results must be in writing.

105-040-0010(4)(d) Language was added to clarify that an applicant may only retake a written test.

105-040-0010(7) Documentation Retention language was added to identify where HRSD policy document retention requirements can be found.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0010

### Recruitment and Selection Process

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. It is the policy of the State of Oregon to base hiring and promotion decisions on an applicant’s relative knowledge, experience, and skills, determined by competition without regard to an individual’s race, color, religion, sex, marital status, national origin, political affiliation, age, disability, or other non-job-related factors, with proper regard for an individual’s privacy.

(1) An applicant shall complete and submit an official State of Oregon application (PD 100), or an alternative application form approved by the Division, and follow the instructions on the recruitment announcement within the designated time period.

(a) An applicant claiming veteran’s preference points must submit a verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon application (PD 100). Disabled Veterans must also submit a copy of their Veteran’s disability preference letter from the Department of Veteran Affairs, unless the information is included in the DD Form 214/215.

(b) Clients of State Department of Human Services programs who meet the eligibility criteria under Administrative Rule 105-040-0060, Limited Competitive and Non-competitive Appointments, may identify themselves as participants by selecting the “AFS” skill code on the State of Oregon application (PD 100). The applicant must submit proof of current program participation at the request of the appointing authority before a job offer will be made.

(2) An appointing authority shall provide the public and state employees a minimum two (2) weeks notice of employment opportunities when filling vacancies other than agency promotions by using the State’s Jobs page on the internet and the Employment Department services. Accordingly:

(a) The recruitment announcement shall include job requirements, minimum qualifications from classification specifications and any special qualifications, salary, selection method, how, when, and where to apply, the length of the recruitment, the type of test, if any, and the basis and method for an applicant’s request for review of disqualification. Minimum qualifications means minimum experience, training, knowledge and skills required for a position in a classification according to the classification specifications.

(b) Any tests administered shall be competitive, unbiased and of such content as to assist in determining an applicant’s qualifications to perform the work.

(3) An appointing authority shall have the authority to verify a statement contained in an application or a statement made in an interview and secure further information concerning the applicant’s qualifications. An adjustment may be made to the applicant’s rating if information obtained materially affects the applicant’s rating of experience, training, or suitability.

(4) Members of the public and state employees may:

(a) Obtain information regarding employment opportunities by accessing the State’s Jobs page on the internet and/or visiting a local office of the Employment Department where recruitment announcements are posted;

(b) Request a review of disqualification within 10 calendar days from the date of grade notice for not meeting minimum qualifications as stated in the recruitment announcement. Any changes due to a disqualification review shall not affect the previous selection decision(s) concerning other applicants;

(c) Request a review, in writing, of test results for reevaluation within 10 calendar days from the date of the grade notice from the hiring agency

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or the Division. The review shall be limited to the verification of scoring, and any changes due to a review shall not affect the previous selection decision(s) concerning other applicants.

(d) Retake a test if more than three (3) months have elapsed since the test was previously taken and if the recruitment is open to application. An appointing authority with delegated recruitment and selection authority may determine the time period before retesting. The most recent score obtained shall determine the candidate's placement on the eligible list or failure to make the list. Retaking of a test applies only to written tests.

(5) The Division may delegate authority to an agency head to establish and administer a recruitment and selection process, for specific positions, which includes the development and administration of tests.

(6) Upon request, the Division may delegate the development and administration of an alternate recruitment process for positions in classifications that have an existing statewide screening process and list of eligibles.

(7) Documentation retention requirements are outlined under HRSD State Policy 40.010.01, Recruitment and Selection Records Retention.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 184.340 & ORS 240.145(3)

Stats. Implemented: ORS 240.250, ORS 240.306, ORS 240.321 & ORS 240.391

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-1999, f. & cert. ef. 9-1-99; HRSD 12-2003, f. 7-15-03, cert. ef. 7-21-03

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**Adm. Order No.:** HRSD 13-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-21-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 105-040-0020

**Subject:** 105-040-0020 Applicability Statement revised to clarify application of the rule. Minor grammatical changes were made throughout the rule.

105-040-0020(1)(a)(A) Language was modified in this section to clarify the way in which an injured worker is placed on the first consideration list.

105-040-0020(1)(a)(A)(i) Language was added allowing an injured worker to remain on the list for 3 years after the date of injury.

105-040-0020(1)(a)(A)(ii) Language was added stating that an employee shall be removed from the list if returned to an available and suitable position.

105-040-0020(1)(a)(A)(iii) Language was added stating that an employee may be removed from the list if determined to be ineligible for reasons identified in HRSD State Policy 50.020.01.

105-040-0020(1)(a)(B) Language was added to this section to clarify exceptions to the existing language.

105-040-0020(1)(d)(B) The word "eligible" was added to clarify who can be put on the list.

105-040-0020(1)(d)(B)(i) Language clarifying who is considered eligible was added to this section.

105-040-0020(1)(d)(B)(ii) Language clarifying who is considered eligible was added to this section.

105-040-0020(1)(d)(C) The word "eligible" was added to clarify who can be put on the list.

105-040-0020(1)(d)(C)(i) Language clarifying who is considered eligible was added to this section.

105-040-0020(1)(d)(C)(ii) Language clarifying who is considered eligible was added to this section.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0020

### Types and Order of Applicant Lists

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. Not applicable to represented positions where in conflict with a collective bargaining agreement.

(1) The State of Oregon uses a variety of applicant lists (some of which have an established order of use) to facilitate the selection of qualified applicants.

(a) First Consideration: Injured Worker Lists shall consist of the names of employees who are injured while employed with a state agency in the Executive Branch. The injury must have been determined to be a compensable work related injury, and the employee must not have waived rein-

statement and reemployment rights in accordance with state workers' compensation laws.

(A) These lists are established by classification for specific entry level classes. Placement on the list shall be in ascending order by date of injury. The term of eligibility on the list shall be until one of the following occurs:

(i) 3 years from date of injury; or

(ii) Until the employee is returned to an available and suitable position (as identified in HRSD State Policy 50.020.01, Return to Work of Injured Workers); or

(iii) Until an employee is deemed ineligible for retention on the list for reasons identified under HRSD State Policy 50.020.01.

(B) Injured Worker lists shall be used first when filling a vacant position in an entry level classification identified in OAR 105-050-0020(1)(c), Return to Work of Injured Workers. Exceptions to this consideration are other injured workers and employees entitled to appointment to the position pursuant to provisions or other employment restrictions of a valid collective bargaining agreement between the employer and a representative of the employer's employees. Employees shall be appointed in the order in which they appear on the list if the employee meets the qualifications for the position.

**NOTE:** This list is by-passed when the classification of the position to be filled is other than an injured worker entry level class.

(b) Second Consideration: Agency Layoff Lists shall consist of the names of permanent (full or part-time) and/or seasonal employees who have completed initial trial service with the State and have separated from the service in good standing due to layoff or demotion in lieu of layoff.

(A) These lists are established by classification within the type of service (i.e. classified represented, classified unrepresented, management service). The term of eligibility on the list is two years from date of layoff/demotion. An individual shall be removed from the list upon the second refusal of a job offer unless an agency layoff plan allows for additional refusals or when the employee is returned to an equivalent position from which laid off (other than temporary work).

(B) Agency Layoff Lists shall be used when no qualified injured worker is available to fill the vacant position or the position is other than an injured worker entry level class. An employee, on the agency layoff list of the same classification and type of service of the position to be filled, shall be appointed if the employee meets the special qualifications, if any, for the position. Appointments from the list shall be made consistent with the agency's layoff plan.

(c) Third Consideration: Statewide Reemployment Layoff Lists shall consist of names of permanent (full or part-time) employees in either the management or classified unrepresented service who have separated due to a layoff from state or unclassified executive service employees terminated from state service due to reduction in force. Employees on the Statewide Reemployment Layoff List shall have completed initial trial service.

(A) These lists are established by classification. An employee may request placement on the list via his/her agency's personnel office for classifications for which qualified and which are the same classification, or same, equal, or lower salary range number. The term of eligibility on the list shall not be longer than two years from the date of layoff. An individual shall be removed from the list upon the second refusal of a job offer or when a person accepts a position and is returned to work (other than temporary work).

(B) Statewide Reemployment Layoff Lists shall be used when there are no qualified employees on the agency's layoff list or no agency layoff list exists. An agency shall consider employees on the list for the classification and may consider related classifications having similar knowledge and skills as the position to be filled and shall interview those employees who meet the special qualifications, if any, for the position.

(C) Agency promotion lists, statewide promotion lists, statewide transfer lists and open competitive lists may be used to supplement the applicant pool when fewer than five qualified applicants appear on the Statewide Reemployment Layoff List.

(d) The consideration of using other lists shall follow the injured worker, agency layoff, and statewide reemployment layoff lists, at the agency's discretion, with sequence optional.

**NOTE:** Use of these lists applies to classified represented positions only when an initial appointment.

(A) Agency Promotion Lists shall consist of names of an agency's employees who meet the qualifications for the position and pass the appropriate promotional test, if any. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from date of placement or adoption of the list, whichever is later;

(B) Statewide Promotion Lists shall consist of names of eligible state employees who meet the qualifications of the position and pass the appro-

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appropriate promotional test, if any. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from date of placement or adoption of the list, whichever is later. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide promotion list;

(C) Statewide Transfer Lists shall consist of names of eligible state employees who desire a transfer to a position of the same classification, or same, equal, or lower salary range number. These lists are established by classification. Employees may request placement on these lists via their agency's personnel office. The term of eligibility shall be two years from date of application or until the administrator elects to discontinue use of such lists. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide transfer list;

(D) Open Competitive Lists shall consist of names of persons seeking employment with the state who meet the qualification of the position and pass the appropriate entrance test, if any. In addition, the list will consist of any state employee seeking other employment with the state who has gained regular status in the classification of the position applied for and who meets any special qualification if any, for the position. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from the date of placement or adoption of the list, whichever is later.

(2) Documentation retention requirements are outlined under HRSD State Policy 40.010.01, Recruitment and Selection Record Retention.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250

Stat. Implemented: ORS 240.306, ORS 659A.052, ORS 659A.043 & ORS 659A.046

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 1-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03; HRSD 3-2003, f. & cert. ef. 4-30-03; HRSD 13-2003, f. 7-15-03, cert. ef. 7-21-03

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**Adm. Order No.:** HRSD 14-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-21-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 105-040-0030

**Subject:** 105-040-0030 Applicability Statement revised to clarify application of the rule.

105-040-0030(1)(c) Language was added to this section to clarify that a list of qualified applicants and a "certificate of eligibles" shall be pulled prior to conducting interviews.

105-040-0030(1)(g) Language was modified to indicate that an agency "may" pull a random certificate with proportionate protected class candidates to meet affirmative action goals.

105-040-0030(1)(1)(H) This section was reworded for clarification.

105-040-0030(2) Language was added to define "certificate of eligibles".

105-040-0030(3) Language was added to define "disposition code".

105-040-0030(4) Language was added to define "protected class".

105-040-0030(4)(a) Language was added to define the group of people under the category of "Asian or Pacific Islander".

105-040-0030(4)(b) Language was added to define the group of people under the category of "African American".

105-040-0030(4)(c) Language was added to define the group of people under the category of "Hispanic".

105-040-0030(4)(d) Language was added to define the group of people under the category of "Native American or Alaskan Native".

105-040-0030(5) Language was added to define "Affirmative action goals".

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0030

### Use of Applicant Lists

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. Not applicable

to represented positions where in conflict with a collective bargaining agreement.

(1) It is the policy of the State of Oregon to establish and maintain lists of qualified applicants to facilitate a selection process based upon required knowledge and skills.

(a) The order in which applicant lists are to be used shall be in accordance with Administrative Rule 105-040-0020, Types and Order of Applicant Lists, or as specified in collective bargaining agreements.

(b) Lists of eligibles necessary to provide an adequate number of qualified candidates shall, except for agency layoff or agency informational lists, be established and maintained on the Division's central system.

(c) When a vacant position is to be filled, an appointing authority, when appropriate, shall request a list of qualified applicants and receive a "certificate of eligibles" prior to conducting interviews.

(d) The certificate of eligibles shall be issued in one of the following formats, whichever is applicable:

(A) All applicants listed in rank order from the highest to lowest score;

(B) All applicants who meet the minimum qualifications for the position;

(C) A limited number of applicants selected at random from a list of all applicants who meet the minimum qualifications for the position.

(e) When a certificate of eligibles is issued in rank order from the highest to lowest score, applicants for interviews shall be selected in that same order. When certificates issued contain tied scores, all applicants with that score shall be offered an interview if one applicant with that score is interviewed.

(f) When a certificate of eligibles is issued for all applicants who meet the minimum qualifications for the position or for a limited number of applicants selected at random from such a list, all applicants shall be interviewed unless a valid screening process is developed and documented to select only the most qualified candidates for interview. If not all qualified applicants are to be interviewed, the job announcement shall inform applicants of the selection process being used. If the selection process includes ranking applicants using a numerical score or any other method of ranking applicants that does not result in a score, veterans' preference points shall be added, where applicable, at the time of ranking.

(g) When a certificate of eligibles is issued for a limited number of applicants selected at random from a longer list of all qualified candidates and the agency has not met its affirmative action goals, the certificate may include the same proportion of protected class candidates as the list of all qualified candidates. An appointing authority may supplement a randomly selected certificate of eligibles in the following manner:

(A) When a random certificate is requested to fill a vacant position for which there is an existing temporary appointment, an appointing authority may interview the temporary employee, or all temporary employees in the agency or work unit, in addition to the candidates listed on the randomly selected certificate of eligibles, provided that the temporary employee is included in the list of all qualified candidates and is performing the same duties of the vacant position.

(B) A randomly selected certificate of eligibles may be supplemented with the names of all qualified candidates who are clients of the Department of Human Services or Juvenile Justice Division programs described under OAR 105-040-0060, Limited-Competitive and Non-competitive Appointments.

(h) The number of candidates on the certificate of eligibles shall be determined by the appointing authority. However, all names with the same score, where scores are used, shall be included.

(i) A related applicant list of a classification having similar knowledge and skills may be used. However, applicants must meet the minimum qualifications for the position being filled.

(j) New and existing applicant lists may be consolidated, as necessary, provided minimum qualifications and the exam requirements are the same.

(k) Except for the expiration of the term of eligibility on an applicant list, any person whose name is removed from a list shall be promptly notified by the Administrator or delegated agency appointing authority of the reason for such removal.

(l) The Administrator or delegated agency may remove a name from an applicant list for reasons including, but not limited to the following:

(A) Failure to respond within a reasonable time period to any inquiry to availability for appointment;

(B) Expiration of the term of eligibility on the list;

(C) Willful violation of these rules or policies, or provisions of the law;

(D) Falsifying statements on the application;

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(E) Failure to pass required and job related criminal record or driving record checks;

(F) Appointment to a classification at the same or higher salary;

(G) Cancellation of a list;

(H) Appointment made from a lay-off list to any classification;

(m) A disposition code shall be reported for each candidate appearing on the certificate of eligibles who was invited to interview.

(2) A certificate of eligibles is a list of candidates certified to a position, as a result of submitting of an application and meeting the minimum qualifications on the job announcement, passing the exam, where applicable, and were included in the number requested by the agency.

(3) A disposition code is a standardized code assigned by an appointing authority or designee to an applicant on a Certificate. The code identifies the action taken and if their name is inactivated or removed from the List. Documentation retention requirements are outlined under HRSD State Policy 40.010.01, Recruitment and Selection Record Retention.

(4) A protected class candidate is a female or person of color in one of the following groups:

(a) Asian or Pacific Islander: Persons having origins in any of the peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, The Philippine Islands and Samoa.

(b) African American (not of Hispanic origin): Persons having origins in any of the black ethnic groups.

(c) Hispanic: Persons having origins in any of the Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultures, regardless of ethnicity.

(d) Native American or Alaskan Native: Persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(5) "Affirmative action goals" means those goals established in the state's Affirmative Action Plan.

Stat. Auth.: ORS 184.340 & ORS 240.145

Stats. Implemented: ORS 240.010 & ORS 240.306

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-2000, f. 1-28-00 cert. ef. 2-1-00; HRSD 14-2003, f. 7-15-03, cert. ef. 7-21-03

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**Adm. Order No.:** HRSD 15-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-21-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 105-040-0040

**Subject:** 105-040-0040 Applicability Statement revised to clarify application of the rule.

105-040-0040(1)(d)(D) The word "applicant" was added to clarify intent of whom the section applies to.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0040

### Types of Appointments

Applicability: Classified unrepresented and management service positions, initial appointment to all classified positions and temporary appointments.

(1) The State of Oregon has a variety of appointment types which are made in accordance with the type of position being filled and the individual needs of the agency. An agency head shall use one of the following methods to appoint persons to state service:

(a) Permanent Appointment: The appointment of a person to a permanent position;

(b) Seasonal Appointment: The appointment of a person to a position which occurs, terminates and recurs periodically or regularly;

(c) Temporary Appointment: The noncompetitive, non-status, appointment of a person for the purpose of meeting emergency, nonrecurring or short-term workload needs of the agency. A temporary employee shall be exempt from all provisions of the State Personnel Relations Law, Administrative Rules and HRSD Policies unless otherwise specified in accordance with HRSD State Policy 40.025.01, Temporary Appointments;

(d) Limited Duration Appointment: The appointment of a person for a study, project, workload need or when position reduction is anticipated.

(A) An appointment made for a study or project shall be for a period not to exceed two years, except when the position is grant funded, but shall expire upon the completion of the study or project or when funding is exhausted.

(B) Appointments made when position reduction is anticipated shall not exceed the end of the current biennium or current season that ends prior to the end of the biennium.

(C) Appointments made for workload need shall be for a period not to exceed two years.

(D) An applicant/employee accepting a limited duration appointment shall be informed of the conditions of the appointment, including employee status at the termination of the appointment, and shall acknowledge in writing acceptance of the appointment under those conditions.

(E) The Limited Duration Agreement model serves as a guide to establish conditions of a limited duration appointment. The agreement will require modification to fit each employee's individual appointment circumstance.

(e) Academic Year Appointment: The appointment of a person to a position which generally conforms to the academic year of mid-September to mid-June. Appointing authorities may extend employment into the period between academic years;

(A) Employees appointed to positions designated as academic year shall be placed on leave without pay during the unextended period between academic years. The employee shall be returned to the position on termination of leave without pay status. Time spent on such leave shall constitute service for purposes of computing vacation accrual rates, recognized service dates and any other purpose where service time is computed except for the period of trial service;

(B) A person accepting an academic year appointment shall be informed of the conditions of the appointment and shall acknowledge in writing acceptance of the appointment under those conditions.

(2) Documentation retention requirements are outlined under HRSD State Policy 40.010.001, Recruitment and Selection Records Retention.

[ED. NOTE: The Agreement model referenced is available from the agency.]

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

Stat. Auth.: ORS 240.145

Stats. Implemented: ORS 240.306, ORS 240.309, ORS 240.321 & ORS 240.425

Hist.: PD 7-1981, f. & cert. ef. 12-18-81; PD 2-1985(Temp), f. & cert. ef. 7-26-85; PD 1-1986, f. & cert. ef. 1-23-86; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1992(Temp), f. & cert. ef. 2-21-92; PD 4-1992, f. & cert. ef. 8-12-92; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-043-0000; HRSD 2-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03; HRSD 3-2003, f. & cert. ef. 4-30-03; HRSD 15-2003, f. 7-15-03, cert. ef. 7-21-03

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**Adm. Order No.:** HRSD 16-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-21-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 105-040-0050

**Subject:** 105-040-0050 Applicability Statement revised to clarify application of rule.

105-040-0050(1)(a)(A) Sections (2)(a), (2)(b), and (2)(c) were deleted and moved to this section to clarify the intent of the rule.

105-040-0050(1)(a)(B) This section was moved to (1)(a)(F).

105-040-0050(1)(a)(D) Language was added to this section to clarify what special or unique skills are.

105-040-0050(1)(a)(E) Language was moved from section (1)(a)(F) and additional language was added to explain what critical time requirements are.

105-040-0050(1)(a)(F) Language from 105-040-0050(1)(a)(B) was moved to this section.

105-040-0050(2) "Rule Clarification:" was deleted to create consistency throughout Chapter 105.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0050

### Direct Appointment

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. This rule provides state agencies an alternative method to the open competitive process when making appointments to positions in state service. Through this alternative method, as in the competitive process, agency heads shall take proactive steps to achieve a diverse workforce representative of the Oregon community and as a means of fulfilling their Affirmative Action Plans.

(1) The agency head has the delegated authority and discretion to make direct appointments consistent with the following criteria:

(a) When a recent open competitive recruitment results in no suitable candidates as determined, documented, and certified by the agency head. To be considered recent, an open competitive recruitment must have been completed within the previous six (6) months. When a recent statewide or

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agency promotion recruitment results in no suitable candidates, the rule requires an open competitive recruitment before a direct appointment can be made. The suitability of a candidate is determined by the agency head and consists of job related factors that are in addition to the minimum qualifications required by the classification; or

(b) An incumbent is appointed to a position being moved into, out of, or within the executive service and duties have not significantly changed in accordance with HRSD State Policy 30.005.01, Effect of Position Classification Change on Incumbents; or

(c) As part of a court or administrative order, consent decree, court or administrative settlement, or negotiated tort claim settlement; or

(d) When the position requires special or unique skills at the professional level. Special or unique skills at the professional level are those which require specialized knowledge typically acquired from college coursework at the bachelor degree level or beyond; or

(e) When filling the position which has critical timing requirements affecting recruitment. Critical timing requirement affecting recruitment means that the position is critical to agency operations and there is a demonstrated need to fill the position quickly, i.e. that candidates with the required skills and expertise would be lost if the normal recruiting process of 6-8 weeks were followed; and

(f) It is an unclassified executive service position that does not meet the criteria in (A)-(E) of this rule and an exception has been granted by the Director of the Department of Administrative Services in accordance with HRSD State Policy 40.055.01, Appointment to the Executive Service; or

(g) The individual to be directly appointed meets the minimum qualifications of the classification; or

(l) The individual is appointed as an underfill and is able to meet the minimum qualifications of the position within 12 months of the appointment.

(2) Each direct appointment shall be documented. The documentation shall be retained for a minimum of three (3) years. The documentation shall cite the applicable rule criteria, results of any open competitive recruitment, the qualifications of the individual selected, and the agency appointing authority authorization signature.

Stat. Auth.: ORS 240.306(5), ORS 240.145(3) & ORS 240.250  
Stats. Implemented: ORS 240.145(3), ORS 240.250, ORS 240.306(1)(2)(5)(6), ORS 240.311 & ORS 240.321(2)  
Hist.: PD 7-1981, f. & ef. 12-18-81; PD 4-1982, f. & ef. 7-1-82; PD 1-1985, f. & ef. 3-1-85; PD 1-1986, f. & ef. 1-23-86; PD 1-1989, f. & cert. ef. 2-10-89; PD 2-1989, f. & cert. ef. 12-1-89; Suspended by PD 1-1993(Temp), f. & cert. ef. 2-17-93; PD 2-1993(Temp), f. & cert. ef. 8-27-93; PD 1-1994, f. & cert. ef. 2-23-94; PD 2-1994, f. & cert. ef. 8-1-94; Renumbered from 105-043-0005; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 2-1997, f. & cert. ef. 11-5-97; HRSD 16-2003, f. 7-15-03, cert. ef. 7-21-03

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**Adm. Order No.:** HRSD 17-2003  
**Filed with Sec. of State:** 7-15-2003  
**Certified to be Effective:** 7-21-03  
**Notice Publication Date:** 6-1-03  
**Rules Amended:** 105-040-0060

**Subject:** 105-040-0060 Applicability statement was revised to clarify the application of the rule.

105-040-0060(1) "substantially disabled" was added to mirror language in ORS 240.306(3).

105-040-0060(1)(a) Language was added to outline the recruitment process for a substantially disabled person.

105-040-0060(1)(b) Language was added to clarify recruitment for the economically disadvantaged or non-competitive appointments are limited to the classifications listed in OAR 105-040-0060.

105-040-0060(1)(b)(B) "Employment Department" was added to clarify where the appointing authority shall provide information.

105-040-0060(1)(c)(A) Removed unnecessary language identifying the various divisions of the Department of Human Services.

105-040-0060(2) Delete "Rule Clarification:" as a housekeeping change to create consistency throughout Chapter 105.

105-040-0060(3) "qualifying" was added to clarify that there are no minimum requirements necessary to qualify for a position.

105-040-0060(5) Language was added to indicate that some of the listed limited-competitive and non-competitive appointment classifications have been abolished. After the title of the classification in parenthesis "Abolished" and the effective date are listed.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0060

### Limited-Competitive and Non-Competitive Appointments

Applicability: Classified unrepresented and management service positions and initial appointment to all classified positions.

(1) It is the policy of the State of Oregon to facilitate the employment of persons who are substantially disabled, economically disadvantaged or unskilled or semi-skilled through a limited-competitive or non-competitive appointment process.

(a) Recruitment for positions using the HIRE system are not limited to the Limited-Competitive and Non-Competitive Classification lists. A limited-competitive selection process through the HIRE system may be used to facilitate employment of those with a substantial disability.

(b) Recruitment for the economically disadvantaged and non-competitive appointments is limited to those classifications listed in this rule (Limited-Competitive and Non-Competitive Appointment Classifications List) unless otherwise authorized by the Division. When an appointing authority chooses to make an appointment using limited-competitive or non-competitive selection and appointment procedures, the appointing authority shall:

(A) Report vacancies to the field office of the Employment Department nearest the location of the vacancy when the recruitment is open to the public;

(B) Provide the Employment Department field office with a brief description of any job reported to that office; and

(C) Make affirmative efforts to supplement referrals to create a diverse pool of candidates.

(c) A limited-competitive selection process may be used for economically disadvantaged persons who meet the following criteria:

(A) Clients of the Department of Human Services programs.

(B) Clients of the Juvenile Justice Division programs funded by the state.

(d) The Division shall use the following criteria when reviewing appointing authority requests for additions to the Limited-Competitive and Non-competitive Appointment Classifications List:

(A) The classification requires minimal or no requisite knowledge or skills;

(B) It is impractical to develop an examination; and

(C) It is impractical to follow the normal recruiting process.

(2) The agency may also report by phone to the Salem field office of the Employment Department, a vacancy in the Portland, Salem, Monmouth, and Corvallis areas that is open to the public, if the referral of walk-in applicants is desired.

(3) A non-competitive appointment is made to designated classifications comprised of unskilled or semi-skilled positions for which there are minimal or no qualifying knowledge or skills, no screening and no ranking. Where more than one candidate is referred, the hiring manager may use a limited-competitive process to select the most qualified.

(4) Limited-competitive appointment may also be used to limit the competition for appointment to non-competitive classes to those persons who meet the criteria outlined in (1)(b)(A) above.

(5) Following is a list of Limited-Competitive and Non-competitive Appointment Classifications:

(a) 001, Supported Employment Worker;

(b) 0100, Student Office Worker;

(c) 0101, Office Assistant 1;

(d) 0150, Student Professional/Technical Worker;

(e) 0230, Cashier 1; (Abolished 09/98)

(f) 0312, Campus Dispatcher; (Abolished 06/02)

(g) 0315, Forestry Communications Dispatcher;

(h) 0405, Mail Services Assistant;

(i) 0714, Issuing Agent; (Abolished 12/99)

(j) 1105, Traffic Survey Interviewer;

(k) 1476, Computer Output Microfiche Technician; (Abolished 07/97)

(l) 2394, Artist's Model; (Abolished 01/98)

(m) 3101, Student Engineering Specialist;

(n) 3769, Experimental Biology Aide;

(o) 4101, Custodian;

(p) 4114, Student Worker Labor/Trades/Service;

(q) 4115, Laborer 1;

(r) 4116, Laborer 2;

(s) 4120, Trades/Maintenance Worker 1;

(t) 4125, Litter Patrol Worker;

(u) 4137, Liquor Distribution Worker 1;

(v) 4140, Warehouse Worker; (Abolished 06/02)

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- (w) 4403, Transporter;
  - (x) 5440, Grain Weigher/Sampler; (Abolished 04/02)
  - (y) 5515, Property Guard;
  - (z) 5520, Campus Patrol Officer; (Abolished 09/98)
  - (aa) 5522, Campus Security and Public Safety Officer; (Abolished 09/98)
  - (bb) 5550, Parking Services Representative;
  - (cc) 6100, Transportation Aide; (Abolished 04/96)
  - (dd) 6104, Supply Processing and Distribution Aide; (Abolished 04/96)
  - (ee) 6109, Hospital Aide; (Abolished 01/98)
  - (ff) 6114, Surgical Services Assistant; (Abolished 01/95)
  - (gg) 6500, Therapy Aide; (Abolished 06/02)
  - (hh) 6605, Human Service Assistant 1;
  - (ii) 6701, Student Human Services Worker;
  - (jj) 6725, Habilitative Training Technician 1
  - (kk) 6750, Group Life Coordinator 1;
  - (ll) 6805, Laboratory Aide; (Abolished 04/02)
  - (mm) 8101, Seed Certification Aide; (Abolished 01/98)
  - (nn) 8104, Seed Analyst (Entry); (Abolished 01/98)
  - (oo) 8125, Agricultural Worker;
  - (pp) 8201, Forest Nursery Worker 1;
  - (qq) 8202, Forest Nursery Worker 2;
  - (rr) 8208, Forest Lookout;
  - (ss) 8235, Student/Professional Forester Worker;
  - (tt) 8319, Fish and Wildlife Technician (Entry);
  - (uu) 8419, Park Conservation Aide; (Abolished 09/00)
  - (vv) 8420, Ranger Aid;
  - (ww) 9100, Food Service Worker 1;
  - (xx) 9210, Laundry Worker. (Abolished 06/02).
- Stat. Auth.: ORS 184.340, ORS 240.145(3) & ORS 240.250  
Stats Implemented: ORS 240.306, ORS 240.321 & ORS 657.710  
Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRMD 2-1996, f. 3-28-96, cert. ef. 4-1-96; HRSD 17-2003, f. 7-15-03, cert. ef. 7-21-03
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**Adm. Order No.:** HRSD 18-2003  
**Filed with Sec. of State:** 7-15-2003  
**Certified to be Effective:** 7-21-03  
**Notice Publication Date:** 6-1-03  
**Rules Amended:** 105-040-0070

**Subject:** 105-040-0070(1)(a) Add "number" to create consistence with the definition of underfill. Replace "reclassified" with "changed" to reflect the employee's position change rather than a reallocation of the position.

105-040-0070(1)(b) Reworded to clarify an underfilling employee's right to notification of the requirements necessary to qualify for the position they are underfilling.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0070

### Alternate Methods of Filling Positions

Applicability: All employees (where not in conflict with collective bargaining agreements). All positions shall normally be filled at the budgeted salary range level and classification. However, an appointing authority may use the following alternate methods of filling positions to provide for situations such as employee development, job sharing, and short-term transitioning.

#### (1) Underfill:

(a) A position may be underfilled with an individual in a lower salary range number and classification when there is a reasonable expectation that the employee will meet minimum qualifications of the allocated level of the position within twenty-four (24) months of appointment made from a certificate or within 12 months of a Direct Appointment. Appointment may be from a certificate or as a direct appointment consistent with Administrative Rule 105-040-0050, Direct Appointment. Upon meeting position qualification and performance requirements, the employee shall be changed to the allocated level of the position;

(b) An employee underfilling shall be advised of the requirements necessary to qualify for the position they are underfilling.

#### (2) Doublefill:

(a) An appointing authority may employ two or more employees in a position as a doublefill for the following purposes:

(A) To cover an employee on leave for any reason when a temporary appointment is not appropriate and a vacant position does not exist to address the workload need;

(B) Short-term transitioning of employees into impending vacant positions for purposes of training;

(C) The position establishment is pending the Position Inventory Control System (PICS) update;

(D) When approved and/or directed by Budget and Management Division to address budget issues, or

(E) Job share not exceeding 1.0 FTE.

(b) Employees doublefilling positions shall meet the minimum qualifications of those positions and be appointed in accordance with applicable recruitment and appointment rules, policies, or collective bargaining agreements;

(c) The doublefill method of filling positions shall not be used to permanently increase legislatively authorized staffing levels.

(3) Crossfill: A position may be crossfilled to a different classification with an equal salary range number providing the position establishment or modification is pending the PICS update.

Stat. Auth.: ORS 184.340 & ORS 240.145

Stats. Implemented: ORS 240.145, ORS 240.012, ORS 240.013, ORS 240.015, ORS 240.250

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 3-1996, f. & cert. ef. 8-1-96; HRSD 18-2003, f. 7-15-03, cert. ef. 7-21-03

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**Adm. Order No.:** HRSD 19-2003  
**Filed with Sec. of State:** 7-15-2003  
**Certified to be Effective:** 7-21-03  
**Notice Publication Date:** 6-1-03  
**Rules Amended:** 105-040-0080

**Subject:** 105-040-0080 Applicability statement was added to clarify the application of the rule.

105-040-0080(1)(c) The word "State" was added to create consistency throughout OAR Chapter 105.

105-040-0080(2) "Clarification" was deleted to create consistency throughout OAR Chapter 105.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-040-0080

### Reemployment

Applicability: Classified unrepresented, management service and exempt service employees.

(1) This rule provides state agencies a non-competitive method of reemploying experienced former state employees who separated from state service in good standing.

(a) An appointing authority may non-competitively reemploy classified service unrepresented and management service employees who separate from state service in good standing, voluntarily demote, or are reclassified downward in any agency in the same, equal, or lower classification for which qualified within two years from the effective date of such action;

(b) An appointing authority may non-competitively reemploy an exempt service employee who has been employed full-time for at least 12 months consecutively in such service in a position for which qualified within two years from the date of separation from state service if such separation is in good standing;

(c) Reemployment of an exempt service employee shall occur only after any current collective bargaining unit member has exhausted any right under an applicable collective bargaining agreement and after a current classified unrepresented or management service employee has exhausted layoff and reemployment eligibility under applicable Administrative Rules and HRSD State Policies.

(2) In the event of a subsequent appointment to a classification with a lower salary range, reemployment eligibility continues for the remainder of the two year period for the original classification from which separated.

Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250

Stats. Implemented: ORS 240.590

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 3-1982, f. & ef. 3-1-82; PD 2-1985(Temp), f. & ef. 7-26-85; PD 1-1986, f. & ef. 1-23-86; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-043-0010; HRSD 19-2003, f. 7-15-03, cert. ef. 7-21-03

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**Adm. Order No.:** HRSD 20-2003  
**Filed with Sec. of State:** 7-15-2003  
**Certified to be Effective:** 7-21-03  
**Notice Publication Date:** 6-1-03  
**Rules Amended:** 105-050-0020

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**Subject:** 105-050-0020 Applicability Statement revised to clarify application of rule.

105-050-0020(1)(d) Language was added identifying “available” and “suitable” are defined in HRSD State Policy.

105-050-0020(1)(e) Language was added identifying “available” and “suitable” are defined in HRSD State Policy.

105-050-0020(1)(g) Housekeeping change to “HRSD” from “Human Resource Services Division” to create consistency throughout Chapter 105 of OAR.

105-050-0020(2) The “Rule Clarification:” section was deleted to create consistency throughout OAR Chapter 105.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 105-050-0020

### Return to Work of Injured Workers

Applicability: All employees: (where not in conflict with a collective bargaining agreement.)

(1) The State of Oregon is committed to return employees with compensable work-related injuries/illnesses to an available and suitable position as soon as possible.

(a) Each state agency shall provide early return of its injured workers in accordance with HRSD State Policy 50.020.01, Return to Work of Injured Workers;

(b) An injured worker shall be any employee who has incurred an injury while employed in a state Executive Branch agency, was determined to be compensable under ORS Chapter 656, and has not exercised or waived reinstatement/reemployment rights under ORS 659A.043 and 659A.043;

(c) For the purpose of placing injured workers, entry level classification shall mean any of the following classifications not requiring prior agency experience: all limited competitive and non-competitive appointment classes per OAR105-040-0060; all classes defined as entry in their title; single-level classes and the first level of a class series. Supervisory and managerial classifications and classifications that are at a higher level than the classification in which the employee was working at the time of injury are not considered entry level;

(d) Each state agency shall provide available and suitable employment (as identified in HRSD State Policy 50.020.01, Return to Work of Injured Workers) to the extent required by law to its injured workers with work restrictions who request to return to work;

(e) In filling vacant positions, each state agency shall give injured workers with work restrictions, injured at another agency, preference for available and suitable positions [as identified in HRSD State Policy 50.020.01, Return to Work of Injured Workers] when filling entry level classifications positions in accordance with OAR105-040-0020, Types and Order of Applicant Lists;

(f) Preference shall mean that qualified injured state workers shall be appointed over all applicants for available and suitable entry level positions in an agency of the state Executive Branch. Exceptions are other injured workers and employees entitled to appointment to the position pursuant to provisions or other employment restrictions of a valid collective bargaining agreement between the employer and a representative of the employer’s employees;

(g) ORS 659A.052 authorizes the Administrator of HRSD to “compel compliance” with the provisions of the law and OAR 105-050-0020 Return to Work of Injured Workers.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 184.340 & ORS 240.145  
Stats. Implemented: ORS 240.306, ORS 240.391, ORS 659A.052, ORS 659A.043 & ORS 659A.046  
Hist.: PD 2, 1994, f. & cert. ef. 8-1-94; Renumbered from 105-070-0006; PD 2-1995, f. 6-30-95, cert. ef. 7-1-95; HRSD 20-2003, f. 7-15-03, cert. ef. 7-21-03

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

**Adm. Order No.:** DOA 20-2003

**Filed with Sec. of State:** 6-20-2003

**Certified to be Effective:** 6-20-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 603-011-0376

**Subject:** A quarantine is established against importation of birds and materials from areas under federal or state quarantine which are capable of transmitting Exotic Newcastle Disease. This rule also establishes controls on gatherings of birds within Oregon and provides for

veterinary inspections of birds imported from non-quarantined areas of affected states.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-011-0376

### Exotic Newcastle Disease, Emergency Quarantine and Movement Restrictions

This section applies to all avian species and commercial traffic involved with avian species originating from areas under state or federal quarantine for Exotic Newcastle Disease and to bird exhibits, shows, auctions, public displays and competitions held in Oregon. It also applies to importation of all birds from states in which a state or federal quarantined area due to Exotic Newcastle Disease exists.

(1) Areas under restriction. The emergency quarantine includes all areas of any state in which a state or federal quarantine for Exotic Newcastle Disease exists.

(2) Items under restriction, except as specifically exempted in (3)(b) and (c) and (4)(b) and (c) below, include birds, poultry, poultry products, poultry waste, or vehicles, equipment or materials of any type that could transmit Exotic Newcastle Disease. Included in the restriction are vehicles that make deliveries of live birds, feed, or equipment to poultry operations of any sort in quarantined areas and then travel into the state of Oregon.

(3)(a) Except as exempted in (b) or (c) below, no live or dead birds, poultry, poultry products, poultry waste, or vehicles, equipment or materials of any type that could transmit Exotic Newcastle Disease may be moved into Oregon from areas under quarantine.

(b) From areas under state or federal quarantine for END, commercial pet birds, pet birds originating from USDA Quarantine Facilities and birds being individually imported, all of which have fulfilled all stipulations of USDA Policies for movement out of the quarantined areas, may be imported into Oregon subject to protocols established by the State Veterinarian.

(c) From areas under state or federal quarantine for END, table eggs which have fulfilled all stipulations of USDA Policies on Movement of Table Eggs out of quarantined areas may be considered for importation into Oregon. If so considered, they will be subject to protocols established by the State Veterinarian.

(4)(a) Except as exempted in (b) or (c) below, no equipment used for the processing of eggs or for the housing, feeding, watering, handling, or otherwise caring for birds of any type may be moved into Oregon from areas under quarantine

(b) Equipment used to house, water, feed, or care for commercial pet birds, pet birds originating from USDA Quarantine Facilities and pet birds being individually legally imported under authority of section (3)(b) above, all of which have fulfilled all stipulations of USDA Policies for movement out of the quarantined areas, may be imported into Oregon subject to protocols established by the State Veterinarian.

(c) Equipment used to transport, house, water, feed, handle, or otherwise care for commercial poultry which has fulfilled all stipulations of USDA Policies for Movement of Conveyances from Quarantined Areas may be considered for importation into Oregon. If so considered, they will be subject to protocols established by the State Veterinarian.

(5) Any commercial vehicle originating from an area under quarantine and which has transported feed, eggs, or equipment or other materials that could transmit Exotic Newcastle Disease must carry proof of the cleaning and disinfection of the vehicle and trailer performed immediately prior to traveling to Oregon. This proof must be provided in writing and demonstrate that the cleaning and disinfection was performed according to protocol established by the USDA.

(6) Birds of any species which originate in states with quarantined areas due to Exotic Newcastle Disease but which come from areas outside of the quarantined area must be accompanied by a Certificate of Veterinary Inspection issued within twenty four (24) hours prior to departure for Oregon by an accredited veterinarian stating the birds are healthy and free of any signs of Exotic Newcastle Disease and do not originate from a quarantined area except as exempted in (3)(b) above, and an Oregon Import Permit number obtained from the office of the Oregon State Veterinarian. Photocopies of Certificates of Veterinary Inspection are not acceptable. National Poultry Improvement Plan forms for movement of poultry may be used by members of National Poultry Improvement Plan with written certification on the form that the shipment did not originate from inside a quarantined area.

(7) A promoter of any event in Oregon which involves birds, such as an exhibit, show, auction, competition, or other public display of birds of any type shall immediately inform the Oregon State Veterinarian by mail, facsimile, or electronic mail of a scheduled event. The notification shall

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include the contact name, mailing address, physical address of the event, and daytime telephone number.

(8) A promoter of an event in Oregon which involves birds originating in another state, such as an exhibit, show, auction, competition, or other public display of birds of any type, shall inform the event exhibitors and vendors in writing of this Oregon Administrative Rule, the current areas under quarantine for Exotic Newcastle Disease, and the risk of introducing Exotic Newcastle Disease into Oregon. The promoter also shall require each event exhibitor and vendor, prior to the event, to attest in writing that they are not in violation of this Oregon Administrative Rule. The signed document shall be forwarded to the Oregon State Veterinarian within one week after conclusion of the event.

Stat. Auth.: ORS 561 & ORS 596  
Stats. Implemented: ORS 561.510, ORS 596.020, ORS 596.341, ORS 596.351 & ORS 596.355  
Hist.: DOA 10-2003(Temp), f. & cert. ef. 1-17-03 thru 7-16-03; DOA 13-2003(Temp), f. & cert. ef. 3-27-03 thru 7-16-03; DOA 20-2003, f. & cert. ef. 6-20-03

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**Adm. Order No.:** DOA 21-2003

**Filed with Sec. of State:** 7-8-2003

**Certified to be Effective:** 7-8-03

**Notice Publication Date:** 3-1-03

**Rules Adopted:** 603-095-2500, 603-095-2520, 603-095-2540, 603-095-2560

**Subject:** The rules effectuate the implementation of the Middle John Day Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-2500

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the subbasin pursuant to authorities vested in the department through ORS 568.900 - 568.933. The area plan is known as the Middle John Day Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Middle John Day Agricultural Water Quality Management Area for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 21-2003, f. & cert. ef. 7-8-03

## 603-095-2520

### Geographic and Programmatic Scope

(1) The Middle John Day Agricultural Water Quality Management Area includes the area that drains into the John Day River between the Wheeler-Gilliam county line and the upstream end of Picture Gorge. The physical boundaries of the Middle John Day Agricultural Water Quality Management Area are indicated on the map included as an attachment to these rules.

(2) Operational boundaries for the land base under the purview of these rules include all agricultural and rural lands within the Middle John Day Agricultural Water Quality Management Area with the exception of public lands managed by federal agencies and activities that are subject to the Oregon Forest Practices Act.

(3) The provisions of these rules apply to all agricultural land whether or not in current productive agricultural use.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the Department and the appropriate Local Management Agency shall work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 21-2003, f. & cert. ef. 7-8-03

## 603-095-2540

### Prevention and Control Measures

(1) Limitations: All landowners or operators conducting activities on agricultural and rural lands are provided the following exemptions from the requirements of OAR 603-095-2540 (Prevention and Control Measures).

(a) A landowner or operator shall be responsible for only those conditions caused by activities conducted on land managed by the landowner or operator.

(b) Rules do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Within the reasonable control of the landowner means that technically sound and economically feasible measures must be available to address conditions described in Prevention and Control Measures.

(c) The Department may allow temporary exceptions when a specific integrated pest management plan is in place to deal with certain weed or pest problems.

(2) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Effective by January 1, 2008, streamside management must allow the establishment, growth, and active recruitment of vegetation, consistent with the vegetative capability of the site, for protection of water quality by filtering sediment, stabilizing streambanks and providing shade.

(4) Effective January 1, 2008, irrigation must be done in a manner that limits the amount of pollutants entering waters of the state in the runoff from the irrigated area.

(5) Livestock Management, by January 1, 2008, areas used to control livestock, with a demonstrated impact on water quality, will be managed to control runoff of sediment or animal waste.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 21-2003, f. & cert. ef. 7-8-03

## 603-095-2560

### Complaints and Investigations

(1) When the Department receives notice of an alleged occurrence of agricultural pollution through a written complain, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-2560(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-2560(4), "person does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2560(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 21-2003, f. & cert. ef. 7-8-03

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**Adm. Order No.:** DOA 22-2003

**Filed with Sec. of State:** 7-8-2003

**Certified to be Effective:** 7-8-03

**Notice Publication Date:** 3-1-03

**Rules Adopted:** 603-095-3100, 603-095-3120, 603-095-3140, 603-095-3160

**Subject:** The rules effectuate the implementation of the Goose and Summer Lakes Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619



# ADMINISTRATIVE RULES

## 603-095-3100

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Goose and Summer Lakes Basin Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - 568.933 and 561.190 - 561.191. The area plan is known as the Goose and Summer Lakes Basin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Goose and Summer Lakes Basin Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards in the Goose and Summer Lakes Basin Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-2003, f. & cert. ef. 7-8-03

## 603-095-3120

### Geographic and Programmatic Scope

(1) The Goose and Summer Lakes Basin Agricultural Water Quality Management Area consists of the Goose and Summer Lakes Basin, as defined by the State of Oregon. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Goose and Summer Lakes Basin Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies and lands that are held in Tribal Trust.

(3) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Goose and Summer Lakes Basin Agricultural Water Quality Management Area.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-2003, f. & cert. ef. 7-8-03

## 603-095-3140

### Requirements

(1) Landowners must comply with OAR 603-95-3140(2) through (3) within the following limitations:

(a) A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances.

(2) Streamside Vegetation:

(a) Effective August 1, 2008, management activities will allow the establishment, maintenance, or improvement of streamside vegetation for summer shade and streambank stability, based on site capability.

(b) Part (a) does not apply to flood control practices that have been historically used in the Management Area. These practices include, but are not limited to, the maintenance of flood-control channels, dikes and catch basins.

(c) Part (a) does not apply to irrigation water conveyance systems, including but not limited to irrigation canals, ditches, and laterals.

(3) Waste Management

(a) Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-2003, f. & cert. ef. 7-8-03

## 603-095-3160

### Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate

inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution will be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-3160(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-3160(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3160(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-2003, f. & cert. ef. 7-8-03

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**Adm. Order No.:** DOA 23-2003

**Filed with Sec. of State:** 7-8-2003

**Certified to be Effective:** 7-8-03

**Notice Publication Date:** 1-1-03

**Rules Adopted:** 603-095-2600, 603-095-2620, 603-095-2640, 603-095-2660

**Subject:** The rules effectuate the implementation of the Upper Willamette/Upper Siuslaw Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-2600

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - 568.933 and 561.190 - 561.191. The area plan is known as the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards in the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 23-2003, f. & cert. ef. 7-8-03

## 603-095-2620

### Geographic and Programmatic Scope

(1) The Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area includes the drainage area of the Long Tom River, Upper Siuslaw River, and several smaller streams that drain directly to the Willamette River. The physical boundaries of the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area are indicated on the map included as Appendix 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has

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been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are within the purview of these rules.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency shall work with these Designated Management Agencies to assure that provisions of these rules apply and to assure that duplication of any services provided or fees assessed does not occur.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 23-2003, f. & cert. ef. 7-8-03

## 603-095-2640

### Prevention and Control Measures

(1) All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by activities conducted on land controlled by the landowner. A landowner is not responsible for violations of the Prevention and Control Measures resulting from actions by another landowner. Conditions resulting from unusual weather events (equaling or exceeding a 25-year, 24-hour storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may be exempted from these conditions subject to prior written approval by the department.

(2) Effective upon rule adoption, agricultural activities shall allow the establishment and development of riparian vegetation along perennial and intermittent streams for streambank stability, shading, and proper riparian function, consistent with site capability.

(a) Legally constructed drainage and irrigation ditches are exempt from OAR 603-095-2640(2).

(3) Effective upon rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(4) Corralled or enclosed livestock areas will be managed to control runoff of sediment and animal waste. Application and storage of manure will be done in a manner that minimizes the introduction of nutrients and bacteria to waterways.

(5) Effective January 1, 2004, agricultural activities will not cause the following visual indicators of erosion where erosion may cause sediment runoff into waters of the state:

(a) Sheet erosion; noted by scoured surfaces or pedestals of soil at the base of plants on sparsely vegetated or bare ground;

(b) Visible active gullies;

(c) Multiple rills, which have the form of gullies, but are smaller in cross-sectional area than one foot.

(d) This prevention and control measure applies to farm roads and staging areas, pastures, cropland, and other areas where agricultural activities occur.

(6) Construction, maintenance, and use of surface drainage field ditches or surface irrigation field ditches shall cause no pollutant delivery to waters of the state from soil erosion induced by excessive channel slope, unstable channel cross section or placement of disposed spoils.

(7) Agricultural activities shall not cause pollution from active channel erosion or other means of sediment delivery from intermittent streams and drainage ways.

(8) Roadways, staging areas, and heavy-use areas shall be constructed and maintained to prevent sediment or runoff contaminants from adversely affecting waters of the state.

(a) Exemptions: Public roads and roads subject to the Oregon Forest Practices Act.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 23-2003, f. & cert. ef. 7-8-03

## 603-095-2660

### Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate

investigation activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-2660(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-2660(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2660(4), the department may investigate at any time any complaint if the Department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 23-2003, f. & cert. ef. 7-8-03

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**Adm. Order No.:** DOA 24-2003

**Filed with Sec. of State:** 7-8-2003

**Certified to be Effective:** 7-8-03

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 603-095-2700, 603-095-2720, 603-095-2740, 603-095-2760

**Subject:** The rules effectuate the implementation of the Owyhee Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-2700

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Owyhee Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - 568.933 and 561.190 - 561.191. The area plan is known as the Owyhee Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Owyhee Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Owyhee Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 24-2003, f. & cert. ef. 7-8-03

## 603-095-2720

### Geographic and Programmatic Scope

(1) The Owyhee Agricultural Water Quality Management Area includes the portions of the following subbasins that are within the state of Oregon's boundaries: southern portion of the Middle Snake-Payette (USGS HUC 1705011503), Lower Owyhee, Middle Snake-Succor, Crooked-Rattlesnake, Jordan, Middle Owyhee, South Fork Owyhee, East Little Owyhee, and the Upper Quinn. The physical boundaries of the Owyhee Agricultural Water Quality Management Area are indicated on the map included as Appendix 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Owyhee Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with

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agricultural activities, with the exception of public lands managed by federal agencies and Tribal Trust lands.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are within the purview of these rules.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Owyhee Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency shall work with these Designated Management Agencies to assure that provisions of these rules apply and to assure that duplication of any services provided or fees assessed do not occur.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 24-2003, f. & cert. ef. 7-8-03

## 603-095-2740

### Prevention and Control Measures

(1) A landowner shall be responsible for only those conditions caused by activities conducted on land managed by the landowner. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(2) Pollution Control and Waste Management: Effective on rule adoption. No person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Streamside Conditions. By January 1, 2008, no person may contribute to conditions that preclude establishment and development of adequate riparian vegetation for streambank stability and shading, consistent with site capability.

(4) Irrigation Surface Water Return Flow:

(a) After January 1, 2008, irrigation surface water return flow to waters of the state shall not cause an excessive, systematic, or persistent increase in sediment levels already present in the receiving waters, except where the return flows do not cause the receiving waters to exceed established sediment standards.

(b) A landowner conducting irrigation activities in accordance with a plan approved in writing by the department or its designee shall be deemed to be in compliance with this rule.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 24-2003, f. & cert. ef. 7-8-03

## 603-095-2760

### Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate investigation activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-2760(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-2760(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2760(4), the department may investigate at any time any complaint if the Department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may

be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 24-2003, f. & cert. ef. 7-8-03

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**Adm. Order No.:** DOA 25-2003

**Filed with Sec. of State:** 7-8-2003

**Certified to be Effective:** 7-8-03

**Notice Publication Date:** 12-1-02

**Rules Adopted:** 603-095-3000, 603-095-3020, 603-095-3040, 603-095-3060

**Subject:** The rules effectuate the implementation of the Upper Deschutes Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-3000

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Upper Deschutes Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190 - 561.191. The area plan is known as the Upper Deschutes Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Upper Deschutes Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards in the Upper Deschutes Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 25-2003, f. & cert. ef. 7-8-03

## 603-095-3020

### Geographic and Programmatic Scope

(1) The Upper Deschutes Agricultural Water Quality Management Area consists of the Upper and Little Deschutes Subbasins, as defined by the State of Oregon. Additionally, it includes lands in the Crooked River drainage south of the Crooked River and west of the range line between R12E and R13E in T14S in order to include the entire Crooked River Ranch subdivision. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Upper Deschutes Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies and lands that are in Tribal Trust.

(3) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Upper Deschutes Agricultural Water Quality Management Area.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 25-2003, f. & cert. ef. 7-8-03

## 603-095-3040

### Requirements

(1) Landowners must comply with OAR 603-95-3040(2) through (3) within the following limitations:

(a) A landowner is responsible for only those conditions resulting from activities controllable by the landowner. A landowner is not responsible for conditions resulting from activities on other lands.

(2) Streamside Vegetation

(a) Effective January 1, 2005, agricultural activities must allow the establishment and development of appropriate vegetation along natural and channelized streams, consistent with site capability. Noxious weeds are not appropriate vegetation. Vegetation must be adequate to prevent unnatural streambank erosion, moderate water temperature, and filter sediment and nutrients from surface runoff.

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(b) Part (a) does not apply to irrigation water conveyance systems, including but not limited to irrigation canals, ditches, and laterals.

(3) ODA Authority to Control Water Pollution

(a) Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 25-2003, f. & cert. ef. 7-8-03

## 603-095-3060

### Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution will be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-3060(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-3060(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3060(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 25-2003, f. & cert. ef. 7-8-03

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**Adm. Order No.:** DOA 26-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-15-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 603-057-0378

**Rules Repealed:** 603-057-0378(T)

**Subject:** Limits the locations, or sites, where pesticide products containing the active ingredient clopyralid may be applied or used in Oregon. Prohibits materials from application or use site being used for compost. Establishes product labeling requirements for obtaining product registration.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-057-0378

### Limitations on Pesticide Products Containing Clopyralid

(1) Any application or use of a pesticide product known to contain the active ingredient clopyralid to a location other than an agricultural, forest, right-of way, golf course or cemetery site is prohibited.

(2) For the application or use of a pesticide product containing clopyralid on a site allowed under (1) above, all applicable label instructions must be followed. Providing grass clippings or other materials from a treated site for use in compost is prohibited.

(3) Pesticide products known to contain the active ingredient clopyralid and having product labeling which authorizes application or use on an agricultural, forest, right-of way, golf course or cemetery site, or on any other site, may be registered and distributed during 2003. For 2004 and subsequent years, a pesticide product known to contain the active ingredient

clopyralid must satisfy one of the following requirements in order to be registered:

(a) The label must specify that the product may only be used on sites allowed by (1) above; or

(b) The label must clearly and prominently display the following statement: "Use of this product in Oregon is limited to the sites stated on this label which are agricultural, forest, right-of-way, golf course or cemetery sites."

(4) Failure to comply with sections (1), (2), or (3) above may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);

(b) Imposition of a civil penalty, in accordance with ORS 634.900;

(c) Any other enforcement action authorized under ORS 634.

Stat. Auth.: ORS 634.322(6), ORS 634.026(1e)

Stats. Implemented: ORS 634

Hist.: DOA 14-2003(Temp), f. & cert. ef. 3-28-03 thru 9-24-03; DOA 26-2003, f. & cert. ef. 7-15-03

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

**Adm. Order No.:** BCD 10-2003(Temp)

**Filed with Sec. of State:** 6-20-2003

**Certified to be Effective:** 7-1-03 thru 12-27-03

**Notice Publication Date:**

**Rules Amended:** 918-309-0030

**Subject:** Reduces certain electrical permit fees for residential wiring.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 918-309-0030

### Permits for Residential Wiring

(1) Fee based on square footage for each dwelling unit (including attached garage) for residential wiring, allowing up to four inspections per unit:

(a) Wiring of not more than 1,000 square feet, \$106;

(b) Each additional 500 square feet or portion thereof, \$19.

(2) Permit fee for Manufactured Home or Modular Dwelling including service or feeder to unit served, up to two inspections only, \$63.

(3)(a) Permit fee for Limited Energy:

(A) One and Two Family Residential, \$25;

(B) This permit fee covers all limited energy type systems in residential occupancies when installed at the same time by the permittee. Installations such as antenna wire, stereo wire, computer wire, and alarm wire done by other contractors require separate permits and fees. No limited energy permit is required if the original permittee installs wiring for doorbells, garage door opener and heating and air conditioning wiring. This permit allows up to two inspections.

(b) Multi-family residential:

(A) Multi-family residential, \$45;

(B) Compute this permit fee as provided in OAR 918-309-0070 Special Fees.

(4) Items Covered in this Section:

(a) When computing the area, include the square footage of attached garages;

(b) The residential fee covers services, feeders and all branch circuits on and inside each dwelling unit and includes garages that are attached to the dwelling unit, including the limited energy systems for the doorbell, garage door opener, and the heating and air conditioning control wiring in one and two family dwellings only;

(c) New Construction. Use this fee in connection with new construction;

(d) Remodels, Additions, Alterations or Repairs. Compute the fee under this section using the square footage of the area remodeled or added, then compute the fee under OAR 918-309-0060 "branch circuits". Use the lower fee;

(e) Reconnection only. See OAR 918-309-0040.

(5) Application of Fees:

(a) One- or Two-Family Dwellings. To calculate the fee for a one- or two-family dwelling, obtain the square footage of each unit. Include the garage if it is attached to any unit. There is an exception in subsection (c)(A) of this section if a detached garage or accessory building is built at the same time as the dwelling unit. Compute the fee using the procedure

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shown for each dwelling unit. Record the number of units under "Items" in the permit and multiply this with the fee shown;

(b) Multi-family Building. In the case of a multi-family building containing three or more apartments, determine the square footage of the largest apartment in the building and compute the fee. For each additional apartment in the building, a fee of one-half of the first unit fee may be used. The house panel fee for general service equipment such as apartment unit lights, washer-dryer, outdoor lighting and the like is calculated using OAR 918-309-0060(1) services and feeders, and OAR 918-309-0060(2)(b) dealing with branch circuits. When inspection is requested, if the entire building is not ready and additional visits are required, additional inspection fees may be charged;

(c) Detached Garages. Detached garages and accessory buildings are not considered part of the residential unit. The permit fee is based on the method of supplying power to the unit:

(A) Exception — Simultaneous Construction with Single Branch Circuit. If the structure receives power through a branch circuit from the house panel with a single branch circuit, include the square footage of the garage with the living unit, provided the garage is built at the same time as the dwelling unit. If a separate construction is involved, use the fee for a single circuit under branch circuits. OAR 918-309-0060(1)(a). If more than one branch circuit is involved, use OAR 918-309-0070;

(B) Sub-Panel. If the detached structure has a sub-panel powered from the house service, the fee is computed using the "feeder" section, OAR 918-309-0040 and branch circuits, OAR 918-309-0060(1);

(C) If the detached structure is built first, the fee is based on service, feeder and branch circuits;

(D) Separate Service. If the structure has a separate service, the fee is based upon service, feeder and branch circuits.

(d) Reconnect Only. See OAR 918-309-0060(6);

(e) House Moves. In most instances, the fee will only involve a service reconnect:

(A) If changes to the service are made, a new service charge is made under OAR 918-309-0040;

(B) For each new, extension or alteration of branch circuits, use OAR 918-309-0060;

(C) If the building was moved in sections and there is no upgrading of the service, use the fees in this section using square footage.

(f) Manufactured Dwellings and Modular Homes. Manufactured dwellings and modular homes usually require a service and a feeder from the service to the home. In mobile home parks, usually only the feeder is necessary because the service already exists. Where there is a detached garage or accessory building, refer to subsection (5)(c) of this rule dealing with detached structures.

Stat. Auth.: ORS 455.030 & ORS 479.870

Stats. Implemented: ORS 455.030 & ORS 479.870

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCA 10-1991, f. 4-26-91, cert. ef. 7-1-91; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0220; BCD 9-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 18-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 9-2001(Temp), f. 8-15-01, cert. ef. 9-4-01 thru 3-3-02; BCD 10-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 10-2003(Temp), f. 6-20-03, cert. ef. 7-1-03 thru 12-27-03

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**Adm. Order No.:** BCD 11-2003(Temp)

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**Notice Publication Date:**

**Rules Suspended:** 918-306-0700(T), 918-306-0705(T), 918-306-0710(T), 918-306-0715(T), 918-306-0720(T), 918-306-0730(T), 918-306-0740(T), 918-306-0760(T), 918-306-0770(T), 918-306-0780(T)

**Subject:** Suspends previously filed temporary rule requirements for semiconductor electrical industrial manufacturing equipment approval.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 918-306-0700

### Application, Scope and Purpose

(1) The purpose of OAR 918-306-0700 to 918-306-0790 is to enable Oregon semiconductor manufacturing firms and semiconductor equipment manufacturers to establish methods to verify that their semiconductor industrial electrical manufacturing equipment meets safety standards adopted by the board and is thereby exempt from the requirements of ORS 479.610 and 479.760 and the rules adopted thereunder. These rules do not

alter or change any other code, permit or inspection requirements under the Oregon Electrical Safety Law or any other state building code.

(2) The authority having jurisdiction has no responsibility to perform inspections outside of supply side grounding, bonding, overcurrent protection and proper wiring methods to the line side of the equipment disconnect. The authority having jurisdiction shall treat the equipment of a semiconductor manufacturer or equipment manufacturer with an approved equipment safety plan in the same manner any certified or evaluated equipment is treated. Where questions on acceptability arise, they shall be directed to the State Chief Electrical Inspector. These rules do not prevent an inspector from ordering the disconnection of any electrical installation or product that constitutes an immediate hazard to life or property, such as exposed live parts during normal operation.

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

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0705

### Definitions

For the purposes of OAR 918-306-0700 to 918-306-0790, unless the context requires otherwise, the following definitions apply:

(1) "Approved", when referring to semiconductor industrial electrical manufacturing equipment covered by these rules, means the equipment is exempt from the requirements of ORS 479.610 and 479.760 through equipment evaluation processes approved by the board.

(2) "Equipment Safety Plan" means the plan submitted by a semiconductor equipment manufacturer or semiconductor manufacturing firm and approved by the board, that provides a process by which equipment used in the manufacture, process, design or development of semiconductor electronic devices meets the safety standards for semiconductor industrial electrical equipment adopted by the board.

(3) "Safety standards" means the standards for semiconductor industrial electrical manufacturing equipment adopted by the board.

(4) "Semiconductor industrial electrical manufacturing equipment", hereinafter referred to as "equipment", means specialized industrial electrical equipment used by a semiconductor manufacturing firm to manufacture semiconductor electronic devices, and includes the equipment components and sub-assemblies

(5) "Semiconductor manufacturing firm", hereinafter referred to as "firm", means a firm that manufactures semiconductor electronic components.

(6) "Registered or Registration" as pertaining to these rules is the process and/or approval of a semiconductor manufacturing firm's "program" by the board.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0710

### Semiconductor Manufacturing Firm Registration

(1) All firms seeking exemption under these rules from the requirements of ORS 479.610 and 479.760 for semiconductor manufacturing industrial electrical equipment, shall submit to the division an equipment safety plan.

(2) Firms that do not have an approved equipment safety plan shall have the affected equipment certified as required by ORS 479.610 and 479.760 and the rules adopted thereunder.

(3) Semiconductor manufacturing firms that have a currently approved semiconductor industrial electrical manufacturing equipment program as of the effective date of these rules shall be deemed to have an approved equipment safety plan for the purposes of the exemptions granted under OAR 918-306-0700 to 918-306-0790. Semiconductor manufacturing firms that do not have a currently approved semiconductor industrial electrical manufacturing equipment program as of the effective date of these rules must meet the requirements of these rules.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0715

### Application Requirements for Semiconductor Manufacturing Firm Registration

(1) Each application shall be submitted on division-supplied forms with a \$100 application fee. The applicant shall also pay a \$400 fee for the review and approval of the equipment safety plan.

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(2) Each application shall include the following:

(a) Applicant's name, address, telephone number, fax number and, if available, e-mail address;

(b) Names and titles of applicant's principals, officers, directors or other responsible agents;

(c) Names and titles of appropriate managers and supervisors of the equipment safety plan; and

(d) An equipment safety plan manual describing the manufacturer's equipment safety plan as defined in these rules.

(3) Following receipt of an application, the division shall either accept or deny the application and the equipment safety plan manual and forward to the board for approval. Equipment safety plan manuals that have been denied may be revised and resubmitted to the division with a \$100 resubmission fee.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0720

### Requirements for Semiconductor Electrical Industrial Manufacturing Equipment Program Manuals

The proposed equipment safety plan manual submitted with an application pursuant to OAR 918-306-0715 shall outline the firm's semiconductor electrical industrial manufacturing equipment verification process to be followed at all of the firm's facilities in Oregon. If the plan is different at different facilities, the equipment safety plan manual shall describe the plan specific to each facility. The manual and appropriate records regarding the administration of the plan shall be available for review by the division upon request at the place of record as indicated within the plan manual. The equipment safety plan manual shall be submitted in duplicate and contain:

(1) The scope of work performed by the firm at the facilities included in the plan;

(2) A general description of the organizational structure of the firm with regard to the equipment safety plan showing appropriate contact personnel including a listing of the appropriate process control personnel by position and level of authority and their telephone number, fax number and, if available, e-mail address;

(3) A listing of the firm's contact numbers with regard to the equipment safety plan including address, telephone number, fax number and, if available, e-mail address for each facility at which the equipment safety plan manual will be used;

(4) A description of the evaluation procedures to be used by the firm to ensure the equipment meets the safety standards and otherwise satisfies the requirements of these rules; and

(5) Identities, qualifications and authority of firm personnel who will have responsibility for administering the equipment safety plan.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0730

### Requirements to Update Semiconductor Electrical Industrial Manufacturing Equipment Program Manual

Each registered firm shall submit to the division supplement(s) to its equipment safety plan manual prior to any change in process or items described in these rules along with a \$100 review fee. All changes in process shall be approved by the division prior to being implemented.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0740

### Responsibilities of the Approved Semiconductor Manufacturing Firm

Registered firms shall ensure the process outlined in their approved equipment safety plan manual is followed at all times when purchasing, installing or altering semiconductor industrial electrical manufacturing equipment. This includes, but is not limited to:

(1) Ensuring all participating equipment is either;

(a) Part of an approved equipment safety plan;

(b) Clearly labeled by an Oregon-approved testing laboratory; or

(c) Evaluated by an Oregon-approved field evaluation firm;

(2) Maintaining adequate inspection reports and other records that clearly demonstrate the plan is followed; and

(3) Notifying the inspecting jurisdiction in writing that the firm has an approved equipment safety plan.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0760

### Registered Semiconductor Manufacturing Firm Monitoring

(1) Semiconductor manufacturing firms shall be reviewed by the division annually to verify the equipment safety plan meets the requirements of these rules. Monitoring shall include a review of the records and procedures of the approved plan. Monitoring may also include reviewing participating equipment at any reasonable time, provided prior notice is given to the firm.

(2) Division monitoring may occur at the firm's place of business, at the location where the firm's records regarding the plan are maintained, at the facility where approved equipment under the plan is located, or at another appropriate building or site.

(3) The division shall annually review and monitor the records and performance of each registered firm to assure conformance with these rules. The division may conduct partial or complete reviews at more frequent intervals if the division determines they are necessary. Reports of all reviews conducted shall be provided to the board.

(4) A registered firm shall make available to the division, upon request, all requested documents in their possession including, but not limited to:

(a) Copy of the approved equipment safety plan;

(b) Incident records and reports pertaining to the equipment approved under these rules; and

(c) Documentation demonstrating an approved equipment safety plan.

(5) Records relating to the manufacturing equipment labeled under a firm's program shall be maintained for a minimum of five years after the operation and life of the equipment by the firm.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0770

### Investigation and Enforcement Fee

For the purposes of administering and enforcing these rules, the division may charge a fee of \$86 per hour when monitoring, reviewing, investigating or conducting analyses necessary to ensure compliance with the approved equipment safety plan or any provision of these rules.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

## 918-306-0780

### Enforcement

In addition to the civil penalties that may be assessed under OAR 918-307-0000, the division may suspend, revoke or require remedial action of an approved equipment safety plan for any violation of these rules.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03)

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**Adm. Order No.:** BCD 12-2003(Temp)

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**Rules Amended:** 918-251-0090, 918-261-0020, 918-306-0510

**Rules Suspended:** 918-306-0000, 918-306-0010, 918-306-0100, 918-306-0110, 918-306-0120, 918-306-0130, 918-306-0140, 918-306-0150, 918-306-0160, 918-306-0170, 918-306-0200, 918-306-0210, 918-306-0220, 918-306-0230, 918-306-0300, 918-306-0310, 918-306-0320, 918-306-0330, 918-306-0500, 918-306-0600, 918-306-0610, 918-306-0700, 918-306-0705, 918-306-0710, 918-306-0715, 918-306-0720, 918-306-0730, 918-306-0740, 918-306-0760, 918-306-0770, 918-306-0780

**Subject:** Suspend rule requirements for semiconductor electrical industrial manufacturing equipment approval

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

# ADMINISTRATIVE RULES

918-251-0090

## Definitions

For purposes of OAR chapter 918, divisions 251 through 311, unless otherwise specified, the following shall apply:

(1) "Appliance" as applied to the limited maintenance specialty contractor license established by ORS 479.630, means any built-in or permanently-connected electrical utilization equipment, not including lighting fixtures, other than industrial, that is installed or connected as a unit to perform one or more functions such as clothes washing, air conditioning, food mixing, deep frying, etc.

(2) "Balance of system" as it relates to renewable electrical energy systems are those products, equipment and systems for the conversion, control and storage of electrical energy.

(3) "Board" means Electrical and Elevator Board.

(4) "Building" means a structure that stands alone or that is isolated from adjoining structures by area separation walls as identified in **Section 504.6** of the **Oregon Structural Specialty Code** adopted in OAR chapter 918, division 460, with all openings therein protected by approved fire doors as required.

(5) "Continuously Employ" means a person, including a person leased from a worker leasing company licensed under ORS 656.850, during time periods when electrical work for which they are responsible is performed, devotes their entire time of employment to tasks of supervising, designing, laying out, planning, controlling and making electrical installations for the electrical contractor for which the supervisor is registered as signing supervisor.

(6) "Custom Made" means electrical products that are designed for a specific purpose and location.

(7) "Document" means prepare records itemizing what was checked, why it was checked, when it was done, how it was checked, what was determined and who did the work.

(8) "Electrical Specialty Code" means the **National Electrical Code** with Oregon amendments.

(9) "Electrical Specialty Code Inspector," formerly referred to as "A-Level Electrical Inspector," is a person certified to inspect under the **Electrical Specialty Code**.

(10) "Energy generation", as it relates to renewable electrical energy generation equipment, are those products, equipment and systems in renewable electrical energy systems that produce or convert electrical energy.

(11) "Engineer" is an individual who has completed a minimum four-year degree program in electrical engineering or electrical technology with power specialty, from an accredited college or university and has received a Bachelor of Science degree.

(12) "Immediate Family" of an owner is the owner's father, mother, brother, sister, son, daughter, son-in-law, daughter-in-law, grandson, granddaughter, grandfather, grandmother, step-mother, step-father, step-son, step-daughter, brother-in-law or sister-in-law.

(13) "Indorsement" is a designation within the restricted energy electrical area showing qualifications and training regarding a product area. It determines the scope of restricted energy electrical activity authorized under a restricted energy electrical license.

(14) "Industrial Electronic Equipment" means a device, appliance, motor, or machine regulated, operated, or controlled through fiber optics or by a combination of electron tubes, capacitors, resistors, impedance transformer, and relays; the control circuit, and/or the power circuits having electrons flowing through a vacuum, metallic vapor, gas tubes, or transistors as used in an industrial plant.

(15) "Industrial Plant", for purposes of licensing and electrical master permit inspection program means an establishment engaged in industrial production, or service, or a school, hospital, sewer plant, water plant, commercial office building, building occupied by the state or a local government entity, or an institution. For purposes of the elevator program, "industrial plant" does not include a school, hospital, commercial office building, building occupied by the state or a local government entity, or an institution where the elevators are accessible to and used by persons other than the employees of that building.

(16) "Installation" includes external and field wiring, service contracts or warranties by the seller or manufacturer concerning the longevity of the equipment or parts after the original installation. It does not include "start-up" activities where new equipment is placed in service, and that type of work related to delivering and setting in place a piece of machinery.

(17) "Inverter", as it relates to renewable electrical energy generation equipment, is a product, equipment or system that converts direct current into alternating current.

(18) "Jurisdictional Inspector" is a state or municipal inspector having inspection responsibility within their jurisdiction over electrical products or their installation, or both.

(19) "Labeled" means a label, symbol or other identifying mark of an approved laboratory, field evaluation firm or the division is attached to an electrical product manufactured according to approved standards and tested or evaluated for specific end uses or both.

(20) "Lighting Fixture" is a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamp to the power supply.

(21) "Limited Energy System" means those systems that include Class 1, Class 2 or Class 3 systems as defined by **Section 725.2** of **NFPA 70 (National Electrical Code)** and audio systems, communication systems and power-limited fire alarm systems, covered in the **Oregon Electrical Specialty Code**.

(22) "Maintain" means to preserve electrical equipment in a good sound condition.

(23) "Maintenance". Compare with repair, replacement, and maintain for definition.

(24) "NEMA" means the National Electrical Manufacturers Association.

(25) "Off grid system" is a stand-alone system, connected to a structure, whose electrical systems are not connected to a utility-supplied electrical production and distribution network.

(26) "On grid system" is an electrical power system connected to a structure whose electrical systems are also connected to a utility-supplied electrical production and distribution network.

(27) "Plug-in Replacement" is a part, component or assembly designed to be inserted directly into a mating receptacle or socket such as printed circuit boards, control relays, control harnesses or other equipment connected by a cord or cable and plug assembly. A plug-in replacement does not have any field wiring that is connected to the plug-in part or assembly.

(28) "Power Circuitry" means that portion of the system, other than control, that provides electrical power to utilization equipment.

(29) "Production Type Testing" means the nondestructive type testing specified by the product standard that a manufacturer shall complete on all of its electrical products prior to release from the factory for sale.

(30) "Registered Professional Electrical Engineer" is an individual licensed by the State of Oregon Board of Engineering Examiners as a professional electrical engineer under OAR chapter 820, division 10.

(31) "Recognized Component" means a part or subassembly that was tested and evaluated by a testing laboratory only for the purposes of meeting the requirements for assembly into another product which is then certified as a complete assembly.

(32) "Renewable Electrical Energy System" as it relates to electrical energy generation, is the total components and subsystems that, in combination, convert wind energy, solar energy, micro-hydroelectricity, photovoltaic energy or fuel cell energy into electrical energy suitable for connection to a utilization load.

(33) "Repair" means to restore worn or damaged parts to a good, sound condition by means other than replacement.

(34) "Replacement" means substitution of complete units of damaged or worn equipment with similar new or used equipment of a size and rating that does not exceed the design capacity of the existing product.

(35) "Signing Supervising Electrician" or "Signing Supervisor" is a licensed supervising electrician who has been authorized by the electrical contractor to sign permits.

(36) "Similar Equipment," as applied to the limited maintenance specialty contractor license established by ORS 479.630(12), means components of light fixtures other than ballasts.

(37) "Stand-alone system" is a renewable electrical energy system that supplies power independently of an electrical production and distribution network.

(38) "Up to the load side of the inverter", as it relates to electrical energy generation equipment, is the renewable electrical energy system equipment up to the alternating current connection terminals of the inverter.

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

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.730

Hist.: DC 10, f. 4-13-72, ef. 5-1-72; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; Renumbered from 814-022-0105; BCA 44-1991, f. & cert. ef. 12-26-91; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0005; BCD 4-1999, f. & cert. ef. 4-1-99; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-2000; BCD 5-2001, f. 6-7-01, cert. ef. 7-1-01; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 23-

# ADMINISTRATIVE RULES

2002, f. 9-13-02 cert. ef. 10-1-02; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-261-0020

### Exemption for HVAC/R Electrical Components

(1) Definitions. For the purposes of this rule, a “component” is an electrical part installed inside, or as part of, an appliance where the part is approved by and meets the design specifications of the manufacturer of the appliance. An appliance is not a “component.”

(2) An exemption from permits and listing requirements is created under ORS 479.540 for the following components repaired, maintained or replaced by a licensed general electrical contractor with a supervising electrician, properly licensed personnel or a limited maintenance specialty contractor HVAC/R:

- (a) Electrical motor;
- (b) Compressor;
- (c) Capacitor;
- (d) Relay;
- (e) Wiring;
- (f) Ignition transformer;
- (g) Low voltage transformer;
- (h) Fan or motor control;
- (i) Sequencer;
- (j) Pressure switch;
- (k) Limit switch;
- (l) Air switch;
- (m) Air cleaner;
- (n) Humidifier;
- (o) Reversing valve;
- (p) Timer;
- (q) Defrost heater;
- (r) Stack switch;
- (s) Gas valves;
- (t) An external thermostat operating at less than 100 va;
- (u) Electric water heating element; and
- (v) Other control devices within the appliance in residential, commercial or industrial service.

(3) An exemption from permits and listing requirements is created under ORS 479.540 for the following components repaired, maintained or replaced by a limited maintenance specialty contractor:

- (a) Electrical motor;
- (b) Compressor;
- (c) Capacitor;
- (d) Relay;
- (e) Wiring;
- (f) Ignition transformer;
- (g) Low voltage transformer;
- (h) Fan or motor control;
- (i) Sequencer;
- (j) Pressure switch;
- (k) Limit switch;
- (l) Air switch;
- (m) Air cleaner;
- (n) Humidifier;
- (o) Reversing valve;
- (p) timer;
- (q) Defrost heater;
- (r) Stack switch;
- (s) Gas valves;
- (t) Electric water heating element; and
- (u) Other control devices within the appliance only of the size and type typically located in a one- or two-family residence.

Stat. Auth.: ORS 479.540(l), ORS 479.550 & ORS 479.730(5)

Stats. Implemented: ORS 479.540

Hist.: BCA 8-1992(Temp), f. 4-29-92, cert. ef. 7-1-92; BCA 17-1992, f. & cert. ef. 9-1-92; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0130; BCD 4-1999, f. & cert. ef. 4-1-99; BCD 14-1999, f. & cert. ef. 10-1-99; BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0000

### Scope and Authority for Rule

(1) The rules in OAR 918-306-0000 to 918-306-0530 deal with the different ways to qualify an electrical product for sale, disposal and installation in Oregon.

(2) Authority for rules.

- (a) ORS 479.540 authorizes partial and complete product exemptions;
- (b) ORS 479.610 requires products for sale in Oregon to be certified;

(c) ORS 479.730 authorizes creation of procedures for product certifications, administration and enforcement and field evaluation of electrical products; and

(d) ORS 479.760 authorizes creation of procedures for approving testing laboratories and for limiting special deputy certifications.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.540, ORS 479.610, ORS 479.730 & ORS 479.760

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0010

### Overview

ORS 479.610 establishes certification requirements for electrical products.

(1) The certification process generally involves testing or evaluation of the product. This is done through:

(a) Laboratory Testing and Certification:

(A) A manufacturer submits its product to a laboratory for testing and listing. The laboratory tests the product to established product standards or protocols in the absence of established standards. Upon meeting standards, it places the product on its tested list and authorizes the manufacturer to attach a label on future production.

(B) Use of the label requires production to continually meet product specifications and manufacturing requirements. The laboratory periodically visits and verifies the manufacturing process still meets the listing and labeling criteria.

(C) The laboratory itself shall be approved by Oregon under ORS 479.760. In addition to approval, periodic inspections of the laboratory are made to determine whether it continues to follow approved procedures.

(D) The product standards and protocols used for laboratory testing shall meet standards approved by the board.

(b) Special Deputy Evaluation and Certification. A product can be submitted to the division for certification under ORS 479.760:

(A) If the product is accepted for special deputy inspection, a division inspector examines the product and its components; reviews the assembly of labeled, listed, recognized and uncertified components; reviews product standards and code compliance; requires testing if required by the application standards; and makes safety evaluations. The division attaches a certification label on the product or authorizes the placement of a certification label.

(B) If the products are accepted for special deputy certification, the division also does limited special deputy certification for production line products. It examines the product and the quality control documents for production. It authorizes attachment of labels to future production. Periodic visitations are made to the manufacturing site by the special deputy. Certification is conditioned on future production continuing to meet product specifications and manufacturing requirements.

(C) The division limits the products it accepts for special deputy certification under ORS 479.760. The special deputy procedures, rules and limitations are in OAR 918-306-0510 to 918-306-0530.

(2) Exemptions. Some products are exempt from certification or can be exempted:

(a) Statutory Exemptions. Statutory exemptions from product certification are in ORS 479.540. A special feature of products exempted by statute is that the product shall still meet **Electrical Specialty Code** requirements. The inspecting jurisdiction shall examine the installation of equipment. ORS 479.540 authorizes the board to reverse the exemption and require certification if it finds a safety hazard in use.

(b) Exemptions by Rule. The authority of the board to create partial or complete product exemptions, as well as licensing exemptions, for installing the product is in ORS 479.540. Exemptions created by rule are in OAR chapter 918, division 261.

(3) Field Evaluation of Products. Field evaluation involves inspection of the product and its components, review of labeled, listed or uncertified components, review for conformance to product standards, code compliance and safety evaluation. It could also involve testing procedures of components or the complete assembly. This is a process similar to special deputy inspection and installation safety inspection of statutorily exempt products, except each separate product is reviewed and no testing by the jurisdictional inspector is involved:

(a) Field evaluation firms provide most of these services:

(A) At the equipment manufacturing facility prior to shipment;

(B) During installation of exempt products where special circumstances exist; or

(C) During site or use specific installation.



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(b) Approval of field evaluation firms is covered in OAR 918-306-0340 to 918-306-0410.

(4) Local Jurisdictional Inspection. Local jurisdictions shall complete inspections of exempt industrial electrical equipment per OAR 918-306-0600 to 918-306-0610.

(5) Revocation of Certification. ORS 479.430 authorizes rules for decertification of products.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0100

### Requests for Approval of Testing Laboratories

(1) Applications for testing laboratory accreditation shall include an undertaking by the testing laboratory to be bound by all requirements in the certification rules.

(2) Application Evaluation. The division shall make an initial review to insure completeness and adequacy of the application.

(3) On-site Laboratory Evaluation. The on-site laboratory evaluation shall be completed by one of the following methods:

(a) Completion by State. Technically qualified board-approved representative or representatives will provide on-site verification that the laboratory meets approval criteria. The representative or representatives shall make recommendations to the board for approval of the laboratory. The cost shall be borne by the applicant.

(b) On-site Evaluation Waiver. The division may waive the on-site evaluation for a testing laboratory that is recognized under the federal Occupational Safety and Health Administration (OSHA), Nationally Recognized Testing Laboratories (NRTL) program. This waiver shall be only for product categories or standards that hold NRTL recognition. The state is still the approval authority and retains the right to conduct on-site evaluations if deemed necessary. The NRTL shall demonstrate that all the requirements under the Oregon administrative rules are met in their program.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.760

Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0060; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0110

### General Requirements

Accreditation of testing laboratories requires:

(1) The testing laboratory to meet Oregon accreditation standards in OAR 918-306-0120 for each of its certification programs for which it seeks accreditation and be approved according to OAR 918-306-0100; and

(2) Examination and continued approval of the testing laboratory under OAR 918-306-0220.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.760

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0120

### Laboratory Organization

The laboratory shall:

(1) Be an independent, third-party testing and inspection company with no direct or indirect affiliation with manufacturers, suppliers or vendors of the products it certifies under this rule;

(2) Not engage in the promotion or design of the product being evaluated, tested or certified; and

(3) Have sufficient diversity of clients or activity and financial net worth, so loss or award of a certification contract would not be a material factor in the financial well-being of the laboratory.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.760

Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0015; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0130

### Laboratory Professional and Ethical Business Practices

The laboratory shall be operated in accordance with generally accepted professional and ethical business practices and shall:

(1) Perform the examinations, tests, evaluations and inspections required under the certification programs in accordance with the designated standards and procedures;

(2) Assure that reported values accurately reflect measured data;

(3) Limit its work to that for which it has the competence and capacity to fulfill;

(4) Provide in its agreement with the client that it shall be free to publicize information concerning safety hazards and failures to meet certification and listing standards and to provide information requested by regulatory agencies;

(5) Maintain a consumer complaint file dealing with written complaints and resolve complaints contesting test results and certifications fairly and promptly;

(6) Be able to perform all examinations, tests, evaluations and inspections for certification of products for which it is approved, according to the latest effective version of applicable safety standards and require all certified products produced after the effective date comply with such standards; and

(7) Maintain an independent relationship between its clients, affiliates or other organizations, so that the laboratory is able to issue test reports and certifications objectively and without bias.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.760

Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0020; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0140

### Quality Control System

The laboratory shall:

(1) Maintain a quality control system to assure accuracy and technical integrity;

(2) Have a quality control manual or a laboratory operations control manual with written procedures, references and information covering certification of each product for which accreditation is sought. The contents must be adequate to guide a testing technician or inspector through the required tests and inspection; and

(3) Keep an updated copy of applicable manuals at the work site for use by laboratory personnel and make manuals available to the division for review and audit.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.760

Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0025; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0150

### Laboratory Personnel

(1) Laboratory personnel shall be competent to perform the tests, examinations, reevaluations and inspections for certification program of each product for which accreditation is sought.

(2) Staff competency shall be verified at least annually by observations or examinations. This shall be conducted by qualified persons selected by the manager having technical responsibility for the laboratory operations.

(3) A training program for assuring new or untrained staff will be able to perform tests and inspections properly and uniformly to the requisite degree of precision and accuracy shall be maintained.

(4) The laboratory shall maintain records, including dates of training, observation or examination of personnel performance.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.760

Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0030; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0160

### Electrical Product Certification

The laboratory shall calibrate, verify and maintain its facilities and equipment used for each test method for products for which accreditation is sought. It shall maintain:

(1) A description of the procedures used in calibrating, verifying and maintaining the test equipment and facilities, including as applicable:

(a) Calibration and verification equipment or services used;

(b) Reference standards and materials used;

(c) Measurement assurance, corroborative references, or other programs in which the laboratory participates;

(d) Specified maintenance practices.

(2) Calibration and verification records, including as applicable:

(a) Equipment description or name;

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- (b) Name of manufacturer;
  - (c) Model, style and serial number, or other identification;
  - (d) Equipment variables subject to calibration and verification;
  - (e) Statement of the instrument's allowable error and tolerances of readings;
  - (f) Calibration and verification schedules (intervals);
  - (g) Dates and results of last calibrations including "as received" results, or verifications and schedule of future calibrations or verifications;
  - (h) Name of laboratory person or outside contractor providing the calibrations or verification service;
  - (i) Traceability to National Institute of Standards and Technology or other standard reference authority as required.
- Stat. Auth.: ORS 479.730  
Stats. Implemented: ORS 479.760  
Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0035; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0170

### Records

- (1) The laboratory shall maintain records and prepare reports of tests, inspections and certification activities associated with each product for which approval is sought. The laboratory shall make available to the division, upon request, a typical completed test or inspection report with the name of the client and source of any product deleted.
  - (2) Test and inspection reports shall be retained for at least three years and contain as applicable:
    - (a) Name and address of the laboratory;
    - (b) Pertinent dates and identification of tests or inspections;
    - (c) Name of client;
    - (d) Description and identification of the sample including, as necessary, where and how the sample was selected;
    - (e) An appropriate title;
    - (f) Identification of the test, inspection or procedure as specified for the certification program;
    - (g) Known deviations, additions to, or exclusions from testing, inspection and certification activities to be appropriate to new or innovative products not contemplated by the standard;
    - (h) Measurements, examinations, derived results and identification of test anomalies;
    - (i) A statement whether or not the results comply with the requirements of the standard;
    - (j) Signature of person(s) having responsibility for the report;
    - (k) Data generated during testing if not included in the test report, such as raw data, calculations, tables, graphs, sketches and photographs;
    - (l) Sample control forms documenting the receipt, handling, storage, shipping and testing of samples or a written description of the procedures and separate records that are maintained to control these operations;
    - (m) Copies of applicable standards and other documents referred to or used in performing each test or inspection for product certification for which approval is sought;
    - (n) Records of its quality control checks and audits for monitoring its test work associated with its certification programs, including records of products assurance (follow-up) test results and records of detected errors and discrepancies and actions taken subsequent to such detection;
    - (o) Written complaints and disposition.
- Stat. Auth.: ORS 479.730  
Stats. Implemented: ORS 479.760  
Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0045; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0200

### Product Certification Process

- A testing laboratory shall be approved only to certify those products, or product categories, identified in its application. The certification program shall contain procedures to ensure certified product complies with the standards (requirements) established by the program. To be considered, a testing laboratory shall undertake to be bound by the following:
- (1) Electrical Product Safety Standard Used. The standards used as the basis of the certification program shall be those adopted by the board in OAR 918-305-0100.
  - (2) If a testing laboratory desires to use a published standard other than one allowed in section (1) of this rule, it shall petition the board for approval of the standard.

(3) Components of Certified Products. Components of certified products shall be evaluated for compliance with standards applicable to such components or found to be suitable for use in the product as stated in the end product standards.

(4) Certification Agreement. Measures, such as the following, to provide for manufacturer compliance with the provisions of the product standard and laboratory control of the use of certification mark shall be embodied in an agreement between the manufacturer and the testing laboratory:

- (a) Require the manufacturer to provide such information and assistance as needed by the testing laboratory to conduct the necessary product conformity and production assurance evaluation;
- (b) Require the manufacturer to provide testing laboratory's representative access during working hours to the factory for inspection and audit activities without prior notice;
- (c) Restrict the manufacturer to application of certification marks only to products that comply with requirements of the product standard;
- (d) Secure the manufacturer's agreement to the publication of notice by testing laboratory where hazard is determined and the product is already available in the marketplace;
- (e) Require reevaluation of product as a condition of continued use of the certification mark whenever the standard covering a certain product is revised;
- (f) Provide for notification of the laboratory of the manufacturer's personnel responsible for and authorized to institute product recall in the case of a hazard;
- (g) Provide for control of certification marks (or labels) by the testing laboratory;
- (h) Require that the testing laboratory provide to the manufacturer a report of original product evaluation which documents by test results and other data when conformity with the applicable product standard is achieved;
- (i) Require the manufacturer to provide the identification of the manufacturer or vendor of the product, and, if the product is produced in more than one location, the place of manufacture of the product.

(5) Identification of Certified Products:

- (a) Certified products shall be labeled or marked with the certification mark of the approved testing laboratory;
- (b) The certification mark shall:
  - (A) Be owned by the testing laboratory and be registered as a certification mark with the U. S. Patent Office;
  - (B) Not be readily transferable from one product to another;
  - (C) Be directly applied to each unit of production in the form of labels or markings suitable for the environment and use of the product, except where the physical size of the unit does not permit, in which case markings may then be attached to the smallest package in which the unit is marketed;
  - (D) Include name or other appropriate identification of the testing laboratory;
  - (E) Include product category where such is not completely obvious.
- (6) Directory (List) of Certified Products. The testing laboratory shall publish annually a Products Directory to identify products that are authorized to bear the laboratory's certification mark (label). The Products Directory shall briefly describe the program, the products covered, the name of the manufacturer or vendor of the certified products, and the identification of the published standards or the compiled requirements on which the program is based, and shall be available to the public. Supplemental up-to-date information shall be publicly available at the office of the testing laboratory at any time during normal business hours.
- (7) Original Conformance (Engineering) Evaluation. Prior to authorizing the use of certification mark on a product, the testing laboratory shall:
  - (a) Determine by examination, tests or combination that representative samples of the product comply with the requirements (standard). Components of certified products shall also be required to comply with the safety standards (requirements) applicable to such components or found to be suitable for use as stated in the end product standard. Evaluation of the product design shall be made on representative production samples or on prototype product samples with subsequent verification that factory productions is the same as the prototype;
  - (b) Determine that the manufacturer has the necessary facilities, test equipment and control procedures to ensure that continuing production of the product complies with the requirements.
  - (8) When the testing laboratory completes all production tests and the certification marks are applied by laboratory personnel, the testing laboratory shall maintain the required records in lieu of the manufacturer.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.760

# ADMINISTRATIVE RULES

Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0050; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0210

### Product Assurance Activities

(1) General. Concurrent with and subsequent to authorizing the manufacturer to use the testing laboratory's certification mark, the testing laboratory shall establish a factory follow-up inspection program to determine continued compliance of certified products with the applicable standard.

(2) Follow-up Inspection Manual. The testing laboratory shall prepare and use an inspection manual prepared by the testing laboratory establishing the conditions governing the use of the certification mark on the products and shall include:

- (a) The identification of the products authorized for certification;
- (b) Identification of manufacturer and plant location at which manufacture and certification is authorized;
- (c) Description, specifications and requirements applicable to product;
- (d) Description of processes where needed for control purposes;
- (e) Description of manufacturer's quality assurance program when used as part of follow-up program;
- (f) Description of inspections and tests to be conducted by the manufacturer and the inspector;
- (g) Description of counter check tests to be conducted in laboratory; and

(h) The form and means of applying the certification mark.

(3) Follow-up Procedures and Activities. Follow-up procedures and activities shall include the following:

(a) Periodic unannounced inspection at the factory with testing at the factory or testing laboratory of representative samples selected from production and, if appropriate, from the market:

(b) Periodic auditing or surveillance of the manufacturer's quality assurance program through the witnessing of manufacturer's tests, review of the manufacturer's records and verification of the manufacturer's produced data;

- (c) Investigation of alleged field failures;
- (d) Procedures for control of the use of the certification mark by:
  - (A) Keeping records of the release and use of certification marks;
  - (B) Removal of marks from noncomplying products;
  - (C) Return or destruction of unused marks when the authority to use the marks is terminated; and
  - (D) Legal action.
- (e) Frequency of Follow-up. The frequency of follow-up inspections shall be sufficient to provide a reasonable check on the means that the manufacturer exercises to assure that the product bearing the certification complies with the applicable standards. The frequency shall not be less than four times per year during production, unless adequate data is provided to the board to justify less frequent inspections. If there is no production during the year, only one follow-up inspection shall be required.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.760

Hist.: DC 9-1980, f. & ef. 8-29-80; DC 10-1982, f. & ef. 3-1-82; DC 8-1984(Temp), f. & ef. 3-8-84; DC 22-1984, f. & ef. 5-15-84; Renumbered from 814-022-0160; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-330-0055; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0220

### Reexamination Schedule

(1) Testing laboratories shall be reexamined under the following schedule:

- (a) Laboratories initially approved shall be examined at the end of one year;
  - (b) Laboratories in good standing shall be examined every three years;
  - (c) Laboratories not in good standing shall be examined more frequently; and
  - (d) NRTL laboratories undergoing periodic audits by federal OSHA, typically annually, may have the periodic review by the state waived. The NRTL shall provide a letter to the chief electrical inspector within 30 days of audit completion, indicating that no deficiencies remain.
- (2) Laboratories examined shall be billed for actual expenses following the reexamination

Stat. Auth.: ORS 479.760

Stats. Implemented: ORS 479.760

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. cert. ef. 10-1-00; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0230

### Items to Be Covered on Reexamination

On reexamination, laboratories shall be examined for corrections required in prior examinations and to determine whether the laboratory continues to meet Oregon requirements.

Stat. Auth.: ORS 479.760

Stats. Implemented: ORS 479.760

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0300

### Authority

Field evaluation rules are authorized by ORS 479.730.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0310

### Products that Can Be Field Evaluated

(1) Except as provided in section (2) of this rule, all electrical products not exempted shall be certified as provided in ORS 479.760 under procedures adopted in OAR 918-306-0010.

(2) The following electrical products may be field evaluated according to the procedures in these rules by an approved field evaluation firm or special deputy:

(a) Unique or specialty electrical products provided:

(A) There are no more than two manufacturers of the product; and

(B) There is limited production of the products.

(b) Products listed by a nonapproved testing laboratory manufactured to standards equivalent to those adopted by the board;

(c) An unlisted product delivered to an Oregon purchaser who requested a product certified to electrical standards adopted by the board provided:

(A) The purchaser provides proof to the inspecting jurisdiction, if requested, that a listed certified product was sought or promised; and

(B) There are extenuating circumstances preventing the return of the product;

(d) A product used in a hazardous location as described in the **Electrical Specialty Code** which invalidates its exemption from certification under ORS 479.540;

(e) A product applied outside of the product classification or that is modified, invalidating its listing and certification;

(f) Mass-produced or commercially-produced products intended for certification listing with a testing laboratory provided a request for field evaluation is filed with the Chief Electrical Inspector, the request is approved by the division, each product is separately evaluated, and the following timelines are not exceeded:

(A) Up to three months for development and test marketing, provided the manufacturer provides proof of a bona fide intent to seek testing laboratory listing and certification; or

(B) Up to six months to allow testing laboratory approval for listing provided the manufacturer provides proof of an agreement for approval and testing and the qualification process is under way; and

(C) Up to an additional six months upon proof that additional time is necessary for the testing laboratory to complete testing and listing provided the delay is not caused by the manufacturer or person seeking certification.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0320

### Product Evaluation Procedures

The following minimum procedures shall be followed for field evaluation of electrical products. It is not the intent of these procedures that any inspection or testing would render the product unusable:

(1) Standards. Field evaluation shall be to:

(a) The approved product standard, including other standards referenced in that standard; or

(b) Any of the following as relevant, if there is no Oregon approved product standard:

(A) Parts of board-approved product standards researched and determined by the field evaluation firm as being applicable and documenting the specific standard references utilized; and

(B) **American National Standards Institute (ANSI)** standards adopted as of September 1, 2000, **NEMA** standards as of September 1,

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2000, and the **Oregon Electrical Specialty Code** as adopted in OAR chapter 918, division 305.

(2) The following protocols shall be followed for field evaluation:

(a) A visual inspection shall be made of all components to determine if the component is listed or recognized by a board-approved testing laboratory:

(A) A listed product shall be evaluated to determine whether it is applied within its product classification or whether there is modification invalidating the listing;

(B) A recognized component shall be evaluated to determine if its application meets the conditions of acceptability that are part of the recognition;

(C) Nonlisted or nonrecognized products should be replaced or tested to the approved component standard to determine acceptability for the specific application;

(D) Unmarked components shall require documentation to determine listing or recognition and shall be evaluated according to this section.

(b) When it is determined that the product meets the requirements in subsection (a) of this section and is acceptable for energizing, production type testing shall be performed including but not limited to:

(A) Dielectric withstand tests on main power circuits;

(B) Heat rise tests on the operating assembly; and

(C) Other nondestructive tests required by the approved product standard.

(c) Upon completion of each inspection or testing evolution, a technical report shall be prepared and issued;

(d) Where the equipment requires reassembly for installation at the final use site, the field evaluation label shall not be applied until the final assembly is complete;

(e) Upon final completion of the field evaluation and application of the field evaluation label, a final report shall be prepared and issued. The final report shall, as a minimum, cover:

(A) A summary of the work done, identifying the person asking for the field evaluation; the person completing the evaluations; date(s) of performance and completion of the evaluation; and summary of the results of evaluation and testing;

(B) Conditions of acceptability and restriction on use shall be included in the report;

(C) The standards used to perform the evaluation;

(D) Identification of the equipment evaluated, the manufacturer, model number, serial number and electrical ratings;

(E) The detailed procedures of the evaluation, inspection and tests;

(F) Results of tests and operation of the equipment, inspection and resolution of discrepancies found;

(G) Test and measurement equipment used in the evaluation and related calibration data; and

(H) Appendices with applicable drawings, schematics, test forms, photographs and other supporting documentation.

(I) In the final report the serial number(s) of the field evaluation label(s) shall be included with the equipment identification,

(e) Copies of all reports shall be provided to the:

(A) Person requesting the evaluation;

(B) Inspecting jurisdiction; and

(C) State Chief Electrical Inspector, unless waived.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0330

### Reviewing Compliance with Electrical Installation Safety Code

(1) Interpretation. As used in ORS 479.540, the "minimum electrical installation safety code" means the **Electrical Specialty Code**.

(2) A municipality may require a report from an approved field evaluation firm to determine whether a product meets the "minimum electrical installation safety code" only when:

(a) An inspection of the product shows one or more Electrical Specialty Code violations and replacement or corrective action is necessary to bring the product into compliance;

(b) The marking on the product, component or engineering specifications cannot be understood (such as when in a foreign language, or when there are no listing or recognized component markings from a board-approved testing laboratory on the product or its components); or

(c) When the jurisdictional authority requires verification the product is installed in compliance with the **Electrical Specialty Code**.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0500

### Limitations on Acceptance for Special Deputy Certification

(1) All electrical products requiring certification shall be certified through testing and listing by an approved testing laboratory, except the following which shall be accepted for special deputy certifications:

(a) Limited Oregon Sales. Up to three assemblies of an electrical product if:

(A) No more than three similar products exist;

(B) There are no more than two manufacturers of the same or similar product, and the person requesting certification does not intend to seek further special deputy certification of the product for sale in Oregon;

(C) Not more than three Oregon sales and special deputy certifications are requested over any two-year period, and the product is tested and listed by a testing laboratory that is not Oregon approved; or

(D) Except as provided in subsection (b) of this section, an Oregon purchaser in good faith requests an Oregon listed product, is provided a product that is not Oregon certified and there are exigent circumstances preventing a return and reorder;

(b)(A) For the purposes of section (1)(a) of this rule, "three similar products" includes custom assembled products intended for the same general purpose; and

(B) The exception in subsection (1)(a)(D) of this rule provided the Oregon purchaser verifies an Oregon certified product was requested or there was no waiver of the certification requirement and cooperates with the compliance section, if enforcement action is taken against the seller.

(c) Production Line Products. Mass-produced or commercially-produced products intended for eventual testing laboratory certification and listing shall be accepted for special deputy certification where it takes:

(A) Up to three months for development and test marketing, provided there is proof of a bona fide intent to seek testing laboratory listing and certification; or

(B) Up to six months to allow testing laboratory approval for listing upon proof a bona fide agreement for approval and testing was entered into and the process is under way.

(2) Extension up to six months shall be granted under subsection (1)(b) of this rule upon proof that additional time is necessary for the testing laboratory to complete testing and listing as long as the delay is not caused by the manufacturer or person seeking certification.

Stat. Auth.: ORS 479.760

Stats. Implemented: ORS 479.760

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0510

### Special Deputy Certification Procedures

When a product is accepted for special deputy certification under ORS 479.760:

(1) A division inspector determines if the product meets applicable minimum safety standards adopted by the board by:

(a) Examining the product and its components for compliance with applicable board-approved standards;

(b) Reviewing the assembly of labeled, listed, recognized or noncertified components for correct and applicable application, installation and circuit protection. Noncertified components are subject to the requirements of ORS 479.760; and

(c) Reviewing code compliance.

(2) A certification label is attached by the special deputy inspector on the product, or placement of a certification label is authorized.

(3) When production line products are accepted for special deputy certification, the special deputy examines the product to board-approved standards, follows the procedures in section (1) of this rule to determine if it meets minimum safety standards. Approval is conditioned on future production continuing to meet product specifications and manufacturing requirements.

Stat. Auth.: ORS 479.760

Stats. Implemented: ORS 479.760

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0600

### Industrial Electrical Equipment Inspection Procedures

(1) For the purpose of OAR 918-306-0600 and 918-306-0610, "power circuitry" is that portion of the system, other than control, that provides

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electrical power to utilization equipment. Utilization equipment is that equipment as defined in the Oregon Electrical Specialty Code.

(2) The inspection procedures, requests for inspection and notice of inspection results for industrial electrical equipment shall be the same as OAR 918-271-0000 through 918-271-0030.

(3) An examination shall be made to determine if the product is industrial electrical equipment qualifying for exemption under ORS 479.540.

(4) A visual inspection shall be made of components operating above 30 volts RMS, 42.2 volts peak or 60 volts dc, to determine if the components are listed or recognized by a board-approved testing laboratory.

(5) The grounding, overcurrent protection and wiring method of the power circuitry shall comply with all the applicable provisions of the Electrical Specialty Code.

(6) A recognized component in the power circuitry shall have a certificate of conformance or its equivalent to determine if its application conforms with the conditions that are part of the recognition.

(7) Unlisted or nonrecognized components shall be replaced, be tested or field evaluated to the approved component standard to determine acceptability for the specific application except for:

(a) Electrical raceways not used for grounding purposes, where not subject to physical damage, and where the conductors are not subject to excessive temperature and physical damage;

(b) Pilot duty devices such as push buttons, limit switches, relays or cord connectors that are used on control circuits supplied by:

(A) A listed or recognized Class 2 power supply; or

(B) A listed or recognized isolating source such that the maximum open circuit voltage potential available to the circuit is not more than 30 volts RMS, 42.2 volts peak or 60 volts dc and the power is limited to 240 va.

(c) Foreign-made unlisted conductors provided the owner, lessee, vendor, manufacturer, installer or approved evaluation firm submits a satisfactory high voltage potential and temperature test report of the conductor insulation based on UL standards for the conductors and for the application.

(8) Fuses and fuse holders in power circuits shall be listed by an Oregon-approved electrical testing laboratory.

Stat. Auth.: ORS 479.540, ORS 479.730 & ORS 479.760

Stat. Implemented: ORS 479.540, ORS 479.730 & ORS 479.760

Hist.: BCD 13-2000, f. 6-30-00, cert. ef. 7-1-00; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0610

### Industrial Electrical Equipment Inspection Permits

(1) The statewide standardized electrical permit application form shall be used for each piece of equipment subject to industrial electrical equipment inspection.

(2) An industrial electrical equipment inspection permit may be obtained by the owner, lessee, vendor or manufacturer of the equipment or by the general supervising electrician of the electrical contractor.

(3) Fees for an industrial electrical equipment inspection shall be charged at the hourly rates established by the authority having jurisdiction. The fee permitted by this section shall be charged only when the local inspector is performing the inspection provided under OAR 918-306-0600.

(4) Upon approval, the jurisdiction shall apply a label in the area of the machine nameplate indicating the equipment identification, date of approval, inspector's name and permit number.

(5) Industrial electrical equipment inspection permits shall not be required for equipment that:

(a) Is certified (listed) in accordance with OAR 918-306-0200;

(b) Has been previously field evaluated in accordance with OAR 918-306-0320; or

(c) Has been certified through special deputies in accordance with OAR 918-306-0510.

Stat. Auth.: ORS 479.540, ORS 479.730 & ORS 479.760

Stat. Implemented: ORS 479.540, ORS 479.730 & ORS 479.760

Hist.: BCD 13-2000, f. 6-30-00, cert. ef. 7-1-00; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0700

### Application, Scope and Purpose

(1) The purpose of OAR 918-306-0700 to 918-306-0790 is to enable Oregon semiconductor manufacturing firms and semiconductor equipment manufacturers to establish methods to verify that their semiconductor industrial electrical manufacturing equipment meets safety standards adopted by the board and is thereby exempt from the requirements of ORS 479.610 and 479.760 and the rules adopted thereunder. These rules do not alter or change any other code, permit or inspection requirements under the Oregon Electrical Safety Law or any other state building code.

(2) The authority having jurisdiction has no responsibility to perform inspections outside of supply side grounding, bonding, overcurrent protection and proper wiring methods to the line side of the equipment disconnect. The authority having jurisdiction shall treat the equipment of a semiconductor manufacturer or equipment manufacturer with an approved equipment safety plan in the same manner any certified or evaluated equipment is treated. Where questions on acceptability arise, they shall be directed to the State Chief Electrical Inspector. These rules do not prevent an inspector from ordering the disconnection of any electrical installation or product that constitutes an immediate hazard to life or property, such as exposed live parts during normal operation.

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

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0705

### Definitions

For the purposes of OAR 918-306-0700 to 918-306-0790, unless the context requires otherwise, the following definitions apply:

(1) "Approved", when referring to semiconductor industrial electrical manufacturing equipment covered by these rules, means the equipment is exempt from the requirements of ORS 479.610 and 479.760 through equipment evaluation processes approved by the board.

(2) "Equipment Safety Plan" means the plan submitted by a semiconductor equipment manufacturer or semiconductor manufacturing firm and approved by the board, that provides a process by which equipment used in the manufacture, process, design or development of semiconductor electronic devices meets the safety standards for semiconductor industrial electrical equipment adopted by the board.

(3) "Safety standards" means the standards for semiconductor industrial electrical manufacturing equipment adopted by the board.

(4) "Semiconductor industrial electrical manufacturing equipment", hereinafter referred to as "equipment", means specialized industrial electrical equipment used by a semiconductor manufacturing firm to manufacture semiconductor electronic devices, and includes the equipment components and sub-assemblies

(5) "Semiconductor manufacturing firm", hereinafter referred to as "firm", means a firm that manufactures semiconductor electronic components.

(6) "Registered or Registration" as pertaining to these rules is the process and/or approval of a semiconductor manufacturing firm's "program" by the board.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0710

### Semiconductor Manufacturing Firm Registration

(1) All firms seeking exemption under these rules from the requirements of ORS 479.610 and 479.760 for semiconductor manufacturing industrial electrical equipment, shall submit to the division an equipment safety plan.

(2) Firms that do not have an approved equipment safety plan shall have the affected equipment certified as required by ORS 479.610 and 479.760 and the rules adopted thereunder.

(3) Semiconductor manufacturing firms that have a currently approved semiconductor industrial electrical manufacturing equipment program as of the effective date of these rules shall be deemed to have an approved equipment safety plan for the purposes of the exemptions granted under OAR 918-306-0700 to 918-306-0790. Semiconductor manufacturing firms that do not have a currently approved semiconductor industrial electrical manufacturing equipment program as of the effective date of these rules must meet the requirements of these rules.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

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## 918-306-0715

### Application Requirements for Semiconductor Manufacturing Firm Registration

(1) Each application shall be submitted on division-supplied forms with a \$100 application fee. The applicant shall also pay a \$400 fee for the review and approval of the equipment safety plan.

(2) Each application shall include the following:

(a) Applicant's name, address, telephone number, fax number and, if available, e-mail address;

(b) Names and titles of applicant's principals, officers, directors or other responsible agents;

(c) Names and titles of appropriate managers and supervisors of the equipment safety plan; and

(d) An equipment safety plan manual describing the manufacturer's equipment safety plan as defined in these rules.

(3) Following receipt of an application, the division shall either accept or deny the application and the equipment safety plan manual and forward to the board for approval. Equipment safety plan manuals that have been denied may be revised and resubmitted to the division with a \$100 resubmission fee.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0720

### Requirements for Semiconductor Electrical Industrial Manufacturing Equipment Program Manuals

The proposed equipment safety plan manual submitted with an application pursuant to OAR 918-306-0715 shall outline the firm's semiconductor electrical industrial manufacturing equipment verification process to be followed at all of the firm's facilities in Oregon. If the plan is different at different facilities, the equipment safety plan manual shall describe the plan specific to each facility. The manual and appropriate records regarding the administration of the plan shall be available for review by the division upon request at the place of record as indicated within the plan manual. The equipment safety plan manual shall be submitted in duplicate and contain:

(1) The scope of work performed by the firm at the facilities included in the plan;

(2) A general description of the organizational structure of the firm with regard to the equipment safety plan showing appropriate contact personnel including a listing of the appropriate process control personnel by position and level of authority and their telephone number, fax number and, if available, e-mail address;

(3) A listing of the firm's contact numbers with regard to the equipment safety plan including address, telephone number, fax number and, if available, e-mail address for each facility at which the equipment safety plan manual will be used;

(4) A description of the evaluation procedures to be used by the firm to ensure the equipment meets the safety standards and otherwise satisfies the requirements of these rules; and

(5) Identities, qualifications and authority of firm personnel who will have responsibility for administering the equipment safety plan.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0730

### Requirements to Update Semiconductor Electrical Industrial Manufacturing Equipment Program Manual

Each registered firm shall submit to the division supplement(s) to its equipment safety plan manual prior to any change in process or items described in these rules along with a \$100 review fee. All changes in process shall be approved by the division prior to being implemented.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0740

### Responsibilities of the Approved Semiconductor Manufacturing Firm

Registered firms shall ensure the process outlined in their approved equipment safety plan manual is followed at all times when purchasing, installing or altering semiconductor industrial electrical manufacturing equipment. This includes, but is not limited to:

- (1) Ensuring all participating equipment is either:
  - (a) Part of an approved equipment safety plan;
  - (b) Clearly labeled by an Oregon-approved testing laboratory; or
  - (c) Evaluated by an Oregon-approved field evaluation firm;
- (2) Maintaining adequate inspection reports and other records that clearly demonstrate the plan is followed; and
- (3) Notifying the inspecting jurisdiction in writing that the firm has an approved equipment safety plan.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0760

### Registered Semiconductor Manufacturing Firm Monitoring

(1) Semiconductor manufacturing firms shall be reviewed by the division annually to verify the equipment safety plan meets the requirements of these rules. Monitoring shall include a review of the records and procedures of the approved plan. Monitoring may also include reviewing participating equipment at any reasonable time, provided prior notice is given to the firm.

(2) Division monitoring may occur at the firm's place of business, at the location where the firm's records regarding the plan are maintained, at the facility where approved equipment under the plan is located, or at another appropriate building or site.

(3) The division shall annually review and monitor the records and performance of each registered firm to assure conformance with these rules. The division may conduct partial or complete reviews at more frequent intervals if the division determines they are necessary. Reports of all reviews conducted shall be provided to the board.

(4) A registered firm shall make available to the division, upon request, all requested documents in their possession including, but not limited to:

- (a) Copy of the approved equipment safety plan;
  - (b) Incident records and reports pertaining to the equipment approved under these rules; and
  - (c) Documentation demonstrating an approved equipment safety plan.
- (5) Records relating to the manufacturing equipment labeled under a firm's program shall be maintained for a minimum of five years after the operation and life of the equipment by the firm.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0770

### Investigation and Enforcement Fee

For the purposes of administering and enforcing these rules, the division may charge a fee of \$86 per hour when monitoring, reviewing, investigating or conducting analyses necessary to ensure compliance with the approved equipment safety plan or any provision of these rules.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

## 918-306-0780

### Enforcement

In addition to the civil penalties that may be assessed under OAR 918-307-0000, the division may suspend, revoke or require remedial action of an approved equipment safety plan for any violation of these rules.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 11-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 8-2003(Temp), f. & cert. ef. 5-5-03 thru 10-31-03 (Suspended by BCD 11-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03); Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03

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**Rules Amended:** 918-225-0691

**Subject:** Clarifies deadline for obtaining continuing education.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

# ADMINISTRATIVE RULES

## 918-225-0691

### Boiler, Pressure Vessel and Pressure Piping Installation, Alteration or Repair Certification Requirements

Persons installing, altering or repairing boilers and pressure vessels shall be certified under these rules and may only work within the scope of their certification.

(1) Persons desiring to obtain certification under these rules shall:

- (a) Meet the qualifications for that certification;
- (b) Apply on a division form; and
- (c) Pay the appropriate fee.

(2) An applicant may request the Board of Boiler Rules to approve alternate verification of training and work experience on a case-by-case basis when required by the certifications in sections (5) through (10) of this rule.

(3) Definitions. For the purpose of this rule:

(a) "Direct Supervision" means the person supervised is in the physical presence of a qualified certified person at the job site and the person doing the supervision is directly assigned to monitor and direct the activities of the person supervised;

(b) "Qualified Certified Person" means a person who holds a Class 2, 3, 4, 5, 5-A or 5-B certification and is authorized to do the work involved without supervision;

(c) "Supervision" means the individual person assigned to perform supervision under section (10) of this rule is directly and specifically assigned to monitor and direct the activities of the person being supervised. Both the person performing supervision and those being supervised shall be prepared to identify each other.

(d) "Verifiable" means the matter asserted by an applicant for certification is corroborated by independent evidence or by the sworn statements of others with actual knowledge.

(4) Class 1 Trainee/Helper Certification. A person holding this certification may install, alter or repair boilers, pressure vessels and pressure piping providing the work is of a mechanical nature only. Work performed shall be under the direct supervision of a qualified certified person. Direct supervision must be on a ratio of one qualified certified person to one trainee/helper. No ASME Code welding is permitted. This certification has no fixed or limited duration. A person may be permanently certified under this category. There are no minimum qualifications required for applicants to obtain this certification.

(5) Class 2 Pressure Vessel Installer Certification. A person holding this certification may install or repair unfired pressure vessels by any non-welded method of attachment.

(a) There are no minimum qualifications required to obtain this certification. Applicants shall pass an examination testing the applicant's knowledge of the Boiler and Pressure Vessel Law, ORS 480.510 to 480.665; OAR chapter 918, division 225; and **American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Section VIII, Division 1, General Requirements.**

(b) Persons who install refrigeration process equipment assembled and sold as a modular unit by the manufacturer and who do not attach piping to a pressure vessel during the installation, are exempt from this rule. To qualify for this exemption, the attachment shall be made by any method other than fusion welding.

(6) Class 3 Building Service Mechanic Certification. A person holding this certification may install or repair boilers (including boiler and non-boiler external piping) and unfired pressure vessels by a non-welded method of attachment. Applicants shall:

(a) Have at least 2,000 hours of verifiable experience installing and repairing boilers;

(b) Pass an examination testing the applicants knowledge of:

(A) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665; OAR chapter 918, division 225; and the general requirements of the **American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Sections I, IV and VIII, and CSD-1;**

(B) The State of Oregon Boiler Safety Program Study Guide;

(C) Building Service Systems (Hydronics) for boilers and related appurtenances, **American Society of Mechanical Engineers/ASME B31.1 Power Piping and B31.9 Building Service Piping;** and

(D) Structural and mechanical blueprints with the ability to interpret specifications.

(7) Class 4 Boilermaker Certification. A person holding this certification may install, alter or repair boilers and pressure vessels (excluding non-boiler external piping) by welding or other methods of attachment. Applicants shall:

(a) Have 2,000 hours of verifiable experience doing welding and 2,000 hours of verifiable experience doing non-welding applications involving boilers or pressure vessels. The verification must cover welding and non-welding applications separately; and

(b) Pass an examination testing the applicant's knowledge of:

(A) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665; OAR chapter 918, division 225; and the general requirements of the **American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII and IX, CSD-1, B31.1 and B31.9;**

(B) General boilermaker skills and procedures;

(C) Blueprint reading, layout and shop mathematics;

(D) Interpreting plans and specifications covering installation, alteration, repair, fabrication and erection of boilers and pressure vessels;

(E) Welding process, metallurgy and other procedures particularly applicable to boilers and pressure vessels; and

(F) The State of Oregon Boiler Safety Program Study Guide.

(c) Class 4 Boilermakers may also perform the scope of work allowed under section (8) of these rules providing:

(A) Work may only be done under the supervision of a qualified certified person under section (8) of these rules; and

(B) Prior to any welding, the individual must qualify to supervisor's employer's welding procedures.

(8) Class 5 Pressure Piping Mechanic Certification. A person holding this certification may:

(a) Fabricate, install, alter and repair pressure piping;

(b) Install boilers and pressure vessels by attachment of piping connections; and

(c) Install, assemble and repair cast iron sectional boilers.

(A) Applicants shall have a minimum of 2,000 hours of verifiable experience performing pipe-welding on **ASME B31** pressure piping and 2,000 hours of verifiable experience performing work on pressure piping and boilers; and

(B) Pass an examination testing the applicant's knowledge of:

(i) **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Sections I and IV, CSD-1 and B31 Pressure Piping;**

(ii) Structural and mechanical blueprints with the ability to interpret specifications;

(iii) Pressure piping systems and controls;

(iv) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225;

(v) The State of Oregon Boiler Safety Program Study Guide; and

(vi) Welding and brazing processes, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(d) Class 5 Pressure Piping Mechanics may also perform the scope of work allowed under section (7) of these rules providing:

(A) Work may only be done under the supervision of a qualified certified person under section (7) of these rules; and

(B) Prior to any welding, the individual must qualify to supervisor's employer's welding procedures.

(9) Class 5-A Process Piping Mechanic Certification. A person holding this certification may fabricate, install, alter or repair **B31.3** process piping. Applicants shall:

(a) Have a minimum of 2,000 hours of verifiable experience performing pipe-welding or brazing on **B31.3** process piping and 2,000 hours of verifiable experience performing work on pressure piping; and

(b) Pass an examination testing the applicant's knowledge of:

(A) **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section B31.3;**

(B) Structural and mechanical blueprints with the ability to interpret specifications;

(C) Pressure piping controls;

(D) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225; and

(E) Welding, brazing, chemical bonding procedures, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(10) Class 5-B Refrigeration Piping Mechanic Certification. A person holding this certification may fabricate, install, alter or repair **B31.5** refrigeration piping. Applicants shall:

(a) Have a minimum of 2,000 hours of verifiable experience performing pipe-welding or brazing on **B31.5** refrigeration piping and 2,000 hours of verifiable experience performing work on pressure piping; and

(b) Pass an examination testing the applicant's knowledge of:

(A) **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section B31.5;**

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(B) Structural and mechanical blueprints with the ability to interpret specifications;

(C) Pressure piping controls;

(D) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225; and

(E) Welding, brazing, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(11) Class 6 Welder Certification. A person holding this certification may weld on boilers, pressure vessels or pressure piping while employed by an approved welding employer. Work may only be performed under the supervision of a person certified under sections (7) through (10) of this rule as applicable. More than one welder may be supervised by one appropriately qualified certified person under this certification.

(a) A Class 6 Welder may also perform the scope of work under section (4) of this rule providing the work performed is under the direct supervision of a qualified certified person under sections (5) through (10) of these rules.

(b) Applicants shall be qualified as a welder in accordance with the **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section IX, Part QW**. The employer shall attest in writing that the applicant is qualified under that code section and is currently qualified to that employer's welding procedures. This written statement is not transferable to another employer.

(12) Certifications may be renewed annually providing the person is in good standing and:

(a) Completes 8 hours of division-approved continuing education; and

(b) Pays renewal fee.

(13) Class 1 Trainee/Helpers and Class 6 Welders are exempt from the continuing education requirements.

(14) Individuals holding a Class 5 Pressure Piping Mechanic certification, who wish to maintain the Class 5 certification shall, by June 30, 2004:

(a) Complete 8 hours of division-approved continuing education per OAR 918-225-0900, specifically focused on **ASME Sections I and IV, Cast Iron Sectional Boilers, ASME B31.3 Process Piping and B31.5 Refrigeration Piping**; and

(b) Pay a renewal fee.

(15) Individuals holding a Class 3 Building Service Mechanic Certification, a Class 4 Boilermaker certification or a Class 5 Pressure Piping Mechanic certification shall, by June 30, 2005:

(a) Complete 8 hours of division-approved continuing education per OAR 918-225-0900, specifically focused on **ASME CSD-1**;

(b) Pay a renewal fee every year; and

(c) Meet any other requirements determined by rule.

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

Stat. Auth.: ORS 480.545 & 480.630

Stats. Implemented: ORS 480.630

Hist.: BCD 7-2003, f. 3-14-03, cert. ef. 7-1-03; BCD 13-2003, f. 6-26-03, cert. ef. 7-1-03

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

**Adm. Order No.:** ID 4-2003(Temp)

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 7-1-03 thru 12-19-03

**Notice Publication Date:**

**Rules Amended:** 836-009-0007, 836-071-0180

**Subject:** This temporary rulemaking adopts new examination fees that reflect the costs of the examination services for which the Director has contracted with a licensing vendor. The new contract takes effect July 1, 2003, and the current fee structure established in the rule needs to incorporate the fees agreed upon for the examination services under the new contract. The amendments to OAR 836-009-0007 and 836-071-0180 that were filed with the Secretary of State on June 26, 2002 and that took effect on July 1, 2002 need to be re-adopted because that rulemaking was not submitted to Legislative Counsel within the required period after the adopted rules were filed with the Secretary of State.

**Rules Coordinator:** Sue Munson—(503) 947-7272

### 836-009-0007

#### Fees

(1) The following fees apply to certificates of authority:

(a) The fee for application for a certificate of authority to transact insurance as an insurer is \$2,500. The fee for application as a domestic insurer must be paid when application for a permit to organize as a domestic insurer is made. Otherwise, the fee must be paid when the application for the certificate is made;

(b) The fee for annual continuation of a certificate of authority issued under subsection (a) of this section is \$1,500;

(c) The fee for reinstatement of a certificate of authority is \$100.

(2) The fees in this section apply to examinations for licenses for agents, adjusters and insurance consultants. The fees are as follows:

(a) Examination fees:

(A) Agent, property and casualty insurance — \$80;

(B) Agent, property insurance only — \$70;

(C) Agent, casualty insurance only — \$70;

(D) Agent, personal lines insurance — \$70;

(E) Agent, life and health insurance — \$80;

(F) Agent, life insurance only — \$70;

(G) Agent, health insurance only — \$70;

(H) Surplus lines agent — \$70;

(I) Adjuster, general lines insurance — \$80;

(J) Adjuster, health insurance — \$70;

(K) Adjuster, any other line designated by rule — \$70;

(L) Consultant, life and health insurance — \$80;

(M) Consultant, life insurance only — \$70;

(N) Consultant, health insurance only — \$70;

(O) Consultant, general lines insurance — \$80;

(P) Consultant, any other line designated by rule — \$70.

(b) Reexamination fees, to be charged when the applicant retakes an examination:

(A) Agent, property and casualty insurance — \$80;

(B) Agent, property insurance only — \$70;

(C) Agent, casualty insurance only — \$70;

(D) Agent, personal lines insurance — \$70;

(E) Agent, life and health insurance — \$80;

(F) Agent, life insurance only — \$70;

(G) Agent, health insurance only — \$70;

(H) Surplus lines agent — \$70;

(I) Adjuster, general lines insurance — \$80;

(J) Adjuster, health insurance — \$70;

(K) Adjuster, any other line designated by rule — \$70;

(L) Consultant, life and health insurance — \$80;

(M) Consultant, life insurance only — \$70;

(N) Consultant, health insurance only — \$70;

(O) Consultant, general lines insurance — \$80;

(P) Consultant, any other line designated by rule — \$70.

(c) The fee for failing to keep an examination appointment or for canceling an examination appointment, if cancellation is made after noon of the third working day before an examination appointment, is \$40. This fee is in addition to the fee for a subsequent examination.

(d) For purposes of the fees charged under subsections (a) and (b) of this section:

(A) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line; and

(B) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who holds a license that is endorsed to transact casualty insurance need not obtain a separate endorsement to transact personal lines insurance.

(3) The following fees apply to application for licenses for agents, adjusters and insurance consultants:

(a) Resident agent — \$30;

(b) Nonresident agent — \$30;

(c) Adjuster — \$30;

(d) Insurance consultant — \$30.

(4) The following fees apply to issuance of licenses for agents, adjusters and insurance consultants:

(a) Resident agent — \$45;

(b) Nonresident agent — \$45;

(c) Adjuster — \$45;

(d) Insurance consultant — \$45.

(5) The examination fee under section (2) of this rule must be paid to the examination vendor. The application fee under section (3) of this rule and the license issuance fee under section (4) of this rule must be paid at the same time. There is no refund of the application and examination fees. Refund of the license issuance fee is governed by section of this rule.



# ADMINISTRATIVE RULES

(6) The fees established in this section apply to the renewal of licenses for agents, adjusters and insurance consultants. A license shall expire on the last day of the month in which the second anniversary of the initial issuance date occurs, and on the second anniversary following each renewal thereafter. The fees are as follows:

- (a) Resident agent — \$45;
- (b) Nonresident agent — \$45;
- (c) Adjuster — \$45;
- (d) Insurance consultant — \$45.

(7) The applicable fee under sections (3) and (4) of this rule shall be paid for each category of insurance business appearing on a license.

(8) The following fees apply to certificates of registration for legal expense organizations:

- (a) Application for a certificate of registration — \$350;
- (b) Renewal of certificate of registration — \$350. The fee under this subsection shall be paid annually.

(9) Annual registration of a foreign risk retention group — \$350. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(10) Annual registration of a purchasing group — \$100. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(11) The license for a rating organization — \$180. The fee under this section shall be paid at the time of initial licensing and triennially thereafter.

(12) The fee for filing a statement by an acquiring party under ORS 732.521 for the purpose of acquiring a controlling interest in an insurer (a "Form A" filing as prescribed in OAR 836-027-0100) is \$50 per hour of Division staff time spent on reviewing the statement, with a minimum fee of \$5,000.

(13) The Fire Marshal shall pay \$50,000 each year for services provided by the Department in the collection of gross premium taxes on insurance covering the peril of fire under ORS 731.820.

(14) Fees paid as required under this rule are not refundable except as provided in this section. If the Director determines that an amount paid exceeds the amount legally due and payable to the Department and the amount of the overpayment is less than \$20, the Department shall refund the amount only upon receipt of a written request from the payer or the representative of the payer. A fee paid for a license under section (4) of this rule is refundable if the license applicant fails the examination or if the license is otherwise not issued to the applicant.

(15) The amendments to section (2)(a), (b) and (d) of this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002, are re-adopted with the operative date of July 1, 2002, and those same amendments to section (2)(a) and (b) of this rule are repealed effective July 1, 2003.

Stat. Auth.: ORS 293.445, ORS 731.244, ORS 731.804 & ORS 744.037  
Stats. Implemented: ORS 731.804, ORS 744.001, ORS 744.002, ORS 744.004, ORS 744.007, ORS 744.066, ORS 744.069, ORS 744.075, ORS 744.528, ORS 744.531, ORS 744.535, ORS 744.619 & ORS 744.621  
Hist.: ID 6-1989(Temp), f. & cert. ef. 7-3-89; ID 14-1989, f. 12-12-89, cert. ef. 1-1-90; ID 21-1990, f. & cert. ef. 12-18-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-1991, f. & cert. ef. 10-21-91; ID 7-1993, f. & cert. ef. 9-3-93; ID 16-1997, f. 11-25-97, cert. ef. 1-1-98; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 14-2000, f. 12-27-00, cert. ef. 1-1-01; ID 13-2001, f. 11-16-01, cert. ef. 1-1-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-19-03

## 836-071-0180

### Agent Pre-Examination Requirements

(1) An applicant for a license as an agent may take an examination for the license only if the applicant first qualifies for the examination by:

(a) Satisfying preexamination training requirements of section (2) of this rule and the training requirement of section (10) of this rule; or

(b) Satisfying the experience requirements of section (6) of this rule and the training requirement of section (10) of this rule.

(2) An applicant may qualify for the examination by taking preexamination training meeting the requirements of section (3) of this rule according to either of the following methods:

(a) Attendance at classroom lectures supervised and conducted by an instructor; or

(b) Attendance at the showing or playing of a previously videotaped or audiotaped lecture, if student check-in and check-out are supervised and a course instructor is present or available to answer student questions.

(3) Preexamination training shall consist of not less than:

(a) 20 hours in basic principles of property insurance, for authority to transact property insurance;

(b) 20 hours in basic principles of casualty insurance, for authority to transact casualty insurance;

(c) 20 hours in basic principles of personal lines insurance, for authority to transact personal lines insurance;

(d) 30 hours in basic principles of life insurance, for authority to transact life insurance; and

(e) 12 hours in basic principles of health insurance, for authority to transact health insurance.

(4) For the purposes of sections (2) and (3) of this rule:

(a) One hour of training shall consist of not less than 50 minutes of instruction.

(b) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line.

(c) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who obtains training for a license to transact casualty insurance need not obtain separate or additional training to transact personal lines insurance.

(5) An applicant may not satisfy the training requirements established in this rule by unsupervised training or by self-study.

(6) An applicant may satisfy experience requirements for the examination by either of the methods described in this section. As provided in section (7) of this rule, an applicant may substitute successful completion of coursework to obtain an industry recognized designation for all or part of the experience requirements. The methods for satisfying experience requirements are as follows:

(a) Obtaining and showing proof of three years of verifiable experience as an unlicensed person performing the duties and activities described in OAR 836-071-0280(1) or (2) in the class or classes of insurance for which application is made, but only if any part of the experience has occurred within two years of the date of application for the agent license in this state; and

(b) Obtaining and showing proof of three years of licensure as a resident agent or insurance broker in another state, a province of Canada or Mexico:

(A) If the applicant has been so licensed within two years of the date of application for the agent license in this state; and

(B) If the applicant is not otherwise exempt from taking the examination under ORS 744.067.

(7) An applicant may substitute successful completion of coursework required for obtaining an industry-recognized designation described in this section for all or a part of the number of years of experience required under section (6) of this rule in the class or classes of insurance for which application was made. The following are the designations, the amount of experience for which the coursework may be substituted and the class or classes of insurance to which the coursework may apply:

(a) Accredited Advisor in Insurance (AAI) designation of the American Institute of Property and Liability Underwriters, Inc.: Three years' experience credit/general lines;

(b) Accredited Customer Service Representative (ACSR) designation of the Independent Insurance Agents Association: Two years' experience credit/general lines;

(c) Associate in Risk Management (ARM) designation of the American Institute of Property and Liability Underwriters, Inc.: Three years' experience credit/general lines;

(d) Certified Insurance Counselor (CIC) designation of the Society of Certified Insurance Counselors: Three years' experience credit/general lines;

(e) Certified Professional Service Representative (CPSR) designation of the Professional Insurance Agents Association: Two years' experience credit/general lines;

(f) Registered Health Underwriter (RHU) designation of the National Association of Health Underwriters in partnership with Northeastern University: Three years' experience credit/health;

(g) Any registered program that fulfills the educational requirement leading to the CFP/Certified Financial Planner certification awarded by the Certified Financial Planner Board of Standards, Inc.: Three years' experience credit/life lines;

(h) Life Underwriters Training Council (LUTCF) designation of the Life Underwriters Training Council: Three years' experience credit/life and health lines;

(i) Chartered Financial Consultant (ChFC) designation of the American College of Life Underwriter: Three years' experience life and health lines;

(j) Fellow Life Manager Institute (FLMI) designation: Three years' experience life and health lines;

# ADMINISTRATIVE RULES

(k) Certified Professional Insurance Women (CPIW) designation: Two years' property and casualty lines; and

(l) An industry designation determined by the Director, by virtue of the coursework, to provide experience at least comparable to experience obtained by coursework for an industry designation specifically referred to in this section.

(8) Pretraining experience claimed under section (6) of this rule is verifiable only if:

(a) The applicant's employer submits to the Division a completed Division Qualification Form that includes a description of all the pretraining experience claimed by the applicant; and

(b) The Division is able to contact the employer to verify the information contained in the Qualification Form.

(9) Proof of completion of a training course for an industry designation under section (7) of this rule must be evidenced by a certificate of completion or notice of a passing examination score by the organization sponsoring the training.

(10) Each applicant for a license as an agent must obtain not less than eight hours of training in the Oregon Insurance Code and administrative rules.

(11) The amendments to this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002 are re-adopted with the operative date of July 1, 2002.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 744.058, ORS 744.064 & ORS 744.067

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 6-1994, f. & cert. ef. 5-20-94; ID 9-2002, f. & cert. ef. 3-18-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-19-03

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## Department of Consumer and Business Services, Workers' Compensation Board Chapter 438

**Adm. Order No.:** WCB 2-2003

**Filed with Sec. of State:** 7-10-2003

**Certified to be Effective:** 9-1-03

**Notice Publication Date:** 4-1-03

**Rules Adopted:** 438-012-0024, 438-012-0070, 438-012-0075, 438-012-0080, 438-012-0085, 438-012-0090, 438-012-0095, 438-012-0100

**Rules Amended:** 438-012-0001, 438-012-0018, 438-012-0020, 438-012-0030, 438-012-0035, 438-012-0050, 438-012-0060, 438-012-0061, 438-012-0062, 438-015-0080

**Subject:** Permanent amendments to Rules of Practice and Procedures under the Workers' Compensation Law related to the Board's "Own Motion" authority under OAR 438, Division 012, and OAR 438-015-0080 (Attorney Fees in Own Motion Cases) to provide an efficient, effective, and expeditious method for the processing and resolution of "post-aggravation rights" new or omitted medical condition claims, for prescribing procedures for the payment of and suspension of temporary disability benefits, for the referral of certain Own Motion requests for an evidentiary hearing (OAR 438-012-0060(6) and 438-012-0061(4)), for prescribing procedures regarding Board review of insurer closure (OAR 438-012-0060(3) and (4)), and for awarding attorney fees for legal services performed regarding certain Own Motion claims.

**Rules Coordinator:** Vicky Scott—(503) 378-3308

### 438-012-0001

#### Definitions

(1) "Own Motion Board" and "Board" mean the Workers' Compensation Board acting under its authority pursuant to ORS 656.278 and these rules.

(2) "Own Motion Claim" means:

(a) A written request by or on behalf of a claimant for temporary disability compensation or claim reopening regarding a worsened condition claim where claimant's aggravation rights have expired;

(b) A request by a claimant to an Own Motion Insurer that clearly requests formal written acceptance of a new medical condition or an omitted medical condition that is related to an initially accepted claim that is initiated after the rights under ORS 656.273 have expired (i.e., a "post-aggravation rights" new medical condition or omitted medical condition claim); and/or

(c) A written request by or on behalf of a claimant for medical benefits for a compensable injury that occurred before January 1, 1966, unless the injury occurred from August 5, 1959 through December 31, 1965 and resulted in an award of permanent total disability.

(3) "Own Motion Insurer," "Insurer" and "Paying Agent" mean a guaranty contract insurer or self-insured employer which is or may be responsible for payment of compensation under the provisions of ORS 656.278.

(4) "Own Motion Order" means an order of the Own Motion Board other than an order following an appeal pursuant to OAR 438-012-0090.

(a) "Proposed and Final Own Motion Order" means an order of an Administrative Law Judge issued pursuant to OAR 438-012-0090 on behalf of the Own Motion Board, subject to timely filing of appeal to the Own Motion Board.

(b) "Final Own Motion Order" means either:

(i) A "Proposed and Final Own Motion Order" issued by an Administrative Law Judge pursuant to OAR 438-012-0090 on behalf of the Own Motion Board that was not timely appealed and has become final by operation of law; or

(ii) An order of the Own Motion Board following appeal to the Own Motion Board of a "Proposed and Final Own Motion Order."

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.267(1)(3), ORS 656.278(1) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

### 438-012-0018

#### Applicability of Rules; Effective Date

(1) These rules apply to claims in which a request for compensation under the Board's own motion jurisdiction is in existence or arose on or after the effective date of these rules.

(2) These rules in division 012 are effective September 1, 2003.

Stat. Auth.: ORS 656.278 & ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

### 438-012-0020

#### Insurer to Process Own Motion Claim: Notice and Contents of Claim; Worsened Condition Claim; "Post-aggravation Rights" New Medical Condition or Omitted Medical Condition Claim; Pre-1966 Injury Claim

(1) All own motion claims, including "post-aggravation rights" new medical condition or omitted medical condition claims, shall first be directed to and processed by the insurer. An own motion claim shall be legibly date-stamped on the date it is received by the insurer.

(2) An own motion claim shall contain sufficient information to identify the claimant and the claim.

(3) An insurer is deemed to have notice of an own motion claim for a worsened condition when one of the following documents is submitted to the insurer by or on behalf of the claimant:

(a) A written request for temporary disability compensation or claim reopening regarding a compensable injury for which aggravation rights have expired; or

(b) Any document submitted to the insurer after the expiration of aggravation rights that reasonably notifies the insurer that the compensable injury results in the claimant's inability to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.

(4) An insurer is deemed to have notice of a "post-aggravation rights" new medical condition or omitted medical condition claim when the insurer receives from the claimant any document that clearly requests formal written acceptance of a new medical condition or an omitted medical condition initiated after expiration of aggravation rights under ORS 656.273 as required by ORS 656.267(1) and (3).

(5) Except as provided in section (6) of this rule, an insurer is deemed to have notice of an own motion claim for medical benefits and/or temporary disability compensation relating to a compensable injury that occurred before January 1, 1966, when one of the following documents is submitted to the insurer by or on behalf of the claimant:

(a) A written request for medical benefits relating to the compensable injury;

(b) Any document that reasonably notifies the insurer that the claimant is seeking medical benefits for the compensable injury;

# ADMINISTRATIVE RULES

(c) A written request for temporary disability compensation or claim reopening; or

(d) Any document that reasonably notifies the insurer that the compensable injury results in the inability of the claimant to work and requires surgery or hospitalization or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.

(6) An own motion claim for medical benefits does not include a claim for medical benefits relating to a compensable injury that occurred from August 5, 1959 through December 31, 1965 and resulted in an award of permanent total disability. Such claims shall be processed as a claim for medical services under ORS 656.245.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented.: ORS 656.278(2) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0024

### **“Post-Agravation Rights” New Medical Condition or Omitted Medical Condition Claim: Insurer Modified Acceptance; Denial; Notice of Clarification; Notice of Incomplete Claim**

(1) For claims with a date of injury before January 1, 2002, the Own Motion insurer shall, within 90 days after receiving a “post-aggravation rights” new medical condition or omitted medical condition claim, either:

(a) Accept the claim by specifying the condition(s) that have been accepted by issuing a Modified Notice of Acceptance under ORS 656.262(6) and OAR 436-060-0140 to the claimant with a copy to the claimant’s attorney, if any, and the Workers’ Compensation Division;

(b) Deny the claim by specifying the factual and legal reasons for denying the condition(s) as provided in OAR 438-012-0070 and/or 438-012-0075, including a notice as prescribed in OAR 438-012-0070, in a letter mailed to the claimant with a copy to the claimant’s attorney, if any;

(c) Issue a Notice of Clarification, as described in OAR 438-012-0080, that is mailed to the claimant and the claimant’s attorney, if any, if no acceptance of the claim is required because the previously issued Notice(s) of Acceptance reasonably apprises the claimant and the medical providers of the nature of the compensable conditions; or

(d) Issue a Notice of Incomplete Claim, as described in OAR 438-012-0085, that is mailed to the claimant and the claimant’s attorney, if any, if no acceptance or denial of the claim is required because the document received by the insurer from the claimant does not clearly request formal written acceptance of a new medical condition or omitted medical condition.

(2) For claims with a date of injury on or after January 1, 2002, the Own Motion insurer shall, within 60 days after receiving a “post-aggravation rights” new medical condition or omitted medical condition claim, either:

(a) Accept the claim by specifying the condition(s) that have been accepted by issuing a Modified Notice of Acceptance under ORS 656.262(6) and 436-060-0140 to the claimant with a copy to the claimant’s attorney, if any, and the Workers’ Compensation Division;

(b) Deny the claim by specifying the factual and legal reasons for denying the condition(s) as provided in OAR 438-012-0070 and/or 438-012-0075, including a notice as prescribed in OAR 438-012-0070, in a letter mailed to the claimant with a copy to the claimant’s attorney, if any;

(c) Issue a Notice of Clarification, as described in OAR 438-012-0080, that is mailed to the claimant and the claimant’s attorney, if any, if no acceptance of the claim is required because the previously issued Notice(s) of Acceptance reasonably apprises the claimant and the medical providers of the nature of the compensable conditions; or

(d) Issue a Notice of Incomplete Claim, as described in OAR 438-012-0085, that is mailed to the claimant and the claimant’s attorney, if any, if no acceptance or denial of the claim is required because the document received by the insurer from the claimant does not clearly request formal written acceptance of a new medical condition or omitted medical condition.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)

Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0030

### **Insurer Recommendation of Reopening or Denial of Claim Voluntarily Reopening**

(1) For all Own Motion claims, including “post-aggravation rights” new medical condition or omitted medical condition claims, with a date of injury before January 1, 2002, except as provided in section (3) of this rule,

the own motion insurer shall, within 90 days after receiving an own motion claim, either:

(a) Voluntarily reopen the Own Motion claim, including any “post-aggravation rights” new medical condition or omitted medical condition claim, under ORS 656.278(5) to provide benefits allowable under ORS 656.278 or to grant additional medical or hospital care to the claimant; or

(b) Submit to the Board a written recommendation as to whether the Own Motion claim, including any “post-aggravation rights” new medical condition or omitted medical condition claim, should be reopened or not reopened, on a form prescribed by the Board, accompanied by the required evidence supporting the recommendation. The own motion insurer shall supply all information and evidence required by the form. Copies of the recommendation form and any supporting evidence shall be mailed to the claimant and the claimant’s attorney, if any.

(2) For all Own Motion claims, including “post-aggravation rights” new medical condition or omitted medical condition claims, with a date of injury on or after January 1, 2002, except as provided in section (3) of this rule, the own motion insurer shall, within 60 days after receiving an own motion claim, either:

(a) Voluntarily reopen the Own Motion claim, including any “post-aggravation rights” new medical condition or omitted medical condition claim, under ORS 656.278(5) to provide benefits allowable under ORS 656.278 or to grant additional medical or hospital care to the claimant; or

(b) Submit to the Board a written recommendation as to whether the Own Motion claim, including any “post-aggravation rights” new medical condition or omitted medical condition claim, should be reopened or not reopened, on a form prescribed by the Board, accompanied by the required evidence supporting the recommendation. The own motion insurer shall supply all information and evidence required by the form. Copies of the recommendation form and any supporting evidence shall be mailed to the claimant and the claimant’s attorney, if any.

(3) In extraordinary circumstances, the Board may grant the insurer an extension for submission of its recommendation.

(4) In all cases when the own motion insurer voluntarily reopens the claim under ORS 656.278(5), the insurer shall issue a 3501 Form to the claimant with copies to the claimant’s attorney, if any, and the Workers’ Compensation Division, Benefits and Policy Services Section. The form shall be as prescribed by the Director.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1), ORS 656.278(5) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0035

### **Temporary Disability Compensation**

(1) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant’s condition becomes medically stationary in those cases where:

(a) The own motion claim for temporary disability compensation is filed after the aggravation rights have expired;

(b) There is a worsening of a compensable injury that results in the inability of the worker to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work; and

(c) The claimant qualifies as a “worker” pursuant to ORS 656.005(30). “Worker” does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(2) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant’s condition becomes medically stationary in those cases where:

(a) The claimant submits and obtains acceptance of a claim for a compensable new medical condition or an omitted medical condition and the claim is initiated after the aggravation rights under ORS 656.273 have expired; and

(b) The claimant qualifies as a “worker” pursuant to ORS 656.005(30). “Worker” does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(3) The claimant is deemed to be in the work force if:

(a) The claimant is engaged in regular employment;

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(b) The claimant, although not employed, is willing to work and is making reasonable efforts to obtain employment; or

(c) The claimant is willing to work, but the claimant is not employed, and the claimant is not making reasonable efforts to obtain employment because such efforts would be futile as a result of the effects of the compensable injury.

(4) The insurer shall make the first payment of temporary disability compensation in accordance with ORS 656.210, 656.212(2) and 656.262(4) within 14 days from:

- (a) The date of an order of the Board reopening the claim; or
- (b) The date the insurer voluntarily reopened the claim.

(5) Temporary disability compensation shall be paid until one of the following events first occurs:

(a) The claim is closed pursuant to OAR 438-012-0055;

(b) A claim disposition agreement is submitted to the Board pursuant to ORS 656.236(1), unless the claim disposition agreement provides for the continued payment of temporary disability compensation; or

(c) Termination of such benefits is authorized by the terms of ORS 656.268(4)(a) through (d).

(6)(a) An Own Motion insurer may unilaterally suspend compensation under the circumstances provided in ORS 656.262(4)(e), (4)(h), and (4)(i). If the own motion insurer believes that temporary disability compensation should be suspended for any reason other than those provided in ORS 656.262(4)(e), (4)(h), and (4)(i), the insurer may make a written request to the Board for such suspension. This request shall:

(i) State the reasons the insurer is requesting that the Board suspend the claimant's temporary disability compensation;

(ii) Include copies of supporting documentation; and

(iii) Be mailed to the claimant and the claimant's attorney, if any, by certified or registered mail.

(b) Unless an extension is granted by the Board, claimant or claimant's attorney shall have 14 days to respond to the Board in writing to the request.

(c) Unless an extension is granted by the Board, the insurer shall have 14 days to reply in writing to claimant's response.

(d) The insurer shall not suspend compensation under this section without prior written authorization by the Board, except as provided in ORS 656.262(4)(e), (4)(h), and (4)(i).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.005(30), ORS 656.262(4), ORS 656.268(4), ORS 656.278(1), ORS 656.278(2) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0050

### Board Will Act Unless Claimant Has Not Exhausted Other Available Remedies

(1) The Board will act promptly upon a request for relief under the provisions of ORS 656.278 and these rules unless:

(a) The claimant has available administrative remedies under the provisions of ORS 656.273;

(b) The claimant's condition is the subject of a contested case under ORS 656.283 to 656.298, 656.307 or 656.308, or an arbitration or mediation proceeding under ORS 656.307; or

(c) The claimant's request for payment of temporary disability compensation is based on surgery or hospitalization or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work that is the subject of either a managed care dispute resolution review process or a Director's medical review under ORS 656.245, 656.260 or 656.327;

(d) The claimant's condition is the subject of litigation under OAR 438-012-0090 or 438-012-0095.

(2) The Board may postpone its review of the merits of the claimant's request for relief if the available remedies set forth in section (1) of this rule could affect the Board's authority to award compensation under the provisions of ORS 656.278.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0060

### Board Review of Insurer Closure

(1) The request for Board review of the insurer's claim closure pursuant to OAR 438-012-0055(1) shall be in writing, signed by the claimant

or the claimant's attorney, and shall include, but is not limited to, the following information:

(a) The claimant's name and mailing address;

(b) A statement that Board review is requested, and the reason(s) for the request for review; reasons for requesting review may include, but are not limited to:

(i) Disagreement with the medically stationary determination;

(ii) Disagreement with the temporary disability compensation awarded, including rate of payment and/or dates awarded; and/or

(iii) Disagreement with permanent disability compensation awarded, if the claim was reopened for a "post-aggravation rights" new medical condition claim and/or omitted medical condition claim. If the claimant disagrees with the impairment used in rating of the claimant's permanent disability for such a claim, the claimant may request appointment of a medical arbiter;

(c) The name of the insurer; and

(d) A copy of the Notice of Closure (Form 2066).

(2) To be considered, the request must be filed with the Board within 60 days after the mailing date of the notice of closure, or within 180 days after the mailing date if the claimant establishes good cause for the failure to file the request within 60 days after the mailing date. The Board shall notify all parties that review has been requested.

(3) Within 14 days after notification from the Board that a review has been requested, the insurer shall submit to the Board and to the claimant and the claimant's attorney, if any, legible copies of all evidence which pertains to the claimant's compensable condition at the time of closure, including any evidence relating to permanent disability. The insurer may also submit written arguments at this time, with copies to the claimant or the claimant's attorney, if any.

(4) The claimant may submit additional evidence and written argument to the Board, with copies to the insurer or its attorney, if any. To be considered, such evidence and argument must be submitted within 21 days from the date the insurer mails the evidence pursuant to section (3) of this rule.

(5) No additional written argument may be submitted unless authorized by the Board.

(6) The Board may refer a matter to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

(7) The Board shall issue its order within a reasonable time after receipt of all evidence and argument from the parties and any recommendations from the Hearings Division.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1), ORS 656.278(6) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0061

### Board Review of Voluntary Reopening of an Own Motion Claim

(1) If a dispute arises out of a voluntary reopening of a claim under ORS 656.278(5), a party may file a written request for Board review, with copies to the other party.

(2) Within 14 days after notification from the Board that a review has been requested, the insurer shall submit to the Board and to the claimant or the claimant's attorney, if any, legible copies of all evidence which pertains to the claimant's compensable condition at the time of the voluntary reopening. The insurer may also submit written arguments at this time, with copies to the claimant or the claimant's attorney, if any.

(3) The claimant may submit additional evidence and written argument to the Board, with copies to the insurer or its attorney, if any. To be considered, such evidence and argument must be submitted within 21 days from the date the insurer mails the evidence and argument pursuant to section (2) of this rule.

(4) The Board may refer a matter to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

(5) The Board shall issue its order within a reasonable time after receipt of all evidence and argument from the parties and any recommendations from the Hearings Division.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1), ORS 656.278(5) & ORS 656.726(5)

Hist.: WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

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## 438-012-0062

### Referral of Request for Enforcement of Board's Own Motion Order and Request for Suspension of Temporary Disability Compensation to Hearings Division

(1) The Board may refer a request to enforce an own motion order to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

(2) The Board may refer a request for suspension of temporary disability compensation under OAR 438-012-0035(6) to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

(3) The Board shall issue its order within a reasonable time after receipt of all evidence and argument from the parties and any recommendations from the Hearings Division.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(5)  
Stats. Implemented: ORS 656.278(1) & ORS 656.726(5)  
Hist.: WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0070

### Notice of Denial of "Post-Agravation Rights" New Medical Condition or Omitted Medical Condition Claim

When an Own Motion insurer denies a "post-aggravation rights" new medical condition or omitted medical condition claim, the notice of denial shall:

- (1) Specify the factual and legal reasons for denial;
- (2) Be mailed to the claimant and the claimant's attorney, if any; and
- (3) Contain a notice, in prominent or bold face type, as follows: "IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL, YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1282. YOUR LETTER MUST STATE THAT YOU WANT A HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION FOR THE DENIED CLAIM UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503)947-7585."

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)  
Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0075

### Notice of Denial of Responsibility for "Post-Agravation Rights" New Medical Condition or Omitted Medical Condition Claim

(1) If an Own Motion insurer intends to deny responsibility for a "post-aggravation rights" new medical condition or omitted medical condition claim, the insurer shall, within the time prescribed in OAR 438-012-0024 for processing the claim, so indicate in or as part of a denial otherwise meeting the requirements of OAR 438-012-0070.

(2) The notice shall:

- (a) Identify the condition(s) for which responsibility is being denied;
- (b) State the factual and legal reasons for the denial; and
- (c) Advise the claimant to file separate, timely claims against other potentially responsible insurers or self-insured employers, including other insurers for the same employer, in order to protect the claimant's rights to obtain benefits on the claim.

(3) The denial may:

(a) List the names and addresses of other insurers or self-insured employers who may be responsible for the claimant's condition; and

(b) State whether the Own Motion insurer has requested the appointment of a paying agent pursuant to ORS 656.307.

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)  
Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0080

### Notice of Clarification in Response to "Post-Agravation Rights" New Medical Condition or Omitted Medical Condition Claim

A Notice of Clarification under OAR 438-012-0024(1)(c) and (2)(c) shall:

(1) Specify the factual and legal reasons for the Own Motion insurer's decision that no acceptance of a "post-aggravation rights" new medical condition or omitted medical condition claim is required;

(2) Be mailed to the claimant and the claimant's attorney, if any; and

(3) Contain a notice, in prominent or bold face type, as follows: "IF YOU THINK THIS NOTICE OF CLARIFICATION IS NOT RIGHT, WITHIN

60 DAYS AFTER THE MAILING OF THIS NOTICE, YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1282. YOUR LETTER MUST STATE THAT YOU WANT A HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO APPEAL THE NOTICE UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503)947-7585."

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)  
Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0085

### Notice of Incomplete Claim in Response to "Post-Agravation Rights" New Medical Condition or Omitted Medical Condition Claim

A Notice of Incomplete Claim under OAR 438-012-0024(1)(d) and (2)(d) shall:

(1) Specify the factual and legal reasons for the Own Motion insurer's decision that no acceptance or denial of a "post-aggravation rights" new medical condition or omitted medical condition claim is required;

(2) Be mailed to the claimant and the claimant's attorney, if any; and

(3) Contain a notice, in prominent or bold face type, as follows:

"IF YOU THINK THIS NOTICE OF INCOMPLETE CLAIM IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS NOTICE, YOU MAY FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD (ATTENTION: OWN MOTION SECTION), 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1282. YOUR LETTER MUST STATE THAT YOU WANT BOARD REVIEW, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503)947-7585."

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)  
Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0090

### Hearing Procedures Regarding Denial and/or Clarification Notice of "Post-Agravation Rights" New Medical Condition or Omitted Medical Condition Claims; Proposed and Final Own Motion Order; Notice of Appeal Rights

(1) Requests for hearing regarding a denial under OAR 438-012-0070 and/or 438-012-0075 or a Notice of Clarification under OAR 438-012-0080 of a "post-aggravation rights" new medical condition or omitted medical condition claim shall be processed by the Hearings Division pursuant to the procedures for ordinary cases prescribed in divisions 006 and 007.

(2) Within 30 days of closure of the hearing record, the Administrative Law Judge shall decide the issues arising from the hearing request(s) from a denial and/or clarification notice of a "post-aggravation rights" new medical condition or omitted medical condition claim(s) by issuing a "Proposed and Final Own Motion Order," including the following written statement, in prominent or bold face type, concerning the parties' rights of appeal:

NOTICE TO ALL PARTIES: IF YOU ARE DISSATISFIED WITH THIS PROPOSED AND FINAL OWN MOTION ORDER, YOU MAY, WITHIN THIRTY (30) DAYS AFTER THE MAILING DATE ON THIS ORDER, REQUEST REVIEW BY THE WORKERS' COMPENSATION BOARD (OWN MOTION SECTION), 2601 25TH ST. SE, SUITE 150, SALEM, OR 97302-1282. ANY SUCH REQUEST SHALL EITHER BE DELIVERED OR MAILED TO THE BOARD AT THE ABOVE ADDRESS. COPIES OF THE REQUEST SHOULD ALSO BE MAILED TO ALL OTHER PARTIES TO THIS PROCEEDING.

FAILURE TO DELIVER OR MAIL THE REQUEST FOR REVIEW TO THE BOARD WITHIN THE TIME ALLOWED WILL RESULT IN THE LOSS OF YOUR RIGHT TO APPEAL THIS OWN MOTION ORDER AND THE BOARD WILL BE UNABLE TO REVIEW THE ADMINISTRATIVE LAW JUDGE'S DECISION, WHICH SHALL, AS A MATTER OF LAW, CONSTITUTE A FINAL OWN MOTION ORDER OF THE BOARD.

(3) If a request for review of an Administrative Law Judge's "Proposed and Final Own Motion Order" is not filed with the Board within 30 days of the mailing of the order, the order shall, as a matter of law, constitute a Final Own Motion Order of the Board.

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)  
Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0095

### Board Review of Administrative Law Judge's Proposed and Final Own Motion Order

(1) Within a reasonable time after receiving a timely-filed request for review of an Administrative Law Judge's "Proposed and Final Own Motion Order," the Board will, by mail, acknowledge the request(s) for review, pro-

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vide copies of the hearing transcript to the parties or their attorneys, and announce a briefing schedule.

(2) The briefing schedule will provide that the requesting party's appellant's brief will be due within 21 days from the date of the Board's letter. The respondent's/cross-appellant's brief will be due within 21 days from the date of mailing of the appellant's brief. The appellant's / cross-respondent's brief will be due within 14 days from the date of mailing of the respondent's/cross-appellant's brief. The cross-appellant's reply brief will be due within 14 days from the date of mailing of the cross-respondent's brief. Unless otherwise authorized by the Board, no other briefs will be considered. Extensions to the briefing schedule may be granted by the Board in the manner described in OAR 438-011-0020(3). The Board may waive its briefing schedule rules on a finding that extraordinary circumstances justify such an action.

(3) Review by the Board of the Administrative Law Judge's "Proposed and Final Own Motion Order" is de novo based on the entire record developed at the Hearings Division. If the record is improperly, incompletely, or otherwise insufficiently developed, the Board may:

- (a) Admit additional documentary evidence into the record; or
- (b) Remand the case to the Administrative Law Judge to take additional evidence and issue a "Proposed and Final Own Motion Order on Remand."

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)  
Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-012-0100

### Board Review of Request for Review of Notice of Incomplete Claim

(1) Within a reasonable time after receiving a request for review of an Own Motion insurer's Notice of Incomplete Claim under OAR 438-012-0085, the Board will, by mail, acknowledge the request.

(2) Within 14 days after notification from the Board that a review has been requested, the Own Motion insurer shall submit to the Board and to the claimant or the claimant's attorney, if any, legible copies of all evidence which pertains to the claimant's compensable condition at the time of the insurer's Notice of Incomplete Claim. The insurer's submission may also include its written position regarding the request for review, with copies to the claimant or the claimant's attorney, if any.

(3) The claimant or the claimant's attorney may submit additional evidence and written argument to the Board, with copies to the Own Motion insurer or its attorney, if any. To be considered, such evidence and argument must be submitted within 21 days from the date the Own Motion insurer mails the evidence and its written position to the Board pursuant to section (2).

(4) The Board may refer a matter to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

(5) The Board shall issue its order within a reasonable time after receipt of all evidence and argument from the parties and any recommendations from the Hearings Division.

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented.: ORS 656.267(1)(3), ORS 656.278(1)(b) & ORS 656.726(5)  
Hist.: WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

## 438-015-0080

### Attorney Fees in Own Motion Cases

(1) If an attorney is instrumental in obtaining increased temporary disability compensation, the Board shall approve a reasonable attorney fee, not to exceed \$1,500, payable out of the increased compensation.

(2) If an attorney is instrumental in obtaining a voluntary reopening of an Own Motion claim that results in increased temporary disability compensation, the Board shall approve a reasonable attorney fee, not to exceed \$1,500, payable out of any increased temporary disability compensation resulting from the voluntary reopening.

(3) If the Board awards additional compensation for permanent disability, the Board shall approve a reasonable attorney fee in the amounts prescribed in OAR 438-015-0040, payable out of the increased compensation.

(4) The Board may allow a fee in excess of the amounts prescribed in sections (1) through (3) of this rule upon a finding that extraordinary services have been rendered.

(5) If an Own Motion insurer denies a "post-aggravation rights" new medical condition or omitted medical condition claim pursuant to OAR 438-012-0070 and/or 438-012-0075 and an attorney is instrumental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge, the Administrative Law Judge or the Board shall award a reasonable assessed fee.

(6) If the Administrative Law Judge orders the acceptance of a previously denied "post-aggravation rights" new medical condition or omitted medical condition claim, the Administrative Law Judge shall award a reasonable assessed fee.

(7) If an Own Motion insurer requests or cross-requests review of an Administrative Law Judge's Own Motion Order regarding a denied "post-aggravation rights" new medical condition or omitted medical condition claim and the Board affirms that order, the Board shall award a reasonable assessed fee.

(8) If a claimant requests review or cross-requests review of an Administrative Law Judge's Own Motion Order that upheld a denial of a "post-aggravation rights" new medical condition or omitted medical condition claim and the Board orders the claim accepted, the Board shall award a reasonable assessed fee for the claimant's attorney's services at hearing and on Board review.

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented: ORS 656.267(3), ORS 656.278(1), ORS 656.386(1)(2) & ORS 656.388(3)  
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

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

**Adm. Order No.:** WCD 7-2003(Temp)

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-15-03 thru 1-10-04

**Notice Publication Date:**

**Rules Amended:** 436-035-0500

**Subject:** Promulgation of temporary disability standards to address the impairment of an individual injured worker in WCD files D90-4836 and FAC-3333.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-035-0500

### Temporary Rule Promulgation for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases pursuant to ORS 656.726(4)(f)(C) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not adequately addressed in the disability standards.

(2) Temporary rules promulgated pursuant to ORS 656.726(4)(f)(C) will be incorporated by reference to the Workers Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter in accordance with ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

AAB-9871 This worker has an accepted diastasis of the sacroiliac joint which is not addressed by the former Standards. The Director adopts the current value and assigns an impairment value of 10% for the accepted diastasis of the sacroiliac joint. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. AAB-9871.

BAD-2834 As a result of pain and atrophy of the right testis the worker underwent removal of the testicle. At the time of closure, the former rules did not address removal of the testicle without an absence or abnormally high level of hormones. The current Standards address the loss of the right testis (gonad) with an alteration in the ability to produce hormones. See OAR 436-035-0430(7). In this case, the Director assigns an impairment value of 3% for this worker's loss of a gonad and resulting sexual dysfunction, including altered hormone production. This impairment value is combined with any other ratable impairment under the former Standards. Notwithstanding OAR 436-035-0003, this rule applies to only WCD file no. BAD-2834.

BAD-5597 This worker sustained a puncture injury of his right foot resulting in an inability to reach neutral or zero toe position at the MTP joint of the right 3rd and 4th toes. At the time of claim closure, the former Standards did not provide a value for the worker's loss of dorsiflexion. See former OAR 436-035-0160(5). The current Standards address this loss, therefore, the Director adopts the current value and assigns an impairment value of 10.5% for dorsiflexion of the right 3rd toe and 25% for dorsiflex-

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ion of the right 4th toe. Each toe value shall be added to any other loss of motion in the corresponding MTP joint of the 3rd and 4th toes. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. BAD-5597.

E82-3081 The worker sustained bilateral calcaneal fractures that went on to develop extensive arthritis associated with decreased strength. The worker has extensive arthritis in the both the left and right feet. At the time of closure, the former rules did not address extensive arthritis in the foot. Therefore, in this case, the Director adopts the criteria as set forth in the current Standards pursuant to OAR 436-035-0200(5) and assigns a value of 5% for the right foot and 5% for the left foot. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003 this rule applies only to WCD file no. E82-3081.

EAB-6007 This worker has sexual dysfunction as a direct medical sequelae of the accepted L1 burst fracture and resulting surgery. At the time of closure, the former Standards did not address sexual dysfunction. The current Standards address sexual dysfunction. See OAR 436-035-0420(10). The Director adopts the current impairment and assigns a value of 14% unscheduled disability for the sexual dysfunction. This value shall be combined with any other applicable unscheduled impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. EAB-6007.

EAD-0843 As a result of the accepted mallet avulsion fracture and subsequent surgery, the worker experiences a loss of function due to mild hypersensitivity and cold intolerance. At the time of closure, the former rules did not address cold intolerance due to vascular dysfunction that was not attributed to Raynaud's phenomenon. See former OAR 436-035-0110(6). The Director finds the loss of function, due to the cold intolerance in the left index finger, similar to the loss associated with a Class 3 vascular impairment under the current Standards and assigns an impairment value of 35% of the left index finger. The current rules address hypersensitivity but the former rules did not. The Director finds the loss of function, due to hypersensitivity in the left index finger, is equivalent to the loss of function experienced with less than normal sensation and assigns an impairment value of 20% of the left index finger, from the PIP joint to the tip. These values shall be combined with any other applicable impairment values for the involved left index finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. EAD-0843.

F98-7114 The worker sustained multiple comminuted fractures and a residual chronic infection, resulting in the inability to reach neutral or zero ankle position. This results in a reduction in plantar flexion, equal to 18 degrees of retained plantar flexion. At the time of claim closure, the former standards did not address the inability to reach neutral or zero ankle position. See former OAR 436-035-0190(8). The Director assigns an impairment value of 7.8% for plantar flexion of the left ankle. This value shall be added to any other ankle or subtalar range of motion loss, then combined with any other applicable impairment values, as appropriate. Notwithstanding OAR 436-035-0003 this rule applies only to WCD file no. F98-7114.

FAA-9841 As a result of the accepted C5-6, the worker experiences a loss of function due to moderate to severe hypersensitivity. At the time of closure, the former Standards did not address hypersensitivity. The Director finds the loss of function due to hypersensitivity in the right thumb, index and middle fingers, similar to a 44% impairment value which is in between the value for loss of "protective sensation" and "total loss of sensation". See OAR 436-035-0110(1)(c). The Director assigns an impairment value for hypersensitivity of 44% for loss in the right thumb, 44% for loss in the right index finger and 44% for loss in the right middle finger. These values shall be combined with any other applicable impairment values for the involved fingers and converted to a hand value, where appropriate. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. FAA-9841.

G92-9449 Following a comminuted distal left femur fracture and traumatic occlusion of the popliteal artery resulting in multiple surgeries and extensive scarring, the worker experiences hypersensitivity in the left leg. The Director assigns a value of 5% for the hypersensitivity in the left leg. This value shall be combined with any other applicable scheduled impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. G92-9449.

G94-9409 The worker sustained a right lower leg fracture with reflex sympathetic dystrophy resulting in the inability to reach neutral or zero ankle position. This results in a reduction in plantar flexion, equal to 33 degrees of retained plantar flexion. At the time of claim closure, the former standards did not address the inability to reach neutral or zero ankle position. See former OAR 436-035-0190(8). The Director assigns an impairment value of 2.8% for plantar flexion of the right ankle. This value shall

be added to any other ankle or subtalar range of motion loss, then combined and apportioned with any other applicable impairment values, as appropriate. Notwithstanding OAR 436-035-0003 this rule applies only to WCD file no. G94-9409

HAC-1026 As a result of the accepted crush injuries to the fingers causing vasospasm and reflex sympathetic dystrophy, the worker experiences a loss of function due to cold intolerance. At the time of closure, the former rules did not address cold intolerance due to vascular dysfunction that was not attributed to Raynaud's phenomenon. See former OAR 436-035-0110(6). The Director finds the loss of function, due to the cold intolerance in the left thumb and hand, attributable to vascular dysfunction associated with a Class 5 impairment under the current Standards and assigns an impairment value of 88% of the left hand. This value shall be combined with any other applicable impairment values for the involved left hand. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. HAC-1026.

HAD-6042 Following a left little finger fracture and laceration, the worker experiences a loss of use due to moderate hypersensitivity. Hypersensitivity in the fingers was not addressed by the former Standards under which this claim was closed, but is addressed by the current rules. The worker has a moderate level of hypersensitivity, which equates to a "protective sensation loss" under the current rules. The Director adopts the current rule wording and assigns an impairment value of 19% for hypersensitivity in the distal phalanx of the left little finger. This value shall be combined with any other applicable impairment values for the involved left little finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. HAD-6042.

D90-4836 As a result of the accepted conditions and reparative surgery, the worker is unable to adduct his right shoulder to the neutral position resulting in a loss of abduction. Abduction measured from -5 degrees to 90 degrees equaling 85 degrees of abduction yields a 2.5% impairment value. See former OAR 436-035-0330(5). The Director adopts the value of 2.5% for loss of abduction of the right shoulder. This value shall be added to any other right shoulder loss of ranges of motion values and then combined with any other applicable shoulder findings. Notwithstanding OAR 436-035-0003 this rule applies only to WCD file no. D90-4836.

FAC-3333 As a result of the accepted bilateral carpal tunnel syndrome, the worker has developed cold intolerance of the right and left hands due to nerve injury. The standards do not address this disability. The Director finds this loss of function similar to the loss of function experienced with Raynaud's syndrome and assigns an impairment value of 35% of the right hand and 35% of the left hand. See OAR 436-035-0110(6). These values shall be combined with any other applicable impairment values for the right and left hands, respectively. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. FAC-3333.

Stat Auth.: ORS 656.726(4)

Stats Implemented: ORS 656.268(6); ORS 656.726(4)(f)(G)

Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & cf. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & cf. 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

# ADMINISTRATIVE RULES

## Department of Corrections Chapter 291

**Adm. Order No.:** DOC 10-2003

**Filed with Sec. of State:** 7-7-2003

**Certified to be Effective:** 7-7-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 291-062-0030

**Subject:** The department is amending this rule to clearly reflect department policy for inmate eligibility to participate in the Oregon SUMMIT (Success Using Motivation, Moral, Intensity and Treatment) Program. Inmates who are convicted of certain crimes are not eligible for participation in the SUMMIT Program. This amendment provides greater clarification and reflects current department policy for acceptance or denial of an inmate to participate in the program.

**Rules Coordinator:** Carolyn Schnoor—(503) 945-0933

### 291-062-0030

#### Inmate Eligibility

(1) The Department will identify inmates eligible to participate in the Oregon SUMMIT Program. To be eligible to participate in the program an inmate:

(a) Must be sentenced to the legal and physical custody of the Oregon Department of Corrections and be subject to a term of post-prison supervision upon satisfaction of a term of incarceration in a Department of Corrections facility;

(b) Must be at least 18 years of age at the time of entry into the program, or may be under 18 years of age and have been convicted of a crime upon remand from juvenile court; and

(c) Must be assigned minimum custody status in accordance with the Department's rule on **Classification (Inmate)** (OAR 291-104) and have no more than 36 months to serve at the beginning of the platoon cycle.

(2) An inmate is **not** eligible to participate in the Oregon SUMMIT Program if ever convicted of a crime described in ORS 163.095, 163.115, 163.118, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.435, 163.525, 164.325, or 164.415. Current or previous convictions of attempt, solicitation or conspiracy to commit any of these listed or similar (i.e., other states) crimes, will also disqualify an inmate for program participation. These disqualifying felonies and misdemeanors are: Aggravated Murder, Murder, Manslaughter I, Kidnapping I, Rape III, Rape II, Rape I, Sodomy III, Sodomy II, Sodomy I, Unlawful Sexual Penetration II, Unlawful Sexual Penetration I, Sexual Abuse III, Sexual Abuse II, Sexual Abuse I, Contributing to the Sexual Delinquency of a Minor, Incest, Arson I, Robbery I. There is a single exception that applies only to an inmate's "instant" offense (the offense resulting in the inmate's current incarceration) of attempt, solicitation, or conspiracy to commit Robbery I or Kidnapping I. This exception would be if the sentencing judge in that offense specifically requests the department, in writing, to consider the inmate candidate's application. Any past conviction of attempt, solicitation, or conspiracy to commit Robbery I or Kidnapping I are permanently disqualified from participation.

(3) An inmate is **not** eligible to participate in the Oregon SUMMIT Program if the inmate is subject to ORS 137.635 (Ballot Measure 4) or ORS 161.610 (gun minimum sentence).

(4) An inmate is **not** eligible to participate in the Oregon SUMMIT Program if the inmate:

(a) Has an adult conviction for felony escape which was committed within three years prior to the beginning of the platoon cycle, or has a conviction for unauthorized departure from the legal and/or physical custody of the Oregon Department of Corrections or its authorized agents which was committed within three years prior to the beginning of the platoon cycle.

(b) Has non-sentencing guidelines prison terms, unresolved criminal prosecutions, consecutive county jail terms, or any other circumstance which would conflict with his/her release from prison upon satisfactory completion of the SUMMIT program.

(c) Has a current Immigration and Naturalization Service (INS) detainer which the facility superintendent determines to constitute a risk for escape from custody.

(d) Is currently assigned to special security housing for reasons of protective custody, or the inmate's assignment to the program is otherwise determined by Department officials to pose a threat to the safe, secure and

orderly operation and management of the program, including the safety of Department staff and inmates.

(e) Has less than ten months to serve from the first day of the program's next cycle, unless, as determined by the facility superintendent, there is sufficient bed space available to accommodate these applicants. In no case will an applicant be accepted who has less than eight months to serve from the first day of the program's next cycle.

(f) After April 1, 1995, commits and is convicted of Manslaughter II (ORS 163.125), Assault I (ORS 163.185), Assault II (ORS 163.175), Kidnapping II (ORS 163.225), or Robbery II (ORS 164.405).

(g) On or after October 4, 1997, commits and is convicted of Using a Child in a Display of Sexually Explicit Conduct (ORS 163.670) or Compelling Prostitution (ORS 167.017).

(h) On or after April 1, 1995, commits and is convicted of Assault II as defined in ORS 163.175(1)(b) (Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon), Kidnapping II (ORS 163.225), or Robbery II (ORS 164.405), unless the sentencing court, notwithstanding ORS 137.700 and 137.707, has imposed a lesser sentence pursuant to 1997 Or Laws, Chapter 852.

(5) No inmate who is convicted of a crime committed on or after December 5, 1996, may be considered for participation in the Oregon SUMMIT Program except upon order of the sentencing court appearing in the judgment authorizing an alternative incarceration program.

Stat. Auth.: ORS 179.040, ORS 421.500 - ORS 421.512, ORS 423.020, ORS 423.030, & ORS 423.075

Stats. Implemented: ORS 179.040, ORS 421.500 - ORS 421.512, ORS 423.020, ORS 423.030, & ORS 423.075

Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 1-1995, f. 1-6-95, cert. ef. 1-9-95; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; DOC 19-1999(Temp), f. & cert. ef. 10-28-99 thru 4-25-00; DOC 8-2000, f. & cert. ef. 4-14-00; DOC 6-2003(Temp), f. & cert. ef. 2-21-03 thru 8-20-03; DOC 10-2003, f. & cert. ef. 7-7-03

## Department of Fish and Wildlife Chapter 635

**Adm. Order No.:** DFW 53-2003(Temp)

**Filed with Sec. of State:** 6-17-2003

**Certified to be Effective:** 6-18-03 thru 12-14-03

**Notice Publication Date:**

**Rules Amended:** 635-017-0090

**Subject:** Amend rules regarding sport fishing regulations on the Willamette River and tributaries above Willamette Falls.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

### 635-017-0090

#### Inclusions and Modifications

(1) The **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page [www.dfw.state.or.us](http://www.dfw.state.or.us) provide requirements for the Willamette Zone. The Willamette Zone is described in OAR 635-017-0100. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

(2) The Willamette River is closed to the retention of sturgeon downstream of Willamette Falls (including Multnomah Channel) from March 24, 2003 through June 30, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

(3) In the Willamette River and tributaries above Willamette Falls, notwithstanding the daily bag limit for salmon and steelhead, anglers may retain one additional adipose fin-clipped steelhead per day, effective June 18, 2003 through December 14, 2003.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert.



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ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03

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**Adm. Order No.:** DFW 54-2003(Temp)

**Filed with Sec. of State:** 6-23-2003

**Certified to be Effective:** 6-28-03 thru 12-24-03

**Notice Publication Date:**

**Rules Amended:** 635-023-0090

**Subject:** Amend rules to close the Columbia River to the retention of sturgeon from the mouth upstream to the Wauna powerlines, including Youngs Bay, from June 28, 2003 through September 30, 2003.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

## 635-023-0090

### Inclusions and Modifications

(1) The **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page [www.dfw.state.or.us](http://www.dfw.state.or.us) provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

(2) The Columbia River is closed to angling for salmon, steelhead, and shad from the I-5 Bridge upstream to Bonneville Dam effective April 6, 2003 through May 15, 2003. The Columbia River from the mouth at Buoy 10 upstream to the I-5 Bridge is closed to angling for salmon, steelhead, and shad on Sundays, Mondays, and Tuesdays, effective April 6, 2003 through May 15, 2003. Effective May 4, 2003, the Columbia River from Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines is open four days per week (Wednesday through Saturday) and closed three days per week (Sunday through Tuesday) with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead, and shad may be retained; all nonadipose fin-clipped chinook salmon and steelhead must be released immediately unharmed;

(b) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per printed regulation pamphlet.

(3) The Columbia River is closed to the retention of sturgeon from the Wauna powerlines (River Mile 40) upstream to Bonneville Dam from March 24, 2003 through June 30, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

(4) The Columbia River from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border upstream of McNary Dam is open from June 16, 2003 to July 31, 2003 to the retention of adipose fin-clipped adult summer chinook salmon.

(5) The Columbia River is closed to the retention of sturgeon between The Dalles Dam and John Day Dam effective June 21, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

(6) The Columbia River is closed to the retention of sturgeon from the mouth upstream to the Wauna powerlines (River Mile 40) from June 28, 2003 through September 30, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119  
Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-

1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-00, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. & cert. ef. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02, cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02, cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03

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**Adm. Order No.:** DFW 55-2003(Temp)

**Filed with Sec. of State:** 6-27-2003

**Certified to be Effective:** 6-30-03 thru 12-26-03

**Notice Publication Date:**

**Rules Amended:** 635-023-0090

**Subject:** Amend rules to close the Columbia River to the retention of sturgeon between Bonneville Dam and The Dalles Dam effective July 7, 2003.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

## 635-023-0090

### Inclusions and Modifications

(1) The **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page [www.dfw.state.or.us](http://www.dfw.state.or.us) provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

(2) The Columbia River is closed to angling for salmon, steelhead, and shad from the I-5 Bridge upstream to Bonneville Dam effective April 6, 2003 through May 15, 2003. The Columbia River from the mouth at Buoy 10 upstream to the I-5 Bridge is closed to angling for salmon, steelhead, and shad on Sundays, Mondays, and Tuesdays, effective April 6, 2003 through May 15, 2003. Effective May 4, 2003, the Columbia River from Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines is open four days per week (Wednesday through Saturday) and closed three days per week (Sunday through Tuesday) with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead, and shad may be retained; all nonadipose fin-clipped chinook salmon and steelhead must be released immediately unharmed;

# ADMINISTRATIVE RULES

(b) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per printed regulation pamphlet.

(3) The Columbia River is closed to the retention of sturgeon from the Wauna powerlines (River Mile 40) upstream to Bonneville Dam from March 24, 2003 through June 30, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

(4) The Columbia River from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border upstream of McNary Dam is open from June 16, 2003 to July 31, 2003 to the retention of adipose fin-clipped adult summer chinook salmon.

(5) The Columbia River is closed to the retention of sturgeon between The Dalles Dam and John Day Dam effective June 21, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

(6) The Columbia River is closed to the retention of sturgeon from the mouth upstream to the Wauna powerlines (River Mile 40) from June 28, 2003 through September 30, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

(7) The Columbia River is closed to the retention of sturgeon from between Bonneville Dam and The Dalles Dam effective July 7, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119  
Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03

**Adm. Order No.:** DFW 56-2003(Temp)

**Filed with Sec. of State:** 7-2-2003

**Certified to be Effective:** 7-3-03 thru 7-16-03

**Notice Publication Date:**

**Rules Adopted:** 635-041-0073

**Subject:** Adopt rules to allow the sale of summer chinook, steelhead, walleye, shad, carp, and sturgeon between 4 feet and 5 feet taken in treaty Indian hook-and-line and platform fisheries in the mainstem Columbia River consistent with action taken by the Columbia River Compact on July 2, 2003.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

## 635-041-0073

### Summer Salmon Season

Salmon, steelhead, walleye, carp, shad, and sturgeon 4 feet and 5 feet may be taken for commercial purposes from mainstem Columbia River waters open to subsistence fishing (see OAR 635-041-0015) beginning 6 a.m. July 3, 2003 through 6 p.m. July 16, 2003.

(1) Gear is restricted to subsistence fishing gear including dipnets, hoopnets, setbag nets, and hook-and-line with bait and lures allowed;

(2) Fish taken using subsistence gear from these open subsistence areas may be sold to licensed fish dealers and directly to members of the general public during this open commercial period;

(3) Subsistence areas in Big White Salmon River and Klickitat River are open to commercial fishing as enacted by the State of Washington.

Stat. Auth.: ORS 496.118 & ORS 506.119

Stats. Implemented: ORS 506.109, ORS 506.129 & ORS 507.030

Hist.: DFW 56-2003(Temp), f. 7-2-03, cert. ef. 7-3-03 thru 7-16-03

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**Adm. Order No.:** DFW 57-2003(Temp)

**Filed with Sec. of State:** 7-8-2003

**Certified to be Effective:** 7-8-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 635-017-0090

**Subject:** Amend rules to allow the personal use harvest of Pacific lamprey at Willamette Falls for one additional day on July 10, 2003.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

## 635-017-0090

### Inclusions and Modifications

(1) The **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page [www.dfw.state.or.us](http://www.dfw.state.or.us) provide requirements for the Willamette Zone. The Willamette Zone is described in OAR 635-017-0100. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits for 2003 are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1, 2003 through July 31, 2003 from sunrise to sunset or until the Department projects that a quota of 6,000 lamprey has been harvested whichever comes first; personal use harvest is permitted Saturday through Monday each week. All harvest is prohibited Tuesday through Friday;

(c) Personal use harvest is also permitted July 10, 2003 from sunrise to sunset or until a time that ODFW personnel at the fishing site have determined the total harvest quota of 6,000 lamprey will be reached, whichever comes first.

(d) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(e) Gear is restricted to hand or hand-powered tool only;

(f) Catch must be reported to ODFW by August 31, 2003 on a form provided by the Department. Harvesters must allow sampling or enumeration of catches by ODFW personnel at fishing site.

(3) The Willamette River is closed to the retention of sturgeon downstream of Willamette Falls (including Multnomah Channel) from March 24, 2003 through June 30, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

# ADMINISTRATIVE RULES

(4) In the Willamette River and tributaries above Willamette Falls, notwithstanding the daily bag limit for salmon and steelhead, anglers may retain one additional adipose fin-clipped steelhead per day, effective June 18, 2003 through December 14, 2003.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; FWC 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03

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**Adm. Order No.:** DFW 58-2003(Temp)

**Filed with Sec. of State:** 7-9-2003

**Certified to be Effective:** 7-9-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 635-041-0063, 635-041-0073

**Subject:** Amend rules to close the Treaty Indian sturgeon setline fishery between July 13, 2003 and July 20, 2003; and adopt a treaty Indian commercial gill net fishery for summer chinook salmon from 6 a.m. July 14, 2003 through 6 p.m. July 16, 2003.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

## 635-041-0063

### Sturgeon Setline Fishery

(1) Sturgeon may be taken by setline for commercial purposes from:

(a) from 12 Noon January 1 through 12 Noon January 31;

(b) from 6 a.m. June 9, 2003 through 6 p.m. July 12, 2003, and from 6 a.m. July 21, 2003 through 6 p.m. August 23, 2003 between Bonneville Dam and The Dalles Dam and between John Day Dam and McNary Dam.

(2) Closed areas are set forth under OAR 635-041-0045.

(3) During the sturgeon setline season it shall be *unlawful* to:

(a) Operate any fishing gear other than setlines except as provided in OAR 635-041-0060;

(b) Operate any setline having more than 100 hooks;

(c) Use other than single hooks size 9/0 or larger;

(d) Operate any setline on which the buoy or marker does not have the tribal identification number of the individual operating the line clearly marked on it and which is attached in a manner that will not allow it to float visibly on the surface at all times.

(4) Notwithstanding OAR 635-041-0045(6)-(11), it is lawful during the open season to fish for sturgeon by means of set lines in the Columbia River within areas at and adjacent to the mouths of rivers.

Stat. Auth.: ORS 183.325 & ORS 506.119

Stats. Implemented: ORS 506.129 & ORS 507.030

Hist.: FWC 89, f. & cert. ef. 1-28-77; FWC 2-1978, f. & cert. ef. 1-31-78; FWC 7-1978, f. & cert. ef. 2-21-78; FWC 2-1979, f. & cert. ef. 1-25-79, Renumbered from 635-035-0063; FWC 6-1980, f. & cert. ef. 1-28-80; FWC 12-1980, f. & cert. ef. 2-29-80; FWC 64-1980(Temp), f. & cert. ef. 11-7-80; FWC 1-1981, f. & cert. ef. 1-19-81; FWC 6-1982, f. & cert. ef. 1-28-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 9-1983(Temp), f. & cert. ef. 3-1-83; FWC 4-1984, f. & cert. ef. 1-31-84; FWC 2-1985, f. & cert. ef. 1-30-85; FWC 4-1986(Temp), f. & cert. ef. 1-28-86; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 48-1988, f. & cert.

ef. 6-21-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 12-1989(Temp), f. & cert. ef. 3-21-89; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 9-1991, f. & cert. ef. 1-31-91; FWC 37-1991(Temp), f. & cert. ef. 4-3-91; FWC 4-1992, f. 1-30-92, cert. ef. 2-1-92; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 41-1992(Temp), f. 6-30-92, cert. ef. 7-1-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 15-1996(Temp), f. & cert. ef. 4-1-96; FWC 25-1996(Temp), f. 5-14-96, cert. ef. 5-15-96; FWC 23-1997(Temp), f. 4-4-97, cert. ef. 4-7-97; FWC 35-1997(Temp), f. & cert. ef. 6-13-97; FWC 40-1997(Temp), f. 6-20-97, cert. ef. 6-23-97; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 50-1998(Temp), f. 6-25-98, cert. ef. 6-26-98 thru 7-24-98; DFW 57-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 22-1999(Temp), f. & cert. ef. 4-1-99 thru 4-23-99; DFW 28-1999(Temp), f. & cert. ef. 4-23-99 thru 7-31-99; DFW 41-1999(Temp), f. & cert. ef. 6-7-99 thru 7-31-99; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 14-2000(Temp), f. 3-17-00, cert. ef. 3-20-00 thru 7-31-00; DFW 31-2000(Temp), f. 6-9-00, cert. ef. 6-10-00 thru 7-31-00; DMV 43-2000(Temp), f. 8-7-00, cert. ef. 8-8-00 thru 8-20-00; DFW 66-2000, f. 9-29-00, cert. ef. 10-2-00 thru 12-31-00; DFW 43-2001(Temp), f. 5-23-01, cert. ef. 5-24-01 thru 11-20-01; DFW 65-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 114-2001(Temp), f. & cert. ef. 12-13-01 thru 12-31-01; DFW 51-2002(Temp), f. & cert. ef. 5-22-02 thru 9-1-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 121-2002(Temp), f. 10-24-02, cert. ef. 10-27-02 thru 12-31-02; DFW 49-2003(Temp), f. & cert. ef. 6-5-03 thru 9-1-03; DFW 58-2003(Temp), f. & cert. ef. 7-9-03 thru 12-31-03

## 635-041-0073

### Summer Salmon Season

(1) Salmon, steelhead, walleye, carp, shad, and sturgeon 4 feet and 5 feet in length may be taken for commercial purposes from mainstem Columbia River waters open to subsistence fishing (see OAR 635-041-0015) beginning 6 a.m. July 3, 2003 through 6 p.m. July 16, 2003, however sturgeon may not be taken for commercial purposes beginning 6 p.m. July 12, 2003. Sturgeon between 4 and 5 feet in length may be retained for subsistence purposes.

(a) Gear is restricted to subsistence fishing gear including dipnets, hoopnets, setbag nets, and hook-and-line with bait and lures allowed;

(b) Fish taken using subsistence gear from these open subsistence areas may be sold to licensed fish dealers and directly to members of the general public during this open commercial period;

(c) Subsistence areas in Big White Salmon River and Klickitat River are open to commercial fishing as enacted by the State of Washington.

(2) Chinook salmon, steelhead, walleye, shad and carp may be taken for commercial purposes in the Columbia River above Bonneville Dam from 6 a.m. July 14, 2003 through 6 p.m. July 16, 2003;

(a) Gear is restricted to gill nets with a minimum mesh size of 7-1/2 inches;

(b) Sockeye may not be sold, but sockeye may be kept for subsistence use;

(c) Sturgeon may not be sold, but sturgeon between 4 and 5 feet in length may be kept for subsistence use.

(d) Closed areas are set forth under OAR 635-041-0045;

(e) Fish caught in the Klickitat River and Big White Salmon River during open fishing periods that overlap with the Columbia River commercial season dates may be sold.

Stat. Auth.: ORS 496.118 & ORS 506.119

Stats. Implemented: ORS 506.109, ORS 506.129 & ORS 507.030

Hist.: DFW 56-2003(Temp), f. 7-2-03, cert. ef. 7-3-03 thru 7-16-03; DFW 49-2003(Temp), f. & cert. ef. 6-5-03 thru 9-1-03; DFW 58-2003(Temp), f. & cert. ef. 7-9-03 thru 12-31-03

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**Adm. Order No.:** DFW 59-2003(Temp)

**Filed with Sec. of State:** 7-11-2003

**Certified to be Effective:** 7-11-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 635-017-0090

**Subject:** Amend rules to close the Pacific lamprey fishery at Willamette Falls effective July 11, 2003.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

## 635-017-0090

### Inclusions and Modifications

(1) The **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page [www.dfw.state.or.us](http://www.dfw.state.or.us) provide requirements for the Willamette Zone. The Willamette Zone is described in OAR 635-017-0100. However, additional regulations may be adopted from time to time, and to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits for 2003 are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

# ADMINISTRATIVE RULES

(b) Open fishing period is June 1, 2003 through July 31, 2003 from sunrise to sunset or until the Department projects that a quota of 6,000 lamprey has been harvested whichever comes first; personal use harvest is permitted Saturday through Monday each week. All harvest is prohibited Tuesday through Friday;

(c) Personal use harvest is also permitted July 10, 2003 from sunrise to sunset or until a time that ODFW personnel at the fishing site have determined the total harvest quota of 6,000 lamprey will be reached, whichever comes first.

(d) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(e) Gear is restricted to hand or hand-powered tool only;

(f) Catch must be reported to ODFW by August 31, 2003 on a form provided by the Department. Harvesters must allow sampling or enumeration of catches by ODFW personnel at fishing site;

(g) Pacific lamprey fishing is prohibited effective July 11, 2003 through the remainder of the previously scheduled season.

(3) The Willamette River is closed to the retention of sturgeon downstream of Willamette Falls (including Multnomah Channel) from March 24, 2003 through June 30, 2003. Catch and release of sturgeon is allowed to continue; however, all sturgeon must be released immediately and unharmed.

(4) In the Willamette River and tributaries above Willamette Falls, notwithstanding the daily bag limit for salmon and steelhead, anglers may retain one additional adipose fin-clipped steelhead per day, effective June 18, 2003 through December 14, 2003.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03

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**Adm. Order No.:** DFW 60-2003(Temp)

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 7-16-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 635-004-0033

**Subject:** Amend rules to establish in-season trip limits for black rockfish, blue rockfish, nearshore complex, and cabezon.

**Rules Coordinator:** Mike Lueck — (503) 872-5272, ext. 5447

**635-004-0033**

**Groundfish Restrictions**

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the sea-

son and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

(a) Minor Nearshore Rockfish (includes black and yellow rockfish, brown rockfish, calico rockfish, China rockfish, copper rockfish, gopher rockfish, grass rockfish, kelp rockfish, olice rockfish, and quillback rockfish).

(b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish)

(c) Minor Slope Rockfish

(d) Black Rockfish

(e) Cabezon

(f) Canary Rockfish

(g) Greenling

(h) Tiger Rockfish

(i) Vermillion Rockfish

(j) Widow Rockfish

(k) Yelloweye Rockfish

(l) Yellowtail Rockfish

(m) Darkblotched Rockfish

(n) Pacific Ocean Perch

(o) Longspine Thornyhead

(p) Shortspine Thornyhead

(q) Arrowtooth Flounder

(r) Dover Sole

(s) Petrale Sole

(t) Rex Sole

(u) Other Flatfish

(v) Lingcod

(w) Sablefish

(x) Pacific Whiting

(2)(a) No vessel may land more than 2,000 pounds of cabezon; 350 pounds of greenling; 3,000 pounds of nearshore rockfish, no more than 900 pounds of which may be species other than black rockfish or blue rockfish, for commercial purposes during any cumulative catch period described in subsection (b).

(b) The cumulative catch periods are: July 1 - August 31; September 1 - October 31; and November 1 - December 31.

(c) If a vessel offloads an amount of catch that exceeds the limit for black rockfish and blue rockfish combined or for minor nearshore rockfish prior to the adopted date for this rule, the vessel may retain the proceeds from that catch, but no additional fishing may occur for the fish group that was exceeded for the remainder of the July 1 - August 31 period.

Stat. Auth.: ORS 506.109 & ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03

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**Department of Forestry**

**Chapter 629**

**Adm. Order No.:** DOF 2-2003

**Filed with Sec. of State:** 6-19-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 3-1-03

**Rules Adopted:** 629-605-0105

**Rules Amended:** 629-605-0100, 629-630-0500

**Subject:** OAR 629-605-0105 Provides Notice of Endangered Species Act. OAR 629-605-0100 Removes reference to Endangered Species Act. OAR 629-630-0500 Removes the requirement that operators obtain prior approval for harvesting operations on high

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landslide hazard areas and adds that operators may consult with the state Forester to evaluate their harvesting plan.

**Rules Coordinator:** Gayle Birch—(503) 945-7210

## 629-605-0100

### Compliance

(1) The operator, landowner, or timber owner shall comply with the practices described in the forest practice rules unless prior approval has been obtained from the State Forester for alternate practices which provide equal or better results.

(2) The State Forester may grant prior approval to waive or modify forest practice rules when:

(a) The State Forester determines that a federal or state agency, a college or university, or a private landowner has submitted an application to the State Forester for a bona fide research project involving activities not in accordance with the rules;

(b) The State Forester determines that waiving or modifying a specific practice will result in less environmental damage than if the practice is applied; or

(c) After consulting with the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester determines that waiving or modifying a specific practice will improve soil, water quality, fish habitat, or wildlife habitat.

(3) When the State Forester's prior approval does not follow the written recommendations of the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester shall maintain a written explanation of the reasons for allowing alternate practices.

(4) The State Forester may grant prior approval to waive or modify rules for resource sites identified in OAR 629-680-0100 (Threatened or Endangered Fish and Wildlife Species), 629-680-0200 (Sensitive Bird Nesting, Roosting and Watering Sites), 629-680-0300 (Significant Wetlands), or 629-680-0400 (Biological Sites) when:

(a) The county has an adopted program under OAR 660-016-0005 and 660-016-0010 that has evaluated the resource sites; and

(b) Applying the forest practice rules for the identified resource sites would regulate or prevent operations, or uses, allowed under the acknowledged county comprehensive plan.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710, ORS 527.715

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 7-1992, f. & cert. ef. 6-5-92; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0102; DOF 2-2003, f. 6-19-03, cert. ef. 7-1-03

## 629-605-0105

### Notice of Federal Endangered Species Act

Compliance with the forest practices rules does not substitute for or ensure compliance with the federal Endangered Species Act. Nothing in these rules imposes any state requirement to comply with the federal **Endangered Species Act**. Landowners and operators are advised that federal law prohibits a person from taking certain threatened or endangered species which are protected under the Endangered Species Act.

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

Statutory Auth.: ORS 527.710

Stats. Implemented: ORS 527.710 & 527.715

Hist.: DOF 2-2003, f. 6-19-03, cert. ef. 7-1-03

## 629-630-0500

### Harvesting On High Landslide Hazard Locations

(1) The purpose of this rule is to prevent timber harvesting-related serious ground disturbance and drainage alterations on all high landslide hazard locations, and to reference additional requirements when there is public safety exposure below the high landslide hazard location.

(2) Operators and the State Forester shall share responsibility to identify high landslide hazard locations and to determine if there is public safety exposure from shallow, rapidly moving landslides using methods described in OAR 629-623-0100 through 0300. If there is public safety exposure, then the practices described in OAR 629-623-0400 through 0800 shall also apply.

(3) Operators shall not construct skid roads on high landslide hazard locations.

(4) Operators shall not operate ground-based equipment on high landslide hazard locations.

(5) Operators shall prevent deep or extensive ground disturbance on high landslide hazard locations during log felling and yarding operations.

(6) Operators concerned about the application of these standards to a specific operation may consult with the State Forester to obtain an evaluation of their harvesting plan and its likelihood of compliance with the standards.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710, ORS 527.715, & ORS 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 1-2003(Temp), f. & cert. ef. 1-29-03 thru 7-27-03; DOF 2-2003, f. 6-19-03, cert. ef. 7-1-03

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## Department of Geology and Mineral Industries Chapter 632

**Adm. Order No.:** DGMI 1-2003

**Filed with Sec. of State:** 6-27-2003

**Certified to be Effective:** 6-29-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 632-007-0000, 632-007-0010, 632-007-0020, 632-007-0030

**Subject:** The rule amends earlier version of rule that specified a certain Oregon Department of Geology and Mineral Industries publication as the map to use for identifying "Further Review Areas" of "Rapidly Moving Landslides." Amended rule defines that maps will be produced in cooperation with state and local jurisdictions as mandated and adopted by agency Governing Board.

**Rules Coordinator:** Gary Lynch—(541) 967-2039

## 632-007-0000

### Purpose

The rules in this Division implement the responsibilities of the Oregon Department of Geology and Mineral Industries under ORS 195.260(4)(a) relating to the mapping of further review areas for rapidly moving landslides.

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 195.260 & ORS 516.090

Hist.: DGMI 1-2002, f. 12-20-02, cert. ef. 1-1-03; Suspended by DGMI 2-2002(Temp), f. 12-20-02, cert. ef. 1-1-03 thru 6-28-03; DGMI 1-2003, f. 6-27-03, cert. ef. 6-29-03

## 632-007-0010

### Definitions

(1) "Further review area" for the purpose of this Division, means an area of land that may be subject to rapidly moving landslides as specifically mapped by the Oregon Department of Geology and Mineral Industries for the purpose of implementing ORS 195.260(4)(a).

(2) "Rapidly moving landslide" for the purpose of this Division, means any detached mass of soil, rock, or debris that begins as a relatively small landslide on steep slopes and grows to a sufficient size to cause damage as it moves down a slope or a stream channel, and is moving at a velocity that is difficult for people to outrun or escape.

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 195.260 & ORS 516.090

Hist.: DGMI 1-2002, f. 12-20-02, cert. ef. 1-1-03; Suspended by DGMI 2-2002(Temp), f. 12-20-02, cert. ef. 1-1-03 thru 6-28-03; DGMI 1-2003, f. 6-27-03, cert. ef. 6-29-03

## 632-007-0020

### Further Review Area Maps

(1) The Oregon Department of Geology and Mineral Industries will prepare further review area maps in cooperation with local governments and in coordination with the Oregon Department of Forestry. The department will prepare further review area maps only for counties in western Oregon and Hood River County, where appropriate.

(2) The Oregon Department of Geology and Mineral Industries will identify further review areas in maps prepared for that purpose. The Governing Board will adopt the further review area maps by rule. No other maps or parts of maps prepared by the department are further review area maps.

(3) As provided in ORS 195.260, further review area maps are designed to assist local government in determining the need for site-specific reports prior to construction of structures in areas with possible hazard from rapidly moving landslides.

(4) Further review area maps are not designed or intended to indicate levels of site-specific hazard.

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 195.260 & ORS 516.090

Hist.: DGMI 1-2002, f. 12-20-02, cert. ef. 1-1-03; Suspended by DGMI 2-2002(Temp), f. 12-20-02, cert. ef. 1-1-03 thru 6-28-03; DGMI 1-2003, f. 6-27-03, cert. ef. 6-29-03

## 632-007-0030

### Effective Date

The rules in this division are effective June 29, 2003.

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 195.260 & ORS 516.090

Hist.: DGMI 1-2002, f. 12-20-02, cert. ef. 1-1-03; Suspended by DGMI 2-2002(Temp), f. 12-20-02, cert. ef. 1-1-03 thru 6-28-03; DGMI 1-2003, f. 6-27-03, cert. ef. 6-29-03

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## Department of Human Services, Addiction Services Chapter 415

**Adm. Order No.:** ADS 2-2003

**Filed with Sec. of State:** 7-15-2003

**Certified to be Effective:** 9-1-03

**Notice Publication Date:** 4-1-03

**Rules Amended:** 415-051-0015, 415-051-0055, 415-051-0057, 415-051-0060

**Rules Repealed:** 415-020-0045, 415-020-0055

**Subject:** These rules are revised as a result of a budget note from the 2001 legislative session. The budget note directed "OADAP" to include a quality improvement measure in the quality assurance plans as required by the existing OAR. This rule will increase the number of certified Alcohol and Drug Counselors providing service to clients as it decreases the amount of time from date of hire that they have to become certified. This revision also aligns the requirements of Community College Substance Abuse programs with administrative rule requirements. The revisions will help ensure that all clients receiving substance abuse treatment are treated by certified or licensed professionals.

**Rules Coordinator:** Robert Miller—(503) 945-6185

### 415-051-0015

#### Administrative Requirements for Treatment Programs

(1) Administrative Rules: An alcohol and other drug treatment program that contracts directly with the Office of Mental Health and Addiction Services or indirectly with the office through the community mental health program administered by the Office of Mental Health and Addiction Services (OMHAS) shall comply with the contracting rules of the office contract agents, OMHAS and the Office of Medical Assistance Programs (OMAP) governing reimbursement for services and refunds including, but not limited to:

- (a) OAR 309-013-0020 (Audit Guidelines);
- (b) OAR 309-013-0075 to 013-0105 (Fraud and Embezzlement);
- (c) OAR 309-014-0000 to 014-0040 (Administrative Standards);
- (d) OAR 410-120-1120 through 120-1980 Office of Medical Assistance Programs (OMAP) General Rules);
- (e) OAR 410-140-0000 through 141-0860 Oregon Health Plan (OHP) Administrative Rules); and
- (f) ORS 813.270 (Intoxicated Driver Program Fund).

(2) Policies and Procedures: A program shall develop and implement written policies and procedures that describe program operations. Policies and procedures shall include a quality assurance plan for ensuring that clients receive appropriate treatment services and that the program is in compliance with relevant administrative rules and other reporting requirements. The Quality Assurance Plan must include:

(a) A measurement of the proportion of full-time equivalent clinical staff who are licensed and or certified as defined in this rule, and

(b) Goals for moving toward 100 percent of staff maintaining the required licensure or certification

(3) Personnel Policies: If two or more staff provide services, the program shall have and implement the following written personnel policies and procedures, which are applicable to program staff, volunteers, and interns/students:

(a) Rules of conduct and standards for ethical practices of treatment program practitioners;

(b) Standards for use and abuse of alcohol and other drugs with procedures for managing incidents of use and abuse that, at a minimum, comply with Drug Free Workplace Standards; and

(c) Compliance with the federal and state personnel regulations including the Civil Rights Act of 1964 as amended in 1972, Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title I of the Americans with Disabilities Act, Oregon civil rights laws related to employment practices, and any subsequent amendments effective on or before the effective date of these rules. The program shall give individualized consideration to all applicants who, with or without reasonable accommodation, can perform the essential functions of the job position.

(4) Documentation of Qualifications: The program shall maintain a record for each treatment staff member documenting applicable qualification standards as described in OAR 415-051-0050 to 0060. The program shall maintain the record for a period of three years following the departure of a treatment staff person.

(5) Disabilities Act: Alcohol and other drug abuse treatment programs receiving public funds must comply with Title 2 of the Americans with Disabilities Act of 1990, 42 USC § 1231 et seq. after July 26, 1992.

(6) Insurance: Each alcohol and other drug abuse treatment program shall maintain malpractice and liability insurance and be able to demonstrate evidence of current compliance with this requirement. Programs operated by a public body shall demonstrate evidence of insurance or a self-insurance fund pursuant to ORS 30.282.

(7) Client Record-keeping: Each program shall:

(a) Accurately record all information about clients as required by these rules in permanent client records;

(b) Maintain each client record to assure permanency, identification, accessibility, uniform organization, and completeness of all components required by these rules and in a manner to protect against damage or separation from the permanent client or program record;

(c) Keep all documentation current (unless specified otherwise, within seven days of delivering the service or obtaining the information);

(d) Include the signature of the person providing the documentation and service;

(e) Not falsify, alter, or destroy any client information required by these rules to be maintained in a client record or program records;

(f) Document all procedures in these rules requiring client consent and the provision of information to the client on forms describing what the client has been asked to consent to or been informed of, and signed and dated by the client. If the program does not obtain documentation of consent or provision of required information, the reasons must be specified in the client record and signed by the person responsible for providing the service to the client;

(g) Require that errors in the permanent client record shall be corrected by lining out the incorrect data with a single line in ink, adding the correct information, and dating and initialing the correction. Errors may not be corrected by removal or obliteration through the use of correction fluid or tape so they cannot be read;

(h) Ensure that a written description of any injury or accident during program services or on program grounds involving any client is placed in the individual's record; and

(i) Permit inspection of client records upon request by the Office to determine compliance with these rules.

(8) Client/Fiscal Record Retention: Client records shall be kept for a minimum of seven years. If a program is taken over or acquired by another program, the original program is responsible for assuring compliance with the requirements of 42 CFR §2.19(a)(1) and/or (b), whichever is applicable. If a program discontinues operations, the program is responsible for:

(a) Transferring fiscal records required to be maintained under section (1) of this rule to the Office of Mental Health and Addiction Services if it is a direct contract or to the community mental health program or managed care plan administering the contract, whichever is applicable; and

(b) Destroying client records or, with client consent, transferring client records to another program.

Stat. Auth.: ORS 409.410 & ORS 409.420

Stats. Implemented: ORS 430.265 - ORS 430.335, ORS 430.345 - ORS 430.380, ORS 430.405 - ORS 430.700 & ORS 813

Hist.: MHD 47(Temp), f. & ef. 10-4-77; MHD 3-1979, f. & ef. 1-16-78; MHD 14-1983, f. 7-27-83, ef. 10-25-83; Renumbered from 309-052-0020(6); ADAP 3-1993, f. & cert. ef. 12-6-93; Renumbered from 309-051-0015; ADAP 1-1995, f. & cert. ef. 7-25-95; ADAP 1-2000(Temp), f. 5-11-00, cert. ef. 6-1-00 thru 11-27-00; ADAP 2-2000, f. 11-22-00, cert. ef. 11-27-00; ADAP 1-2002, f. 8-1-02, cert. ef. 9-1-02; ADS 2-2003, f. 7-15-03, cert. ef. 9-1-03

### 415-051-0055

#### Clinical Supervision Staff Qualifications

(1) Qualifications: Each alcohol and other drug abuse treatment program shall have an identified clinical supervisor who has one of the following qualifications at the time of hire:

(a) Five years of paid full-time experience in the field of alcohol and other drug counseling; or

(b) A Bachelor's degree and four years of paid full-time experience in the social services field, with a minimum of two years of direct alcohol and other drug counseling experience; or

(c) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience.

(2) Competency: Any supervisor shall:

(a) Have knowledge and experience demonstrating competence in the performance of the following essential job functions: supervision of treatment staff including staff development, treatment planning, case management, and utilization of community resources including self-help groups;

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preparation and supervision of client evaluation procedures; preparation and supervision of case management procedures for client treatment; conducting of individual, group, family, and other counseling; and assurance of the clinical integrity of all client records for cases under their supervision, including timely entry or correctness of records and requiring adequate clinical rationale for decisions in admission and assessment records, treatment plans and progress notes, and discharge records;

(b) Demonstrate by his or her conduct the competencies required by this rule and compliance with the program policies and procedures implementing these rules; and

(c) Except as provided in section (5) of this rule, hold a current certification or license in addition counseling or hold a current license as a health or allied provider issued by a state licensing body.

(3) Certification: For supervisors holding a certification or license in addition counseling, qualifications for the certificate or license must have included at least:

(a) 4,000 hours of supervised experience in alcohol/drug abuse counseling;

(b) 300 contact hours of education and training in alcoholism and drug abuse related subjects; and

(c) Successful completion of a written objective examination or portfolio review by the certifying body.

(4) Licensure/Registration: For supervisors holding a health or allied provider license, such license/registration shall have been issued by one of the following state bodies and the supervisor must possess documentation of at least 120 contact hours of academic or continuing professional education in the treatment of alcohol and drug-related disorders:

(a) Board of Medical Examiners;

(b) Board of Psychologist Examiners;

(c) Board of Clinical Social Workers;

(d) Board of Licensed Professional Counselors and Therapists; or

(e) Board of Nursing.

(5) Recovering Individuals: For an individual recovering from a substance abuse related disorder, the performance of a clinical supervisor's essential job functions in connection with staff and clients who themselves may be trying to recover from a substance abuse related disorder demands that an applicant or person hired as clinical supervisor be able to demonstrate continuous sobriety under nonresidential, independent living conditions for the immediate past two years.

(6) Administrator as Clinical Supervisor: If the program's director meets the qualifications of the clinical supervisor, the director may be the clinical supervisor

Stat. Auth.: ORS 409.410 & ORS 409.420

Stats. Implemented: ORS 430.265 - ORS 430.335, ORS 430.345 - ORS 430.380, ORS 430.405 - ORS 430.700 & ORS 813

Hist.: MHD 47(Temp), f. & ef. 10-4-77; MHD 3-1979, f. & ef. 1-16-78; MHD 14-1983, f. 7-27-83, ef. 10-25-83; Renumbered from 309-052-0020(6); ADAP 3-1993, f. & cert. ef. 12-6-93; Renumbered from 309-051-0055; ADAP 1-1995, f. & cert. ef. 7-25-95; ADAP 1-2000(Temp), f. 5-11-00, cert. ef. 6-1-00 thru 11-27-00; ADAP 2-2000, f. 11-22-00, cert. ef. 11-27-00; ADS 2-2003, f. 7-15-03, cert. ef. 9-1-03

## 415-051-0057

### Counseling and Treatment Staff Qualifications

(1) Competency: All treatment staff shall:

(a) Have knowledge, skills, and abilities demonstrating competence in the following essential job functions: treatment of substance-related disorders including client evaluation and individual, group, family, and other counseling techniques; program policies and procedures for client case management and record keeping; and accountability for recording information in the client files assigned to them consistent with those policies and procedures and these rules;

(b) Demonstrate by conduct the competencies required by this rule and compliance with the program policies and procedures implementing these rules; and

(c) Except as provided in section (4) or (5) of this rule, hold a current certification or license in addition counseling or hold a current license as a health or allied provider issued by a state licensing body.

(2) Certification: For treatment staff holding a certification or license in addition counseling, qualifications for the certificate or license must have included at least:

(a) (750) hours of supervised experience in alcohol/drug abuse counseling;

(b) 150 contact hours of education and training in alcoholism and drug abuse related subjects; and

(c) Successful completion of a written objective examination or portfolio review by the certifying body.

(3) Licensure/Registration: For treatment staff holding a health or allied provider license, such license/registration shall have been issued by one of the following state bodies and the staff person must possess documentation of at least 60 contact hours of academic or continuing professional education in the treatment of alcohol and drug-related disorders:

(a) Board of Medical Examiners;

(b) Board of Psychologist Examiners;

(c) Board of Clinical Social Workers;

(d) Board of Licensed Professional Counselors and Therapists; or

(e) Board of Nursing.

(4) Existing Staff: Existing staff of residential programs who do not hold a certificate/license that meets the standards identified in section (2) or (3) of this rule must apply to a qualified credentialing organization or state licensing board within three months of the effective date of this rule and achieve certification or licensure meeting the standards of section (2) or (3) of this rule within (24) months of the application date.

(5) New Hires: New hires need not hold a qualified certificate/license but those who do not must make application within six months of employment and receive the credential/license within (24) months of the application date.

(6) Recovering Individuals: For an individual recovering from a substance abuse related disorder, the performance of a counselor's essential job functions in connection with staff and clients who themselves may be trying to recover from a substance abuse related disorder demands that an applicant or person hired as a counselor be able to demonstrate continuous sobriety under nonresidential, independent living conditions for the immediate past two years.

(7) Interns/Students: Interns/students who do not meet the requirements of section (1) of this rule may provide clinical services if closely supervised by qualified staff pursuant to an established written plan.

Stat. Auth.: ORS 409.410 & ORS 409.420

Stats. Implemented: ORS 430.265 - ORS 430.335, ORS 430.345 - ORS 430.380, ORS 430.405 - ORS 430.700 & ORS 813

Hist.: ADAP 1-1995, f. & cert. ef. 7-25-95; ADAP 1-2000(Temp), f. 5-11-00, cert. ef. 6-1-00 thru 11-27-00; ADAP 2-2000, f. 11-22-00, cert. ef. 11-27-00; ADS 2-2003, f. 7-15-03, cert. ef. 9-1-03

## 415-051-0060

### Use of Volunteers

Each alcohol and other drug abuse treatment program utilizing volunteers shall have the following standards for volunteers:

(1) Policy: A written policy regarding the use of volunteers that shall include:

(a) Specific responsibilities and tasks of volunteers;

(b) Procedures and criteria used in selecting volunteers, including sobriety requirements for individuals recovering from the disease of alcohol or other drug abuse;

(c) Specific accountability and reporting requirements of volunteers; and

(d) Specific procedure for reviewing the performance of volunteers and providing direct feedback to them.

(2) Orientation and Training: There shall be documentation that volunteers complete an orientation and training program specific to their responsibilities before they participate in assignments. The orientation and training for volunteers shall:

(a) Include a thorough review of the alcohol and other drug abuse treatment program's philosophical approach to treatment;

(b) Include information on confidentiality regulations and client's rights;

(c) Specify how volunteers are to respond to and follow procedures for unusual incidents;

(d) Explain the alcohol and other drug abuse treatment program's channels of communication and reporting requirements and the accountability requirements for volunteers;

(e) Explain the procedure for reviewing the volunteer's performance and providing feedback to the volunteer; and

(f) Explain the procedure for discontinuing a volunteer's participation.

Stat. Auth.: ORS 409.410 & ORS 409.420

Stats. Implemented: ORS 430.265 - ORS 430.335, ORS 430.345 - ORS 430.380, ORS 430.405 - ORS 430.700 & ORS 813

Hist.: MHD 14-1983, f. 7-27-83, ef. 10-25-83; ADAP 3-1993, f. & cert. ef. 12-6-93; Renumbered from 309-051-0060; ADAP 1-1995, f. & cert. ef. 7-25-95; ADAP 1-2000(Temp), f. 5-11-00, cert. ef. 6-1-00 thru 11-27-00; Administrative correction 6-20-01; ADS 2-2003, f. 7-15-03, cert. ef. 9-1-03

# ADMINISTRATIVE RULES

## Department of Human Services, Child Welfare Programs Chapter 413

**Adm. Order No.:** CWP 24-2003(Temp)

**Filed with Sec. of State:** 6-18-2003

**Certified to be Effective:** 6-18-03 thru 12-14-03

**Notice Publication Date:**

**Rules Amended:** 413-050-0200, 413-050-0210, 413-050-0220, 413-050-0230, 413-050-0240, 413-050-0250, 413-050-0260, 413-050-0270, 413-050-0280, 413-050-0290, 413-050-0300

**Subject:** The Department of Human Services (DHS) supportive and Remedial Child Care program is being revised to add an additional pre-approval process for providers of child care. With the integration of child care services in DHS, faster approvals are now available through the department's self-sufficiency provider approval process. The revisions to these rules provide for use of this new process statewide, as well as the process available through the DHS foster care or relative care program, and the Child Care Division of the Employment Department.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

### 413-050-0200

#### Purpose

The purpose of these rules is to define key terms, describe eligibility criteria and rate payment policies related to the State Office for Services to Children and Families Supportive or Remedial Day Care program. Expenditures by the Department under these rules are subject to the availability of state or federal funds, as applicable, and are subject to immediate curtailment by the Department if the necessary state or federal authorizations or funding are curtailed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

### 413-050-0210

#### Definition

(1) "Authorized Absence" means the temporary absence from the facility by a child who is expected to return to care.

(2) "Department" means the Department of Human Services.

(3) "CCD" means the Child Care Division of the Employment Department.

(4) "SDA" means Service Delivery Area of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

### 413-050-0220

#### Eligibility Criteria

(1) The Department may purchase Supportive or Remedial Day Care Services for children under 13 years of age who are receiving Preventive/Restorative services, Child Protective Services, Substitute Care, or Adoption Services when the child(ren)'s physical, social, mental or emotional needs are not being met and day care will reduce the need for substitute care placement.

(2) Supportive or Remedial Day Care is to be used in the following priority order:

(a) When a child would be able to remain at home as an alternative to substitute care, or to return home from substitute care through specialized day care planning;

(b) When a foster care or adoptive placement is in jeopardy due to a foster or adoptive parent's illness, or there is a need for temporary respite due to extreme care demands of the child;

(c) When a parent is unable to meet the child's needs due to extreme physical or emotional stress

(d) When a child's physical, social, mental, or emotional development is being retarded or is at risk due to lack of proper care or stimulation.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

### 413-050-0230

#### Service Authorization

(1) Case Record Documentation:

(a) The service worker must review the appropriateness of day care service as a component of the total service plan. The day care service must be part of a coordinated, goal oriented, time limited casework plan to reduce the need for substitute care;

(b) The case record must document how the service will support or assist in achieving the service plan objectives. The use of day care services must be approved by the service supervisor;

(c) Each service is to be coded per IIS code sheet showing the relationship to prevention of substitute care.

(2) Limits of Eligibility:

(a) The maximum time the Department will authorize Supportive or Remedial Day Care for any one child is eight hours a day, five days a week;

(b) The use of the day care service shall be reviewed by the service worker and supervisor at least once every three months. The service authorization may be extended for three months at a time to assist in meeting the service goal to a maximum of 12 months;

(c) The service may be used more than 12 months only to prevent imminent foster care or prevent shelter care. Extension past 12 months shall be reviewed and approved by the local Department Substitute Care Review Committee;

(d) If all allocated funds are expended, service workers are to document unmet needs and notify the SDA Manager or designee.

(3) Select a Provider:

(a) Day Care Home or Center. The Department shall assist the parent in evaluating day care providers in order to select the provider which most closely matches the needs of the child and the family. The family should participate in selecting a CCD approved day care provider, or a Department approved day care, foster care, or relative care provider, but the service worker shall make final determination based on the needs of the child and goals of the case plan. Prior to placing any child in Supportive or Remedial Day Care, the provider must be approved through the Department day care, or foster care, or relative care process unless they are currently "licensed" by CCD. Other valid reasons for not using a person include behavior which may have a detrimental effect on a child, or physical or mental problems which would adversely affect a child.

(b) In-Home Care:

(A) Prior to authorizing in-home care the Department worker shall:

(i) Determine if the person is known to the Department using the Central Provider and Client Index; and

(ii) Determine that the provider is at least 18 years of age and is willing and able to provide the quantity and quality of care needed by the child;

(iii) Require the in-home provider to be approved through the Department day care, or foster care, or relative care process unless they are currently "licensed" with the CCD. Other valid reasons for not using a person include behavior which may have a detrimental effect on a child, or physical or mental problem which would adversely affect a child.

(iv) Obtain a provider number (see IIS User's Guide, Provider Subsystem); and

(v) Explain to the provider the CF 977, "Payment Policies and Procedures."

(B) In-Home Care may be authorized when:

(i) A child, who is ordinarily in day care purchased by the Department, is ill. This is limited to no more than five days of care in one calendar month and shall not exceed the number of hours per day already authorized; or

(ii) A handicapped child requires care and no out-of-home day care is available or can be developed; or

(iii) The plan for in-home care does not exceed the cost of out-of-home day care.

(C) The in-home care provider will be paid at the minimum wage.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 13-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

### 413-050-0240

#### Payment Process

The Department payment is subject to Department established eligibility conditions described in these rules.

(1) The Department will pay only for day care authorized by the Department.

(2) If a child is in day care when the service plan is made, payment shall be made only from the date the service is authorized.

(3) The Department will make payments for temporary absences if requested by the provider, subject to the following requirements and limits:



# ADMINISTRATIVE RULES

(a) The provider must use the same policy for all families, including those served and not served by the Department;

(b) The child must be expected to continue in day care with the same provider after the absence;

(c) The Department will not make payment for absence(s) exceeding a total of five days in any calendar month; and

(d) Absence days, or portions thereof, will include only the time(s) for which care has been authorized by the Department.

(4) Department payments will only be made to a day care provider who is CCD approved provider, a Department approved day care provider, or foster care provider, or relative care provider.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

## 413-050-0250

### Payment Authorization

(1) Complete a "Supportive or Remedial Day Care Payment Authorization/Termination Notice" (CF 116) and a "Plan/Service Authorization" (CF 308). Distribute the CF 116 and input information from the CF 308 into IIS.

(2) Invoices (See the Integrated Information System (IIS) User's Guide, Client Subsystem.):

(a) A "Day Care Invoice" (CPO 350FI-A) will be generated automatically and mailed to the provider from the Department when information from the CF 308 has been input no later than the seventh working day prior to the end of the service month;

(b) If information from the CF 308 has not been input within the above stated time, or a supplemental payment is to be made, local Department staff shall send a CF 283, "Supplemental Client Invoice-Day Care," to the care provider;

(c) Checks are written up to the amount authorized. Authorization should be input into IIS prior to service provision whenever possible. The worker will be notified of a discrepancy between authorization and billing amounts by the Department Accounting Services.

(A) If the provider billed the Department for additional care that was authorized but not input, the local Department must prepare a CF 283, "Supplemental Invoice." Complete the invoice for the difference to be paid showing the unit, rate, and amount. Local Department staff shall sign the provider's name and their own name and mail it to the Department Accounting Services;

(B) If the provider did not bill the Department for additional care that was authorized but not input, the local Department staff must send a CF 283 to the provider to complete and mail to Department Accounting Services;

(C) A CF 308 must also be completed to authorize additional service. For additional service the "Type of Service" code is DSUP for out-of-home providers and DISP for care provided in the child's home.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

## 413-050-0260

### Payment Revision or Plan Closure

(1) When a child is no longer in care or the client becomes ineligible prior to the projected end date, the service worker must notify the provider and the client that the Department will no longer pay for care. This is done by sending a copy of the most recent CF 116 with the termination section completed.

(2) When a child who is ordinarily in day care purchased by the Department is ill an additional payment may be made to a substitute provider, who is either an approved CCD provider, or a Department approved day care provider, foster care provider or relative care provider.

(3) Any time there is an overpayment the worker must initiate overpayment and/or fraud procedures. See OAR 413-310-0000 through 0100 (Department child welfare policy III-B.1)

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

## 413-050-0270

### Billing Method

(1) Department payments for day care are made by check to the provider on behalf of the client after all care for the month has been given. The invoice is to be submitted to the Department by the provider for payment.

(2) Family day care providers must bill at an hourly rate (with the exception that they may bill at a daily rate for before and/or after school care) not to exceed the total authorized.

(3) Center and group home providers may bill at an hourly, daily, weekly, or monthly rate not to exceed the total authorized.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

## 413-050-0280

### Determining Day Care Rates for Payment

(1) The Department will pay the provider's standard rate for all children or the Department Supportive Remedial Day Care maximum rate (see OAR 413-050-0290), whichever is less. The allowable rate shall be entered on the CF 116, "Supportive or Remedial Day Care Payment Authorization/Termination Notice."

(2) The provider shall not ask for, or accept, directly or indirectly, any additional payment for care provided to a Department eligible family unless there is a written agreement between the Department and the provider. (See CF 116A, "Request for an Exception.")

(3)(a) When the infant rate has been authorized for a child and the child reaches 30 months of age, the rate must be revised. Department workers are responsible for making this change effective no later than the first of the month after the child reaches 30 months of age.

(b) The Department worker shall send the provider a revised CF 116, and revise the Type of Service and authorized amounts on the CF 308 and input into IIS.

(4)(a) Although there are no special day care rates for children who are physically, developmentally and/or emotionally disabled, when a child 30 months of age or over functions below chronological age, the Department may authorize up to the infant rate for the care of the identified child.

(b) The Department worker, with supervisory approval, must document in the case record why the infant rate is being authorized for a child 30 months or older. Documentation must include the following:

(A) That effort was made to locate a resource at the Department non-infant rate; and

(B) Description of the specific problem which requires services above those covered by the non-infant rate.

(5) Rates charged to the Department for day care services may not exceed rates charged for comparable services to children not served by the Department:

(a) Donations and subsidies of cash or in-kind services may be used to reduce charges which would otherwise be made for day care services;

(b) Such donations and subsidies must be used to reduce charges for all children in care unless the donor specifies in writing that the donation is to be used for either a specific family or category of families;

(c) Separate records shall be kept by the provider for all donations and subsidies received and disbursed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

## 413-050-0290

### Maximum Rates

(1) The maximum rates the Department pays for Supportive or Remedial Day Care are determined annually and will be furnished upon request.

(2) In-home Care: Minimum wage for care in a child's own home is governed by the state minimum wage law. It may not be negotiated. Overtime at one-and-one-half times the regular rate must be paid for all hours worked in excess of 40 hours in a work week (seven sequential days). Overtime shall not be paid to a provider who lives in the child's home.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

## 413-050-0300

### Exceptions

(1) Specific exceptions to any section of these rules may be granted for good and just cause by the Department.

(a) The exception must be requested in writing and show how the intent of the rule will be met.

(b) No exception will be granted which may jeopardize the health, safety, and well-being of any child in care.

# ADMINISTRATIVE RULES

(c) No exceptions will be allowed to use a provider who is not registered or certified by the CCD, or who is not approved by the Department as a day care provider, foster care provider, or relative care provider.

(d) No exceptions will be allowed to the minimum standards for the use of alternate care givers in Foster Care, Relative Care and Adoptive Families, established in OAR 413-200-0301 through 0401.

(2) All exceptions must be approved by the person designated by the Department and be on file in the case record. The granting of an exception shall not constitute a precedent for any other provider or client.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03

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**Rules Repealed:** 413-020-0275, 413-020-0285, 413-020-0300, 413-020-0310, 413-020-0320, 413-020-0330, 413-020-0335, 413-020-0340, 413-020-0350, 413-020-0360, 413-020-0380, 413-020-0390, 413-020-0400, 413-020-0405, 413-020-0410, 413-020-0420, 413-020-0430, 413-030-0100, 413-030-0110, 413-030-0120, 413-030-0130

**Subject:** The Department of Human Services Child Welfare Program is adopting Child Protective Service (CPS) rules that emphasize the identification of safety threats to children in reviewing information received by the department alleging child abuse. A guided assessment process has been developed to improve consistency in gathering information and making assignments for CPS assessments. These rules require specific time lines for seeing a child face-to-face to assess child safety and to develop a child safety plan when child safety threats are present. These rules will result in more timely initiation of CPS assessments for children who are potentially unsafe. These rules address determining protective capacities of parents and caregivers and the use of Team Decision Meetings with families to develop safety plans for children. These new rules include substantial changes to current rules regarding screening and assessment of alleged child abuse. Rules that currently address other CPS issues such as cross reporting, working with other entities, interviewing, photographing and document, medical examinations, and dispositions have had some revisions and have been moved to Chapter 413 division 015 so that all of these related CPS issues can be filed in a logical order within new division 015. The introduction rule and the child safety assessment and child safety planning rules are new rules. A copy of the final rules can be accessed at the child welfare policy website: <http://www.dhs.state.or.us/policy/childwelfare/index.htm>

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-015-0100

### Child Protective Service Authority and Responsibility

Information regarding suspected child abuse, including neglect and third-party abuse, is received by the Department, screened for Department response, and assigned for CPS assessment and disposition. These processes and time lines for completion are provided in division 015 of this chapter of rules. OAR 413-015-0100 through 0125 provide an overview of division 015, which implements ORS 418.015 and 419B.005 to 419B.050.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0105

### Purpose of Child Protective Services

(1) The purposes of Child Protective Services are to identify child abuse and to assure protection of children.

(2) The goals of Child Protective Services are to:

(a) Assure a child's welfare and safety through various protective strategies;

(b) Reduce the factors, causes, and stresses that led to the child abuse;

(c) Support and encourage family preservation or reunification; and

(d) Initiate permanency plans when it is determined that a child cannot safely remain in or return to the home.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0110

### Introduction to Rules Governing Child Protective Services

The rules of this division are organized as follows:

(1) Introduction to Child Protective Services, OAR 413-015-0100 through 0125

(2) Screening, OAR 413-015-0200 through 0225

(3) Cross Reporting, OAR 413-015-0300 through 0310

(4) Child Protective Services Assessment, OAR 413-015-0400 through 0410

(5) Child Safety Assessment and Child Safety Planning, OAR 413-015-0500 through 0510

(6) Working with Other Entities, 413-015-0600 through 0615

(7) Interviewing, 413-015-0700 through 0740

(8) Photographing and Documenting, 413-015-0800

(9) Medical Examination, 413-015-0900 through 0905

(10) Child Abuse Assessment Dispositions, 413-015-1000

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0115

### Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) "Caregiver" is a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a minor under 18 years of age.

(3) "Child abuse" means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) "Child protective services (CPS)" means a specialized social service program that the Department provides on behalf of children who are abused or who are at substantial risk of child abuse by a parent or caregiver.

(5) "Child protective services assessment" means activities and interventions that evaluate potential safety threats, risk influences, and caregiver protective capacity and determine whether or not child abuse has occurred. Activities include development of a child safety plan and identification of services.

(6) "Child protective services supervisor (CPS supervisor)" means an employee of the Department trained in child protective services and designated as a supervisor.

(7) "Child protective services worker (CPS worker)" means an employee of the Department who has completed the mandatory department training for child protective service workers.

(8) "Child safety assessment" means actions or interventions, which include face-to-face contact with the child and parent, or caregiver, to determine whether a child is safe.

(9) "Child safety plan" means a documented set of actions or interventions that describe how a child's safety is achieved by eliminating or managing a safety threat.

(10) "Department" means the Department of Human Services Child Welfare Program.

(11) "Department response" means how the Department intends to respond to a report of child abuse after a report of alleged abuse is screened.

(12) "FACIS" means the Family and Child Information System.

(13) "Guided Assessment Process (GAP)" is a tool used to determine the presence of a safety threat that requires consideration of risk influences and parent or caregiver protective capacity.

(14) "Harm" means impairment, damage, detriment, or injury to a child's physical, sexual, emotional, or mental development or functioning.

# ADMINISTRATIVE RULES

(15) "Immediate safety threat" means behavior, conditions, or circumstances that are presently beyond the parent's or caregiver's current ability to manage and are likely to result in harm to a child.

(16) "Impending safety threat" means behavior, conditions, or circumstances that are not presently beyond the parent's or caregiver's current ability to manage but are likely to become so within the near future and are likely to result in harm to a child.

(17) "ICWA" means the Indian Child Welfare Act.

(18) "Multi-disciplinary team (MDT)" is a county investigative team, described in ORS 418.747, that includes law enforcement personnel, child protective service workers, district attorneys, school officials, health department staff, and juvenile department personnel.

(19) "Risk influences" means those circumstances and situations that contribute to the severity of identified safety threats and that are considered by the CPS worker when a safety plan is developed.

(20) "Protective capacity" means a parent's or caregiver's strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or stop risk influences from creating a safety threat.

(21) "Protective custody" means custody authorized by ORS 419B.150.

(22) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(23) "Report" means information provided to the Department that constitutes an allegation of child abuse.

(24) "Safe" means there is an absence of safety threats in a family or there is sufficient protective capacity within the family to manage the existing safety threats.

(25) "Safety threat" means behavior, conditions, or circumstances that are likely to result in harm to a child.

(26) "Screening" means the process used by a screener to determine the Department's response when information alleging abuse is received.

(27) "Screener" means a department employee with training required to provide screening services.

(28) "Substantial harm" means immobilizing impairment, life threatening damage, or significant or acute injury to a child's physical, sexual, psychological, or mental development or functioning.

(29) "Team Decision Meeting (TDM)" means a facilitated meeting with family, extended family, community members, service providers, and child welfare staff held for the purpose of making child placement related decisions.

(30) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0120

### Initiating Child Protective Services

Child protective services for a child or family may be initiated in a variety of ways, including but not limited to:

- (1) A child or family requests services.
- (2) A person provides information about suspected child abuse.
- (3) A county or another state requests services.
- (4) A juvenile court orders or recommends services.
- (5) The Department receives information from law enforcement about suspected child abuse.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0125

### Department Responsibility Ends

The Department is not responsible for providing protective services when:

- (1) The screener determines that information received does not constitute child abuse (see OAR 413-015-0210(2)(a) and (b)).
- (2) The CPS assessment results in a disposition of unfounded.
- (3) The CPS assessment does not identify information sufficient to request juvenile court intervention, and the parents or caregivers do not request or agree to receive voluntary services.
- (4) Pertinent safety threats have been eliminated, or the parent's or caregiver's protective capacity can manage identified safety threats.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0200

### Screening Rules, Purpose

The Department receives information alleging child abuse from various sources. OAR 413-015-0205 through 0225 describe how the Department will review this information and determine a department response. This process is known as screening and is conducted by a screener.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0205

### Screening Activities

On the same day information alleging child abuse is received by the Department, screeners must complete the following actions unless otherwise provided for in this rule or an extension is granted as provided in OAR 413-015-0220:

(1) Use the guided screening process to assure critical information is collected and to evaluate the presence of safety threats.

(2) Contact only those collateral sources who can provide firsthand information necessary to evaluate possible safety threats to the child and to determine the appropriate department response.

(3) Research the history of the child and family for essential family data to determine current or previous department involvement related to current child abuse allegations.

(4) Inquire regarding possible Indian or Alaskan Native heritage.

(5) Request from law enforcement agencies (LEA), when available and appropriate, relevant information, including domestic disturbance calls, arrests, and restraining orders.

(6) Determine the location and corresponding legal jurisdiction of the family's residence and the site where the alleged child abuse may have occurred.

(7) Enter data into the FACIS system:

(a) In situations that require a response by the Department (immediate, impending, or response required) on the same day the screening determination is made.

(b) In situations that do not require a response (closed at screening and logged) no later than the next working day after the screening determination is made.

(8) Consult with the CPS supervisor as required by the SDA protocol when determining the Department's response or assigning the referral. In no case should the supervisory consultation unduly delay the screening or assignment of the report for assessment.

(9) Determine the Department's response.

(10) Assign the referral to a CPS worker for a CPS assessment if the screener determines the department response requires a referral.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0210

### Determining Department's Response and Required Time Lines

Upon completion of the screening activities required by OAR 413-015-0205, the screener must determine whether the information alleging child abuse constitutes a report of child abuse and must determine the Department's response. The Department's response will be either a CPS assessment or no CPS assessment, as explained in sections (1) and (2) of this rule.

(1) CPS assessment required. If the screener determines that information received constitutes a report of child abuse:

(a) An Immediate Response referral is required if there is an immediate safety threat.

(b) An Impending Response referral is required if there is an impending safety threat.

(c) A Response Required referral is required if the presence of a safety threat is identified, but the information indicates the child is currently safe.

(2) CPS assessment not required. If the screener determines that the information alleging child abuse meets the following criteria, it will not be assigned to a CPS worker for a CPS assessment:

(a) Close at Screening: A case is closed at screening if the information alleging child abuse constitutes a report of child abuse, but there is no current safety threat, the safety threat has been resolved, or the safety threat is from a person outside the child's family and the child's caregiver is protective. The screener must decide whether other services are appropriate and make service or resource referrals as necessary. The screener must assure that the information received supports the determination that the child is

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currently safe and that other services or resources have been identified as needed.

(b) Log: A case is logged if the screener determines that the information alleging child abuse does not constitute a report of child abuse, but the information is from a mandatory reporter or the information may be significant if future related calls are received.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0215

### Notifications to Specific Agencies or Entities

The screener must notify specific agencies or entities of referrals that the screener determines meet the criteria described in OAR 413-015-0210(1)(a), (b), or (c) or (2)(a).

(1) LEA. The screener must cross report to LEA as required by OAR 413-015-0305(1).

(2) Child Care Division. The screener must notify the Child Care Division of referrals alleging child abuse in a registered day-care home or in a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(3) Child Caring Agency Licensing Program. The screener must notify the Department's Child Caring Agency Licensing Program when the referral involves a licensed child caring facility.

(4) ICWA. If the screener or assigned CPS worker knows or has reason to know that the child is an Indian child, the screener or CPS worker must give notice to the Indian child's tribe that a CPS assessment is being conducted.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0220

### Extensions

(1) The CPS supervisor may grant an extension to the deadline in OAR 413-015-0205 when the screener cannot complete the screening activities the same day that the information alleging child abuse is received because critical information is still needed to determine the Department's response. The screener must document both the reason for an extension that is granted and the approval by a supervisor.

(2) If the screening activities cannot be completed within the time frames identified in this division of rules, the CPS supervisor may grant a one-day extension up to two times. Screening activities may not exceed two days beyond the day the information alleging child abuse is received by the Department.

(3) When a child welfare office is closed for a weekend or holiday and screening activities cannot be completed the day before the weekend or holiday begins, and the screener does not have enough information to determine a department response, a CPS supervisor may grant an extension to allow screening activities to be completed on the next business day.

(4) If the screener has enough information to determine the Department's response, no extension to the deadline in OAR 413-015-0205 may be allowed.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0225

### Supervisory Review

The CPS supervisor must review all closed-at-screening reports within five days of completion of screening activities and electronic transmission for review.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0300

### Cross Reporting Defined

The Department and LEA are required by ORS 419B.015 to notify each other when a report of child abuse is received. This process is known as cross reporting, and the notification is called a cross report. The following rule explains when and how a report of child abuse received by the Department is cross reported.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0305

### Cross Reporting Requirements

(1) The Department screens reports of child abuse in accordance with the screening rules in this division of rules. If the Department's screener determines that information received constitutes a report of child abuse, the screener must cross report the case to an appropriate LEA in the county where the report was made. If the abuse is alleged to have occurred in a different county, the screener may also cross report to an appropriate law enforcement agency in the county where the abuse occurred. The Department must make a cross report even when the Department receives information alleging abuse of a child who is already the subject of an open department child welfare case.

(2) Cross reporting time frames. Cross reporting must be completed in the manner and within the time lines described in this section.

(a) Cross Report, Immediate. When the screener determines that a report of alleged child abuse requires an immediate response, the screener or CPS worker must cross report without delay by contacting the appropriate LEA by telephone, by providing necessary information to the LEA, and by requesting immediate assistance from the LEA. In addition to the telephone cross report, the CPS worker must provide a completed screening report to the LEA if the Department and LEA do not respond to the report of abuse together. If the Department and LEA respond to the report of abuse together, the CPS worker does not need to provide a completed screening report to the LEA.

(b) Cross Report, Impending or Response Required. When the screener determines that the department response should be either an impending response or a response required, the screener must ensure that a cross report is made by fax or other expedited process the same day the Department receives the information alleging child abuse or when the Department's response is determined.

(c) Cross Report, Closed at Screening. When the screener determines that no department response is required and that the report will be closed at screening, the screener must ensure that the cross report is made the same day that the information is entered into the FACIS system.

(3) Cross reporting, supplemental information. The Department may receive information not previously cross reported but apparently related to an allegation of abuse involving the same victim and the same alleged perpetrator that has been previously cross reported. In that event, the screener must proceed as follows:

(a) If the information relates to the same instance of abuse, the screener must make a supplemental cross report of the additional information to each LEA that received the prior cross report. The supplemental information is cross reported using the same time frames used for the original report of abuse, found in section (2) of this rule.

(b) If the information includes a previously unreported instance of abuse or a different reporter of abuse, victim, or alleged perpetrator, the screener must treat the report as a new report of child abuse.

(4) Cross report not required. A cross report is not required:

(a) If, after screening is completed, the screener determines that the information received does not constitute a report of child abuse.

(b) If, after screening is completed, the screener determines that the information received is from a reporter of child abuse who previously made the same allegation regarding the same victim and same alleged perpetrator and that the reporter has provided no additional information.

(5) Contents of cross report. The Department uses its form DHS ?311, or equivalent, to make cross reports. A cross report must include, if known, the names and addresses of the child, the names and addresses of the child's parent or caregiver, the child's age, the nature and extent of the abuse, any evidence of previous abuse, the explanation given for the abuse, and any other information that the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the alleged abuser.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0310

### Administrative Requirements

(1) Local protocol. Each local office must have a written protocol for tracking cross reports sent from the local child welfare office and received by LEA.

(2) Office log. Each local office must maintain a log to track cross reports from the office received by the LEA.

(3) Verification of cross reporting. The CPS supervisor or designee must ensure daily that cross reports are made of all cases required to be

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cross reported by reviewing the office log that tracks all reports that have been sent by the office and received by the LEA.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0400

### Purpose of CPS Assessment and Time Lines

(1) OAR 413-015-0400 through 413-015-0410 describe and establish time lines for completing a CPS assessment.

(2) The CPS assessment process begins once the screening process has been completed, a department response has been determined, and the referral is assigned to a CPS worker.

(3) To complete the CPS assessment, the CPS worker assesses the referral of child abuse to determine whether child abuse has occurred; evaluates potential safety threats, the severity of risk of harm, and parental or caregiver capacity to protect; develops services to assure the child's safety; and provides support to the family.

(4) The CPS worker must complete the CPS assessment, including FACIS input and electronic transmission for review, within 30 days of the day that the information alleging child abuse is received by the screener. The CPS supervisor may approve a one-time extension of an additional 30 days for completion of the CPS assessment if critical information is outstanding. Additional extension of time may be approved by the child welfare program manager if the ability to obtain critical information is beyond the reasonable control of the CPS worker.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0405

### CPS Assessment

The following actions are usually taken to assess a child's safety, to establish a child safety plan, and to complete the CPS assessment. The steps do not occur in a prescribed order but are controlled by the specific circumstances in a given case. The steps are described in a logical order in these rules, but they are not necessarily in the order they must be completed.

(1) Consult with CPS supervisor. Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at key points during the assessment, such as:

- (a) Before making initial contact with the family;
- (b) Prior to a decision to place a child in protective custody;
- (c) When a referral indicates potential danger to the worker;
- (d) When a referral involves allegations that child abuse occurred in a licensed child caring agency;
- (e) When a referral involves a foster care home certified by the Department;
- (f) When making dispositions in complicated or sensitive situations or cases;
- (g) Prior to initiating court action; and
- (h) Prior to a decision to close a case during or at the end of the CPS assessment.

(2) Review relevant records. The CPS worker must review relevant paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the assessment. The CPS worker must review the documents to identify information related to:

- (a) Safety threats and risk influences;
- (b) Worker safety;
- (c) Child and family support systems and protective capacity; and
- (d) History of or a pattern of abuse.

(3) Contact the reporter. The CPS worker must contact the reporter or other collateral sources for additional information if the referral does not contain adequate information to proceed with the assessment.

(4) Contact and work with other entities. The CPS worker must contact other entities including LEAs, public and private schools, tribes, and multi-disciplinary teams (MDTs) as necessary to complete the CPS assessment. The requirements for making these contacts are further described in "Working with Other Entities," OAR 413-015-0600 through 0615.

(5) Determine ICWA Status. The CPS worker must initiate the process to determine the child's ICWA status and notify the tribe if applicable:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Oregon Tribes must be notified within 24 hours after

information alleging abuse is received by the Department. Consult with the ICWA manager to determine whether there is reasonable cause to believe that the child is ICWA eligible.

(c) If the Indian child is enrolled or eligible for enrollment in an Oregon tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local department ICWA liaison or a supervisor if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(6) Identify legal parents and putative fathers. The CPS worker or designee must make a reasonable effort to identify legal parents and putative fathers within 30 days after a child is taken into protective custody. Information about putative fathers must be recorded on form CF 418, "Father(s) Questionnaire" and filed in the case record.

(7) Notify Parent or Caregiver of intent to interview. The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety or a criminal investigation.

(8) Conduct Interview. The CPS worker must interview people, as necessary, to complete the CPS assessment. The requirements for interviewing parents and children are described in OAR 413-015-0700 to 0740.

(9) Conduct child safety assessment. The CPS worker must conduct the child safety assessment using the GAP within the time lines set out in OAR 413-015-0500 through 0510. The safety assessment time lines are based on the department response determined by the screener during the screening process, described in OAR 413-015-0210(1)(a) through (c).

(10) Develop child safety plan. When a safety threat has been identified as a result of the child safety assessment, the CPS worker must immediately develop a child safety plan with the involvement of the family and tribe, if applicable and practicable. OAR 413-015-0500 through 0510 provide specific time lines and requirements for a child safety plan.

(11) Photograph and document. The CPS worker must take photographs, as necessary, to complete the CPS assessment. The requirements for taking photographs are described in OAR 413-015-0800, "Photographs and Documents of Abuse."

(12) Obtain medical examinations. The CPS worker must obtain medical examinations, as necessary, to complete the CPS assessment. The requirements for obtaining medical examinations are described in "Medical Examination and Medical History," OAR 413-015-0900 through 0905.

(13) Provide notice of child placed in protective custody. If a child is placed in protective custody (see OAR 413-015-0410), the CPS worker must notify parents, including a non-custodial parent; caregivers; and the child's tribe, if applicable, in writing.

(14) Record assessment activities. The CPS worker must record assessment activities and information gathered during the assessment process. OAR 413-015-0500 through 0510 provide specific requirements and procedures for making findings and documenting information such as safety threats that have been identified, the capacity of parents or caregivers to protect the child, the safety plan components, identity of relatives who are willing to contribute to the child's safety plan, and cultural considerations.

(15) Notify reporting party. The CPS worker must make a concerted effort to contact the person who made the report of suspected child abuse when the Department has made contact with the family and has concluded the CPS assessment.

(16) Determine disposition of CPS assessment. The CPS worker must determine a disposition to complete the CPS assessment. The requirements for determining dispositions are described in OAR 413-015-1000, "The CPS Assessment Dispositions."

(17) Obtain supervisory review. A CPS supervisor or designee must review and approve a completed CPS assessment within five working days of the electronic submission of the assessment by the CPS worker.

(18) Enter FACIS data. Each local department office may designate an individual to enter the CPS supervisor's electronic verification of review and approval into FACIS.

(19) Notify parents or caregivers of CPS assessment dispositions. The CPS worker must notify the child's parents, including a non-custodial legal parent (if available and if the notification is appropriate), and caregivers of the disposition. OAR 413-010-0700 through 0740 provide requirements and procedures for notifying parents and caregivers.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050  
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0410

### Protective Custody and Juvenile Court Action

- (1) Protective Custody

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(a) The CPS caseworker may take a child into emergency protective custody when the child is in an imminently dangerous environment and law enforcement assistance is not available. When there is resistance, the caseworker may not take the child into custody, but shall wait for law enforcement assistance or obtain an order of temporary custody from the juvenile court;

(b) If the parent or caregiver of an abused or neglected child requests that their child be placed in protective custody and the agency agrees that protective custody is necessary, the CPS worker may take custody of the child without police assistance. The parent must sign a form CF1005, "Voluntary Custody Agreement."

(c) Under ORS 419B.171, when a child is taken into protective custody without a court order, the person taking the child into custody must promptly file a brief written report with the court. A written report is required even if the child is released to a parent or other responsible person prior to a shelter care hearing. The written report shall be completed and sent to the court the day the child is taken into custody, or no later than the morning of the next working day.

(d) If the child is not released to a parent or other responsible person, but is retained in protective custody, a shelter hearing must be scheduled as required by ORS 419B.183.

(2) Juvenile Court Petition. When a child is taken into protective custody or juvenile court intervention is necessary to assure the child and family receive appropriate services, the CPS worker must make arrangements for a juvenile court petition to be filed, as provided in ORS 419B.809.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0500

### Purpose

The purposes of these rules, OAR 413-015-0500 through 0510, are to:

- (1) Describe a child safety assessment and a child safety plan.
- (2) Establish when a child safety plan must be developed.
- (3) Establish when a child safety plan is no longer required.
- (4) Describe the use of team decision meetings (TDM) in making placement decisions for a child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0505

### Child Safety Assessments and Time Frames

(1) To complete a child safety assessment, the CPS worker must:

(a) Have face-to-face contact with the child who is the subject of the referral.

(b) Have face-to-face contact with the primary parent or caregiver, if possible.

(c) Determine if other children in the home are safe.

(d) Utilize the GAP and interviewing guidelines set out in OAR 413-015-0700 through 0740 to:

(A) Identify safety threats;

(B) Assess risk influences; and

(C) Assess parents' or caregivers' protective capacity.

(2) After the screener determines the department response and assigns the referral to a CPS worker, the CPS worker must complete a child safety assessment within the following time lines:

(a) Immediate Response: The CPS worker must complete a child safety assessment on the same working day the report alleging child abuse is received by the Department.

(b) Impending Response: The CPS worker must make face-to-face contact with the child within 24 hours of the time the report alleging child abuse is received by the Department or document why attempted contacts have been unsuccessful. The CPS worker must complete the safety assessment and safety plan without undue delay.

(c) Response Required: The CPS worker must make a face-to-face contact with the child within 5 days of the day the report alleging child abuse is received by the Department and must complete the safety assessment and safety plan without undue delay.

(3) Exceptions:

(a) Any exception to the time lines given in section (2) of this rule requires CPS supervisor approval and written justification of how the child's safety needs have been considered.

(b) If the screener has been granted an extension, the CPS supervisor may adjust the child safety assessment and safety planning time line accordingly.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0510

### Child Safety Plan

(1) Safety Plan. The CPS worker must develop and document a child safety plan when a safety threat has been identified as a result of a child safety assessment.

(2) Use GAP. The CPS worker will utilize the GAP to consider safety threats, risk influences, and parent's or caregiver's protective capacity in developing a child safety plan.

(3) Use of TDMs. The CPS worker must develop a child safety plan with family participation whenever possible. If the CPS worker knows or has reason to know the case involves an Indian child, the CPS worker shall involve the Indian child's tribe when developing the child's safety plan. When a safety plan involves considering an out-of-home placement, a TDM must be held.

(a) In order to involve the family in the out-of-home placement decision, the TDM should be held prior to the decision to make an out-of-home placement. If it is not practicable to hold the TDM prior to placement, the TDM must be held prior to the shelter hearing.

(b) The CPS worker retains final responsibility for assessing child safety and approving the child safety plan.

(c) If a TDM is not held, supervisory approval and supporting documentation is required.

(d) Local department offices must develop protocols for scheduling, facilitating, and documenting TDM's.

(4) The child safety plan may contain one or both of the following components depending on the individual safety needs of children in the family:

(a) An in-home child safety plan. An in-home safety plan must be developed:

(A) When the protective capacity of the parent or caregiver can be enhanced or supported to create safety for the children; or

(B) When a safety threat can be temporarily or permanently eliminated and protective capacity of the family or non-offending parent or caregiver is sufficient to provide safety for a child.

(b) An out-of-home child safety plan. An out-of-home safety plan shall be developed:

(A) When existing protective capacity of the caregiver cannot be enhanced or supported to provide for the child's safety; or

(B) When there is no parent or caregiver to provide for the child's safety needs.

(C) When reasonable efforts or active efforts (if applicable) have been made to prevent the removal of the child from the home.

(5) Documentation requirements. The CPS worker must document a child safety assessment and a child safety plan using the GAP Child Safety Assessment within three working days following face-to-face contact with a child.

(6) Closing a Child Safety Plan. The CPS worker will close the child safety plan when identified safety threats have been eliminated, the parent or caregiver protective capacity can manage identified safety threats, or another plan has been established for the safety of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0600

### Purpose

The CPS worker may need to work with representatives of other entities to complete the CPS assessment. The requirements and procedures for working with certain other entities are set out and explained in OAR 413-015-0605 through 0615.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0605

### Coordination with LEA

(1) Dependent on the department response determined by the screener, either the screener or the CPS worker must contact one or more LEAs in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules OAR 413-015-0300 through 0310.

(2) Department's level of response. When practicable, the CPS worker must coordinate assessment activities with LEA in the following situations:

(a) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(b) Presence of danger. When the CPS worker has information that indicates that there may be a threat of danger to the worker or child.

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(c) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(d) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody.

(e) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(3) Joint Response. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is responsible for the following activities:

- (a) Conducting the child safety assessment;
- (b) Establishing the child safety plan, which includes:

(A) Engaging the family in the development of a child safety plan whenever possible; and

(B) Determining the need for protective custody or out-of-home placement for the child;

(c) Completing the CPS assessment;

(d) Determining whether there is reasonable cause to believe that child abuse occurred; and

(e) Identifying the strengths of the family and needs of the child for the purpose of determining whether child welfare services are required.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0610

### Working with a Public or Private School

The CPS worker may interview a child at school when the worker believes it will be the best environment in which to make contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(1) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(2) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(3) Request information from school personnel regarding a child's handicapping conditions, if any, prior to an interview with the affected child.

(4) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker should confer with the CPS supervisor for assistance in handling the situation.

(5) Discuss further actions with the child at the conclusion of the interview.

(6) Inform school personnel when the interview has been completed.

(7) Inform school personnel if the child is taken into protective custody.

(8) Inform school personnel that the CPS worker will notify parents of the interview.

(9) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0615

### Local Interagency Agreements

Department service delivery area managers must develop interagency agreements regarding assessment of child abuse, as necessary, with local entities including the following:

(1) Private schools.

(2) Medical experts. The local DHS office must establish a procedure that insures the availability of immediate medical consultation when needed.

(3) MDTs. Requirements for MDT protocols are set out in ORS 418.747.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0700

### Purpose

The CPS worker must conduct interviews either to complete the CPS assessment. These rules, OAR 413-015-0700 through 0740, provide guidelines for conducting interviews.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0705

### Goals of an Interview with a Child, Parent, or Caregiver

The goals of an interview with a child, parent, or caregiver are to:

(1) Determine the culture and primary language of the children and parents or caregivers.

(2) Determine whether a safety threat exists and assess the extent and effect of the threat on the alleged victim and other children in the home.

(3) Identify the risk influences that affect the severity of the safety threat.

(4) Determine, in conjunction with other child assessment information, whether or not there is reasonable cause to believe child abuse has occurred.

(5) Determine the capacity of the parents or caregivers to protect the children, including their ability to protect children from any safety threats.

(6) Engage the family in the child safety assessment and mutually develop a child safety plan and recommendations for services, whether voluntarily requested by the family or required to protect a child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0710

### Guidelines for Interviewing

The CPS worker must, to the extent possible, do the following during the interview:

(1) Present identification to the family at the beginning of the interview.

(2) Clearly state the reason for the interview, provide statutory authority to assess reports of child abuse, and give an explanation of the alleged child abuse.

(3) Allow the parent or caregiver to respond to each allegation.

(4) Ensure the privacy of the persons being interviewed.

(5) Focus the interview on the safety of the children.

(6) Observe and ask questions about indications of child abuse.

(7) Assess whether the parents or caregivers are involved in domestic violence.

(8) Identify legal parents and extended family members who might assist in developing a child safety plan.

(9) Observe the interactions between the parents or caregivers and the children, and between the parents or caregivers.

(10) Summarize the initial impressions and intentions resulting from the interview with appropriate family members or caregivers.

(11) Obtain names of persons from the parents and caregivers who can provide additional information in making the child safety assessment or child safety plan.

(12) Ask the parents and caregivers to sign an authorization to release information to enable the Department to obtain confidential information from physicians, mental health providers, school employees, or other service or treatment providers.

(13) If the CPS worker believes the juvenile court will be involved in the case, explain the juvenile court process and the availability of legal representation to the parents and caregivers.

(14) Provide a business card or other document to the parents and caregivers containing the CPS worker's name and phone number.

(15) Inform the parents and caregivers about the Department's grievance procedure.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0715

### Access to the Child for Interview

(1) Parent not home. When the CPS worker contacts the child at home and the parent or caregiver is not present:

(a) If the referral indicates that there may be immediate danger to the child's health or safety or if there is reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling or that child is inadequately supervised and there is an immediate need to evaluate the

# ADMINISTRATIVE RULES

child's health and safety, the CPS worker must consult with a CPS supervisor and seek assistance from LEA.

(b) If the referral does not indicate any immediate danger to the child's health or safety or if there is not reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling or that the child is inadequately supervised, the CPS worker must wait until the parent is present to complete a child interview.

(2) Denied access. When the CPS worker is denied access to the child or to the child's residence, the CPS worker must:

(a) If the referral indicates that there may be immediate danger to a child's health or safety, request assistance from LEA in assessing the situation and in taking the child into protective custody if needed.

(b) If the referral does not indicate that there is immediate danger to a child's health or safety, the CPS worker must do the following:

(A) Attempt to contact other persons who may have relevant information regarding the referral;

(B) Persist in attempts to gain cooperation from the family or caregivers, depending on the known child safety information; and

(C) Seek LEA assistance.

(c) Consult with the CPS supervisor, the district attorney, assistant attorney general, or the county juvenile department to discuss possible juvenile court action; or

(d) Seek a protective custody order from the juvenile court.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0720

### Interviewing Alleged Victims and Siblings

The CPS worker must interview and observe the alleged victims and their siblings in accordance with the following guidelines:

(1) If one child within the family appears to be a victim of child abuse, the CPS worker must interview and observe siblings and other children living in the household. The CPS worker must consider interviewing other children with whom the alleged abuser had recent access.

(2) The CPS worker must notify the parents or caregivers the same day a child has been interviewed. The CPS supervisor or designee must approve an extension of this time frame.

(3) The CPS worker must conduct interviews in a manner that assures privacy for the child.

(4) If the parent or caregiver is the alleged abuser or if the presence of the parent or caregiver might impede the interview, the CPS worker may interview children independent of their parents or caregivers.

(5) The CPS worker must observe the child's injuries or signs of neglect. The CPS worker may need to remove a child's clothing to make adequate observations. In that event, the CPS worker must:

(a) Use discretion and make the child as comfortable as possible.

(b) Seek parental consent and assistance, when possible and appropriate.

(c) Consider requesting a worker or other support person, who is the same gender as the child, be present to serve as a witness and provide comfort for the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0725

### Interviewing the Child's Parents and Caregivers

(1) Whenever practicable, the CPS worker must interview both parents and caregivers in person, as follows:

(a) The CPS worker may interview each person individually, as well as together.

(b) The CPS worker should interview the non-offending parent or caregiver prior to interviewing the parent or caregiver alleged to be the abuser.

(c) The CPS caseworker must interview the alleged abuser when he or she is the victim's parent or caregiver, unless it is not possible to do so.

(d) When law enforcement is involved in the investigation, the CPS worker must coordinate the interviews of the alleged abuser with LEA.

(2) Non-custodial parent. The CPS worker must interview the non-custodial legal parent when it is appropriate and possible.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0730

### Interviewing Persons Who Are Collateral Sources

The CPS worker should interview collateral sources who may have first-hand knowledge of the reported incident or family circumstances. The CPS worker should:

(1) Contact collateral sources who could clarify or supplement the information contained in the referral. Possible collateral sources may include relatives, neighbors, physicians, school personnel, public health nurses, or others.

(2) Gather information from collateral sources throughout the CPS assessment as circumstances allow.

(3) Protect the identity of collateral sources to the extent possible.

(4) Consult with the district attorney or the assistant attorney general to obtain a court order for records from collateral sources, if the source is unwilling to share information with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0735

### Medical Records

ORS 419B.050 allows health care providers to furnish medical records of the child, including psychological and psychiatric records, to law enforcement or the Department when it is conducting an investigation of child abuse without the consent of the parent.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0740

### Confidentiality

Information gathered and records and reports compiled during a CPS assessment are confidential and may be disclosed only as provided in ORS 419.035. The identity of the person reporting child abuse may not be disclosed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0800

### Photographs and Documents of Abuse

(1) As stated in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the investigation. Copies of the photographs should be labeled with the case name, child's name, and date taken and filed in the department record.

(2) The CPS worker may not photograph the child if verbal or physical resistance is expressed by the child, or parent, or caregiver. If the worker does not photograph the child because of resistance from the child, parent, or caregiver, the worker must document that information in the department file.

(3) The CPS caseworker must document injuries and hazardous environments in the assessment narrative by use of photographs, written description, or illustrations.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0900

### Obtaining Medical Examination

The CPS worker should secure a medical examination of the child and obtain the child's medical history when necessary to determine treatment needs, to reassure the child and family, or to assist in completing the CPS assessment:

(1) If there is evidence of trauma to the child, the CPS worker must make arrangements to transport the child to a medical facility. The CPS worker should discuss with the parent or caregiver the need for medical evaluation of treatment. The CPS worker may ask parents to take the child to a medical facility for a medical evaluation or treatment. The CPS worker may accompany the parent to a medical facility and must request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Health Information."

(2) If the parent refuses to secure necessary medical examination or treatment, and the CPS worker has reasonable cause to believe that an exam will reveal evidence of abuse, the worker must contact the LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical exam.

(3) A child 12 years of age or older may refuse a physical examination if the sole purpose of the exam is to preserve evidence of sexual abuse.



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(4) When the CPS worker is making a determination of medical neglect, the CPS worker must consult with a health care professional.

(5) If there is an indication of a life-threatening condition, or of a deteriorating condition that may become life threatening, the CPS worker must seek medical consultation immediately.

(6) If there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab, the CPS worker must make arrangements to have the child tested for chemical exposure within 24 hours of learning of the exposure.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-0905

### Psychological and Psychiatric Evaluations

The CPS worker should secure an assessment of the parent, caregiver, or child by a mental health professional to determine treatment needs or to assist in completing the CPS assessment when there is information indicating:

- (1) Unusual or bizarre forms of punishment;
- (2) Mental illness;
- (3) Suicidal ideation; or
- (4) Unusual or bizarre child or parental behaviors that are indicative of emotional problems.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

## 413-015-1000

### The CPS Assessment Dispositions

(1) This rule describes child abuse for the purpose of making CPS assessment dispositions.

(2) Following the completion of the CPS assessment, the CPS worker must determine whether there is reasonable cause to believe child abuse occurred. The possible determinations are:

(a) "Founded," which means there is reasonable cause to believe that child abuse occurred.

(b) "Unfounded," which means no evidence of child abuse was identified or disclosed.

(c) "Unable to determine," which means there are some indications of child abuse, but there is insufficient data to conclude that there is reasonable cause to believe that child abuse occurred.

(3) When determining whether there is reasonable cause to believe child abuse occurred, the CPS worker shall consider, among others, the following parental behavior, conduct, and conditions:

(a) Abandonment, including parental behavior showing an intent to permanently give up all rights and claims to the child.

(b) Child selling, including the selling of a child that consists of buying, selling, bartering, trading or offering to buy or sell the legal or physical custody of a child.

(c) Mental injury (psychological maltreatment), including cruel or unconscionable acts or statements made, threatened to be made, or permitted to be made by the parent or caregiver that has a direct effect on the child. The parent or caregiver's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional or social well-being and functioning.

(d) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Chronic neglect is a persistent pattern of family functioning in which the parent or caregiver does not sustain or meet the basic needs of a child resulting in an accumulation of harm that can have long term effect on the child's overall physical, mental, or emotional development. Neglect includes the following:

(A) Physical neglect, which includes the failure to provide for the child's basic physical needs including adequate shelter, food, and clothing;

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from disabled infants with life threatening conditions. However, failure to provide the child with immunizations or routine well child care alone does not constitute medical neglect.

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the parent or caregiver leaving the child with another person and failing to reclaim the child, or parental or caregiver failure to provide information about their whereabouts, providing

false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The parent or caregiver behavior must be related to the observable and substantial harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(e) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include:

- (A) Head injuries;
- (B) Bruises, cuts, lacerations;
- (C) Internal injuries;
- (D) Burns or scalds;
- (E) Injuries to bone, muscle, cartilage, and ligaments;
- (F) Poisoning;
- (G) Electrical shock;
- (H) Death.

(f) Sexual abuse, which includes a person's use or attempted use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(g) Sexual exploitation, including the use of a child in a sexually explicit way for personal gain, for example, to make money, in exchange for food stamps or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(h) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of substantial harm of physical or sexual abuse, neglect or mental injury, or other maltreatment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, ORS 418.015, ORS 419B.005 - ORS 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03

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## Department of Human Services, Departmental Administration and Medical Assistance Programs Chapter 410

**Adm. Order No.:** OMAP 44-2003

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 6-30-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 410-120-1195

**Subject:** Effective April 1, 2003, OMAP temporarily adopted rule 410-120-1195 to provide a limited prescription drug benefit to certain individuals. Certain individuals previously participating in the medically needy program, identified with specific health related conditions as outlined in a budget note attached to SB 5548, were made eligible for a State-funded limited prescription drug benefit until June 30, 2003. This filing will complete the process to adopt this rule. Please note: This action is for the purpose of maintaining a record of history.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

### 410-120-1195

#### SB 5548 Population

Effective for services rendered between April 1, 2003, and June 30, 2003.

(1) Certain individuals previously participating in the OSIP-MN Medically Needy Program as of January 31, 2003, and who are identified by DHS with specific health-related conditions as outlined in the Joint Ways and Means budget note accompanying Senate Bill 5548 (2003) shall be referred to as SB 5548 clients:

(a) SB 5548 clients are eligible for a State-funded, limited, prescription drug benefit for covered drugs described in subsection (2) of this rule;

(b) The supply of covered drugs for any SB 5548 client may not exceed a dosage supply for a period from April 1, 2003 through June 30, 2003. A calculation of the dosage supply begins on the date a covered prescription is filled, which may not occur before April 1, 2003. Reimbursement may only be made for covered drugs in quantities that will supply daily doses from the date the prescription is filled until June 30,

# ADMINISTRATIVE RULES

2003. No carryover doses beyond those dates are subject to reimbursement under this limited prescription drug benefit program.

(2) Eligibility for, and access to, covered drugs for SB 5548 clients:

(a) SB 5548 clients must have been participating in the former OSIP-MN Medically Needy Program as of January 31, 2003, and as of that date had a medical diagnosis of HIV or organ transplant status;

(b) SB 5548 clients receiving anti-retrovirals and other prescriptions necessary for the direct support of HIV symptoms:

(A) Must agree to participate in the DHS CareAssist Program in order to obtain access to this limited prescription drug benefit; and

(B) Prescriptions are limited to those listed on the CareAssist Formulary which can be found at [www.dhs.state.or.us/publichealth/hiv/careassist/](http://www.dhs.state.or.us/publichealth/hiv/careassist/).

(c) SB 5548 clients receiving Immunosuppressive, anti-infectives and other prescriptions necessary for the direct support of organ transplants:

(A) Drug coverage includes any Medicaid reimbursable Immunosuppressive, anti-infectives or other prescriptions necessary for the direct support of organ transplants, except for those classes listed in Table 1195. These classes are restricted to the formulary as outlined in Table 1195.

(B) These SB 5548 clients may obtain dosages not to exceed the covered time period from April 1, 2003, to June 30, 2003:

(i) Via mail order one (1) 100-day fill; or

(ii) Via any retail pharmacy choosing to participate in this limited prescription drug benefit program, up to three (3) 34-day fills.

(3) Reimbursement for covered prescription drugs is limited by the terms and conditions described in this rule. This limited drug benefit provides State-funded reimbursement to pharmacies choosing to participate according to the terms and conditions of this rule:

(a) SB 5548 clients will not be sent a medical ID card, however they will be sent a letter from the Department, which will document their eligibility for this limited drug benefit;

(b) Retail pharmacies choosing to participate will be reimbursed for covered prescription drugs for the direct support of organ transplants described in subsection (2)(c) of this rule at the lessor of billed, Average Wholesale Price (AWP) minus 14% or Oregon Maximum Allowable Cost (OMAC), plus a dispensing fee of \$3.50;

(c) DHS pharmacy benefits manager, First Health, will process retail pharmacy drug benefit reimbursement claims for SB 5548 clients;

(d) Mail order reimbursement will be subject to DHS contract rates;

(e) Prescription drugs through the CareAssist program will be subject to the DHS contract rates;

(f) Reimbursement for this limited drug benefit is not subject to the following rules:

(A) 410-120-1230 and -1235, Client Copayments;

(B) 410-121-0300, Federal Upper Limit (FUL) for prescription drugs. Table 120-1195 — SB 5548 Prescription Drug List [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced in this rule are available from the agency.]  
Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 28-2003(Temp), f. & cert. ef. 4-1-03 thru 9-1-03; OMAP 44-2003, f. & cert. ef. 6-30-03

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**Adm. Order No.:** OMAP 45-2003(Temp)

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03 thru 12-15-03

**Notice Publication Date:**

**Rules Amended:** 410-120-1195

**Subject:** The General Rules program administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. Based upon SB5548 and the report of the Joint Committee on Ways and Means, the Department of Human Services is authorized to provide State-funded reimbursement for limited prescription drugs to "certain individuals previously participating in the Medically Needy program and receiving prescription drugs to support organ transplants and remedy HIV-positive symptoms." Qualified individuals identified with specific health related conditions as outlined in the committee report for Senate Bill 5548, will be eligible for a State-funded, limited, prescription drug benefit. The program, originally funded through June 30, 2003, has been extended until December 31, 2003. Rule 410-120-1195 is temporarily amended to reflect this extension.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-1195

### SB 5548 Population

Effective for services rendered between April 1, 2003, and December 31, 2003.

(1) Certain individuals previously participating in the OSIP-MN Medically Needy Program as of January 31, 2003, and who are identified by DHS with specific health-related conditions as outlined in the Joint Ways and Means budget note accompanying Senate Bill 5548 (2003) shall be referred to as SB 5548 clients:

(a) SB 5548 clients are eligible for a State-funded, limited, prescription drug benefit for covered drugs described in subsection (2) of this rule;

(b) The supply of covered drugs for any SB 5548 client may not exceed a dosage supply for a period from April 1, 2003 through and December 31, 2003. A calculation of the dosage supply begins on the date a covered prescription is filled, which may not occur before April 1, 2003. Reimbursement may only be made for covered drugs in quantities that will supply daily doses from the date the prescription is filled until December 31, 2003. No carryover doses beyond those dates are subject to reimbursement under this limited prescription drug benefit program.

(2) Eligibility for, and access to, covered drugs for SB 5548 clients:

(a) SB 5548 clients must have been participating in the former OSIP-MN Medically Needy Program as of January 31, 2003, and as of that date had a medical diagnosis of HIV or organ transplant status;

(b) SB 5548 clients receiving anti-retrovirals and other prescriptions necessary for the direct support of HIV symptoms:

(A) Must agree to participate in the DHS CareAssist Program in order to obtain access to this limited prescription drug benefit; and

(B) Prescriptions are limited to those listed on the CareAssist Formulary which can be found at [www.dhs.state.or.us/publichealth/hiv/careassist/](http://www.dhs.state.or.us/publichealth/hiv/careassist/).

(c) SB 5548 clients receiving Immunosuppressive, anti-infectives and other prescriptions necessary for the direct support of organ transplants:

(A) Drug coverage includes any Medicaid reimbursable Immunosuppressive, anti-infectives or other prescriptions necessary for the direct support of organ transplants, except for those classes listed in Table 120-1195. These classes are restricted to the formulary as outlined in Table 120-1195.

(B) These SB 5548 clients may obtain dosages not to exceed the covered time period from April 1, 2003, to and December 31, 2003:

(i) Via mail order three (3) 100-day fill; or

(ii) Via any retail pharmacy choosing to participate in this limited prescription drug benefit program, up to nine (9) 34-day fills.

(3) Reimbursement for covered prescription drugs is limited by the terms and conditions described in this rule. This limited drug benefit provides State-funded reimbursement to pharmacies choosing to participate according to the terms and conditions of this rule:

(a) SB 5548 clients will not be sent a medical ID card, however they will be sent a letter from the Department, which will document their eligibility for this limited drug benefit;

(b) Retail pharmacies choosing to participate will be reimbursed for covered prescription drugs for the direct support of organ transplants described in subsection (2)(c) of this rule at the lessor of billed, Average Wholesale Price (AWP) minus 14% or Oregon Maximum Allowable Cost (OMAC), plus a dispensing fee of \$3.50;

(c) DHS pharmacy benefits manager, First Health, will process retail pharmacy drug benefit reimbursement claims for SB 5548 clients;

(d) Mail order reimbursement will be subject to DHS contract rates;

(e) Prescription drugs through the CareAssist program will be subject to the DHS contract rates;

(f) Reimbursement for this limited drug benefit is not subject to the following rules:

(A) 410-120-1230 and 1235, Client Copayments;

(B) 410-121-0300, Federal Upper Limit (FUL) for prescription drugs.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 28-2003(Temp), f. & cert. ef. 4-1-03 thru 9-1-03; OMAP 44-2003, f. & cert. ef. 6-30-03; OMAP 45-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03

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**Adm. Order No.:** OMAP 46-2003(Temp)

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03 thru 12-15-03

**Notice Publication Date:**

**Rules Adopted:** 410-120-1210

**Rules Amended:** 410-120-1200

# ADMINISTRATIVE RULES

## **Rules Suspended:** 410-120-1200(T)

**Subject:** The General Rules program Administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. Rule 410-120-1200(T) contains a description of the plus and standard benefit package. This rule will be temporarily amended, and a new rule temporarily adopted to clarify language and to be consistent with other applicable OARs reflecting what eligibility categories receive plus and standard benefit package.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## **410-120-1200**

### **Excluded Services and Limitations**

Certain services or items are not covered under any program or for any group of eligible clients. If the client accepts financial responsibility for a non-covered service, payment is a matter between the provider and the client subject to the requirements of OAR 410-120-1280. No payment will be made for any expense incurred for any of the following services or items:

(1) That are not expected to significantly improve the basic health status of the client as determined by the Medical Assistance Program (e.g., OMAP's Medical Director, medical consultants or Peer Review Organization).

(2) That are not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury.

(3) That are determined not medically appropriate by Medical Assistance Program staff or authorized representatives, including OMPRO or any contracted utilization review organization.

(4) That are not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his/her scope of practice or licensure.

(5) That are for routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabilitation of the client. Examples include exams for employment or insurance purposes.

(6) That are provided by friends or relatives of eligible clients or members of his/her household, except when the friend, relative or household member is a health professional, acting in a professional capacity, or when the friend, relative or household member is directly employed by the client under Seniors & People with Disabilities (SPD) Home and Community Based Waiver.

(7) That are for services or items provided to a client who is in the custody of a law enforcement agency or an inmate of a nonmedical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under the Medical Assistance Program.

(8) Where the need for purchase, repair or replacement of materials or equipment is caused by adverse actions of clients to personally owned goods or equipment or to items or equipment rented or purchased by the Medical Assistance Program.

(9) That are related to a non-covered service; some exceptions are identified in the individual provider rules. If the provision of a service related to a non-covered service is determined by OMAP to be cost-effective, the related medical service may, at OMAP's discretion and with OMAP's prior authorization, be covered.

(10) Which are considered experimental or investigational or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy.

(11) That are identified in the provider guide appropriate Administrative Rules, including the Hospital guide, Revenue Codes Section, as not covered.

(12) That are requested by or for a client who has been determined by the Medical Assistance Program to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services.

(13) That are for copying or preparing records or documents excepting those Administrative Medical Reports requested by the branch offices or OMAP for casework planning or eligibility determinations.

(14) Whose primary intent is to improve appearance.

(15) Which are similar or identical to services or items which will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the client will be essentially the same.

(16) For the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence,

except as specified by the Prioritized List of Health Services (OAR 410-141-0520).

(17) Items or services which are for the convenience of the client and are not medically appropriate.

(18) The collection, processing and storage of autologous blood or blood from selected donors unless a physician certifies that the use of autologous blood or blood from a selected donor is medically appropriate and surgery is scheduled.

(19) Educational or training classes which are not medically appropriate (Lamaze classes, for example).

(20) Outpatient social services except Maternity Case Management services and other social services described in the individual provider rules as covered.

(21) Plasma infusions for treatment of Multiple Sclerosis.

(22) Post-mortem exams or burial costs, or other services subsequent to the death of a client.

(23) Radial keratotomies.

(24) Recreational therapy.

(25) Telephone calls, including but not limited to telephone conferences between physicians or between a physician or other practitioner and a client or representative of the client, except for telephone calls for the purpose of tobacco cessation counseling, as described in OAR 410-130-0190, and Maternity Case Management as described in OAR 410-130-0100.

(26) Transsexual surgery or any related services or items.

(27) Weight loss programs, including, but not limited to Optifast, Nutri-system, and other similar programs. Food supplements will not be authorized for use in weight loss.

(28) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered.

(29) Immunizations prescribed for foreign travel.

(30) Services which are requested or ordered but not provided (i.e., an appointment which the client fails to keep or an item of equipment which has not been provided to the client).

(31) DUII-related services already covered by the Intoxicated Driver Program Fund as directed by ORS 813.270(1) and (5).

(32) For transportation to meet a client's personal choice of a provider.

(33) Pain center evaluation and treatment.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76, Renumbered from 461-013-0030; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03

## **410-120-1210**

### **Medical Assistance Benefit Packages:**

(1) Clients in some Medical Assistance Program categories have limited benefits. These limitations or exclusions are in addition to those limitations or exclusions described in these General Rules (OAR 410-120-1200) and in the individual program provider rules. The Benefit Package Messages on the Medical Care Identification describe the "package" of medical benefits.

(2) Benefit Packages are as follows:

(a) OHP Plus benefit package;

(b) OHP Standard benefit package;

(c) QMB-Qualified Medicare Beneficiary benefit package;

(d) QMB-Qualified Medicare Beneficiary + OHP Plus benefit package;

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(e) CAWEM - Citizen/Alien-Waived Emergency Medical benefit package;

(f) Benefits for other client populations.

(3) This section explains who is eligible for each of the packages, any additional limitations or restrictions that may apply. The benefit package and program category are as follows:

(a) OHP Plus Benefit Package:

(A) Effective Feb. 1, 2003, the OHP Plus benefit package is available to recipients who are categorically eligible for medical assistance as defined in federal regulation and the Oregon Health Plan waiver granted on October 15, 2002. A client is categorically eligible for medical assistance if he or she is eligible under a mandatory, selected optional Medicaid program, or the Children's Health Insurance Program, and who are also within the income and other eligibility criteria adopted by DHS;

(B) Service coverage for clients with this Package is based on the Prioritized List of Health Services. Cost sharing may apply to some covered services;

(C) Ancillary services, (see OAR 410-141-0480);

(D) Chemical dependency services provided through local alcohol/drug treatment providers;

(E) Mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors.

(b) OHP Standard Benefit Package:

(A) Effective February 1, 2003, the OHP Standard benefit package is available to clients eligible for the Oregon Health Plan through the Oregon Health Plan expansion waiver granted on October 15, 2002. These recipients are adults and childless couples, who are also within the income and other eligibility criteria adopted by DHS. The Department identifies these clients through the program acronym, OHP-OPU;

(B) Except as provided in paragraph (D) of this section, service coverage for clients with this package is based on the Prioritized List of Health Services. Cost sharing and benefits limitations may apply to some covered services.

(C) Ancillary services (see OAR 410-141-0480);

(D) The following services are not covered under the Standard Benefit Package:

(i) Non-Emergency medical transportation;

(ii) Vision (frames, contacts, corrective devices and eye exams for the purpose of prescribing glasses or contacts);

(iii) Durable Medical Equipment and Supplies;

(iv) Dental;

(v) Outpatient Chemical Dependency;

(vi) Outpatient Mental Health;

(vii) Other limitations as identified in individual OMAP program administrative rules.

(c) QMB - Qualified Medicare Beneficiary benefit package:

(A) QMB clients are Medicare beneficiaries who have limited income but do not meet the income standard for full Medical Assistance Program coverage. QMB clients have coverage through Medicare Part A and B for most covered services. The Medical Assistance Program provides coverage only for those services that are also covered by Medicare;

(B) Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of the coinsurance and deductible, but no more than the Medicare allowable;

(C) QMB clients may be billed by the provider for services that are not covered by Medicare. QMB clients may not be billed by the provider for the deductible and coinsurance amounts due for services that are covered by Medicare.

(d) QMB - Qualified Medicare + OHP Plus Benefit Package: Clients covered by this package are Medicare beneficiaries that have met the income standard for full Medical Assistance Program coverage. Their coverage includes:

(A) Any service covered by Medicare;

(B) Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible; and

(C) Service coverage based on the Prioritized List of Health Services (OAR 410-141-0520);

(D) Mental health services;

(E) Chemical dependency services provided through a local alcohol/drug treatment provider.

(e) Citizen/Alien-Waived Emergency Medical Assistance (CAWEM) benefit package:

(A) The client receives a Medical Care Identification, which indicates coverage, and is limited to emergency medical needs or labor and delivery services;

(B) Emergency medical services are covered when a client eligible under the CAWEM program has, after sudden onset, a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. There may be other limitations depending on the eligibility category to which the client is assigned;

(C) The following services are not covered for CAWEMS: Prenatal or postpartum care, sterilization, family planning, preventive care, transplants and transplant-related services, chemotherapy, hospice, home health, private duty nursing, dialysis, dental services provided outside of an emergency room/hospital setting, outpatient drugs or over-the-counter products, non-emergency medical transportation, therapy services, durable medical equipment and medical supplies, and rehabilitation services.

(f) Benefits for other client populations:

(A) Fully Capitated Health Plans, Dental Care Organization and Mental Health Organization Members:

(i) These clients are enrolled in a Prepaid Health Plan for their medical, dental and mental health care;

(ii) Most non-emergency services are obtained from the Prepaid Health Plan or require a referral from the Prepaid Health Plan that is responsible for the provision and reimbursement for the medical, dental or mental health service;

(iii) The name and phone number of the Plan appears on the Medical Care Identification.

(B) Primary Care Case Managers:

(i) These clients are enrolled with a Primary Care Case Manager for their medical care;

(ii) Most non-emergency services provided to clients enrolled with a Primary Care Case Manager (PCCM) require referral from the PCCM.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03

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**Adm. Order No.:** OMAP 47-2003

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 6-1-03

**Rules Adopted:** 410-121-0030

**Subject:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. Rule 410-121-0030 is revised to update the Plan Drug List by defining the Practitioners Managed Prescription Drug Plan route of administration for the Estrogen class.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-121-0030**

**Practitioner-Managed Prescription Drug Plan (PMPDP)**

(1) Practitioner-Managed Prescription Drug Plan (PMPDP)

(a) The Practitioner-Managed Prescription Drug Plan is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price;

(b) Decisions concerning the clinical effectiveness of the prescription drugs are made by licensed health practitioners, informed by the latest peer-reviewed research and consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL is a listing of prescription drugs for selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represents effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that has been determined to be the most effective drug(s) available for the best possible price. The PDL will include other drugs in the class that are Medicaid reimbursable and which the FDA has deter-

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mined to be safe and effective if the relative cost is less than the benchmark drug(s). If pharmaceutical manufacturers enter into supplemental discount agreements with DHS that reduces the cost of their drug below that of the benchmark drug for the class, their drug will also be included in the PDL. A copy of the PDL is available on the web at [www.omap.hr.state.or.us](http://www.omap.hr.state.or.us).

## (3) PMPDP Plan Drug List (PDL) Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3)(a) that is available for the best possible price; and considering any input from the HRC, other FDA approved drug(s) in the same class that are available for a lesser relative price. Relative price will be determined using the methodology described in subsection (4);

(c) Drug classes and selected drug(s) for the drug classes will be reviewed annually or more frequently if in the discretion of DHS, new safety information or the release of new drugs in a class or other information makes this advisable. New drugs will not be added to the PDL until they have been reviewed by the HRC. All changes or revisions to the PDL will be made publicly, using the rulemaking process, and will be published in OMAP's Pharmaceutical Services provider guide.

## (4) Relative Cost and Best Possible Price Determination:

(a) DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS will first determine the benchmark drug based on the Average Wholesale Price (AWP) on the first of the month in which DHS reviews that specific drug class;

(c) Once the cost of the benchmark drug is determined, the costs of other FDA approved drugs in the class will be recalculated using AWP, Oregon Maximum Allowable Cost (OMAC) and/or Federal Upper Limits in effect on the first of the month in which DHS reviews that specific drug class (OAR 410-121-0180), less average rebate. Drugs with prices under 105% of the benchmark drug price will be included on the PDL;

(d) DHS will consider price, rebate, and the stability of both, over a period of time in determining the cost effectiveness. DHS may also consider dosing issues, patterns of use and compliance issues. These factors will be weighed with any advice provided by the Health Resources Commission in reaching a final decision.

(5) PMPDP Reimbursement: OMAP will only reimburse for the prescription drugs specifically listed in the PMPDP categories on the Plan Drug List(s). OMAP will only reimburse for drugs not listed in the PMPDP categories by using the exception process.

## (6) PMPDP Plan Drug List (PDL) Exception Process:

(a) If the prescribing practitioner, in his/her professional judgement, wishes to prescribe a drug not on the PDL, he/she may request an exception, subject to the requirements of OAR 410-121-0040. The prescribing practitioner must call the Managed Access Program (MAP) Help Desk to request an exception for medically appropriate drugs not listed in the PDL categories.

(b) Regardless of the PDL, prescriptions shall be dispensed in the generic form unless practitioner requests otherwise subject to the regulations outlined in OAR 410-121-0155.

Table 121-0030-1, PMPDP Plan Drug List (PDL) (updated effective 7/1/2003)

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02;

OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03;

OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03

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**Adm. Order No.:** OMAP 48-2003

**Filed with Sec. of State:** 7-7-2003

**Certified to be Effective:** 7-7-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 410-121-0157

**Subject:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. OMAP temporarily amended Rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. This is the permanent filing for OMAP 39 (T), effective upon filing.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0157

### Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) formerly Health Care Financing Administration (HCFA) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to OMAP on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Names and Labeler Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. OMAP includes in rule by reference, Release #123, dated June 12, 2003 and the OMAP Master Pharmaceutical Manufacturer's Rebate Lists- Alphabetical and Numeric by Manufacturer. This information is available on OMAP's website: <http://www.dhs.state.or.us/policy/health-plan/rules/>, and on the CMS website: [www.cms.hhs.gov/medicaid/drugs/drughmpg.asp](http://www.cms.hhs.gov/medicaid/drugs/drughmpg.asp), or by contacting CMS.

(3) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(4) The actual NDC dispensed and the actual Metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91;

HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-

1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-

1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert.

ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR

34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993 (Temp),

f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93;

HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert.

ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95;

HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997,

f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-

00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP

3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-

01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp)

f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01

thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-

2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01,

cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP

16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-

02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-

2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03

thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-

15-03; OMAP 48-2003, f. & cert. ef. 7-7-03

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## Department of Human Services, Mental Health and Developmental Disability Services Chapter 309

**Adm. Order No.:** MHD 2-2003(Temp)

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03 thru 12-27-03

**Notice Publication Date:**

**Rules Amended:** 309-047-0065

**Subject:** Temporary amendment to the Employment and Alternative to Employment Services for Individuals with Developmental Disabilities - Entry, Exit and Transfer, OAR 309-047-0065, limits service to persons with 24 hour state support and suspends access to employment or other day support to persons living in their own or family home. These amendments are necessary to support changes in services required to implement the Staley Lawsuit Settlement, meet Federal Title XIX waiver requirements, and match anticipat-

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ed legislative allocations effecting approximately 1100 persons with developmental disabilities.

**Rules Coordinator:** Pam Rouske—(503) 945-6954

## 309-047-0065

### Entry, Exit and Transfer: General

(1) Qualifications for Department funding. Unless the circumstances in 309-047-0065(1)(f) apply, all individuals considered for Department-funded services shall:

- (a) Be referred by the Community Mental Health Program;
- (b) Be determined to have a developmental disability by the Department or its designee;

(c) Not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment or other forms of discrimination under applicable state or Federal law;

- (d) Be 18 years of age or older;

(e) Be an individual also receiving residential services which are paid or regulated by the Department, excluding Semi-Independent Living Programs certified under OAR 309-041-0015, and including, but not limited to, services in:

(A) A group home regulated by OAR 309-049-0070 through 309-049-0210;

(B) An adult foster home regulated by OAR 309-040-0000 through 309-040-0098;

(C) A Supported Living program regulated by OAR 309-041-0550 through 309-041-0830; or

(D) An individual's own or family home when the individual receives Self-Directed Support services which are provided according to OAR 309-041-1110 and which cost over \$20,000 annually.

(f) Individuals who meet the conditions of 309-041-0065(1)(a)-(d), live in their own or family home, do not meet the conditions of 309-041-0065(1)(e), and are enrolled in Employment or Alternative to Employment services as of June 30, 2003, shall be eligible for Employment or Alternative to Employment services governed by these Rules until the date designated by the Department for transfer to Support Services governed by OAR-309-041-1750 through 1920.

(2) Information required for entry meeting. The service shall acquire the following information prior to an entry ISP team meeting:

(a) Written documentation that the individual has been determined to have a developmental disability;

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device;

- (c) A brief written history of any behavioral challenges;

(d) Documentation of the individual's current physical condition, including any physical limitations which would affect employment;

(e) Documentation of any guardian or conservator, or any other legal restriction on the rights of the individual, if applicable; and

- (f) A copy of the most recent ISP, if applicable.

(3) Entry meeting. An entry ISP Team meeting shall be conducted prior to the initiation of services to the individual. The findings of the entry meeting shall be recorded in the individual's file and include at a minimum:

- (a) The name of the individual proposed for services;
- (b) The date of the meeting;
- (c) The date determined to be the date of entry;
- (d) Documentation of the participants at the meeting;
- (e) Documentation as required by OAR 309-047-0090(4) and 309-047-0095;

(f) Documentation of the pre-entry information required by OAR 309-047-0065(2)(a-f);

(g) Documentation of the proposed transition plan as defined in the Case Management Services Rule OAR 309-041-0445 for services to be provided if the decision was made to serve;

(h) Documentation of the type of employment or alternative to employment service the individual shall receive. This service shall be one of the following:

- (A) Supported employment;
- (B) Community based service;
- (C) Facility based services; or
- (D) A combination of the above.

(i) Documentation of the decision to serve or not serve the individual requesting service, with reasons.

(4) Exit meeting. Each individual considered for exit shall have a meeting by the ISP Team before any decision to exit is made. Findings of

such a meeting shall be recorded in the individual's file and include at a minimum:

- (a) The name of the individual considered for exit;
- (b) The date of the meeting;
- (c) Documentation of the participants included in the meeting;
- (d) Documentation of the circumstances leading to the proposed exit;
- (e) Documentation of the discussion of the strategies to prevent an exit from service (unless the individual is requesting exit);
- (f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services to the individual after the exit.

(5) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the service under the following conditions:

(a) The individual and his/her guardian requests an immediate removal from the service; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(6) Transfer decision. A decision to transfer an individual within a service provider shall be made by the ISP team. Findings of the ISP team shall be recorded in the individual's file and include at a minimum:

- (a) The name of the individual considered for transfer;
- (b) The date of the meeting or telephone call(s);
- (c) Documentation of the participants included in the meeting or telephone call(s);
- (d) Documentation of the circumstances leading to the proposed transfer;
- (e) Documentation of the alternatives considered, including transfer;
- (f) Documentation of the reasons why any preferences of the individual, legal representative and/or family members cannot be honored;
- (g) Documentation of a majority agreement of the participants regarding the decision; and
- (h) The written plan for services to the individual after transfer.

Stat. Auth.: ORS 430.041

Stats. Implemented: ORS 430.610, ORS 430.630 & ORS 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; MHD 2-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

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**Adm. Order No.:** MHD 3-2003(Temp)

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03 thru 12-27-03

**Notice Publication Date:**

**Rules Adopted:** 309-041-1138

**Rules Amended:** 309-041-1110, 309-041-1115, 309-041-1120, 309-041-1125, 309-041-1130, 309-041-1135, 309-041-1140, 309-041-1142, 309-041-1145, 309-041-1150, 309-041-1165, 309-041-1170

**Subject:** Temporary amendments to the Self-Directed Support for Individuals with Developmental Disabilities rules are amended to:

a) Reflect restricted eligibility for self-directed support services to certain individuals with developmental disabilities for whom the Department has specifically funded services; b) Remove references to the former Mental Health and Developmental Disabilities Services Division and replace them with appropriate references to the Department of Human Services and Seniors and People with Disabilities; c) Remove references to Brokerage organizations and staff, reflecting the fact that all services under these rules are now provided by County Developmental Disability Programs and Case Management staff associated with those programs; d) Address service descriptions acceptable under the Community Based Waiver #0117.90.R2; e) Include references to requirements specific to independent provider, provider organization and general business provider qualifications; and f) Complete technical adjustments such as re-numbering or making language consistent with other Department Rules.

**Rules Coordinator:** Pam Rouske—(503) 945-6954

## 309-041-1110

### Statement of Purpose and Statutory Authority

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for Community Developmental Disability Programs providing

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services to adults with developmental disabilities required for those adults to remain at home or in their family homes.

(2) Statutory authority. These rules are authorized by ORS 409.050 and carry out the provisions of ORS 430.610 through 430.670, 427.005 through 427.007. These rules also carry out the provisions of ORS 417.340 through 417.348 for families of adults with developmental disabilities.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

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## 309-041-1115

### Definitions

As used in OAR 309-041-1110 through 309-041-1185:

(1) "Abuse of an adult" means one or more of the following:

(a) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury; or

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or service provider or other staff and the adult. Sexual exploitation also includes failure of staff to discourage sexual advances towards staff by individuals served. For situations other than those involving an employee, service provider, or other staff and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical behavior directed toward the adult.

(2) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(3) "Adult" means an individual 18 years or older with developmental disabilities.

(4) "Annual ISP Meeting" means an annual meeting which is coordinated by the individual's case manager and which is attended by the individual served, agency representatives who provide service to the individual, the individual's legal representative, if any, relatives of the individual and/or other persons, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an individual support plan.

(5) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and services.

(6) "Case Manager" means an employee of Seniors and People with Disabilities, a community developmental disability program or other agency which contracts with the CDDP or SPD, who is selected to plan, procure, coordinate and monitor individual support plan services and acts as a proponent for persons with developmental disabilities.

(7) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(8) "Client Process Monitoring System" or "CPMS" means the SPD's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(9) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Seniors and People with Disabilities or a local mental health authority.

(10) "Developmental Disability":

(a) Means, for adults, a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(A) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(B) Has continued, or can be expected to continue, indefinitely; and

(C) Constitutes a substantial handicap to the ability of the person to function in society; or

(D) Results in significant subaverage general intellectual functional with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of

adaptive behavior. Definitions and classifications shall be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(11) "Director" means Director of the Oregon Department of Human Services or that person's designee.

(12) "Entry" means admission to a SPD-funded service provider.

(13) "Exit" means either termination from a SPD-funded program or transfer from one SPD-funded program to another. Exit does not mean transfer within a service provider's program.

(14) "Family," for determining individual eligibility for Self-Directed services as a resident in the family home, for identifying persons who may apply, plan, and arrange for individual supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(15) "Fiscal Intermediary" means a person or agency that receives and distributes self-directed support funds on behalf of a family or individual according to a Self-Directed Support plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of families or individuals who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(16) "General business provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with Self-Directed Support Services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(17) "Grievance" means a formal complaint by an individual or family about services or employees of a CDDP.

(18) "Immediate family," for the purposes of determining whether SDS funds may be used to pay a family member to provide services, means the spouse of an adult.

(19) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(20) "Independence" means the extent to which persons with mental retardation or developmental disabilities with or without staff assistance exert control and choice over their own lives.

(21) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with Self-Directed Support Service funds who personally provides services to the individual.

(22) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(23) "Integration" means that persons with mental retardation or other developmental disabilities live in the community, use the same resources that are used by and available to other members of the community, participate in the same community activities other community members participate in, and have regular contact with other community members who do not have disabilities.

(24) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person who is authorized by the court to make decisions about services for the individual.

(25) "Local Mental Health Authority" means the county court or board of county commissioners of one or more counties who operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

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(26) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(27) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(28) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned and/or delegated to the qualified provider or family.

(29) "Person-Centered Planning" means a process of gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources. People who assist, or facilitate, this help the individual and those significant to the individual to identify, use, and strengthen naturally-occurring opportunities in designing strategies for support at home and in the community. Facilitators gather information in a number of ways, but all must be consistent with individual needs and preferences. Facilitators conduct interviews with the individual and--depending on the individual's need for support to communicate--with persons selected by, or clearly significant to, the individual. These interviews range from simple discussion of issues identified during application to assembling a network of people to work out complex support issues. Facilitators also frequently set up experiences and observations with the individual in home and community settings.

(30) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data. Behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(31) "Productivity" means:

(a) Engaging in income-producing work, measured through improvements in income level, employment status or job advancement; or

(b) Engaging in activities that contribute to a household or community.

(32) "Provider" means a person, organization or business who is selected by an individual or the individual's legal representative and paid with Self-Directed Support funds to provide support according to the individual's Self-Directed Support Plan.

(33) "Provider Organization" means an entity selected by an individual, the individual with the assistance of the individual's designee, or the individual's legal representative, and paid with Self-Directed Support Service funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(34) "Self-Directed Support" or "SDS" means support which is:

(a) Required for an individual to live in the individual's home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with a Self-Directed Support plan.

(35) "Self-Directed Support Plan" or "SDS Plan" means the written details of the supports, activities, costs, and resources required for an individual to achieve personal goals, or for a family to achieve outcomes relat-

ed to supporting an individual in the home. The SDS Plan is developed by the CDDP and individual or family to articulate decisions and agreements made during a person-centered process of planning and information-gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The SDS Plan is the individual's Plan of Care for Medicaid purposes.

(36) "Seniors and People with Disabilities" or "SPD" means Seniors and People with Disabilities of the Oregon Department of Human Services.

(37) "Social Benefit" or "Social Service" means a service solely intended to assist an individual with disabilities to function in society on a level comparable to that of an individual of similar age and income who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an individual's current Self-Directed Support plan and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability (e.g. public or parochial education for school-aged individuals, training for a specific job skill or trade that is not part of a vocational rehabilitation plan);

(b) Provide financial assistance with food, clothing, shelter, and laundry needs common to individuals with or without disabilities; or

(c) Replace other governmental or community services available to an individual or family; or

(d) Exceed the actual costs of supports that must be provided for the individual to be supported at home or in the family home.

(38) "Support" means assistance individuals require solely because of the effects of disability to maintain or increase independence, achieve community presence and participation, and improve productivity. It includes assistance families require to care for individuals residing in the family home or in the process of returning from out-of-home placement.

(39) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

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## 309-041-1120

### Eligibility for Self-Directed Support Services

(1) Non-discrimination. Individuals determined eligible according to OAR 309-041-1120(2) shall not be denied Self-Directed Support services or otherwise discriminated against on the basis of age or of diagnostic or disability category. Access to service shall also not be restricted due to race, color, creed, national origin, citizenship, age, income or duration of Oregon residence.

(2) Eligibility. The CDDP of an individual's county of residence shall find the individual eligible for the CDDP's SDS services when the individual has been determined eligible for DD services by the CDDP and the individual is an adult living at home or in the family home whose Self-Directed Support services, or whose combined Self-Directed Support services and services regulated by OAR 309-047-0000 through 309-047-0140 Employment and Alternative to Employment Services, cost more than \$20,000 a year and when part or all of the funds for these services have been designated by contract with the CDDP to support the individual because:

(a) SPD has determined the individual to be at imminent risk of civil commitment under ORS 427 and is providing diversion services according to the provisions of OAR 309-041-0300 through 309-041-0335 Standards for Diversion Services; or

(b) Funds previously used to purchase the individual's Department-regulated residential, work, or day habilitation services have been made available by SPD to purchase Self-Directed services; or

(c) SPD has found the individual eligible for Comprehensive 300 services as defined through the settlement agreement *Staley v. Kitzhaber* (USDC CV00-0078-ST) and has made funds available for those services.

(3) Concurrent eligibility. Individuals shall not be eligible for Self-Directed Support service by more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a collaborative plan developed by both CDDP's in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

Stat. Auth.: ORS 409.050



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Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348  
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## 309-041-1125

### Service Entry and Exit

(1) Providing basic information to individuals and legal representatives. The CDDP shall make accurate, up-to-date written information about Self-Directed Support services available to eligible individuals and their legal representatives. These materials shall include:

(a) Criteria for entry, conditions for exit, and how the limits of assistance with purchasing supports are determined;

(b) A description of processes involved in using Self-Directed Support services, including person-centered planning, evaluation, and how to raise and resolve concerns about SDS services;

(c) Clarification of CDDP employee responsibilities as mandatory abuse reporters;

(d) A brief description of individual and legal representative responsibility for use of public funds;

(e) An explanation of individual rights to select and direct providers of services authorized through the individual's SDS plan and purchased with SDS funds from among those qualified according to OAR 309-041-1135; and

(f) The CDDP shall make information required in OAR 309-041-1125(1)(a) - (e) available using language, format, and presentation methods appropriate for effective communication according to individual needs and abilities.

(2) Entry into SDS services. An individual shall enter Self-Directed Support services at any time that funds are made available through a SPD contract with the CDDP specifically to support the individual.

(3) Duration of SDS services. An eligible individual who has entered a CDDP's Self-Directed Support service may continue to receive SDS services as long as SPD continues to provide funds specifically for that individual through contract with the CDDP and the individual continues to require the services to remain at home or in the family home.

(4) An individual shall exit SDS services:

(a) At the end of a service period agreed upon by all parties and specified in the Self-Directed Support Plan;

(b) At the written request of the individual or the individual's legal representative to end the service relationship;

(c) When the individual moves from the CDDP's service area, unless as part of a time-limited plan for transition to a new county of residence;

(d) When funds to support the individual are no longer provided through SPD contract to the CDDP of the individual's county of residence;

(e) When the CDDP has sufficient evidence to believe that the individual or the individual's legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Self-Directed Support Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services; or

(f) No less than thirty (30) days after the CDDP has served written notice of intent to terminate services, when the individual or the individual's legal representative either cannot be located or has not responded to repeated attempts by CDDP staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate.

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## 309-041-1130

### Required Self-Directed Support Services

(1) Each SDS CDDP shall provide or arrange for the following services as required to meet the support needs of eligible individuals:

(a) Assistance to determine needs and plan supports;

(b) Assistance to find and arrange resources and supports;

(c) Education and technical assistance to make informed decisions about support needs and direct support providers;

(d) Fiscal intermediary services;

(e) Employer-related supports; and

(f) Assistance to monitor and improve the quality of personal supports.

(2) Person-centered planning process required. A CDDP shall use a person-centered planning approach to assist individuals and their legal representatives to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The planning process shall address

basic health and safety needs and supports, including informed decisions by the individual or the individual's legal representative regarding any identified risks.

(3) Written plan required. The individual's Case Manager shall write an initial Self-Directed Support Plan that is signed by the individual (or the individual's legal representative) and dated within 30 days of entry into SDS services. The plan or attached documents shall include:

(a) Individual name and, if applicable, legal representative name;

(b) The purpose of plan activities, addressing one or more of the following:

(A) Independence, i.e. the degree of choice and control an individual hopes to achieve or maintain;

(B) Integration, i.e. the regular access to relationships and community resources the individual hopes to achieve or maintain;

(C) Productivity, i.e. the employment or other contributing roles an individual hopes to achieve or maintain; or

(D) Developing or maintaining the capacity of the family to continue to care for the individual in the family home.

(c) A description of the supports required to accomplish the purpose, with a brief statement of the nature of the disability that makes the support necessary;

(d) Projected dates of when specific supports are to begin and end, as well as the end date, if any, of the period of service covered by the plan;

(e) Projected costs, with sufficient detail to support estimates;

(f) A list of personal, community, and public resources that are available to the individual and how they will be applied to provide the required supports;

(g) Final Self-Directed Support fund costs; and

(h) Schedule of plan reviews.

(4) Nursing Care Plan. A Nursing Care Plan shall be included in the SDS planning when SDS funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(5) Review of plan and resources. The individual's Case Manager shall conduct, and document results of, reviews of plans and resources with individuals and their legal representatives as follows:

(a) At least quarterly review and reconciliation of receipts and records related to purchases of supports with SDS funds ;

(b) At least annually and as major activities or purchases are completed to:

(A) Evaluate progress toward achieving the purposes of the plan;

(B) Note effectiveness of purchases based on Case Manager observation as well as individual or legal representative satisfaction; and

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of SDS funds to purchase supports.

(6) Transition to Another County. The CDDP shall assist an individual moving from its area of service by working with SPD and the receiving CDDP to effect continuation of supports and the transfer of funds required for purchase of required supports.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 2-2001, f. 4-20-01, cert. ef. 4-23-01; MHD 3-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1135

### Self-Directed Support Fund Assistance with Purchasing Supports

(1) Plan required. A CDDP shall only use SDS funds to assist individuals and their legal representatives to purchase supports when the individual's Case Manager has developed a written SDS Plan which meets requirements for development and content in OAR 309-041-1130 and:

(a) Identifies supports that are necessary for an individual to live in his or her own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual; and

(c) Identifies the resources needed to purchase the remainder of necessary supports.

(2) Assistance is a social benefit. Goods, and services purchased with Self-Directed Support funds shall be provided only as social benefits as defined in OAR 309-041-1115(37).

(3) Amount, method and schedule of payment. SDS funds may be disbursed on behalf of individuals. The method, amount, and schedule of payment shall be specified in written agreements between the CDDP and the individual and individual's legal representative, if any.

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(4) Supports purchased. Supports purchased for an individual with Self-Directed Support funds are limited to those described in OAR 309-041-1138. The CDDP shall arrange for these supports to be provided:

(a) In settings and under contractual conditions that allow the individual or the individual's legal representative to freely redirect resources to purchase supports and services from another provider;

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 309-041-1115(30);

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home; and

(e) According to Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks.

(5) Independent Provider qualifications. The CDDP shall require and document that, when SDS funds are used to purchase support or other personal assistance for individuals, each provider:

(a) Is at least 18 years of age;

(b) Has approval to work based on current Oregon Department of Human Services policy and procedures for review of criminal history;

(c) Is legally eligible to work in the United States;

(d) Is not an immediate family member of the individual receiving supports;

(e) Demonstrates by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the SDS Plan, with such demonstration confirmed in writing by the employing individual or individual's legal representative including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual;

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;

(f) Holds current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(g) Understands requirements of maintaining confidentiality and safeguarding individual information;

(h) Is not on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers;

(i) In the case of an agency, holds any license or certificate required by the State of Oregon or federal law or regulation to provide the services purchased by or for the individual; and

(j) If providing transportation, has a valid driver's license and proof of insurance, as well as other license or certificate that may be required under state and local law, depending on the nature and scope of the transportation service.

(6) Provider Organization qualifications. Provider organizations licensed under OAR 309-049-0030 through 309-049-0225 for 24-Hour Residential Programs or 309-040-0000 through 309-040-0100 for Adult Foster Homes or certified under 309-047-0000 through 309-047-0140 for Employment/Alternatives to Employment, 309-041-0550 through 309-041-0830 for Supported Living Services, OAR 309-041-1750 through 309-041-1920 for Support Services Brokerages shall not require additional certification as an organization to provide services described in these rules.

(a) Current license or certification shall be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, train qualified staff;

(B) Provide services according to individual support plans; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) All individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with self-directed services funds shall meet standards for qualification of independent providers outlined in OAR 309-041-1135(5)(a) - (j).

(7) General business provider qualifications. General Business Providers providing services to individuals and paid with self-directed support services funds shall hold any current license appropriate to function required by the State of Oregon or federal law or regulation, including but not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) Current license and bond as a building contractor under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030 for a provider of environmental accessibility adaptations;

(d) Public transportation providers shall be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon;

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Oregon Office of Medical Assistance Program if vending medical equipment;

(f) A current business license for providers of personal emergency response systems;

(g) Retail business licenses for vendors and supply companies providing specialized diets; and

(h) Services provided and paid for with self-directed support services funds shall be limited to those within the scope of the general business provider's license.

(8) Provider responsibilities and agreements. When SDS funds are used to purchase supports for individuals, the CDDP shall require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify the individual's legal representative and family (if services are provided to an individual in the family home) and the CDDP of injury, illness, accidents, or any unusual circumstances which may have a serious effect on the health, safety, physical, emotional well being or level of services required by the individual for whom services are being provided; and

(c) Limits of payment:

(A) SDS fund payments for the agreed-upon services shall be considered full payment and the provider under no circumstances shall demand or receive additional payment for these services from the individual, the individual's legal representative, or the individual's family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program;

(B) The provider shall bill all third party resources before using SDS funds unless another arrangement is agreed upon by the CDDP in the SDS Plan.

(9) Use of SDS funds prohibited. SDS funds shall not pay for:

(a) Services, materials, or activities that are illegal;

(b) Services or activities that are carried out in a manner that constitutes abuse of an adult as defined in OAR 309-041-1115(1);

(c) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

(d) Services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(e) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(f) Individual or family vehicles;

(g) Health and medical costs that the general public normally must pay, including but not limited to: medications; health insurance co-payments; mental health evaluation and treatment; dental treatments and appliances; medical treatments; dietary supplements; treatment supplies not related to nutrition, incontinence, or infection control;

(h) Ambulance services;

(i) Legal fees, including but not limited to costs of representation in educational negotiations, establishing trusts, and creating guardianships;

(j) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(k) Individual support that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Rate enhancements to an individual's existing Employment/Alternative to Employment service under OAR 309-047-000 through 309-047-0140;

(m) Employee wages or contractor payments for services when the individual is not present or available to receive services, e.g. employee paid time off, hourly "no-show" charges, and contractor preparation hours;

(n) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of Self-Directed supports as defined in OAR 309-041-1115(34), the definition of supports as defined in

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309-041-1115(38), and the definition of social benefits as defined in 309-041-1115(37);

(o) Educational services for school-age adults, including professional instruction, formal training and tutoring in communication, socialization, and academic skills;

(p) Services, activities, materials, or equipment that can be obtained by the individual or the individual's legal representative through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(q) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds; or

(r) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the individual's legal representative, family, or service provider have engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Self-Directed Support plan, refused to cooperate with record keeping required to document use of Self-Directed Support funds, or otherwise knowingly misused public funds associated with Self-Directed Support services.

(10) Documentation required. The CDDP shall inform individuals and individuals' legal representatives in writing of records and procedures required in 309-041-1145(3)(c) regarding expenditure of SDS funds for direct assistance. During development of the SDS Plan, the individual's Case Manager shall determine the need or preference for the CDDP to provide support with documentation and procedural requirements and shall include delineations of responsibility for maintenance of records in the SDS Plan and any other written service agreements.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 2-2001, f. 4-20-01, cert. ef. 4-23-01; MHD 3-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1138

### Supports Purchased with Self-Directed Funds

When conditions of purchase in OAR 309-041-1135 are met, Self-Directed Support funds may be used to purchase:

(1) Behavior Consultation. Behavior consultation consists of: assessment of the individual, the needs of the family and the environment; development of a positive behavior support plan; implementation of the positive behavior support plan with the provider or family; and revision and monitoring of the plan as needed. Services may include training, modeling, and mentoring the family, development of visual communication systems as behavior support strategies, and communicating as authorized by the individual or their legal representative with school, medical or other professionals about the strategies and outcomes of the behavior support plan.

(a) Providers may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists who:

(A) Have education, skills, and abilities necessary to provide behavior consultation services;

(B) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

(C) Submit a resume to the CDDP indicating at least one of the following:

(i) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(ii) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(b) Behavior consultation does not include: mental health therapy or counseling; health or mental health plan coverage; educational services, including, but not limited to, consultation and training for classroom staff, adaptations to meet needs of the individual at school, assessment in the school setting, or any service identified by the school as required to carry out the person's Individual Education Plan.

(2) Community inclusion services. Community inclusion services assist an individual to acquire, retain or improve skills, which take place in a non-residential setting, separate from the home in which the individual lives which occur on a regularly scheduled basis. Community Inclusion Supports include assistance to participate in generic community services, facilities, businesses, recreation and leisure. These supports are provided for an individual to participate in activities to facilitate independence and

promote community inclusion in settings chosen by the individual and the individual's legal representative.

(a) Community inclusion services include, but are not limited to: assistance in use of community resources (e.g. shopping, transportation systems, assistance with eating, toileting, mobility during recreational activities); and the cost of daily care and supervision.

(b) Examples of what community inclusion services do not provide include, but are not limited to: secondary and post-secondary education services; tuition to private schools; services provided by a spouse of the individual; illegal activities; legal fees; vacation costs that would normally be incurred by anyone on vacation regardless of disability; supports that have not been arranged according to applicable state and federal wage and hour regulations; services that are not necessary or cost-effective; and services or activities carried out in a manner that constitutes abuse of an adult.

(3) Supported employment services. Supported employment services assist an individual to choose, get and keep a job in an integrated community business setting.

(a) Supported employment services include, job development, training, and on-going supervision to obtain paid employment.

(b) Examples of what supported employment services do not provide include, but are not limited to the following: support provided by someone who does not meet the minimum provider qualifications as specified in OAR 309-041-1135; illegal activities; legal fees; services or activities carried out in a manner that constitutes abuse of an adult; care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations; rate enhancements to an individual's existing employment/community inclusion service under OAR 309-047-0000 through 309-047-0140; payment for the supervisory activities rendered as a normal part of the business setting; incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program; payments for vocational training that is not directly related to an individual's supported employment program; and services that are not necessary or cost-effective. For purposes of this rule:

(A) Supported employment services shall not replace services available under a program funded under the Rehabilitation Act of 1973, or P.L. 94-142.

(B) Supported employment services under this rule shall not replace or duplicate services that the individual currently receives through SPD contracted Employment/Alternatives to Employment service governed by OAR 309-047-0000 through 309-047-0140.

(4) Environmental Accessibility Adaptations. Environmental accessibility adaptations are physical adaptations to an individual's home, which are necessary to ensure the health, welfare, and safety of the individual in the home, or which enable the individual to function with greater independence around the home.

(a) Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of ramps and grab-bars; removing or widening of doorways; handrails; electric door openers; adaptations of kitchen cabinet/sinks; modifications of bathroom facilities; hardening the environment; protective fencing; individual room air conditioners to maintain stable temperature as required by the individual's medical condition; overhead track systems to assist with lifting or transferring of individuals; installation of specialized electric and plumbing systems which are necessary to accommodate medical equipment; and supplies necessary for the welfare of the individual.

(b) Examples of what environmental accessibility supports do not provide include, but are not limited to: generic fire safety equipment; generic household maintenance and repair; adaptations or improvements to the home which are of general utility, and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, adaptations or improvements to the home which add to the total square footage of the home; adaptations and modifications not constructed in accordance with applicable State or local codes; adaptations and improvements not necessary or cost-effective; and materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies.

(c) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans to make homes safe and accessible.

(d) Providers of environmental accessibility adaptation involving building modifications or new construction must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

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(5) Family Caregiver Supports. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for the individual. These services are fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family.

(6) Family Training. Family training services are training and counseling services provided to the family of a individual with developmental disabilities to increase their capabilities to care for, support and maintain the individual in the home.

(a) Family training services include, but are not limited to: instruction about treatment regimens and use of equipment specified in the Self-Directed Support Plan; information, education and training about the individual's disability, medical, and behavioral conditions. Family training services may be provided in various settings by various means, including but not limited to: psychologists licensed under ORS 675.030; professionals licensed to practice medicine under ORS 677.100; social workers licensed under ORS 675.530; counselors licensed under ORS 675.715; organized conferences and workshops specifically related to the individual's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Examples of what family training services do not provide include, but are not limited to: mental health counseling, treatment, or therapy; training for paid caregivers; legal fees; training for families to carry out educational activities in lieu of school; vocational training for family members; and paying for training to carry out activities that constitute abuse of an adult.

(c) Prior authorization by the CDDP shall be required for attendance by family members at organized conferences and workshops funded with Self-Directed Support Services funds.

(7) In-Home Support. In-Home Support services are care, training, supervision and protection provided based on the needs of the individual that must be met for the individual to live in the family home.

(a) In-Home Support services include, but are not limited to: providers who come into the family home and assist the individual with: activities of daily living; medical and physical health care—including delegation of nursing tasks; behavior management; maintenance of expressive and receptive skills in verbal and non-verbal language; functional application of acquired reading and writing skills; training and support in personal environmental skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Examples of what In-Home Support services do not provide include, but are not limited to: services provided by the spouse of the individual; services available through private insurance or health plan; services provided by someone who does not meet the minimum provider qualifications of this rule; behavior management not based on positive behavioral theory and practice; legal fees; care, training or supervision that has not been arranged according to applicable state and federal wage and hour regulations; health and medical costs that the general public normally must pay; educational services for school-age individuals; and replacing support normally provided to the individual by a family member services.

(8) Occupational Therapy. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified occupational therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Occupational therapy services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools.

(9) Physical Therapy. Physical therapy services are the services of a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified physical therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Physical therapy services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools.

(10) Respite Care. Respite care services are short-term care provided on an hourly or daily basis because of the absence, or need for relief of, persons normally providing the care to an individual with developmental disabilities.

(a) Temporary or overnight respite services may be provided in a variety of settings, including, but not limited to: the home of the individual; a licensed group home or foster home; a licensed day care center; or a community care facility that is not a private residence.

(b) Respite services do not include: ongoing services which occur on a regular schedule such as 8-hours-a-day, 5-days-a-week or are provided to allow the individual's family to attend school or work; vacation travel and lodging expenses; cost of the individual's meals unless part of a short-term stay in a licensed facility, group home or foster home.

(11) Specialized Equipment and Supplies. Specialized equipment and supplies are devices, controls, or appliances specified in the Self-Directed Support Plan, which enable an individual to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment permitted under the Medicaid State Plan after the scope and limits of the State Medicaid Plan have been reached.

(a) Examples of specialized equipment and supplies include, but are not limited to: mobility, communication, incontinence, and positioning devices; age-appropriate hospital beds; continuous positioning airway pressure, apnea monitors; generators for technology-dependent individuals; equipment required to obtain urgent medical assistance; a manual wheelchair to use while power chair is being repaired; a second wheelchair that can fit into interior doors while larger power chair remains outside; latex gloves and similar supplies used in personal care; and equipment such as plates, bowls, utensils, glasses, trays that allow an individual to eat independently or with minimum assistance

(b) Examples of items that are not Specialized Equipment and Supplies include, but are not limited to: work-related clothing; generic household furnishings; personal clothing for the individual or family, and other purchases made because of financial need; any equipment or supplies that can be purchased by the individual through the Oregon Health Plan or private insurance, or obtained through other resources; illegal substances or materials; materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies; items which are needed solely to allow an individual to participate in school; items not of direct medical or remedial benefit to the individual; and equipment that is not necessary or cost-effective, experimental, not generally-accepted, or absolutely prohibited by the Oregon Health Plan.

(12) Speech, Hearing, and Language Services. Speech, hearing and language services are the services of a professional licensed under ORS 681.250 that that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope specified in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified speech therapy professional when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Speech, hearing, and language services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools. Educational services for school age individuals, such as: professional instruction, formal training, and tutoring in communication, socialization, and academic skills

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are not allowable expenses covered by Self-Directed Support Services funds.

(13) Transportation services. Transportation services are services that provide training or support in public or private transportation required for the individual to attend recreation, day programs, appointments, and related services according to a Self-Directed Support Plan.

(a) Transportation services include, but are not limited to: transportation provided by common carriers, taxicab or bus in accordance with standards established for these entities; reimbursement on a per-mile basis for transporting an individual in a rural area into the nearest town once a week for shopping and recreational opportunities; assistance with purchase of a bus pass; and reimbursement of operational expenses of agency/staff vehicles used for transporting individuals not to exceed established rates.

(b) Transportation services do not include: purchase of individual or family vehicles; routine vehicle maintenance and repair; ambulance services; payment to a spouse of an individual recipient of Self-Directed Support services; costs for transporting someone other than the individual with disabilities; and payment to someone who cannot meet provider qualifications according to OAR 309-041-1135.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 3-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1140

### Abuse and Unusual Incidents

(1) Abuse prohibited. No adult as defined at OAR 309-041-1115(3) or individual as defined at 309-041-1115(22) shall be abused nor shall abuse be condoned by any employee, staff or volunteer of the CDDP.

(a) Basic personnel policies and procedures. The CDDP shall have in place personnel policies and procedures addressing suspension, increased supervision or other appropriate disciplinary employment procedures when a staff member has been identified as an alleged perpetrator in an abuse investigation. The CDDP shall also have in place personnel policies and procedures addressing disciplinary action and/or termination of employment when the allegation of abuse has been substantiated.

(b) Mandatory abuse reporting personnel policies and procedures. Any employee of a CDDP is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status shall be made at least annually to all employees on forms provided by SPD. All employees shall be provided with a SPD-produced card regarding abuse reporting status and abuse reporting.

(2) Unusual Incidents.

(a) Written report. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual and a CDDP employee shall be prepared at the time of the incident and placed in the individual's record. Such description shall include:

(A) Conditions prior to or leading to the incident;

(B) A description of the incident;

(C) Staff response at the time; and

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression or unusual incident.

(b) Immediate notification of allegations of abuse and abuse investigations. The CDDP shall notify SPD immediately of an incident or allegation of abuse falling within the scope of OAR 309-041-0560(1)(a) through (d). When an abuse investigation has been initiated, the CDDP shall also immediately notify the individual's legal representative or conservator. An individual's parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or unless notification has been specifically prohibited by law.

(c) Immediate notification. In the case of a serious illness, injury or death of an individual, the CDDP shall immediately notify the individual's legal representative or conservator, parent, next of kin, designated contact person and/or other significant person

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

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## 309-041-1142

### Grievances and Appeals

(1) Grievances. The CDDP shall implement written policies and procedures for individuals', their legal representatives and families' grievances. These policies and procedures shall, at a minimum, provide for:

(a) Notification. The CDDP shall inform each individual, each individual's legal representative, and family members orally and in writing of the CDDP's grievance policy and procedures and of the right to move directly to hearing according to OAR 309-041-1142(2) in the case of certain circumstances involving Medicaid services.

(b) Receipt of grievances from individuals, individuals' legal representatives, others acting on the behalf of individuals, and families. ;

(c) Investigation of the facts supporting or disproving the grievance;

(d) Taking appropriate actions on grievances within five working days following receipt of grievance;

(e) Submission to the CDDP director. If the grievance is not resolved, it shall be submitted to the CDDP director for review. Such review shall be completed and a written response to the grievant provided within 15 days;

(f) Submission to SPD. If the grievance is not resolved by the CDDP director, it shall be submitted to the SPD Administrator or Administrator's designee for review. Such review shall be completed and a written response to the grievant provided within 45 days of submission to SPD. The decision of the SPD Administrator or Administrator's designee shall be final; and

(g) Documentation of each grievance and its resolution shall be filed or noted in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation shall include a statement that disciplinary action was taken.

(2) Denial, termination, suspension, or reduction of services.

(a) Each time the CDDP takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the CDDP shall notify the individual or the individual's legal representative(s) of the right to a hearing and the method to obtain a hearing. The CDDP shall mail the notice, or personally serve it to the individual or the individual's legal representative(s) ten (10) days or more prior to the effective date of an action.

(A) The CDDP shall use the Oregon Medical Assistance Program (OMAP) form 3030 or comparable SPD-approved form for such notification.

(B) This notification requirement shall not apply if an action is part of, or fully consistent with, the SDS Plan and the individual, or the individual's legal representative(s), has agreed with the action by signature to the plan.

(b) The adult individual or the adult individual's legal representative may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the CDDP. At the time the CDDP denies a written request for additional or different services, it must notify the appealing party, in writing, of the information specified in paragraph (2)(c) of this section.

(c) A notice required by paragraphs (2)(a) or (2)(b) of this section shall be served upon the appealing party personally or by certified mail. The notice shall state:

(A) What action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to a contested case hearing in accordance with the Oregon Attorney General's model rules at OAR 137-003-501 through 137-003-0700 and 42 CFR Part 431, Subpart E;

(E) That the CDDP's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice shall take effect by default if the SPD representative does not receive a request for a hearing from the party within 45 days from the date that the CDDP mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(H) An explanation of the circumstances under which CDDP services will be continued if a hearing is requested.

(d) If the individual or the individual's legal representative(s) disagree with a decision or proposed action by the CDDP, the party may request a contested case hearing. The SPD representative must receive the signed form within 45 days after the CDDP mailed the notice of action.

(e) The individual or the individual's legal representative(s) may request an expedited hearing, if he or she feels that there is immediate, seri-

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ous threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(f) If the individual or individual's legal representative(s) requests an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, SPD shall continue the services. SPD shall continue the services until whichever of the following occurs first, but in no event shall services be continued in excess of ninety days from the date of the individual's (or individual's legal representative's) request for an administrative hearing:

- (A) The current authorization expires;
- (B) The hearings officer or SPD renders a decision about the complaint; or
- (C) The individual is no longer eligible for Medicaid benefits.

(D) SPD shall notify the individual or individual's legal representative(s) that it is continuing the service. The notice shall inform the individual or individual's legal representative that, if the hearing is resolved against him or her, SPD may recover the cost of any services continued after the effective date of the continuation notice.

(g) SPD shall reinstate services if:

(A) SPD takes an action without providing the required notice and the individual or individual's legal representative requests a hearing;

(B) SPD does not provide the notice in the time required in this rule and the individual or individual's legal representative requests a hearing within ten days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(D) SPD shall promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or SPD decides in the individual's favor before the hearing.

(h) The SPD representative and the individual or the individual's legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575 "Prehearing Conference". The informal conference may also be used to:

- (A) Provide an opportunity for the SPD and the individual or individual's legal representative to settle the matter;
- (B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the hearing request;
- (C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;
- (D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;
- (E) Give the individual or the individual's legal representative and SPD the chance to correct any misunderstanding of the facts;
- (F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and
- (G) Give SPD an opportunity to review its action or the action of the CDDP.

(i) The individual or individual's legal representative(s) may, at any time prior to the hearing date, request an additional conference with the SPD representative. At his or her discretion, the SPD representative may grant such a conference if it will facilitate the hearing process.

(j) SPD may provide to the individual or individual's legal representative the relief sought at any time before the final order is served.

(k) Withdrawals: An individual or the individual's legal representative may withdraw a hearing request at any time. The withdrawal will be effective on the date SPD or the hearings officer receives it. The hearings officer shall send a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or individual's legal representative may cancel the withdrawal up to the tenth working day following the date such an order is issued.

(l) Proposed and final orders:

(A) In a contested case, the hearings officer shall serve a proposed order on the individual and SPD. The proposed order shall become a final order if no exceptions are filed within the time specified in subsection B below;

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by SPD. The exceptions must be in writing and must reach SPD not later than ten days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless SPD

prior-approves. After receiving the exceptions, if any, SPD may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, SPD may issue an amended proposed order.

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

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 2-2001, f. 4-20-01, cert. ef. 4-23-01; MHD 3-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1145

### SDS Operation

(1) Personnel Policies and Practices.

(a) Personnel files and qualifications records. The CDDP shall maintain up-to-date written position descriptions for all Case Managers providing self-directed support services that includes written documentation of the following for each staff person:

(A) Reference checks and confirmation of qualifications prior to hire;

(B) Satisfactory completion of basic orientation, including mandatory abuse reporting training;

(C) Satisfactory completion of job-related in-service training;

(D) Oregon Department of Human Services approval to work based on criminal records review;

(E) Notification and acknowledgement of mandatory abuse reporter status;

(F) Any substantiated abuse allegations;

(G) Any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and

(H) Legal U.S. worker status.

(2) Case Manager training. The CDDP shall provide or arrange for Case Managers to receive training needed to provide or arrange for the SDS services.

(3) Record requirements. The CDDP shall maintain records in compliance with this rule, applicable state and federal law, other state rules regarding audits and clinical records, and the most current edition of the Mental Health and Developmental Disability Services Division Handbook on Confidentiality.

(a) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, the CDDP's shall be considered "providers" as defined in ORS 179.505(1), and 179.505 shall be applicable. Access to records by SPD does not require authorization by the individual or individual's legal representative. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) Individual records. The CDDP shall maintain and make available on request for SPD review up to date records for each individual receiving self-directed services. These records shall include:

(A) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal representative, or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, and individual financial resource information.

(B) Records related to receipt and disbursement of public and private support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 309-041-1135(5)(a-j), and documentation that individual and individual's legal representative understand and accept or delegate record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) Self-Directed Support Plan and reviews;

(F) Case Manager correspondence and notes related to resource development and plan outcomes; and

(G) Customer satisfaction information.

(c) Special requirements for SDS direct assistance expenditures. The CDDP shall develop and implement written policies and procedures concerning use of SDS funds to purchase goods and services that are described in the SDS Plan as required to meet the support needs of individuals. These policies and procedures shall include, but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records may be maintained by the individual or family;

(i) Itemized invoices and receipts to record purchase of any single item;

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(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services.

(B) Procedures for confirming the receipt, and securing the use, of specialized equipment and environmental accessibility adaptations:

(i) When specialized equipment is obtained for the exclusive use of an individual, the CDDP shall record the purpose, final cost, and date of receipt;

(ii) The CDDP shall secure use of equipment costing more than \$500 through a written agreement between the CDDP and the individual or individual's legal representative which specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(iii) The CDDP shall obtain prior authorization from SPD for environmental accessibility adaptations to the home costing more than \$1500;

(iv) The CDDP shall ensure that projects for environmental accessibility adaptations to the home costing \$5000 or more are:

(I) Reviewed and approved by SPD before work begins and before final payment is made;

(II) Completed or supervised by a contractor licensed and bonded in the State of Oregon; and

(III) that steps are taken as prescribed by SPD for protection of State's interest through liens or other legally available means; and

(v) The CDDP shall obtain written authorization from the owner of a rental structure before any minor physical environmental accessibility adaptations are made to that structure.

(C) Return of purchased goods.

(i) Any goods purchased with SDS funds that are not used according to SDS plan or according to an agreement securing the State's use may be immediately recovered.

(ii) Failure to furnish written documentation upon written request from SPD, the Oregon Department of Justice Medicaid Fraud Unit or Centers for Medicare and Medicaid Services or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(d) General financial policies and practices. The CDDP shall:

(A) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any SPD administrative rule pertaining to fraud and embezzlement.

(e) Records retention. Records shall be retained in accordance with OAR 166-005-000 through 166-040-1050 (State Archivist). Financial records, supporting documents, statistical records, and all other records (except client records) shall be retained for a minimum of three years after the close of the contract period, or until audited. Client records shall be kept for a minimum of seven years.

(4) Other operating policies and practices. The CDDP shall develop and implement such written statements of policy and procedure in addition to those specifically required by this Rule as are necessary and useful to enable the agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 2-2001, f. 4-20-01, cert. ef. 4-23-01; MHD 3-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1150

### Quality Assurance

The CDDP shall participate in statewide evaluation and regulation activities as directed by SPD.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 2-2001, f. 4-20-01, cert. ef. 4-23-01; MHD 3-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1165

### Inspections and Investigations

(1) Inspections and investigations required. The CDDP shall allow the following types of investigations and inspections to be performed by the Oregon Department of Human Services, SPD, or other proper authority:

(a) Quality assurance and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) Unannounced. Any inspection or investigation may be unannounced.

(3) Required documentation. All documentation and written reports required by this rule shall be:

(a) Open to inspection and investigation by the Oregon Department of Human Services, SPD, or proper authority; and

(b) Submitted to the Oregon Department of Human Services, SPD, or proper authority within the time allotted.

(4) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or SPD has determined to initiate an investigation, the CDDP shall not conduct an internal investigation without prior authorization from SPD. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions shall be taken.

(5) Investigations shall be completed as prescribe in OAR 309-040-0200 through 309-040-0290 and shall include an Abuse Investigation and Protective Services Report according to OAR 309-040-0260(1). The report shall include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse and/or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the persons(s) alleged to have engaged in the conduct.

(6) Upon completion of the abuse investigation by Oregon Department of Human Services, SPD, or a law enforcement agency, the CDDP may conduct an investigation without further SPD approval to determine if any other personnel actions are necessary.

(7) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 309-040-0260(1), the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate service provider(s). The service provider shall implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(8) Plan of improvement. A plan of improvement shall be submitted to SPD for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 2-2001, f. 4-20-01, cert. ef. 4-23-01; MHD 3-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1170

### Variances

(1) Criteria for a variance. Variances may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in this rule, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances.

(2) Variance application. The CDDP requesting a variance shall submit a written application to SPD that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's service, evidence that the variance is consistent with the individual's current SDS plan.

(3) SPD review. The SPD Administrator or Administrator's designee shall approve or deny the request for a variance. This decision shall be final.

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(4) Notification. SPD shall notify the CDDP of the decision. This notice shall be sent within 30 calendar days of the receipt of the request by SPD and copies shall be sent to other relevant sections of SPD.

(5) Duration of variance. SPD shall determine the duration of the variance.

(6) Written approval. The CDDP may implement a variance only after written approval from SPD.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 2-2001, f. 4-20-01, cert. ef. 4-23-01; MHD 3-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

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**Adm. Order No.:** MHD 4-2003(Temp)

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**Rules Amended:** 309-041-1750, 309-041-1760, 309-041-1780, 309-041-1800, 309-041-1850, 309-041-1860, 309-041-1870, 309-041-1880, 309-041-1890, 309-041-1910

**Subject:** Temporary amendments to the Support Services for Adults with Developmental Disabilities rules include: a) Adjustments in provisions regarding group enrollments that are required for the Department to stay within the 2003-05 proposed budget effective July 1, 2003; b) Changes required to ensure continued compliance with Medicaid requirements and avoid loss of Federal resources in the program; and c) Clarification of process and procedural issues that have arisen since implementation of Support Services.

**Rules Coordinator:** Pam Rouske—(503) 945-6954

## 309-041-1750

### Statement of Purpose and Statutory Authority

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for Support Service Brokerages, for purchase of individual supports with support service funds, and for providers paid with support services funds to provide services to adults with developmental disabilities so that those adults may live in their own homes or in family homes. Services provided under this rule are intended to identify, strengthen, expand and, where required, supplement private, public, formal and informal support available to these adults so that they may exercise self-determination in the design and direction of their lives.

(2) Statutory authority. These rules are authorized by ORS 409.050 and carry out the provisions of ORS 430.610 through 430.670, 427.005 through 427.007. These rules also carry out the provisions of ORS 417.340 through 417.348 for families of adults with developmental disabilities.

Stat. Auth.: ORS 430.041

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1760

### Definitions

As used in OAR 309-041-1750 through 309-041-1920:

(1) "Abuse" means:

(a) Except for Provider Organizations listed in OAR 309-041-1760(1)(b)-(e), one or more of the following:

(A) Any death caused by other than accidental or natural means;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury; or

(D) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program and an adult.

(b) Activities described in OAR 309-049-0035(1)(a)-(j) for Provider Organizations qualifying to be paid with support services funds as 24-Hour Residential Programs licensed under OAR 309-049-0030 through 309-049-0225.

(c) Activities described in OAR 309-040-0005(1)(a)-(e) for Provider Organizations qualifying to be paid with support services funds as Adult Foster Homes licensed under OAR 309-040-000 through 309-040-0100.

(d) Activities described in OAR 309-047-0005(1)(a)-(j) for Provider Organizations qualifying to be paid with support services funds as Employment/Alternatives to Employment programs certified under OAR 309-047-0000 through 309-047-0140.

(e) Activities described in OAR 309-041-0560(1)(a)-(j) for Provider Organizations qualifying to be paid with support services funds as Supported Living Services certified under OAR 309-041-0550 through 309-041-0830.

(2) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(3) "Administration of medication" means the act of a person, responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(4) "Adult" means an individual 18 years or older with developmental disabilities.

(5) "Basic Benefit" means the type and amount of Support Services available to each eligible individual, specifically:

(a) Access to Support Service Brokerage services listed in 309-041-1860(1)(a)-(g) and, if required,

(b) Assistance with purchase of supports listed in 309-041-1870(6)(a)-(p) with no more than:

(A) \$9600 per Plan Year from July 1, 2001 through June 30, 2003, and adjusted thereafter biennially according to legislatively-approved increments, when an individual is a Medicaid recipient and has chosen to receive services available through the Support Services waiver, and

(B) An amount equal to the state's General Fund contribution to the maximum amount available per Plan Year to a Medicaid recipient per OAR 309-041-1760(5)(b)(A) when an individual is either not eligible for Medicaid or does not otherwise receive Medicaid benefits, calculated according to the Medicaid match rate current at the beginning of the Plan Year and adjusted annually to correspond to changes in the Medicaid match rate.

(6) "Basic Supplement" means the amount of support services funds in excess of the Basic Benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria. A Basic Supplement is subject to limitations outlined in OAR 309-041-1870(4)(a)(A-B).

(7) "Basic Supplement Criteria" means the written inventory of an individual's circumstances which is completed and scored by the Brokerage to determine whether the individual is eligible for annual support services funds in excess of the Basic Benefit due to extraordinary long-term need.

(8) "Certificate" means a document issued by the Department to a Support Services Brokerage or to a Provider Organization that certifies the Brokerage or Provider Organization is eligible to receive State funds for these services.

(9) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(10) "Chore services" mean services needed to maintain a clean, sanitary and safe environment in an individual's home. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, moving heavy items of furniture for safe access and egress. These services are provided when no one in the household is capable of either performing, or paying for, the services and when no other relative, caregiver, landlord, community/volunteer agency, or third-party payer is capable of or responsible for their provision.

(11) "Client Process Monitoring System" or "CPMS" means the Department's computerized system for enrolling and terminating services for individuals.

(12) "Community Inclusion Supports" means services that may include instruction in skills an individual wishes to acquire, retain or improve that enhance independence, productivity, integration, and/or maintain the individual's physical and mental skills. These supports are provided:

(a) For an individual to participate in activities to facilitate independence and promote community inclusion and contribution; and

(b) At any time in community settings of the individual's choice.

(13) "Community Living Supports" means services provided for the purpose of facilitating independence and promoting community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of community-based housing the individual chooses, consistent with the outcome for community living defined in the individual's support plan. The type, frequency, and duration of direct support and other community living support is defined in the plan of care based on the individual's selected housing arrangement and assessed needs.



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Supports are available to individuals who live alone, with roommates, or with family. The services include support designed to develop or maintain skills required for self-care, directing supports, and caring for the immediate environment such as:

(a) Personal skills, including eating, bathing, dressing, personal hygiene, and mobility;

(b) Socialization, including development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(c) Community participation, recreation or leisure, including the development or maintenance of skills to use generic community services, facilities, or businesses;

(d) Communication, including development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(e) Personal environmental skills including planning and preparing meals, budgeting, laundry, and housecleaning.

(14) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with Seniors and People with Disabilities or a local mental health authority.

(15) "Comprehensive Services" means: (a) 24-hour residential services regulated by the Department including, but not limited to, care provided in a group home, in a foster home, or through a supported living program, and (b) supports provided to an individual in the individual or family home that cost more than \$20,000 in funds designated by Seniors and People with Disabilities specifically for that purpose for individuals with developmental disabilities per Plan Year for the July 1, 2001 through June 30, 2003 biennium or more than \$20,000 plus any legislatively-approved cost-of-living increments per Plan Year for each biennium thereafter.

(16) "Department" means the Oregon Department of Human Services.

(17) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual function with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(18) "Emergent status" means a temporary, unpredictable situation when an individual enrolled in a Support Service Brokerage may be allowed to receive Department-paid support exceeding \$20,000 per year to remain in his or her home or family home or to enter a short-term out-of-home residential placement without exiting Support Services. An individual shall only be considered in emergent status if he or she is in jeopardy of losing his or her living situation due to inability or unavailability of the primary caregiver, when no alternative resources are available, and when the CDDP of the individual's county of residence has determined that the individual meets criteria for crisis/diversion services as defined in OAR 309-041-0300 through 309-041-0335. Services are provided while an individual is in emergent status to prevent the individual's civil commitment to an institution for the mentally retarded as described in ORS Chapter 427, or to prevent a permanent out-of-home placement. Services to maintain the individual in the community and stabilize the situation are crisis/diversion services defined in OAR 309-041-0300 through 309-041-0335, which may include short-term residential placement services indicated in the individual's Support Service Brokerage Plan of Care Crisis Addendum, as well as additional support in the individual's home as described in the Support Services Individual Support Plan. Length of emergent status shall only be authorized by the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for the individual's county of residence, depending on the source of the crisis/diversion funds. In no case

shall emergent status for an individual exceed two hundred seventy (270) consecutive days in twelve (12) consecutive months.

(19) "Employer-related supports" means activities that assist individuals and, when applicable, their family members, with directing and supervising provision of services described in the Individual Support Plan. Supports to the employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(20) "Entry" means admission to a Senior and People with Disabilities Services-funded service provider.

(21) "Environmental Accessibility Adaptations" means physical adaptations which are necessary to ensure the health, welfare, and safety of the individual in the home, or which enable the individual to function with greater independence in the home. Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of shatter-proof windows; hardening of walls or doors; specialized, hardened, waterproof or padded flooring; an alarm system for doors or windows; protective covering for smoke detectors, light fixtures, and appliances; sound and visual monitoring systems; fencing; installation of ramps and grab-bars, installation of electric door openers; adaptation of kitchen cabinets/sinks; widening of doorways; handrails; modification of bathroom facilities; individual room air conditioners for individuals whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk; installation of non-skid surfaces; overhead track systems to assist with lifting or transferring; specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the individual; modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle). This service does not include:

(a) Adaptations or improvements to the home which are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, and

(b) Adaptations that add to the total square footage of the home.

(22) "Environmental Modification Consultant" means either an Independent Provider or a Provider Organization paid with support services funds to provide advice to an individual, the individual's legal representative, or the individual's Personal Agent about the environmental accessibility adaptation required to meet the individual's needs.

(23) "Exit" means either termination from a Seniors and People with Disabilities-funded program or transfer from one Seniors and People with Disabilities-funded program to another. Exit does not mean transfer within a service provider's program.

(24) "Family," for determining individual eligibility for Support Services Brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(25) "Family Training" means training and counseling services for the family of an individual to increase capabilities to care for, support and maintain the individual in the home. This service includes: instruction about treatment regimens and use of equipment specified in the Individual Support Plan; information, education and training about the individual's disability, medical, and behavioral conditions; and counseling for the family to relieve the stress associated with caring for an individual with disabilities. This service is provided by licensed psychologists, professionals licensed to practice medicine, social workers, counselors, or in organized conferences and workshops that are limited to topics related to the individual's disability, identified support needs, or specialized medical or habilitative support needs. The training is not provided to paid caregivers.

(26) "Fiscal Intermediary" means a person or agency that receives and distributes support services funds on behalf of an individual according to an Individual Support Plan. The fiscal intermediary responsibilities may

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include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(27) "General business provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with Support Service funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(28) "Grievance" means a formal complaint by an individual or individual's legal representative about services or employees of a Support Service Brokerage or Provider Organization.

(29) "Habilitation services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. These services include supported employment, community living supports, and community inclusion supports.

(30) "Home" means an individual's primary residence which is not licensed or certified by, and under contract with, the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(31) "Homemaker services" means support consisting of general household activities such as meal preparation and routine household care provided by a trained homemaker. The services are provided when the person regularly responsible for these activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual.

(32) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(33) "Independence" is defined in ORS 427.005 and means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(34) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with Support Service funds who personally provides services to the individual.

(35) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(36) "Individual Support Plan" or "ISP" means the written details of the supports, activities, costs, and resources required for an individual to achieve personal goals. This Individual Support Plan is developed by the individual, the individual's personal agent, the individual's legal representative (if any), and other persons who have been invited to participate by the individual or individual's legal representative. The ISP articulates decisions and agreements made through a person-centered process of planning and information-gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(37) "Integration" is defined in ORS 427.005 and means use by persons with mental retardation or developmental disabilities of the same community resources that are used by and available to other persons and participation in the same community activities in which nondisabled persons participate, together with regular contact with nondisabled persons, and residence by persons with developmental disabilities in homes or in home-like settings which are in proximity to community resources, together with regular contact with nondisabled persons in their community.

(38) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person who is authorized by the court to make decisions about services for the individual.

(39) "Local Mental Health Authority" means the county court or board of county commissioners of one or more counties who operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

(40) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to

ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(41) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(42) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(43) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned and/or delegated to the qualified provider or family.

(44) "Occupational Therapy" means the services of a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(45) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for the services listed in OAR 309-041-1860(1)(a)-(g), who meets the requirements of OAR 309-041-1890(4)(a)-(b), and who is:

(a) A trained employee of a Support Service Brokerage or

(b) A person who has been engaged under contract to the Brokerage to allow the Brokerage to meet responsibilities in geographic areas where Personal Agent resources are severely limited.

(46) "Personal Emergency Response Systems" mean electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(47) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual determine and describe choices about personal goals and lifestyle preferences and design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources. The process helps the individual and those significant to the individual to identify, use, and strengthen naturally occurring opportunities for support at home and in the community. Methods for gathering information vary, but all are consistent with individual needs and preferences, ranging from simple interviews with the individual to informal observations in home and community settings to formally structured meetings.

(48) "Physical Therapy" means services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(49) "Plan Year" means twelve (12) consecutive months used to calculate an individual's annual Basic Benefit. Unless otherwise set according to conditions of 309-041-1860(4)(h) or 309-041-1870(4)(b)(G), the initial Plan Year begins on the date the individual's first Individual Support Plan after enrollment in a Brokerage is approved and signed by the CDDP authorizing implementation; subsequent Plan Years begin on the anniversary date of the approval of this initial plan.

(50) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(51) "Prescription medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(52) "Primary Caregiver" means the person identified in an individual's ISP as providing the majority of care and support for an individual in the individual's home.

(53) "Productivity" is defined in ORS 427.005 and means engagement in income-producing work by a person with mental retardation or developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or developmental disabilities in work contributing to a household or community.

(54) "Provider Organization" means an entity selected by an individual or the individual's legal representative and paid with Support Service funds that:

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(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(55) "Provider Organization Director" means the employee of a Provider Organization responsible for administration and provision of services according to these Rules.

(56) "Psychotropic medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(57) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(58) "Respite Care" means short-term care and supervision provided because of the absence, or need for relief of, persons normally providing the care to individuals unable to care for themselves. Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence. Respite includes two types of care, neither of which can be characterized as 8-hours-a-day, 5-days-a-week services or are provided to allow caregivers to attend school or work:

(a) Temporary Respite Care, which is provided on less than a 24-hour basis, and

(b) 24-Hour Overnight Care, which is provided in segments of 24-hour units that may be sequential.

(59) "Restraint" means any physical hold, device, or chemical substance which restricts, or is meant to restrict, the movement or normal functioning of an individual.

(60) "Self-administration of medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his/her own body without staff assistance, upon written order of a physician, and safely maintaining the medication(s) without supervision.

(61) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom—The ability for an individual with a developmental disability together with freely-chosen family and friends to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority—The ability for a persons with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy—The arranging of resources and personnel— both formal and informal—that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility—The acceptance of a valued role in a person's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for persons with developmental disabilities.

(62) "Seniors and People with Disabilities" or SPD means Seniors and People with Disabilities of the Department of Human Services.

(63) "Social Benefit" or "Social Service" means a service solely intended to assist an adult with disabilities to function in society on a level comparable to that of an adult who does not have such disability. Such a benefit or service does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without disabilities; or

(c) Replace other governmental or community services available to an individual. Financial assistance provided as a social benefit or social services does not exceed the actual cost of the support required by an individual and must be either:

(A) Reimbursement for an expense authorized in a previously-approved plan of service; or

(B) An advance payment in anticipation of an expense authorized in a previously negotiated and approved Individual Support Plan.

(64) "Special Diet" means specially prepared food and/or particular types of food needed to sustain the individual in the family home. Special diets can include: high caloric supplements; gluten-free supplements; diabetic, ketogenic or other metabolic supplements. Special diets are ordered by a physician and periodically monitored by a dietician. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements. Special diets do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability.

(65) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances which enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State plan. It does not include items not of direct medical or remedial benefit to the individual. All items meet applicable standards of manufacture, design, and installation.

(66) "Specialized Supports" mean treatment, training, consultation or other unique services necessary to achieve outcomes in the plan of care that are not available through State Medicaid Plan services or other Support Services listed in 309-041-1870(6)(a)-(p). Typical supports include the services of a behavior consultant, a licensed nurse, or a social/sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the support plan;

(d) Monitor implementation of plan; and

(e) Revision of the plan as needed.

(67) "Speech and Language Therapy services" means the services of a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(68) "Support" means assistance individuals require—solely because of the effects of disability—to maintain or increase independence, achieve community presence and participation, and improve productivity. This assistance is flexible and subject to change with time and circumstances.

(69) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(70) "Support Services" means the services of a Support Services Brokerage listed in 309-041-1860(1)(a)-(g) as well as the uniquely determined activities and purchases arranged through the Brokerage. Support Services:

(a) Complement the existing formal and informal supports that exist for an individual living in his or her own home or family home;

(b) Are designed, selected, and managed by the individual or individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(71) "Support Service Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 309-041-1860(1)(a)-(g) associated with planning and implementation of Support Services for adults with developmental disabilities, using the principles of self-determination described in OAR 309-041-1760(61).

(72) "Support Service Brokerage Director" or "Brokerage Director" means the employee of a publicly- or privately operated Support Service Brokerage who is responsible for administration and provision of services according to these Rules.

(73) "Support Service Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by SPD to be added to an individual's ISP to describe crisis/diversion services an individual is to receive while he or she is in emergent status in a short-term residential placement. This short-term plan is coordinated by staff of the CDDP of the individual's county of residence.

(74) "Support Service Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group formed to provide consumer-based leadership and advice to each Support Service Brokerage regarding issues

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such as development of policy, evaluation of services, and use of resources and which meets the requirements of OAR 309-041-1890(1)(a)-(d) for such groups.

(75) "Support Services Funds" means public funds designated by the Support Services Brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(76) "Support Services Specialist" means an employee of a CDDP that performs the essential functions necessary to ensure the proper use of support services resources for individuals served by the Brokerage. This includes, but is not limited to, Title TXIX waiver enrollment, authorization of the Individual Support Plan, assistance in accessing crisis/diversion services, consulting with brokerage regarding allowable expenditure, annual Title XIX reviews, grievance and dispute resolution, facilitating transfers between Brokerages or into comprehensive services, and utilization review of services delivered.

(77) "Transportation" means services that allow individuals to gain access to community services, activities and resources that are not medical in nature.

(78) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - 430.670, ORS 427.005 - 427.007 & ORS 417.340 - 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1780

### Abuse and Unusual Incidents in Support Service Brokerages and Provider Organizations

(1) Abuse prohibited. Any adult as defined at 309-041-1760(4) or individual as defined at 309-041-1760(35) shall not be abused nor shall abuse be condoned by any employee, staff or volunteer of the Brokerage or Provider Organization.

(a) Basic personnel policies and procedures. Support Service Brokerages and Provider Organizations shall have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an alleged perpetrator in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) Mandatory abuse reporting personnel policies and procedures. Any employee of a Brokerage or Provider Organization is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status shall be made at least annually to all employees on forms provided by the Department. All employees shall be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) Unusual Incidents.

(a) Written report. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual and a Brokerage or Provider Organization employee shall be prepared at the time of the incident and placed in the individual's record. Such description shall include:

(A) Conditions prior to or leading to the incident;

(B) A description of the incident;

(C) Staff response at the time; and

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression or unusual incident.

(b) Copies sent to Support Services Specialist and Brokerage. Copies of all Unusual Incident reports involving abuse that occur while an individual is receiving Brokerage or Provider Organization services shall be sent to the CDDP Support Services Specialist. Copies of reports of all unusual incidents that occur while the individual is receiving services from a Provider Organization, shall be sent to the individual's Brokerage within five working days of the incident.

(c) Immediate notification of allegations of abuse and abuse investigations. The Brokerage shall immediately report to the CDDP, and the Provider Organization shall report to the CDDP with notification to the Brokerage, any incident or allegation of abuse falling within the scope of 309-041-1760(1)(a)-(e). When the CDDP has initiated an abuse investigation, the CDDP shall ensure that either the Support Services Specialist or

the Brokerage shall also immediately notify the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or unless notification has been specifically prohibited by law.

(d) Immediate notification. In the case of a serious illness, injury or death of an individual, the Brokerage or Provider Organization shall immediately notify:

(A) The individual's legal guardian or conservator, parent, next of kin, designated contact person and/or other significant person;

(B) The Community Mental Health and Developmental Disability Program; and

(C) In the case of the Provider Organization, the individual's Support Services Brokerage.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - 430.670, ORS 427.005 - 427.007 & ORS 417.340 - 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1800

### Grievances and Appeals in Support Service Brokerages and Provider Organizations

(1) Grievances. Support Services Brokerages and Provider Organizations shall develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures shall at minimum address:

(a) Informal resolution. These policies and procedures shall provide opportunity for an individual or someone acting on behalf of the individual to informally discuss and resolve any allegation that a Brokerage or Provider Organization has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity shall not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes;

(b) Receipt of grievances. The policies and procedures shall describe how the Brokerage or Provider Organization receives and documents grievances from individual(s) and others acting on the behalf of individuals. If a grievance is associated in any way with abuse, the recipient of the grievance shall immediately report the issue to the CDDP and notify the Brokerage Director and, if applicable, the Provider Organization Director;

(c) Investigation of the facts supporting or disproving the grievance;

(d) Taking appropriate actions on grievances within five working days following receipt of grievance;

(e) Review by the Brokerage Director if the grievance involves Brokerage staff or services, or by the Provider Organization Director if the grievance involves Provider Organization staff or services, if the grievance is not or cannot be resolved with Brokerage or Provider Organization staff, respectively. Such review shall be completed and a written response to the grievant provided within 15 days following receipt of the grievance; and

(f) Third-party review when grievances are not resolved by the Brokerage Director or Provider Organization Director.

(A) Unless the grievant is a Medicaid recipient who has elected to initiate hearing processes according to OAR 309-041-1800(3), grievances having to do with development of an individual's Individual Support Plan, services at variance with the type, amount, frequency, or duration specified in an individual's written ISP, or the selection of any provider of service specified in the individual's ISP shall be submitted to the CDDP for review.

(i) This review shall be completed according to the CDDP dispute resolution policy and a written response shall be provided to the grievant within the timelines described in that policy.

(ii) If the grievance remains unresolved after review by the CDDP, it may be submitted to the SPD Administrator or Administrator's designee for review. Such review shall be completed and a written response to the grievant provided within 45 days of receipt of the grievant's written request for SPD review. The decision of the SPD Administrator or Administrator's designee shall be final unless the grievant is a Medicaid recipient who chooses to initiate further hearing according to OAR 309-041-1800(3).

(B) When a grievance does not involve the circumstances of OAR 309-041-1800(1)(f)(A), and the grievant is not a Medicaid recipient electing to initiate hearing processes according to OAR 309-01-1800(3), the grievance may be submitted directly to the SPD Administrator or Administrator's designee for review. Such review shall be completed and a written response to the grievant provided within 45 days of receipt of the grievant's written request for SPD review. The decision of the SPD Administrator or Administrator's designee shall be final.

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(g) Documentation of each grievance and its resolution shall be filed or noted in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation shall include a statement that disciplinary action was taken.

(h) Copies of all grievances to Support Services Specialist. Copies of the documentation on all grievances shall be sent by the Brokerage or Provider Organization to the Support Services Specialist within 15 working days of initial receipt of the grievance.

(2) Notification. The Brokerage and Provider Organization shall inform each individual, or the individual's legal representative, orally and in writing, of the Brokerage or Provider Organization grievance policy and procedures.

(a) The Brokerage and Provide Organization shall inform each individual Medicaid recipient, or the individual Medicaid recipient's legal representative, orally and in writing, of the right of a Medicaid recipient to move directly to hearing as per 309-041-1800(3) at any point if the Brokerage, Provider Organization or SPD does not address a grievance satisfactorily.

(b) Information shall be presented using language, format, and methods of communication appropriate to the individual's needs and abilities.

(3) Denial, termination, suspension, or reduction of services for individual Medicaid recipients.

(a) Each time the Brokerage takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the Brokerage shall notify the individual or the individual's legal representative(s) of the right to a hearing and the method to obtain a hearing. The Brokerage shall mail the notice, or personally serve it to the individual or the individual's legal representative(s) ten (10) days or more prior to the effective date of an action.

(A) The Brokerage shall use the Oregon Medical Assistance Program (OMAP) form 3030 or comparable Department-approved form for such notification.

(B) This notification requirement shall not apply if an action is part of, or fully consistent with, the Individual Support Plan and the individual, or the individual's legal representative(s), has agreed with the action by signature to the plan.

(b) The individual or the individual's legal representative may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the Brokerage. At the time the Brokerage denies a written request for additional or different services, it must notify the appealing party, in writing, of the information specified in paragraph (3)(c) of this section.

(c) A notice required by paragraph (3)(a) or (3)(b) of this section shall be served upon the appealing party personally or by certified mail. The notice shall state:

(A) What action the Brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to a contested case hearing in accordance with the Oregon Attorney General's model rules at OAR 137-003-501 through 137-003-0700 and 42 CFR Part 431, subpart E;

(E) That the Brokerage's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice shall take effect by default if the Department representative does not receive a request for a hearing from the party within 45 days from the date that the Brokerage mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(H) An explanation of the circumstances under which Brokerage services will be continued if a hearing is requested.

(d) If the individual or the individual's legal representative(s) disagree with a decision or proposed action by the Brokerage, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the Brokerage mailed the notice of action.

(e) The individual or the individual's legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(f) If the individual or individual's legal representative(s) request an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department shall continue the services. The Department shall continue the services until

whichever of the following occurs first, but in no event shall services be continued in excess of ninety days from the date of the individual's (or individual's legal representative's) request for an administrative hearing:

(A) The current authorization expires;

(B) The hearings officer issues a proposed order and the Department renders a final order about the complaint; or

(C) The individual is no longer eligible for Medicaid benefits.

(D) The Department shall notify the individual or individual's legal representative(s) that it is continuing the service. The notice shall inform the individual or individual's legal representative that, if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department shall reinstate services if:

(A) The Department takes an action without providing the required notice and the individual or individual's legal representative requests a hearing;

(B) The Department does not provide the notice in the time required in this rule and the individual or individual's legal representative requests a hearing within ten days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(D) The Department shall promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or the Department decides in the individual's favor before the hearing.

(h) The Department representative and the individual or the individual's legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575 "Prehearing Conference". The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual or individual's legal representative to settle the matter;

(B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the hearing request;

(C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the Brokerage.

(i) The individual or individual's legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(j) The Department may provide to the individual or individual's legal representative the relief sought at any time before the final order is served.

(k) Withdrawals. An individual or the individual's legal representative may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The Department shall send a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or individual's legal representative may cancel the withdrawal up to the tenth workday following the date such an order is issued.

(l) Proposed and final orders.

(A) In a contested case, the hearings officer shall serve a proposed order on the individual and the Department.

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department not later than ten days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless the Department prior-approves. After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

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Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1850

### Standards for Support Service Brokerage Entry and Exit

(1) Providing basic information. The Support Services Brokerage shall make accurate, up-to-date information about the program available to individuals referred for services. This information shall include:

- (a) A declaration of program philosophy;
- (b) A brief description of the services provided by the program, including typical timelines for activities;
- (c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;
- (d) A declaration of Support Service Brokerage employee responsibilities as mandatory abuse reporters;
- (e) A brief description of individual responsibilities for use of public funds;
- (f) An explanation of individual rights, including rights to:
  - (A) Choose a Brokerage among Department-contracted Brokerages in an individual's county of residence;
  - (B) Choose a Personal Agent among those available in the selected Brokerage;

(C) Select providers among those qualified according to OAR 309-041-1900, 309-041-1910, and 309-041-1920 to provide supports authorized through the Individual Support Plan;

(D) Direct the services of support providers; and

(E) Raise and resolve concerns about Brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 309-041-1800(3) when services covered under Medicaid are denied, terminated, suspended, or reduced.

(g) Indication that additional information about the Support Service Brokerage is available on request. That information shall include, but is not limited to:

(A) A description of the Support Service Brokerage's organizational structure;

(B) A description of any contractual relationships the Support Service Brokerage has in place or can establish to accomplish the Support Service Brokerage functions required by this rule; and

(C) A description of the relationship between the Support Services Brokerage and its Policy Oversight Group.

(h) The Brokerage shall make information required in OAR 1850(1)(a)-(g) available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(2) Entry into Support Service Brokerage services.

(a) An individual shall enter Support Service Brokerage services within 90 calendar days of the date the CDDP has completed processes of eligibility determination, selection of Brokerage, application, and referral except during the period of statewide Support Service Brokerage development July 1, 2001, through June 30, 2005. During that period, and unless SPD has implemented statewide changes in the order of group enrollments according to 309-041-1850(2)(a)(E), individuals who have been determined eligible, selected the Brokerage, and completed CDDP processes for application and referral to the Brokerage shall enter in the following order:

(A) First, individuals living in the Brokerage's area of service and receiving, as of the date the Brokerage is certified to provide services only Self-Directed Support services regulated by 309-041-1110 through 1170 or a combination of Self-Directed Support services and Employment/Alternative to Employment services regulated by 309-047-0000 through 309-047-0140.

(B) Second, and continuing through June 30, 2005, individuals who are not receiving any SPD-funded services as of the date the Brokerage is certified to provide services, entering according to priorities and characteristics described in written SPD guidelines and in order of date of formal application made during the CDDP referral process;

(C) Third, beginning while enrollment of individuals per 309-041-1850(2)(a)(B) is still in progress and continuing through June 30, 2005, individuals receiving only Employment/Alternative to Employment services regulated by 309-047-0000 through 309-047-0140 in the Brokerage's area of service as of the date the Brokerage is certified to provide services; and

(D) Fourth, beginning while enrollment of individuals per 309-041-1850(2)(a)(B) and 309-041-1850(2)(a)(C) is still in progress and continuing through June 30, 2005, individuals receiving Semi-Independent Living Services regulated by 309-041-015.

(E) Notwithstanding the order of group enrollments indicated in 309-041-1780(2)(a)(A)-(D), SPD may implement changes in the order of enrollment on a statewide basis when SPD has determined that such changes are prudent and necessary for the continued development and operation of Support Services Brokerages.

(b) The Support Services Brokerage shall not accept individuals for entry beyond the total number of individuals specified in its current contract with the Department.

(4) Exit from a Support Services Brokerage. An individual shall exit a Support Services Brokerage:

(a) At the written request of the individual or the individual's legal representative to end the service relationship;

(b) No less than thirty (30) days after the Support Service Brokerage has served written notice of intent to terminate services, when the individual either cannot be located or has not responded to repeated attempts by Support Service Brokerage staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate; or

(c) Whenever the individual's emergent status exceeds two hundred seventy (270) days in twelve (12) consecutive months.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - 430.670, ORS 427.005 - 427.007 & ORS 417.340 - 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1860

### Support Service Brokerage Services

(1) Each Support Service Brokerage shall provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(b) Assistance for individuals to find and arrange the resources to provide planned supports;

(c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the Brokerage;

(d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct support providers;

(e) Fiscal intermediary activities in the receipt and accounting of Support Service funds on behalf of an individual in addition to making payment with the authorization of the individual;

(f) Employer-related supports, assisting individuals to fulfill roles and obligations as employers of support staff when plans call for such arrangements; and

(g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(h) Support Service Brokerages shall apply the principles of self-determination as defined in OAR 309-041-1760(6) to provision of services required in OAR 309-041-1860(1)(a)-(g).

(2) Person-centered planning process required. A Support Service Brokerage shall use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(3) Health and safety issues. The planning process shall address basic health and safety needs and supports, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(4) Written plan required. The Personal Agent shall write an initial Individual Support Plan that is signed by the individual (or the individual's legal representative) and, unless circumstances allow exception under 309-041-1860(4)(h), dated within 90 days of entry into Support Service Brokerage services and at least annually thereafter. When an individual's legal representative must sign the plan, the individual's Personal Agent shall also work with the legal representative to inform the individual as completely as possible of the contents of the plan and to obtain, to the degree possible, the individual's agreement to the plan. The plan or attached documents shall include:

(a) The individual's name;

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(b) A description of the supports required, including the reason the support is necessary;

(c) Projected dates of when specific supports are to begin and end;

(d) Projected costs, with sufficient detail to support estimates;

(e) A list of personal, community, and public resources that are available to the individual and how they will be applied to provide the required supports;

(f) The providers or, when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general provider) of supports to be purchased with Support Services Funds; and

(g) Schedule of plan reviews.

(h) The schedule of the first new Support Services ISP developed in compliance with OAR 309-041-1860(2) after an individual enters a Brokerage may be adjusted to promote continuity of services one time for any individual entering a Brokerage in certain circumstances. Such an adjustment shall interrupt any Plan Year in progress and establish a new Plan Year for the individual beginning on the date the first new ISP is approved and signed by the CDDP authorizing implementation. Circumstances where this adjustment is permitted include:

(A) Transition of individuals receiving Self-Directed Support Services governed by 309-041-1110 through 1170 to Support Services between November 1, 2001, through June 30, 2002. The date of the individual's first ISP after enrollment in a Support Services Brokerage may be adjusted or correspond to the expiration date of the individual's Self-Directed Support Plan in place at the time of transition to the Support Service Brokerage if the Self-Directed Support Plan otherwise meets the requirements of 309-041-1860 (4)(a)-(g), has been approved for implementation by the CDDP Support Services Specialist prior to or upon the individual's enrollment in the Support Service Brokerage, and does not authorize support services fund expenditures in excess of the average monthly amount available through the Basic Benefit;

(B) Transition of individuals receiving Employment/Alternative to Employment services regulated by 309-041-0000 through 0140, without Department-paid residential services, to Support Services July 1, 2003. The date of the individual's first new Support Services ISP after enrollment in the Brokerage may be adjusted to correspond to the expiration date of the individual's Individual Support Plan in place at the time of transition or to October 1, 2003, whichever is later, when the individual is among those required to transition into Support Services from Employment/Alternative to Employment services July 1, 2003, and when the ISP developed while the individual is still enrolled in Employment/Alternative to Employment services has been approved for implementation by the CDDP Support Services Specialist prior to or upon the individual's enrollment in the Support Service Brokerage;

(C) Transition of individuals receiving Family Support Services for Children with Developmental Disabilities, regulated by 309-041-2000 through 2180, Children's Intensive In-Home Services (CIIS), regulated by 411-300-0100 through 0220, or Medically Fragile Children (MFC) Services, regulated by 309-044-0100 through 0210, when those individuals are 18 years of age. The date of the individual's first new Support Services ISP after enrollment in the Brokerage may be adjusted to correspond to the expiration date of the individual's annual plan (Child and Family Support Plan (Family Support), Complete Plan of Care (CIIS), or Comprehensive Plan of Care (MFC)) in place at the time the individual turns 18 years of age when the annual plan developed while the individual is still receiving Family Support, CIIS, or MFC services has been approved for implementation by the CDDP Support Services Specialist prior to or upon the individual's enrollment in the Support Service Brokerage; or

(D) Transition of individuals receiving other Department-paid services who are required by SPD to transition to Support Services. The date of the individual's first Support Services ISP may be adjusted to correspond to the expiration date of the individual's plan for services which has been developed according to regulations governing Department-paid services the individual receives prior to transition, is current at the time designated by SPD for transition to Support Services, and is approved for implementation by the CDDP Support Services Specialist prior to or upon the individual's enrollment in the Support Service Brokerage.

(5) Professional or Other Service Plans. When applicable:

(a) A Nursing Care Plan shall be attached to the Individual Support Plan when Support Services Funds are used to purchase care and services requiring the education and training of a licensed professional nurse; and

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by SPD for use in these circumstances, shall be attached when an individual enrolled in a Brokerage:

(A) Has been determined eligible for crisis/diversion services according to OAR 309-041-0300 through 309-041-0335 by the CDDP of the individual's county of residence ; and

(B) The individual is in emergent status in a short-term out-of-home residential placement as part of his or her crisis/diversion services

(6) CDDP Support Services Specialist approval prior to implementation. With the exception of circumstances indicated in 309-041-1860(6)(c), the Support Services Brokerage shall obtain written CDDP Support Services Specialist approval prior to implementation of:

(a) Initial and annual Individual Support Plans; and

(b) Significant changes in the ISP which include, but are not limited to, changes in the types of support purchased with support services funds and changes in supports which will cause total Plan Year expenses to exceed original estimates by more than 10%, but which do not include changes in the providers chosen to provide direct assistance to the individual.

(c) When immediate, unexpected, and significant change in the type of support purchased with support services funds is necessary, outside the normal hours of CDDP operation, to prevent injury or harm to the individual, the Brokerage may implement the change, but shall obtain written confirmation, within 10 calendar days from the date of the change, from the CDDP Support Services Specialist indicating that the change was appropriate and, if applicable, that ongoing change in services is approved.

(7) Periodic review of plan and resources. The Personal Agent shall conduct and document reviews of plans and resources with the individual and the individual's legal representative as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the Individual Support Plan;

(b) At least annually and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the plan, assessing and revising goals as needed;

(B) Record final Support Services fund costs;

(C) Note effectiveness of purchases based on Personal Agent observation as well as individual satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of Support Services funds to purchase supports.

(8) Transition to another Support Service Brokerage. At the request of an individual enrolled in Brokerage services who has selected another Brokerage, the Support Service Brokerage shall collaborate with the receiving Brokerage and the CDDP of the individual's county of residence to effect transition of support services.

(a) If the Department has designated and contracted funds solely for the support of the transitioning individual, the Support Services Brokerage shall notify the Department to consider transfer of the funds for the individual to the receiving Support Services Brokerage.

(b) The Individual Support Plan in place at the time of request for transfer may remain in effect 90 days after enrollment in the new Brokerage while a new plan is negotiated and approved.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1870

### Using Support Services Funds to Purchase Supports

(1) Approved written plan required. A Support Services Brokerage may use Support Services funds to assist individuals to purchase supports in accordance with an Individual Support Plan which:

(a) Identifies supports that are necessary for an individual to live in his or her own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Projects the amount of Support Services funds, if any, which may be required to purchase the remainder of necessary supports and which are within the Basic Benefit limits, unless authorized for supplement to the Basic Benefit according to 309-041-1870(4)(a-e); and

(d) Has been approved for implementation by the CDDP Support Services Specialist.

(2) Assistance is a social benefit. Goods and services purchased with Support Services funds on behalf of individuals shall be provided only as social benefits as defined in OAR 309-041-1760(63).

(3) Limits of financial assistance. Assistance with purchase of individual supports in any Plan Year as defined in 309-041-1760(49) shall be

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limited to the Basic Benefit as defined in 309-041-1760(5) unless individual circumstances meet the conditions of the exceptions indicated in 309-041-1870(4)(a)-(e).

(a) Individuals shall have access throughout the Plan Year to the total annual amount of Support Services funds determined necessary to implement an approved Individual Support Plan, even if there is a delay in implementation of the plan, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) Individual plan costs. Estimates of individual plan costs shall be based on written guidelines for costs of frequently used services published and updated periodically by the Department.

(A) Department guidelines notwithstanding, final costs shall not exceed local usual and customary charges for these services as evidenced by the Brokerage's own documented survey.

(B) The Support Service Brokerage shall establish a process for review and approval of all budgets based on estimates exceeding published guidelines and shall monitor the approved individual plans involved for continued cost effectiveness.

(4) Exceptions to Basic Benefit financial limits. Exceptions to the Basic Benefit annual Support Services fund limit shall be only as follows:

(a) Extraordinary long-term need. Individuals with extraordinary long-term need as demonstrated by a score of seventy (70) or greater on the Basic Supplement Criteria may have access to more than the Basic Benefit Support Services fund limit in order to purchase necessary supports.

(A) For Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit shall result in a Plan Year cost which is less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium, and

(B) For individuals who are not Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit shall result in a Plan Year cost which is less than the state's General Fund contribution to the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium, calculated according to the Medicaid match rate current at the beginning of the Plan Year and adjusted annually to correspond to changes in the Medicaid match rates, and

(C) The Brokerage Director, or a designee from Brokerage management and administration, shall administer the Basic Supplement Criteria only after receiving Department-approved training. The Brokerage Director shall score Basic Supplement Criteria according to written and verbal instruction received from SPD. Failure to comply with instruction may result in Brokerage repayment to SPD of any or all funds expended on behalf of individuals due to errors in scoring.

(D) The trained Brokerage Director or designee shall administer the Basic Supplement Criteria within 30 calendar days of the written request of the individual or the individual's legal representative.

(E) The Brokerage Director or designee shall send written notice of findings regarding eligibility for a supplement to the Basic Benefit to the individual and the individual's legal representative within 45 calendar days of the written request for a supplement. This written notice shall include:

(i) An offer for the individual and individual's legal representative to discuss the findings in person with the Director, with the individual's Personal Agent in attendance if desired; and

(ii) A notice of appeal processes under 309-041-1800.

(F) Annual Individual Support Plan reviews for recipients of the supplement shall include a review of circumstances and resources to confirm continued need.

(b) Transfers from Employment/Alternative to Employment, Semi-Independent Living, and Self-Directed Support services according to Department-designated schedule of group enrollments under OAR 309-041-1850(2). Support Service fund expenditures for individuals enrolled in these services prior to the designated date of group enrollment in Support Services Brokerages may, for a limited amount of time, exceed the Basic Benefit financial limits. To qualify, individuals must be enrolled in Employment/Alternative to Employment services regulated by OAR 309-047-0000 through 0140, enrolled in Semi-Independent Living Services regulated by OAR 309-041-0015 through 0024, or receive Self-Directed Support services regulated by OAR 309-041-1110 through 1170 during the month prior to enrollment in a Support Services Brokerage and the Department's annual cost of this previous service must exceed the financial assistance available through the Basic Benefit.

(A) Each qualified individual transferring from Employment/Alternative to Employment Services November 1, 2001, through June 30, 2002, shall have access to Support Services funds in an amount equal to the Department's previous cost for the individual in these services, as negotiated according to Department guidelines, for no more than three hundred

sixty-five (365) calendar days from date of enrollment in the Support Services Brokerage;

(B) Each qualified individual transferring from Employment/Alternative to Employment Services beginning July 1, 2003, and who does not have any other Department-paid residential support services prior to that date, shall have access to Support Services funds in an amount each month equal to the Department's previous Employment/Alternative to Employment monthly costs for the individual, as negotiated according to Department guidelines:

(i) For three hundred sixty-five (365) days, if he or she is a Medicaid recipient eligible for waiver services; or

(ii) For one hundred eighty (180) days, if he or she is not a Medicaid recipient eligible for waiver services.

(C) Each qualified individual transferring from Semi-Independent Living services shall have access to Support Services funds in an amount equal to the Department's previous cost for the individual in these services, as negotiated according to Department guidelines, for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Support Services Brokerage; and

(D) Each qualified individual transferring from Self-Directed Support services November 1, 2001, through June 30, 2002, shall have access to Support Services funds in an amount equal to financial assistance authorized by his or her current Self-Directed Support Plan for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Brokerage when the individual is a Medicaid recipient choosing to receive Support Service waiver services and for no more than ninety (90) calendar days from date of enrollment in the Brokerage when the individual is not Medicaid-eligible or does not otherwise receive Medicaid benefits.

(E) Upon individual enrollment in the Brokerage, the Brokerage shall fully inform the individual and the individual's legal representative of the time limit for the supplement to the Basic Benefit.

(F) The Support Services Brokerage shall complete assessment, identify resources, and develop a new individualized plan and budget during this period with a goal of reducing Support Services fund annual costs to less than or equal to financial assistance available in the Basic Benefit.

(G) At any point during the individual's first year of enrollment in the Brokerage that annual plan costs are successfully reduced to a cost less than or equal to that available in the Basic Benefit, the individual's new Plan Year shall begin on the date the revised individual support plan is authorized for implementation by the individual's CDDP Support Services Specialist.

(c) Prior-authorized crisis/diversion services. Individuals who have been assessed as in need of, and meeting criteria for, crisis/diversion services by the CDDP of the individual's county of residence according to OAR 309-041-0300 through 309-041-0335 may receive short-term assistance with purchase of support in excess of the Basic Benefit. Use of crisis/diversion services shall only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Program responsible for the individual's county of residence.

(A) Funds associated with crisis/diversion services shall be used to pay the difference in cost between the authorized Individual Support Plan and budget in place at the time the individual is determined eligible for crisis/diversion services and the supports authorized by either the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for crisis/diversion services in the individual's county of residence, depending on the source of crisis/diversion funds, to meet the short-term need.

(B) Although costs for crisis/diversion services may bring the individual's total Plan Year cost temporarily at or above the minimum allowable Plan Year cost of in-home Comprehensive Services in the same biennium, in no case shall the individual's costs exceed the state's current ICF/MR daily cost per individual nor shall Plan Year expenses at or above the minimum for Comprehensive Services make the individual eligible for Comprehensive Services.

(i) Individuals placed in emergent status due to receiving crisis/diversion services authorized and provided according to OAR 309-041-0300 through 309-041-0335 may remain enrolled in, and receive Support Services from, the Support Service Brokerage while both crisis/diversion services and Support Services are required to stabilize and maintain the individual at home or in the family home. In no case, however, shall the individual remain enrolled in the Support Service Brokerage under emergent status for more than 270 consecutive days in any 12-month period.

(ii) The individual's Personal Agent shall participate with CDDP or regional crisis/diversion staff in efforts to stabilize supports and return costs to the Basic Benefit or approved supplement levels, documenting reviews



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of effectiveness at least every ninety (90) days while the individual is receiving crisis/diversion services.

(d) Conversions from other Department-regulated services. Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through Department contract from a Department-regulated residential, work, or day habilitation service to Support Services funds, or to Self-Directed Support funds regulated by 309-041-1110 through 1170 prior to enrollment in a Support Service Brokerage, shall have access to the amount specified in the Department contract as available for the individual's use. This provision shall only be applicable when each transition is separate and specific to the individual and the services being converted are not subject to a statewide service transitions described in OAR 309-041-1870(4)(b).

(A) Individual Plan Year costs shall always be less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium; and

(B) The Brokerage shall review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and shall make budget reductions when allowed by the individual support plan.

(e) Funds designated for services to individuals eligible for, and at imminent risk of, civil commitment under ORS 427. Individuals whose support funds were specifically assigned through Department contract to Self-Directed Support Services prior to the date designated by the Department for transfer of the individual from Self-Directed Support services to a Support Service Brokerage shall have access to the amount specified in the Department contract as available for the individual's use.

(A) Individual Plan Year costs shall always be less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium; and

(B) The Brokerage shall review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and shall make budget reductions when allowed by the individual support plan.

(5) Amount, method and schedule of payment.

(a) The Brokerage shall disburse, or arrange for disbursement of, Support Services funds to qualified providers on behalf of individuals up to the amount agreed upon in an Individual Support Plan that has been signed by the individual or the individual's legal representative and approved for implementation by the CDDP Support Services Specialist. The Brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment shall be specified in written agreements between Brokerage and the individual or individual's legal representative.

(6) Types of supports purchased. Supports eligible for purchase with Support Services funds are:

- (a) Chore services as defined in 309-041-1760(10);
- (b) Community inclusion supports as defined in 309-041-1760(12);
- (c) Community living supports as defined in 309-041-1760(13);
- (d) Environmental accessibility adaptations as defined in 309-041-1760(21);
- (e) Family training as defined in 309-041-1760(25);
- (f) Homemaker services as defined in 309-041-1760(31);
- (g) Occupational therapy services as defined in 309-041-1760(44);
- (h) Personal emergency response systems as defined in 309-041-1760(46);
- (i) Physical therapy services as defined in 309-041-1760(48);
- (j) Respite care as defined in 309-041-1760(58);
- (k) Special diets as defined in 309-041-1760(64);
- (l) Specialized medical equipment and supplies as defined in 309-041-1760(65) as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, then purchase, rental, and repair with Support Services funds shall be limited to the types of equipment and supplies permitted under the State Medicaid Plan and, specifically, those that are not excluded under OAR 410-122-0080. Support Services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases that exceed the limits have been denied by Medicaid State Plan or private insurance, and the denial has been upheld in applicable Medicaid contested case hearing or private insurance benefit appeals process; and

(B) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase his or her abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which he or she lives may be purchased with Support Services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that can be purchased for this purpose shall be of direct benefit to the individual and include:

(i) Adaptive equipment for eating (i.e. utensils, trays, cups, bowls that are specially designed to assist an individual to feed him/herself;

(ii) Adaptive beds;

(iii) Positioning devices;

(iv) Specially designed clothes to meet the unique needs of the individual with the disability, e.g. clothes designed to prevent access by the individual to the stoma, etc.);

(v) Assistive technology items;

(vi) Computer software used by the individual to express needs, control supports, plan and budget supports;

(vii) Augmentative communication devices;

(viii) Environmental adaptations to control lights, heat, stove, etc.; or

(ix) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g. vestibular swing, weighted blanket, tactile supplies like creams and lotions).

(m) Specialized supports as defined in 309-041-1760(66);

(n) Speech and language therapy services as defined in 309-041-1760(67);

(o) Supported employment as defined in 309-041-1760(69); and

(p) Transportation as defined in 309-041-1760(77).

(7) Conditions of purchase. The Brokerage shall arrange for supports purchased with Support Services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect Support Services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine Support Services funds to purchase group services must receive written instruction about the limits and conditions of such arrangements;

(B) Combined Support Services funds cannot be used to purchase existing, or create new, Comprehensive Services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one individual;

(D) Combined arrangements for community inclusion or supported employment services that result in creation of a provider organization as defined in 309-041-1760(54) must be certified according to 309-041-1750 through 1920; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 309-041-1760(50) and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home;

(e) According to Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) According to 309-041-1900 through 309-041-1920 governing provider qualifications and responsibilities.

(8) Independent Provider, Provider Organization, General Business Provider agreements and responsibilities. When Support Service funds are used to purchase care, training, supervision or other personal assistance for individuals, the Brokerage shall require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse as defined in 309-041-1760(1)(a)-(e);

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is

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providing individual care, training, or supervision and which may have a serious effect on the health, safety, physical or emotional well-being, or level of services required; and

(c) Limits of payment:

(A) Support Service fund payments for the agreed-upon services shall be considered full payment and the provider under no circumstances shall demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program;

(B) The provider shall bill all third party resources before using Support Service funds unless another arrangement is agreed upon by the Brokerage and described in the Individual Support Plan.

(d) The provisions of 309-041-1870(9) regarding sanctions that may be imposed on providers.

(9) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) Sanction(s) may be imposed on a provider when the Brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with Support Services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Had his/her professional license suspended, revoked, or otherwise limited, or surrendered his/her license;

(D) Failed to safely and adequately provide the services authorized;

(E) Had an allegation of abuse or neglect substantiated against him or her;

(F) Failed to cooperate with any Department or Brokerage investigation and/or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Not adhered to the provisions of OAR 309-041-1870(8) or 309-041-1880; or

(K) Been suspended or terminated as a provider by another agency within the Department.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with Support Services funds;

(B) The provider may not be allowed to provide services for a specified length of time and/or until specified conditions for reinstatement are met and approved by the Brokerage or Department, as applicable;

(C) The Brokerage may withhold payments to the provider.

(c) If the Brokerage makes a decision to sanction a provider, the Brokerage shall notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator of the Department or designee.

(e) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by any Department agency may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1880

### Using Support Services Funds for Certain Purchases Is Prohibited

Support Service funds shall not be used to pay for:

(1) Services, materials, or activities that are illegal;

(2) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 309-041-1760(1)(a)-(e);

(3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

(4) Services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(5) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(6) Individual or family vehicles;

(7) Health and medical costs that the general public normally must pay, including: medications; health insurance co-payments; dental treatments and appliances; medical treatments; dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; treatment supplies not related to nutrition, incontinence, or infection control;

(8) Ambulance services;

(9) Legal fees;

(10) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(11) Individual care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(12) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of supports as defined in 309-041-1760(68), or do not meet the definition of social benefits as defined in 309-041-1760(63);

(13) Educational services for school-age individuals over the age 18, including professional instruction, formal training and tutoring in communication, socialization, and academic skills and post-secondary educational services such as those provided through two- or four-year colleges for individuals of all ages;

(14) Services, activities, materials, or equipment that can be obtained by the individual or family through other available means such as private or public insurance, or other governmental or public services;

(15) Unless under certain conditions and limits specified in rate-setting guidelines published by SPD, employee wages or contractor charges for time or services when the individual is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(16) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds;

(17) Services when there is sufficient evidence to believe that the individual or individual's representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Individual Support Plan, refused to accept or delegate record keeping required to use Support Service Brokerage resources, or otherwise knowingly misused public funds associated with Brokerage services.

(18) Services which, in the opinion of the individual's Personal Agent, are characterized by failure to act/neglect that leads to or is in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to the failure to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through condoning or permitting abuse of an adult by any other person. However, no person shall be deemed neglected for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1890

### Standards for Support Services Brokerage Administration and Operations

(1) Individual and family leadership. The Brokerage shall develop and implement procedures for incorporating the direction, guidance and advice of individuals and family members of individuals in the administration of the organization.

(a) The Support Services Brokerage shall establish and utilize a Policy Oversight Group, of which the membership majority shall be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage Procedures shall be developed and implemented to assure the policy oversight group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key

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personnel, program evaluation and quality assurance, grievance or appeal resolution.

(c) If the Policy Oversight Group is not also the governing body of the Support Services Brokerage, then the Brokerage shall develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the Brokerage.

(d) A Policy Oversight Group shall develop and implement operating policies and procedures.

(2) Full-Time Brokerage Director required. The Support Services Brokerage shall employ a full-time Director who is responsible for daily Brokerage operations in compliance with these rules and has authority to make budget, staffing, policy, and procedural decisions for the Brokerage.

(3) Director qualifications. In addition to general staff qualifications of 309-041-1810(1)-(2), the Brokerage Director shall have a minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or six years of experience, including supervision, in the field of developmental disabilities or a social service/ mental health field.

(4) Fiscal Intermediary requirements.

(a) Individuals or entities providing fiscal intermediary services shall:

(A) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the Brokerage Director and Policy Oversight Group to effectively manage the Brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in individual support plans;

(b) Contractor and employee qualifications. The Support Brokerage shall obtain and maintain written evidence that:

(A) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(B) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the Brokerage has provided requisite education, training and experience.

(5) Personal Agent qualifications. Each Personal Agent shall have:

(a) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(b) Five years of equivalent training and work experience related to developmental disabilities.

(6) Separation of duties. When a CDDP operates a Brokerage:

(a) Support Services Specialist and Personal Agent activities, responsibilities, and costs shall be clearly separated and delineated in individual files, staff job descriptions, and CDDP financial and service reports; and

(b) The individual's Personal Agent shall not also be the individual's Support Services Specialist.

(7) Personal Agent training. The Brokerage shall provide or arrange for Personal Agents to receive training needed to provide or arrange for Brokerage services, including, but not limited to: principles of self-determination, person-centered planning processes, identification and use of alternative support resources, fiscal intermediary functions, basic employer/employee roles and responsibilities, developing new resources, major public health and welfare benefits, constructing and adjusting individualized support budgets, and assisting individuals to judge and improve quality of personal supports.

(8) Individual record requirements. The Brokerage shall maintain current, up-to-date records for each individual served and shall make these records available on request for Department review: These records shall include, at minimum:

(a) Application and eligibility Information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal guardian or conservator (if applicable), address, telephone number, date of entry into

the program, date of birth, sex, marital status, individual financial resource information, and Plan Year anniversary date;

(c) Documents related to determining eligibility for Brokerage services and the amount of Support Services funds available to the individual, including Basic Supplement Criteria if applicable.

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of 309-041-1900 through 1920;

(e) Documentation, signed by the individual or individual's legal representative, that the individual or individual's legal representative has been informed of responsibilities associated with the use of Support Services funds;

(f) Incident reports;

(g) Assessments used to determine supports required, preferences, and resources;

(h) Individual Support Plan and reviews;

(i) Personal Agent correspondence and notes related to resource development and plan outcomes; and

(j) Information about individual satisfaction with personal supports and the Brokerage services.

(9) Special records requirements for Support Services fund expenditures. The Brokerage shall develop and implement written policies and procedures concerning use of Support Services funds. These policies and procedures shall include, but may not be limited to:

(a) Minimum acceptable records of expenditures:

(A) Itemized invoices and receipts to record purchase of any single item which costs \$25.00 or more;

(B) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(C) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(D) Pay records, including timesheets signed by both employee and employer, to record employee services.

(b) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations:

(A) When equipment is obtained for the exclusive use of an individual, the Support Services Brokerage shall record the purpose, final cost, and date of receipt;

(B) The Brokerage shall secure use of equipment or furnishings costing more than \$500 through a written agreement between the Brokerage and the individual or individual's legal representative which specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(C) The Brokerage shall ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5000 or more per single instance or cumulatively over several modifications:

(i) Are approved by Seniors and People with Disabilities before work begins and before final payment is made;

(ii) Are completed or supervised by a contractor licensed and bonded in the State of Oregon; and

(iii) That steps are taken as prescribed by the Department for protection of the Department's interest through liens or other legally available means; and

(D) The Brokerage shall obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(c) Return of purchased goods. Any goods purchased with Support Services funds that are not used according to an Individual Support Plan or according to an agreement securing the State's use may be immediately recovered. Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Centers for Medicare and Medicaid Services or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(10) Quality Assurance.

(a) The Brokerage Policy Oversight Group shall develop a Quality Assurance Plan and review this plan at least twice a year. The plan shall include a written statement of values, organizational outcomes, activities, and measures of progress that:

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(A) Uses information from a broad range of consumer, advocate, professional and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the Brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the Brokerage to changing needs and preferences of individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The Brokerage shall participate in statewide evaluation, quality assurance, and regulation activities as directed by the Department.

(11) Brokerage referral to affiliated entities.

(a) When a Brokerage is part of, or otherwise directly affiliated with, an entity that also provides services an individual may purchase with private or support services funds, Brokerage staff shall not refer, recommend or otherwise support the individual to utilize this entity to provide services unless:

(A) The Brokerage conducts a review of provider options which demonstrates that the entity's services will be cost-effective and best-suited to provide those services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The Brokerage shall develop and implement a policy that addresses individual selection of an entity of which the Brokerage is a part or otherwise directly affiliated to provide services purchased with private or support services funds. This policy shall address, at minimum:

(A) Disclosure of the relationship between the Brokerage and the potential service provider;

(B) Provision of information about all other potential service providers to the individual without bias;

(C) A process for arriving at the option for selecting the service provider;

(D) Verification of the fact that the service providers were freely chosen among all alternatives;

(E) Collection and review of data on services purchased by individual enrolled in the Brokerage by an entity of which the Brokerage is a part or otherwise directly affiliated; and

(F) Training of Personal Agents and individuals in issues related to selection of service providers.

(12) General operating policies and practices. The Support Services Brokerage shall develop and implement such written statements of policy and procedure in addition to those specifically required by this Rule as are necessary and useful to enable the agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-1910

### Standards for Provider Organizations Paid with Support Services Funds

(1) Provider Organizations with current license or certification. A provider organization's license under OAR 309-049-0030 through 309-049-0225 for 24-Hour Residential Programs or OAR 309-040-000 through 309-040-0100 Adult Foster Homes or certified under OAR 309-047-0000 through 309-047-0140 Employment/ Alternatives to Employment or OAR 309-041-0550 through 309-041-0830 Supported Living Services shall not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, or emergent services.

(a) Current license or certification shall be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, train qualified staff;

(B) Provide services according to individual support plans; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) All individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds shall meet standards for qualification of independent providers outlined in OAR 309-041-1900.

(c) Provider Organizations developing new sites, owned or leased by the Provider Organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and receiving services purchased with Support Services funds, shall meet the conditions of OAR 309-041-1910(2)(f) in each such site.

(2) Provider Organizations requiring certification under OAR 309-041-1750 through 1920. A Provider Organization without current license under OAR 309-049-0030 through 309-049-0225 for 24-Hour Residential Programs or OAR 309-040-000 through 309-040-0100 Adult Foster Homes or current certification under OAR 309-047-0000 through 309-047-0140 Employment/ Alternatives to Employment or OAR 309-041-0550 through 309-041-0830 Support Living Services shall be certified as a provider organization according to these rules prior to selection for providing services listed in OAR 309-041-1870(6)(a)-(p) and paid for with support services funds.

(a) Basic policies and procedures required. The provider organization shall develop and implement policies and procedures required for administration and operation in compliance with these rules, including, but not limited to:

(A) Policies and procedures required in OAR 309-041-1780 through 309-041-1830 related to abuse and unusual incidents, inspections and investigations, grievances and appeals, personnel policies and practices, records, and variances.

(B) Individual rights. The program shall have and implement written policies and procedures which:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide the individual's services;

(ii) Protect individuals during hours of service from financial exploitation which may include, but is not limited to: staff borrowing from or loaning money to individuals; witnessing wills in which the staff or provider organization is beneficiary; and/or adding the staff member or provider organization name to the individual's bank account(s) or other personal property without approval of the individual or individual's legal representative; and

(C) Policies and procedures appropriate to scope of service, including but not limited to those required to meet minimum standards set forth in OAR 309-041-1910(2)(f)-(k) and consistent with written service agreements for individuals currently receiving services.

(b) Written service agreement. The provider organization shall develop a written service agreement with the individual or individual's legal representative and shall deliver services according to that agreement. The written service agreement shall be consistent with the individual's ISP and shall describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety and emergency procedures that may be required, including action to be taken if an individual is unable to provide for his or her own safety and is missing while in the community under the care of the provider agency.

(c) Individual Records. The program shall maintain a current record for each individual receiving services. The record shall include:

(A) The individual's name, current home address, and home phone number;

(B) Current written service agreement, signed and dated by the individual or individual's legal representative;

(C) Contact information for the legal representative and any other persons designated by the individual or individual's representative to be contacted in case of incident or emergency;

(D) Contact information for the Support Services Brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals shall meet independent provider qualifications in OAR 309-041-1900. Additionally, those staff, contractors or volunteers shall have:

(A) Current CPR and first aid certification, obtained from a recognized training agency prior to working alone with an individual; and

(B) Written documentation of a TB test within two weeks of being engaged by the provider organization to provide services.

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(e) General training requirements. The provider organization shall ensure that employees, contractors, and volunteers receive training appropriate to scope of the provider organization's services.

(f) Additional standards for services provided in provider organization owned or leased site. Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites shall meet the following minimum requirements:

(A) Written Plan. A written emergency plan shall be developed and implemented and shall include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information.

(i) The telephone numbers of the local fire, police department and ambulance service, or "911" service where available, shall be posted by designated telephone(s); and

(ii) The telephone numbers of the Provider Organization Director, and other persons to be contacted in case of emergency shall be posted by designated telephone(s).

(C) Quarterly safety review. A documented safety review shall be conducted quarterly to ensure that the service site is free of hazards. These reports shall be kept in a central location by the Provider Organization for three years.

(D) Emergency evacuations. The support agency shall train all individuals when they begin attending the service site to leave the site in response to an alarm or other emergency signal and/or to cooperate with assistance to exit the site.

(i) Each support agency shall conduct an unannounced evacuation drill each month when individuals are present;

(ii) Exit routes shall vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site shall be provided specialized training and/or support in evacuation procedures.

(iv) Written documentation shall be made at the time of the drill and kept by the support agency for at least two years following the drill. It shall include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan shall:

(I) Be developed with the local fire authority, the individual or individual's legal representative, and the provider organization director; and

(II) Be presented as a variance request per OAR 309-041-1830.

(E) Adaptations required for sensory or physically impaired. The support agency shall provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) Health and safety inspections. The provider organization shall assure that at least once every three years health and safety inspection(s) shall be conducted.

(i) The inspection(s) must cover all areas and buildings where services are delivered to individuals, administrative offices and storage areas.

(ii) The inspection(s) shall be performed by: the Oregon Occupational Safety and Health Department; the service's worker's compensation insurance carrier; or an appropriate expert such as a licensed safety engineer or consultant as approved by Seniors and People with Disabilities; and the Oregon Health Department, when necessary.

(iii) The inspection(s) must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used by the service;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken shall be kept by the provider for five years.

(G) Fire and Life Safety Inspections for Owned, Leased, or Rented Buildings and Property. The service provider shall ensure that each service site has received initial fire and life safety inspections performed by the

local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes, and documentation of any resulting action taken shall be kept by the provider for five years.

(H) Staffing requirements.

(i) Direct service staff shall be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present.

(ii) When individuals are present, staff shall have the following minimum skills and training:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical need(s) identified in the individual service agreement; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention need(s) as identified in individual service agreements.

(g) Additional standards for assisting individuals with health and medical needs. Provider organizations providing services to individuals that involve assistance with meeting health and medical needs shall:

(A) Develop and implement written policies and procedures addressing: emergency medical intervention; treatment and documentation of illness and health care concerns; administering, storing and disposing of prescription and non-prescription drugs including self administration, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records;

(B) Maintain a current written records for each individual receiving assistance with meeting health and medical needs that includes: health status; changes in health status observed during hours of service; any remedial and corrective action required and when such actions were taken if occurring during hours of service; and a description of any restrictions on activities due to medical limitations;

(C) If providing medication administration when the individual is unable to self-administer medications and there is no other responsible person present who can lawfully direct administration of medications, the provider organization shall:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed; and

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders.

(vi) Unused, discontinued, outdated, or recalled drugs shall not be administered by the agency provider.

(D) If required to maintain a Medication Administration Record, the MAR shall include:

(i) The name of the individual;

(ii) The brand name and/or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of administrative review by the provider organization director or designee.

(E) Safeguards to prevent adverse medications reactions shall be utilized that include:

(i) Maintaining information about the effects and side-effects of medications the agency has agreed to administer;

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(ii) Communicating any concerns regarding any medication usage, effectiveness or effects to the individual, individual's designee, or individual's legal representative; and

(iii) Prohibiting the use of one individual's medications by another.

A record of visits to medical professionals, consultants or therapists if facilitated or provided by the service.

(h) Additional standards for providing transportation. Provider organizations that own or operate vehicles that transport individuals shall:

(A) Maintain the vehicles in safe operating condition;

(B) Comply with Department of Motor Vehicles laws;

(C) Maintain insurance coverage on the vehicles and all authorized drivers; and

(D) Carry in vehicles a fire extinguisher and first aid kit.

(E) Assign drivers meet applicable Department of Motor Vehicles requirements to operate vehicles transporting individuals.

(i) Additional standards for assisting an individual to manage personal funds. If assisting with management of funds, the provider organization shall have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with program and/or another individual's funds, or the program becoming an individual's guardian or conservator; and

(B) The program's reimbursement to the individual of any funds that are missing due to theft and/or mismanagement on the part of any staff of the program, and/or of any funds within the custody of the program that are missing. Such reimbursement shall be made within 10 working days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) Written policy. The provider organization shall have and implement a written policy concerning behavior intervention procedures. The provider organization shall inform the individual and individual's legal representative of the behavior intervention policy and procedures prior to finalizing the written service agreement.

(B) Any intervention to alter an individual's behavior shall be based on positive behavioral theory and practice as defined by OAR 309-041-1760(50) and shall be:

(i) Approved in writing by the individual or the individual's legal representative;

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior shall be:

(i) Prescribed by physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences; and

(k) Additional standards for supports that involve restraints.

(A) The provider organization shall only employ physical restraint:

(i) As part of an Individual Support Plan that meets OAR 309-041-1760(36);

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Staff training. Provider organization staff members who need to apply restraint under an individual's service agreement shall be trained by a Department approved trainer and documentation of the training shall be maintained in his/her personnel file.

(C) Physical restraints in emergency situations. Physical restraints in emergency situations shall:

(i) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the agency provider director or designee, or individual's physician;

(iii) Be authorized within one hour of application of restraint;

(iv) Result in the immediate notification of the individual's designee or legal representative; and

(v) Prompt a review of the written service agreement, initiated by the agency provider, if used more than three times in a six month period.

(D) Physical restraint shall be designed to avoid physical injury to the individual or others, and to minimize physical and psychological discomfort.

(E) Incident report. All use of physical restraint shall be documented and reported according to procedures described in OAR 309-041-1780. The report shall include:

(i) The name of the individual to whom the restraint is applied;

(ii) The date, type and length of time, of restraint application;

(iii) The name and position of the person authorizing the use of the restraint;

(iv) The name of the staff member(s) applying the restraint; and

(v) Description of the incident.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 430.610 - ORS 430.670, ORS 427.005 - ORS 427.007 & ORS 417.340 - ORS 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

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**Subject:** The Family Support Services for Children with Developmental Disabilities rules are adopted to prescribe standards, responsibilities and procedures for providing family support services to children with developmental disabilities and their families.

**Rules Coordinator:** Pam Rouske—(503) 945-6954

## 309-041-2000

### Statement of Purpose, Principles, and Statutory Authority

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for providing family support services to children with developmental disabilities and their families.

(2) Principles. Family Support services are built on the principles of family support and self-determination. The principles of family support, as outlined in ORS 417.342, are based on the belief that all people, regardless of disability, chronic illness, or special need have the right to a permanent and stable family and that supporting families in caring for children at home is in the best interest of the children, families, and communities. The principles of self-determination are based on the belief that the surest, most cost-effective ways to foster and preserve family and community membership can be constructed and managed by the people receiving services. Family Support services foster and strengthen flexible networks of community-based, private, public, formal and informal, family-centered and family-directed supports designed to increase families' abilities to care for children with developmental disabilities and to support the integration and inclusion of children with developmental disabilities into all aspects of community life.

(3) Statutory authority. These rules are authorized by ORS 409.050 and carry out the provisions of ORS 430.610 through 430.670, 427.005 through 427.007, and 417.340 through 417.350.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2010

### Definitions

As used in OAR 309-041-2000 through 309-041-2180:

(1) "Abuse" of a child is defined in ORS 419B.005 and includes, but is not limited to, physical abuse, neglect, threat of harm, mental injury, abandonment, and child selling.

(2) "Activities of Daily Living" or "ADL's" means the following activities that must be accomplished by or for an individual in the course of a normal day to ensure the individual's continued well-being:

(a) Acquiring adequate nutrition;

(b) Dressing and grooming;

(c) Bathing and personal hygiene;

(d) Toileting (including bowel and bladder care);

(e) Personal mobility; and

(f) Management of any prescribed medications and treatments.

(3) "Administrator" means the Assistant Director, Department of Human Services, and Administrator for Seniors and People with Disabilities Services.

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(4) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and monitor services.

(5) "Case Manager" means an employee of Seniors and People with Disabilities Services, a community developmental disability program or other agency which contracts with the County or Division, who is selected to plan, procure, coordinate and monitor Child and Family Support Plan services and acts as a proponent for children with developmental disabilities and their families.

(6) "Child" means an individual who is less than 18 years of age.

(7) "Child- and Family-Centered Planning" means a process, either formal or informal, for gathering and organizing information that:

(a) Facilitates the full participation, choice and control by families of children with developmental disabilities in decisions relating to the supports that will meet the priorities of the family;

(b) Responds to the needs of the entire family in a timely and appropriate manner;

(c) Is easily accessible to and usable by families of children with disabilities;

(d) Helps a child and family to determine and describe choices about the child's life and goals and to design strategies for supporting the child and family in pursuit of these goals;

(e) Helps the child, the family, and others chosen by the child or family to identify and use existing abilities, relationships and resources, strengthening naturally occurring opportunities for support at home and in the community; and

(f) Is conducted in manner and settings consistent with the child's and family's needs and preferences, including but not limited to simple interviews with the child and family, informal observations in home and community settings, or formally structured meetings.

(8) "Child and Family Support Plan" or "CFSP" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's family or other legal representative develops the Child and Family Support Plan with the assistance of the child's Case Manager. The CFSP articulates decisions and agreements made through a child- and family-centered process of planning and information-gathering conducted or arranged for by the child's Case Manager and which involves the child to the extent normal and appropriate for his or her age and other persons who have been identified and invited to participate by the child's family or other legal representative. The CFSP is the only plan of care and services required by SPD for a child receiving Family Support services.

(9) "Community Developmental Disability Program" or "CDDP" means an entity responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with Seniors and People with Disabilities or a local mental health authority.

(10) "Department" means the Oregon Department of Human Services.

(11) "Developmental Disability":

(a) Is always provisional for children five years and younger and means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely; AND

(A) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care, receptive and expressive language, learning, mobility, and self-direction; OR

(B) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in (11)(a)(A).

(b) Is always provisional for children six years and older and means:

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(i) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: self care, receptive and expressive language, learning, mobility, self-directions; AND

(ii) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(iii) The individual is expected to need multiple, specialized supports indefinitely.

(12) "Direct Assistance Funds" means one or more of three categories of Family Support funds managed by CDDP's to assist families with pur-

chase of supports for children with developmental disabilities according to each child's Child and Family Support Plan. Unique financial limitations and order of service apply to each Direct Assistance Fund:

(a) Direct Assistance Fund 1 is limited to no more than \$3,000 per Plan Year for each child and, with some exceptions, is available on a first-come, first-served basis;

(b) Direct Assistance Fund 2 is limited to no more than \$7,500 per Plan Year for each child and, with some exceptions, is available in order of qualification based on exceptional needs; and

(c) SPD-Designated Funds are available only to specific children for whom SPD designates funds to the CDDP by written contract.

(13) "Director" means the Director of the Oregon Department of Human Services or that person's designee.

(14) "Employer-related supports" means activities that assist a family with directing and supervising provision of services described in a child's Child and Family Support Plan. Supports to a family assuming the role of employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(15) "Entry" means admission to a SPD-funded service provider.

(16) "Exit" means either termination from a Seniors and People with Disabilities-funded program or transfer from one Seniors and People with Disabilities-funded program to another. Exit does not mean transfer within a service provider's program.

(17) "Family," for determining a child's eligibility for Family Support services as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the child with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with disabilities who is related to one of the partners by blood, marriage, or legal adoption.

(18) "Family Satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the family receiving the service or support.

(19) "Family Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Child and Family Support Plans, and purchase of supports as social benefits required for a child to live in the family home. Supports, resources, and other assistance are designed to:

(a) Support families in their efforts to raise their children with disabilities in the family home;

(b) Strengthen the role of the family as the primary caregiver;

(c) Support families in determining their needs and in making decisions concerning necessary, desirable, and appropriate services;

(d) Promote the use of existing formal and informal supports and social networks, strengthening natural sources of support, and helping build connections to existing community resources and services;

(e) Involve youth with disabilities in decision-making about their own lives, consistent with their unique strengths, resources, priorities, concerns, abilities and capabilities;

(f) Prevent unwanted out-of-home placement and maintain family unity; and

(g) Whenever possible, reunite families with children with disabilities who have been placed out of the home.

(20) "Family Support Funds" means public funds contracted by SPD to the CDDP to assist families with purchase or development of supports for children with developmental disabilities.

(21) "Family Support Policy Oversight Group" or "Policy Oversight Group" means the group formed to provide consumer-based leadership and advice to the CDDP regarding Family Support issues such as development of policy, evaluation of services, and use of resources and which meets the requirements of OAR 309-041-2150 for such groups.

(22) "Family Support Principles" means principles outlined in ORS 417.340 and indicating that Family Support services:

# ADMINISTRATIVE RULES

(a) May use private and volunteer resources, publicly funded services and other flexible dollars to provide a family with the services needed to care for the family member with a disability or chronic illness.

(b) Must be sensitive to the unique needs, strengths and multicultural values of an individual and the family rather than fitting the individual and family into existing services.

(c) Must be built on a relationship of respect and trust that recognizes that families are better able to determine their own needs than have their needs determined by the state or a public agency.

(d) Shall be provided in a manner that develops comprehensive, responsive and flexible support to families in their role as primary caregivers for family members with disabilities or chronic illnesses.

(e) Shall focus on the entire family and be responsive to the needs of the individual and the family.

(f) May be needed throughout the lifespan of the individual family member living at home who has a disability or chronic illness.

(g) Shall be available to families before they are in crisis.

(h) May be a service option offered to families, but not imposed on them.

(i) Shall encourage maximum use of existing social networks and natural sources of support and should encourage community integration.

(j) Shall not be confined to a single program or set of services but shall be a philosophy that permeates all program and services.

(23) "Fiscal Intermediary" means a person or agency that receives and distributes Family Support funds on behalf of the family of an eligible child according to the child's CFSP. The fiscal intermediary responsibilities include payments to vendors as well as activities and records related to payroll and payment of employer-related taxes and fees as an agent of families who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(24) "General business provider" means an organization or entity selected by the parent or other legal representative of an eligible child, and paid with Family Support funds that:

(a) Is primarily in business to provide the service chosen by the parent or other legal representative to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.

(25) "Guardian" means a parent for children less than 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the child.

(26) "Home" means a child's primary residence which is not licensed or certified by, and under contract with, the Department of Human Services to provide care to the child as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(27) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(28) "Independent Provider" means a person who is selected by a child's parent or other legal representative and paid with Family Support funds and who personally provides services to the child.

(29) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(30) "Legal Representative" means the parent of a child, unless the court appoints another person or agency to act as guardian.

(31) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(32) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the child and how those needs will be met. It includes which tasks will be taught, assigned and/or delegated to the qualified provider or family.

(33) "Plan Year" means twelve (12) consecutive months used to calculate what Family Support funds may be made available annually to support an eligible child. The initial Plan Year begins on the date the child's first Child and Family Support Plan after entry into Family Support services is signed by the child's parent or other legal representative and Case Manager. Subsequent Plan Years begin on the anniversary date of the approval of this initial plan.

(34) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(35) "Provider Organization" means an entity selected by a child's parent or other legal representative and paid with Family Support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(36) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(37) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom—The ability for an individual with a developmental disability together with freely-chosen family and friends to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority—The ability for a person with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy—The arranging of resources and personnel—both formal and informal—that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility—The acceptance of a valued role in a person's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for persons with developmental disabilities.

(38) "Seniors and People with Disabilities" or SPD means Seniors and People with Disabilities of the Department of Human Services.

(39) "Social Benefit" or "Social Service" means a service provided to a family solely to assist a child with developmental disabilities to function in and around the home and to participate in activities comparable to that of a child of similar age who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an eligible child's current Child and Family Support Plan and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(d) Replace other governmental or community services available to child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(40) "Support" means assistance eligible children and their families require—solely because of the effects of developmental disability on the child—to maintain or increase the child's age-appropriate independence, to achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. This assistance is flexible and subject to change with time and circumstances.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2020

### Eligibility for Family Support Services

(1) Non-discrimination. Families of children determined eligible according to OAR 309-041-2020(2) shall not be denied Family Support services or otherwise discriminated against on the basis of age or diagnostic or disability category. Access to service shall also not be restricted due to race, color, creed, national origin, citizenship, income or duration of Oregon residence.

(2) Eligibility. The CDDP of a child's county of residence shall find a child eligible for the CDDP's Family Support services when the child has been determined eligible for Developmental Disability Services by the CDDP and either:



# ADMINISTRATIVE RULES

(a) Lives in the family home and does not receive other Department-paid in-home, community living, or family support services other than State Medicaid Plan services, adoption assistance, or short-term assistance provided to prevent out-of-home placement; or

(b) The child resides in Department-paid residential services and SPD has designated funds specifically to provide supports required for the child to return to the family home in the county served by the CDDP.

(3) Concurrent eligibility. Children shall not be eligible for Family Support services from more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a plan developed by both CDDP's in which services and expenditures authorized by one CDDP are not duplicated by the other.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2030

### Family Support Service Information and Entry

(1) Providing information about Family Support. The CDDP shall develop and implement a process for informing families of eligible children about Family Support services. The process shall include:

(a) Recording the date and time the child's parent or other legal representative is informed of, and requests, Family Support services;

(b) Providing accurate, up-to-date information about the CDDP's Family Support services to families who request Family Support services. This information shall include but not be limited to:

(A) A declaration of Family Support services philosophy;

(B) Criteria for entry and for determining how much assistance with purchasing supports will be available;

(C) Common processes encountered in using Family Support services, including child- and family-centered planning, evaluation, and how to raise and resolve concerns about Family Support services;

(D) Clarification of CDDP employee responsibilities as mandatory reporters of child abuse;

(E) A brief description of family responsibilities in regard to use of public funds;

(F) An explanation of family rights to select and direct the providers of services authorized through the eligible child's Child and Family Support Plan and purchased with Family Support funds from among those qualified according to OAR 309-041-2140 to provide supports; and

(G) An assurance that additional information about Family Support services shall be made available at the family's request. Additional information shall include, but is not limited to:

(i) A description of the CDDP's organizational structure;

(ii) A description of any contractual relationships the CDDP has in place or can establish to accomplish the Family Support service functions required by this rule; and

(iii) A description of the relationship between the CDDP and its Family Support Policy Oversight Group.

(c) The CDDP shall make information required in OAR 309-041-2030(1)(b)(A-G) available using language, format, and presentation methods appropriate for effective communication according to each family's needs and abilities.

(2) Entry into Family Support services.

(a) An eligible child shall enter Family Support services:

(A) When the CDDP determines that the eligible child is the next child to be served according to the priorities and order of service described in OAR 309-041-2030(2)(b) and that sufficient resources are available to initiate service; and

(B) At any time that funds are made available through a SPD contract with the CDDP specifically to support the eligible child.

(b) Order of service. Except as provided in OAR 309-041-2030(2)(a)(B) and 309-041-2030(2)(c), eligible children shall enter Family Support services as follows:

(A) For assistance with purchase of support through Direct Assistance Fund 1, the CDDP shall assign order of entry either according to when, according to the CDDP's records, the child's parent or other legal representative was informed of and requested Family Support services or the date of the child's placement on a wait list for services previously provided by the CDDP under OAR 309-041-1110 through 1170 (Self-Directed Support Services), whichever is earliest.

(i) If no order for service can be determined according to OAR 309-041-2030(2)(b)(A) at the time services for children transition from Self-Directed Support services provided under OAR 309-041-1110 through 1170 to Family Support services provided under these rules, then the names

of all children whose families are known to have requested either Self-Directed Support or Family Support services and who are not eligible to enter Family Support services directly from Self-Directed Support services according to OAR 309-041-2030(2)(c) shall be pooled and drawn at random to determine order of entry to Family Support services.

(ii) If more than one child's parent or other legal representative requests services at the same time, then the CDDP shall assign order among those children according to random selection.

(B) In order of qualification for additional assistance based on exceptional needs criteria described in OAR 309-041-2100 for services purchased through Direct Assistance Fund 2. If more than one child qualifies at the same time, then the CDDP shall assign order among those children according to random selection.

(C) On a date agreed upon by SPD and the CDDP when funds to support the eligible child have been specifically contracted to the CDDP.

(c) Exception to order of service. To avoid disruption of services, children with Self-Directed Support Plans formulated according to OAR 309-041-1130 and current as of the SPD-designated date of transition to Family Support services shall directly enter Family Support services on that date according to the provisions of OAR 309-041-2090(2).

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2040

### Family Support Service Duration and Exit

(1) Duration of Services. Once a child has entered a CDDP's Family Support services, the child and family may continue receiving services from that CDDP through the last day of the month during which the child turns 18, as long as the child remains eligible for Family Support, annual CFSP's are developed and kept current, the need for service remains, and funds are available at the CDDP to continue services, except in the following cases:

(a) Short-term assistance. Families and children receiving assistance according to provisions of OAR 309-041-2080(1)(b)(B) or 309-041-2080(1)(c)(B) shall be short-term recipients of services. Services shall not extend beyond the end date of the contract between SPD and the CDDP current at the time the CDDP offers such short-term assistance. Using this assistance shall not affect a child's order of service for longer-term Family Support services without written approval of the child's parent or other legal representative.

(b) Changing county of residence. If a child and family move from the CDDP's area of service, the CDDP shall arrange for services purchased with Family Support funds to continue, to the extent possible, in the new county of residence through the end date of the child's CFSP when the CFSP conforms to OAR 309-041-2070 and is current at the date of the move.

(2) Exit from Family Support services. A child shall leave a CDDP's Family Support services:

(a) At the end of a service period agreed upon by all parties and specified in the Child and Family Support Plan;

(b) At the written request of the child's family or other legal representative to end the service relationship;

(c) At the end of the last day of the month during which the child turns 18;

(d) When the child and family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP; or

(e) No less than thirty (30) days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:

(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate;

(B) Funds are no longer available for Family Support services in the family's county of residence; or

(C) The CDDP has sufficient evidence to believe that the family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the CFSP, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

# ADMINISTRATIVE RULES

## 309-041-2050

### Family Support Services Waiting List

The CDDP shall maintain an up-to-date written list of eligible children and their families who have been assigned an order for service according to OAR 309-041-2030(2)(b), but have not yet received the services for which they are eligible.

(1) The list shall include name and date of birth of each eligible child, name of parent or legal representative, assigned place in the order of service, dates services were requested (if known), and date of qualification for additional services based on exceptional need. Information from this list shall be provided to SPD upon request.

(2) Re-assignment of order of service with change of county of residence. Despite assignment of order of service by one CDDP, when a child and family move outside the area of service of that CDDP, the child must be assigned placement in the order of Family Support services by the CDDP of the new county of residence according to the provisions of OAR 309-041-2030(2). If Family Support services are not immediately available, the child shall be placed on the wait list for services from the new CDDP according to the new assignment in the order of service.

Statutory Auth.: ORS 409.050  
Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350  
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2060

### Required Family Support Services

Each CDDP shall provide or arrange for the following services as required to support a child receiving Family Support services in the family home:

(1) Assistance for families to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(2) Assistance for families to find and arrange the resources to provide planned supports;

(3) Assistance with development and expansion of community resources required to meet the support needs of children and families;

(4) Information, education, and technical assistance for families, and children as appropriate to age, to use to make informed decisions about support needs and to direct support providers;

(5) Fiscal intermediary activities in the receipt and accounting of Family Support funds on behalf of families in addition to making payment with the authorization of families;

(6) Employer-related supports, assisting families to fulfill roles and obligations as employers of support staff when a child's support needs require such arrangements; and

(7) Assistance for families, and children as appropriate for age, to effectively put CFSP's into practice, including help to monitor and improve the quality of personal supports and to assess and revise plan goals.

(8) Services shall be provided according to Family Support principles defined in OAR 309-041-2010(22).

Statutory Auth.: ORS 409.050  
Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350  
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2070

### Family Support Services Child and Family Support Plan

(1) The CDDP shall provide or arrange for a child- and family-centered planning process to assist families to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The CDDP, the child, as appropriate for age, and family shall develop a written Child and Family Support Plan for each child as a result of this process within the first 90 days of entry in Family Support services and annually thereafter if services are to continue. The Child and Family Support Plan shall include, but shall not be limited to:

(a) The eligible child's first and last name and the name of the family if different than the child's name or the name of the child's legal representative;

(b) A description of the supports that are required, including the reason the support is necessary;

(c) Beginning and end dates of the Plan Year as well as when specific activities and supports are to begin and end;

(d) Projected Family Support fund costs, if any, with sufficient detail to support estimates;

(e) The types of supports to be purchased with Family Support funds, including the type of provider;

(f) The proposed schedule of plan reviews;

(g) Signatures of the child's Case Manager, the child's parent or other legal representative, and the child, as appropriate for age.

(2) The CFSP or records supporting development of each CFSP shall include evidence that:

(a) Family members, the child (as appropriate for age), and others of the family's choosing have participated in the planning process;

(b) Family Support funds are used only to purchase goods or services necessary for a child to be supported in the family home;

(c) The Case Manager has assessed the availability of other means for providing the supports before using Family Support funds and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible.

(3) Additional requirements for plans involving Direct Assistance Fund 2 and SPD-Designated Funds. Plans and records supporting plan development for children receiving services purchased through Direct Assistance Fund 2 or through SPD-Designated Funds shall indicate that basic health and safety needs and supports have been addressed, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the child's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support for child and family to recognize and report abuse.

(4) Implementing plans developed by someone other than the child's Case Manager. The CDDP shall not use Family Support funds to implement any plan proposed and written as a result of assistance with planning provided by someone other than the child's Case Manager until the child's Case Manager determines that the new plan meets the applicable requirements of OAR 309-041-2070(1)-(3). In such cases, the Case Manager's signature on the plan shall indicate acceptance of the plan as the child's CFSP.

(5) Option for abbreviated plan and process for services purchased from Direct Assistance Fund 1. When the CDDP determines a child may receive services that include purchases through Direct Assistance Fund 1, the parent or legal representative of the child may choose to develop the CFSP through an abbreviated planning process consisting of an interview with the child's Case Manager and a statement of assurances that the conditions of OAR 309-041-2070(2) have been met.

(a) The CFSP resulting from this process shall be written on forms provided by SPD.

(b) Services purchased through this plan option are limited to one or more of the following services:

(A) Behavior Consultation services as described in 309-041-2120(1)(a-b) and provided at SPD-approved rates;

(B) Community Inclusion services as described in 309-041-2120(2)(a-b);

(C) Environmental Accessibility Adaptations as described in 309-041-2120(3)(a-d);

(D) Family Caregiver Supports as described in OAR 309-041-2120(4)(a-e);

(E) Family Training as described in OAR 309-041-2120(5)(a-b);

(F) In-Home Support as described in OAR 309-041-2120(6)(a)(A) and 309-041-2120(6)(b);

(G) Respite Care services as described in 309-041-2120(9)(a-b);

(H) Specialized Equipment and Supplies as described in OAR 309-041-2120(11)(a-b), except that purchases shall be limited to incontinence supplies; or

(I) Transportation Services as described in 309-041-2120(13)(a-b) and provided at SPD-approved rates.

(6) The Case Manager shall obtain and attach a Nursing Care Plan to the written Child and Family Support Plan when Family Support funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(7) Review of plan and resources. The Case Manager shall conduct and document reviews of plans and resources with families as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the Child and Family Support Plan;

(b) At least annually, and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the plan;

(B) Record final Family Support funds costs;

(C) Note effectiveness of purchases based on Case Manager observation as well as family satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of Family Support funds to purchase supports.

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350  
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

(8) Transition to another county of residence. The CDDP shall assist Family Support service recipients when the family and eligible child move to a county outside its area of service by:

(a) Continuing Family Support fund payments authorized by the CFSP which is current at the time of the move, if the support is available, through the end date of the CFSP; and

(b) Arranging orientation for the child and family to Family Support services provided by the CDDP of the new county of residence, including discussion of the process for assigning placement on the new CDDP's wait list if Family Support services are not immediately available.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2080

### Managing and Accessing Family Support Funds

(1) When the CDDP receives \$30,000 or more annually in Family Support funds from SPD, excluding funds designated by SPD for specific individuals, the CDDP shall:

(a) At the advice of the CDDP's Family Support Policy Oversight Group, allocate up to 10% for a Resource Development Fund to be used according to the provisions of OAR 309-041-2080(4).

(b) Allocate 75% of funds remaining after creation of the Resource Development Fund for Direct Assistance Fund 1. This fund shall only be used to purchase one or more of the supports described in OAR 309-041-2120 for children according to each child's CFSP.

(A) Purchase of supports through Direct Assistance Fund 1 shall be offered to children and families in an order of service established according to OAR 309-041-2030(2)(b) as long as funds are available.

(B) The CDDP shall review Direct Assistance Fund 1 purchases and obligations at least every 90 days and shall provide opportunities for time-limited, short-term access to Family Support services to children and families waiting for services when additional long-term obligations cannot be supported by the funds available.

(c) Allocate 25% of funds remaining after creation of the Resource Development Fund for Direct Assistance Fund 2. This fund shall only be used to purchase, according to each child's CFSP, one or more of the supports described in OAR 309-041-2120 for children whose circumstances meet exceptional needs criteria described in OAR 309-041-2100.

(A) Purchase of supports through Direct Assistance Fund 2 shall be offered to children and families in an order of service established according to OAR 309-041-2030(2)(b)(B) as long as funds are available.

(B) The CDDP shall review Direct Assistance Fund 2 purchases and obligations at least every 90 days and shall provide opportunities for time-limited, short-term access to Family Support services to children and families waiting for services when additional long-term obligations cannot be supported by the funds available.

(2) When the CDDP receives less than \$30,000 annually in Family Support funds from SPD, excluding funds designated by SPD for specific individuals, the CDDP shall, with the advice of its Family Support Policy Group, develop and implement a plan for use of funds which includes:

(a) Optional allocation of up to 10% of these Family Support funds for a Resource Development Fund to be used according to the provisions of OAR 309-041-2080(4); and

(b) Access to assistance with purchasing supports described in OAR 309-041-2120, subject to order of service, exceptional needs criteria, review and other provisions for Direct Assistance Fund 1 in OAR 309-041-2080(1)(b) and Direct Assistance Fund 2 in OAR 309-041-2080(1)(c), except that proportions required for those funds do not apply, and to the limits of financial assistance for each of these funds indicated in OAR 309-041-2090(1).

(3) SPD-Designated Funds. Funds contracted to a CDDP by SPD to serve specific children shall be used only to support those children. Services shall be provided according to each child's SPD-approved CFSP and continuing need for services shall be regularly reviewed according to SPD procedures.

(4) Resource Development Funds. Funds identified as Resource Development Funds according to OAR 309-041-2080(1)(a) or 309-041-2080(2)(a) shall be spent at the advice of the CDDP's Family Support Policy Oversight Group to encourage development of local resources to improve the capacity of the community to support children with developmental disabilities. The CDDP shall submit any plan for a Resource Development Fund, including total dollars and proposed uses, to SPD for approval prior to implementation.

(5) No child's supports shall be purchased using more than one Direct Assistance Fund concurrently.

Statutory Auth.: ORS 409.050

## 309-041-2090

### Financial Limits of Family Support Services

(1) In any Plan Year, as defined in 309-041-2010(33), Family Support funds used to purchase supports for a child shall be limited to the amount of Family Support funds specified in the child's CFSP, and shall in no case exceed:

(a) \$3000 for any child receiving services purchased with Direct Assistance Fund 1, or

(b) \$7500 for any child receiving services purchased with Direct Assistance Fund 2.

(2) Exceptions to eligibility and limits of financial assistance for Direct Assistance Funds 1 and 2. Families and children receiving Self-Directed Support Services under OAR 309-041-1110 through 1170 at the date of SPD-designated transfer of Self-Directed Support services for children to Family Support services governed by these rules shall continue to receive assistance after transfer to Family Support services according to Self-Directed Support plans developed in conformance with OAR 309-041-1130 and current at the time of transfer, subject to the following conditions:

(a) If the amount of funds to be spent on supports authorized by a child's Self-Directed Support plan is \$3000 or less per year, the child and family shall continue to receive services from Direct Assistance Fund 1 for as long as the child requires and is eligible for Family Support services. If the CDDP finds the child eligible for Direct Assistance Fund 2 according to OAR 309-041-2100, the child shall be assigned a place in the order of service through Direct Assistance Fund 2 according to date of eligibility determination and shall continue to receive services through Direct Assistance Fund 1 until services through Direct Assistance Fund 2 are available.

(b) If the amount of funds to be spent on support authorized by a child's Self-Directed Support plan is \$3001-\$7500 per year and the CDDP finds the child eligible for Direct Assistance Fund 2 according to OAR 309-041-2100, the child and family shall receive services from Direct Assistance Fund 2 for as long as the child requires that level of service and is eligible for Family Support services.

(A) If the child is not eligible for Direct Assistance Fund 2, the child and family may continue to receive services through Direct Assistance Fund 2 through the end date of the Self-Directed Support Plan current at the time of the transfer and, if needed, through one additional Plan Year, for a total transition period of no more than two years.

(B) If, after the transition, the child remains ineligible for Direct Assistance Fund 2, the child shall receive Direct Assistance Fund 1 services for as long as the child requires and is eligible for Family Support services

(C) If at any point during the transition period the CDDP finds the child eligible for Direct Assistance Fund 2, the child may continue to receive services through Direct Assistance Fund 2 for as long as the child requires that level of service and is eligible for Family Support services.

(c) If the amount of funds to be spent on support authorized by a child's Self-Direct Support plan is over \$7500 per year, the child and family shall receive services through Direct Assistance Fund 2, but in excess of its financial limits, through the end date of the Self-Directed Support Plan current at the time of the transfer. If at the end of that period the CDDP finds the child eligible for Direct Assistance Fund 2 according to OAR 309-041-2100 and the child's supports can be obtained within the financial limits for Direct Assistance Fund 2, the child and family shall receive services from Direct Assistance Fund 2 for as long as the child requires that level of service and is eligible for Family Support services.

(A) If at the end date of the Self-Directed Support Plan current at the time of transfer the CDDP finds the child eligible for Direct Assistance Fund 2 according to OAR 309-041-2100, but the child's supports cannot be obtained within the financial limits for Direct Assistance Fund 2, the child and family may continue to receive services from Direct Assistance Fund 2, but in excess of its financial limits, for one additional plan year. At the end of that time, the child's supports shall be purchased through Direct Assistance Fund 2 and shall be subject to the financial limits of that fund.

(B) If the child is not found eligible for Direct Assistance Fund 2 by the end date of the Self-Directed Support Plan current at the time of transfer, the child and family may continue to receive services, if needed, in excess of Direct Assistance Fund 2 limits for up to one additional Plan Year, for an initial transition period of up to two years.

(i) If at the end of the initial transition period, the child remains ineligible for Direct Assistance Fund 2, the child and family shall receive, if needed, Direct Assistance Fund 2 services for up to one additional Plan Year, for a total transition time of no more than three years.

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(ii) If the CDDP at any point in the transition period finds the child eligible for Direct Assistance Fund 2, the child and family shall receive services from Direct Assistance Fund 2 for as long as the child requires that level of service and is eligible for Family Support services.

(iii) If at the end of the total transition period the child remains ineligible for Direct Assistance Fund 2, the child and family shall receive Direct Assistance Fund 1 services for as long as the child requires and is eligible for Family Support services.

(3) Estimates used to establish the limits of financial assistance in the CFSP shall be based on written guidelines for costs of frequently-used services published and updated periodically by SPD whenever available and applicable.

(a) SPD guidelines notwithstanding, final costs shall not exceed local usual and customary charges for these services as evidenced by the CDDP's own documented review.

(b) The CDDP shall establish a process for review and approval of all purchases which exceed published guidelines and shall monitor the CFSP's involved for continued cost effectiveness.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2100

### Determining Eligibility for Access to Direct Assistance Fund 2 Due to Exceptional Needs

A child shall be determined eligible for services purchased through Direct Assistance Fund 2 when:

(1) The CDDP determines that the child has extraordinary physical management and health needs that require long-term, intensive, and specialized services on a daily basis as indicated by having:

(a) One or more of the following care requirements:

(A) Total assistance with all activities of daily living, i.e. acquiring nutrition, personal hygiene, toileting, dressing, personal mobility, and management of medications and treatments;

(B) Constant visual or auditory supervision; or

(C) Requires Licensed Practical Nurse or Registered Nurse care at home or caregiver who has been trained to do skilled nursing tasks; and

(b) Circumstances and conditions included in three or more of the following categories:

(A) Feeding: Uses G-tube, J-tube, or NG-tube; experiences reflux with airway involvement (i.e. requires special positioning, medication to control); or difficult/prolonged feeding due to high risk of aspiration rather than any behavioral cause, e.g. uncontrolled seizures, unable to chew, swallowing issues;

(B) Respiratory: Uses oxygen; has tracheotomy; requires suction; or uses ventilator;

(C) Physical Management: Weight over 50 pounds; stage 2-4 skin breakdown; or frequent re-positioning, i.e. child is unable to reposition self and requires re-positioning at minimum of every three hours including nighttime due to issues such as skin breakdown, compromised lungs, reflux, or orthopedic impairments;

(D) Urinary: Incontinence after the age of 7; uses catheter; or requires regular dialysis;

(E) Neurological: Severe seizures, uncontrolled, which require emergency medication to stop or physical intervention;

(F) Metabolic: Insulin-dependent diabetes or other significant metabolic disorder; or

(G) Vascular: Must use IV at home; or

(2) The CDDP determines that the child has extraordinary behavior support needs, exhibiting behavior that causes injury to self or others, extensive property damage, or both and which requires intervention. A child shall only be considered to have such extraordinary, severe behavior when, in the absence of intervention which may keep the incidence of behavior low or non-existent:

(a) At least one of the following statements is true:

(A) The child's behavior causes serious injury to self, others, or both;

or

(B) The child's behavior causes significant damage to property; and

(b) All of the following statements are true:

(A) The child's behavior requires modifications to the environment, including but not limited to constant supervision, to prevent the damaging or injurious behavior from occurring;

(B) The child's behavior continues, or—in the opinion of a medical or behavioral professional—would continue in the absence of continuous preventive measures—over a sixty (60) day period at a rate of three (3) times a week; and

(C) The child's behavior prevents the family from participating in routine family activities; or

(3) The CDDP determines that the child's primary caregiver's health or household composition severely negatively affects the ability of the caregiver to provide care the child requires to remain in the home. This determination shall only be made when:

(a) The primary caregiver has a chronic or temporary physical or psychological condition which has been diagnosed by a medical professional, and which negatively affects the caregiver's ability to support the child in activities of daily living as defined in and meet the child's health and safety needs; or

(b) The primary caregiver is caring for at least one other person in the home, in addition to the child, who has a disability, e.g. a spouse, another child, or an elderly parent, and for whose care the primary caregiver does not receive pay. Because of disability, additional person(s) are either completely dependent on physical assistance with any one activity of daily living or require some level of physical or verbal assistance to complete three or more activities of daily living.

(4) After initial determination of eligibility for Direct Assistance Fund 2, the CDDP shall review eligibility:

(a) With recipients of Direct Assistance Fund 2 services during development of each annual CFSP and

(b) With children and families who have been waiting for services for at least a year prior to entry into Direct Assistance Fund 2 services to confirm continued eligibility.

(5) Direct Assistance Fund 2 eligibility determination and eligibility reviews shall be conducted by the child's Case Manager. Information used to make determinations and conduct reviews must include personal observation and discussions with the child and family in the family home.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2110

### Conditions for Family Support Direct Assistance Fund Purchases

(1) Plan required. A CDDP shall only use Family Support funds to assist families to purchase supports in accordance with Child and Family Support Plans that meet requirements for development and content in 309-041-2070.

(2) Assistance is a social benefit. Goods and services purchased with Family Support funds to support specific individual children and families shall be provided only as social benefits as defined in OAR 309-041-2010(39).

(3) The CDDP shall arrange for supports purchased with Family Support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to freely redirect Family Support funds to purchase supports and services from another qualified provider.

(A) The CDDP shall provide written instruction about the limits and conditions of group services to families who choose to combine Family Support funds to purchase such services;

(B) Each child's support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one child; and

(C) The CDDP must evaluate combined arrangements that result in creation of provider organizations or general business providers to determine whether license or certification is required under Oregon law for the organization to provide services for children.

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 309-041-2010(34) and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the child or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home;

(e) According to Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) According to OAR 309-041-2140 governing provider qualifications.

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(4) Independent Provider, Provider Organization, General Business Provider agreements and responsibilities. When Family Support funds are used to purchase care, training, supervision or other personal assistance for children, the CDDP shall require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse as defined in 309-041-2010(1);

(b) Responsibility to immediately notify the child's legal representative, or any other person specified by the child's legal representative, of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual care, training, or supervision and which may have a serious effect on the health, safety, physical or emotional well-being, or level of services required; and

(c) Limits of payment:

(A) Family Support fund payments for the agreed-upon services shall be considered full payment and the provider under no circumstances shall demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program;

(B) The provider shall bill all third party resources before using Family Support funds unless another arrangement is agreed upon by the CDDP and described in the Child and Family Support Plan.

(5) Amount, method and schedule of payment. The CDDP may disburse Family Support funds to or on behalf of families up to the amount agreed upon in a Child and Family Support Plan that has been signed by the Case Manager and the child's parent or other legal representative. The method and schedule of payment shall be specified in written agreements between the CDDP and the individual's legal representative.

(6) Documentation required. The CDDP shall inform families in writing of records and procedures required in 309-041-2160 regarding expenditure of Family Support funds for direct assistance. During development of the Child and Family Support Plan, the Case Manager shall determine the need or preference for the CDDP to provide support with documentation and procedural requirements and shall delineate responsibility for maintenance of records in written service agreements.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2120

### Supports Purchased with Direct Assistance Funds

When conditions of purchase in OAR 309-041-2110 are met, and provided purchases are not prohibited under OAR 309-041-2130, Direct Assistance Funds may be used to purchase:

(1) Behavior Consultation. Behavior consultation consists of: assessment of the child, the needs of the provider or family and the environment; development of a positive behavior support plan; implementation of the positive behavior support plan with the provider or family; and revision and monitoring of the plan as needed. Services may include training, modeling, and mentoring the family or provider, development of visual communication systems as behavior support strategies, and communicating as authorized by the family with school, medical or other professionals about the strategies and outcomes of the behavior support plan.

(a) Providers may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists who:

(A) Have education, skills, and abilities necessary to provide behavior consultation services;

(B) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

(C) Submit a resume to the CDDP indicating at least one of the following:

(i) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(ii) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(b) Behavior consultation does not include: mental health therapy or counseling; health or mental health plan coverage; educational services, including, but not limited to, consultation and training for classroom staff, adaptations to meet needs of the child at school, assessment in the school

setting, or any service identified by the school as required to carry out the child's Individual Education Plan.

(2) Community Inclusion. Community inclusion services assist a child to acquire, retain or improve skills that enhance independence, productivity, and integration. Community Inclusion Supports include assistance to participate in generic community services, facilities, businesses, recreation and leisure. These supports are provided for a child to participate in activities to facilitate independence and promote community inclusion in settings chosen by the family.

(a) Examples of community inclusion services include, but are not limited to: personal assistance with eating, toileting, mobility during recreational activities; fees and supplies required for the child and provider to participate in individualized services; peer coaching or mentoring to participate in community activities; specialized camps; adaptive recreational programs; the cost of daily care and supervision after school when a child of the same age (twelve and over) without disabilities would not require day care.

(b) Community Inclusion services do not: replace normal parental roles and responsibilities in a child's acquisition and retention of communication, socialization, recreation, and self-help skills; replace normal parental responsibility for child care while the parents work or go to school; or include education and other instruction and support available according to the Individuals with Disabilities Education Act. Examples of activities that are not provided as Community Inclusion services include, but are not limited to: substitute care for child under 12 years of age while parents work or go to school; education services; tuition to private schools; payment of programs or services in lieu of school; legal fees such as those for setting up trusts, guardianships, providing representation at hearings regarding educational services; incentive payments to employers to hire youth with disabilities.

(3) Environmental Accessibility Adaptations. Environmental accessibility adaptations are physical adaptations to a child's home or family vehicle which are necessary to ensure the health, welfare, and safety of the child in the home, or which enable the child to function with greater independence around the home and in family activities.

(a) Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of shatter-proof windows; hardening of walls or doors; specialized, hardened, waterproof or padded flooring; an alarm system for doors or windows; protective covering for smoke detectors, light fixtures, and appliances; sound and visual monitoring systems; fencing; installation of ramps and grab-bars, installation of electric door openers; adaptation of kitchen cabinets/sinks; widening of doorways; handrails; modification of bathroom facilities; individual room air conditioners for children whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk; installation of non-skid surfaces; overhead track systems to assist with lifting or transferring; specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the child; modifications to a vehicle to meet the unique needs of the child (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle). They may include modifications to a second site, such as the home of a non-custodial parent or a neighbor providing frequent respite services, when those modifications are not a provider's responsibility as a reasonable accommodation under the Americans with Disabilities Act.

(b) Examples of what environmental accessibility supports do not provide include, but are not limited to: adaptations or improvements to the home which are not cost effective, are of general utility to the household, or are not of direct medical or remedial benefit to the child, such as carpeting, roof repair, central air conditioning; adaptations that add to the total livable, heated square footage of the home; generic fire safety equipment; general household maintenance and repair.

(c) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans to make homes safe and accessible.

(e) Environmental accessibility adaptation providers must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

(4) Family Caregiver Supports. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for their children. These services are:

(a) Child- and family-centered planning facilitation and follow-up;

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(b) Fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family;

(c) Assistance with family costs associated with recruiting, hiring, and directing providers, including advertising, translation services, and development of tools such as job descriptions, contracts, and employment agreements;

(d) Cost of additional homeowner's insurance, but not Workers Compensation, required to cover domestic employees providing in-home care and supervision; and

(e) Workplace materials and supplies that may be required for paid caregivers in the family home.

(5) Family Training. Family training services are training, coaching, and support provided to the family of a child with developmental disabilities to increase capabilities to care for, support and maintain the child in the home.

(a) Family training services include, but are not limited to: instruction about treatment regimens and use of equipment specified in the Child and Family Support Plan; information, education and training about the child's disability, medical, and behavioral conditions; training and information about disabilities and disability resources in general; and support for the family to relieve the stress associated with caring for child with disabilities. Family training services may be provided in various settings by various means, including but not limited to: psychologists licensed under ORS 675.030; professionals licensed to practice medicine under ORS 677.100; social workers licensed under ORS 675.530; counselors licensed under ORS 675.715; organized conferences and workshops; materials such as computer programs, books, and audio/video media; parent-to-parent information-sharing and mentoring.

(b) Examples of what family training services do not provide include, but are not limited to: mental health counseling, treatment, or therapy; more than \$500 per family in registration fees, lodging, and travel costs for any single training event; training for paid caregivers; legal consultation fees; training for families to carry out educational activities in lieu of school; vocational training for family members.

(6) In-home Support. In-home support services are care, training, and supervision provided based on the needs of the child that must be met for the child to live in the family home. These services support the child to live as independently as appropriate for the child's age.

(a) In-home support services include, but are not limited to:

(A) Providers who come into the family home and assist the child with: activities of daily living; medical and physical health care—including delegation of nursing tasks; behavior management; maintenance of expressive and receptive skills in verbal and non-verbal language; functional application of acquired reading and writing skills; training and support in personal environmental skills such as planning and preparing meals, budgeting, laundry, and housecleaning; and

(B) Assistance with extraordinary household costs incurred only because of a child's disability including, but not limited to: space for paid overnight caregivers to sleep; payment of water or sewage bill above normal use due to child's use of water to self-calm.

(b) Examples of what in-home support services do not provide include, but are not limited to: support generally provided at the child's age by parents or the educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act; health insurance; legal consultation fees for establishing domestic employment arrangements; clothing; mortgage or rent payments; home schooling; telephone, television, internet services.

(7) Occupational Therapy. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family and provider training, consultation, feeding adaptations, and direct therapy provided by an appropriately licensed or certified occupational therapist.

(b) Occupational therapy services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(8) Physical Therapy. Physical therapy services are services provided by a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills or physical condition when

prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified physical therapist.

(b) Physical therapy services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(9) Respite Care. Respite care services are short-term care and supervision provided on an hourly or daily basis because of the absence, or need for relief of, persons normally providing the care to a child with developmental disabilities.

(a) Temporary or overnight respite services may be provided in a variety of settings, including, but not limited to: the home of the child or respite provider; a licensed group home or foster home; a licensed day care center; a specialized camp; or a community care facility that is not a private residence.

(b) Respite services do not include: ongoing services which occur on a regular schedule such as 8-hours-a-day, 5-days-a-week or are provided to allow the child's parents to attend school or work; vacation travel and lodging expenses; cost of the child's meals unless part of a short-term stay in a licensed group home or foster home.

(10) Special Diets. Special diets are specially prepared food supplements or particular types of food supplements needed to sustain the child in the family home, ordered by a physician, and monitored at least every six months by a dietitian licensed according to ORS 691.415 through 691.465. These supplements may include, but are not limited to, high caloric supplements, gluten-free supplements, or metabolic supplements. Special diet services are not intended to meet an individual's complete daily nutritional requirements and do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability. Special diets do not include experimental nutritional supplements or regimens, such as combinations of vitamins and minerals purported to cure or alleviate symptoms of autism, Downs' Syndrome, or other developmental disabilities and which have not achieved general professional acceptance as essential to management of these conditions.

(11) Specialized Equipment and Supplies. Specialized equipment and supplies are devices, aids, controls, supplies, or appliances that enable children to participate in or perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment. Specialized equipment and supplies may include equipment, furnishings, or supplies which are not commercially manufactured specifically to serve a medical or remedial function, but which have or may be easily modified to have important characteristics that safely and cost-effectively provide necessary supports.

(a) Examples of specialized equipment and supplies include, but are not limited to: mobility, communication, incontinence, and positioning devices; age-appropriate hospital beds; apnea monitors; generators for technology-dependent individuals; equipment required to obtain urgent medical assistance; a manual wheelchair to use while power chair is being repaired; a second wheelchair that can fit into interior doors while larger power chair remains outside; extra-heavy bed; water table, swing, other sensory devices or equipment used by child with autism to self-calm; used equipment that has been certified by an appropriate professional as safe for mobility or positioning; adaptive switches; adaptive communication devices and supplies; customized equipment such as plates, bowls, utensils, glasses, trays that allow a child to eat independently or with minimum assistance; extra cost of shoes or other clothing due to required modifications or frequency of replacement caused by extraordinary wear.

(b) Examples of items that are not Specialized Equipment and Supplies include, but are not limited to: standard items of clothing in amounts normally required by children of the same age; cost equivalent of toys and activities typically purchased by parents of children of the same age; equipment and furnishings of general household use; items required solely to allow a child to participate in school; fees for maintaining telephone services; trampolines other than small "jogger" type; beds which restrict a child's freedom of movement when the bed is used to control behavior and when the child has passed the age when cribs and similar arrangements are normally used to protect a child from falling out of bed.

(12) Speech, Hearing, and Language Services. Speech, hearing and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's

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skills after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified physical therapist.

(b) Speech, hearing, and language services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(13) Transportation Services. Transportation services allow children to gain access to community services, activities, and resources.

(a) Examples of transportation services include, but are not limited to: payment per mile for extraordinary mileage required to transport a child to urban medical centers from distant rural communities; supplements to public transportation required to accommodate wheelchair or other equipment and supervision needs.

(b) Transportation services do not include: transportation normally provided by schools and by parents for children of similar age without disabilities; purchase of any family vehicle; vehicle maintenance and repair; reimbursement for out-of-state travel expenses; ambulance services; transportation services available to a child under the State Medicaid Plan.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2130

### Using Family Support Funds for Certain Purchases is Prohibited

Family Support funds shall not be used for:

(1) Services, materials, or activities that are illegal;

(2) Services or activities that are carried out in a manner that constitutes abuse of a child as defined in OAR 309-041-2010(1);

(3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

(4) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(5) Materials or equipment that have been determined unsafe for the general public by recognized child and consumer safety agencies;

(6) Family vehicles;

(7) Health and medical costs that the general public normally must pay, including, but not limited to: medications; health insurance co-payments; mental health treatments; dental treatments and appliances; medical treatments; dietary supplements; treatment supplies not related to nutrition, incontinence, or infection control;

(8) Ambulance services;

(9) Legal fees, including, but not limited to, the costs of representation in educational negotiations, establishment of trusts, creation of guardianship, etc.;

(10) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the child's disability-created need for personal assistance in all home and community settings;

(11) Care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(12) Employee wages or contractor payments for services when the child is not present or available to receive services, e.g. employee paid time off, hourly "no show" charge, contractor preparation hours, etc.;

(13) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of supports as defined in OAR 309-041-2010(40), or do not meet the definition of social benefits in OAR 309-041-2010(39);

(14) Educational services, including professional instruction, formal training and tutoring in communication, socialization, and academic skills;

(15) Services, activities, materials, or equipment that the CDDP determines can be obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(16) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds; or

(17) Purchase of services when there is sufficient evidence to believe that the child's parent or legal representative, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Child and Family Support Plan, refused to cooperate with record keeping required to document use of Family Support funds, or otherwise knowingly misused public funds associated with Family Support services.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2140

### Standards for Providers Paid with Direct Assistance Funds

Independent providers, provider organizations, and general business providers paid with Family Support Direct Assistance Funds shall be qualified as follows:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or other legal representative to provide the services listed in OAR 309-041-2120 shall:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department of Human Services policy and procedures for review of criminal history;

(c) Be legally eligible to work in the United States;

(d) Not be a parent, stepparent, foster parent or other person legally responsible for the child receiving supports;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the Child and Family Support Plan, with such demonstration confirmed in writing by the child's parent or other legal representative and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual;

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If providing transportation services, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(j) Nursing consultants must in addition have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with State Law, including at least one year of experience with people with developmental disabilities.

(2) Provider organizations shall hold any current license or certification required by Oregon law to provide services to children. In addition, all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with Family Support funds shall meet standards for qualification of independent providers outlined in OAR 309-041-2140(1).

(3) Services provided by general business providers shall hold any current license appropriate to function required by the State of Oregon or federal law or regulation and services purchased with Family Support funds shall be limited to those within the scope of the general business provider's license. Such licenses include, but are not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) Current license and bond as a building contractor under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030 for a provider of environmental accessibility adaptations involving home renovation or new construction;

(d) Public transportation providers shall be regulated according to established standards and private transportation providers must have business licenses and drivers licensed to drive in Oregon;

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Oregon Office of Medical Assistance Program if vending medical equipment;

(f) A current business license for providers of personal emergency response systems; and

(g) Retail business licenses for vendors and supply companies providing specialized diets.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

# ADMINISTRATIVE RULES

## 309-041-2150

### Family Support Services Administration and Operation

(1) Family leadership. The CDDP shall appoint a Family Support Policy Oversight Group to advise the CDDP regarding the effectiveness of Family Support services, to evaluate family satisfaction with Family Support services, and to set priorities for and monitor use of the Resource Development Fund, if applicable.

(a) The majority of appointments to the Family Support Policy Oversight Group shall be family members of children with developmental disabilities.

(b) The CDDP shall develop and implement written agreements with the Family Support Policy Oversight Group describing how such a policy group provides advice regarding use of Family Support resources and what process shall be used to resolve any disagreements between the CDDP and its Family Support Policy Oversight Group.

(c) When the Family Support Policy Oversight Group is a subgroup of another advisory body, at least one meeting every three months of the primary advisory body must focus on Family Support services and concerns.

(2) Case Manager training. The CDDP shall provide or arrange for Case Managers to receive SPD-approved training needed to provide Family Support services, including, but not limited to, child- and family-centered planning processes, employer-related supports, and individualized budgeting for supports.

(3) Fiscal Intermediary requirements. Providers of fiscal intermediary services purchased by the CDDP with Family Support Direct Assistance Funds according to Child and Family Support Plans shall:

(a) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;

(b) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(c) Establish and meet the time lines for payments;

(d) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(e) Generate service, management, and statistical information and reports required by the CDDP to effectively manage Family Support services and by families to effectively manage supports;

(f) Maintain flexibility to adapt to changing circumstances of children and families; and

(g) Provide training and technical assistance to families as required and specified in Child and Family Support Plans.

(4) General record requirements. The CDDP shall maintain records in compliance with this rule, applicable state and federal law, other state rules regarding audits and clinical records, and the most current edition of the Mental Health and Developmental Disability Services Division Handbook on Confidentiality.

(a) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, CDDP's under these rules shall be considered "providers" as defined in ORS 179.505(1), and 179.505 shall be applicable. Access to records by SPD does not require authorization by the family. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) Individual records. Records for children who receive Family Support services shall be kept up-to-date and shall include:

(A) Assigned placement in order of service, with information used to determine placement;

(B) An easily-accessed summary of basic information, including child's name, parents' names, legal representative if other than parents, conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, and child's financial benefit information.

(C) Records related to receipt and disbursement of Family Support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 309-041-2140 and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule;

(D) Incident reports involving CDDP staff;

(E) Assessments used to determine supports required, preferences, and resources;

(F) Child and Family Support Plan and reviews;

(G) Case Manager correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(c) General financial policies and practices. The CDDP shall:

(A) Maintain up-to-date accounting records accurately reflecting all Family Support services revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(d) Records retention. Records shall be retained in accordance with OAR 166-005-000 through 166-040-1050 (State Archivist). Financial records, supporting documents, statistical records, and all other records (except individual records) shall be retained for a minimum of three years after the close of the contract period, or until audited. Individual records shall be kept for a minimum of seven years.

(4) Other operating policies and practices. The CDDP shall develop and implement such written statements of policy and procedure in addition to those specifically required by this Rule as are necessary and useful to enable the agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2160

### Special Record Requirements for Direct Assistance Fund Purchases

The CDDP shall develop and implement written policies and procedures concerning use of Family Support funds to purchase goods and services required for support of children and described in Child and Family Support Plans. These policies and procedures shall include, but are not limited to:

(1) Minimum acceptable records of expenditures:

(a) An itemized list, dated and signed by the child's parent or other legal representative, of expenses such as snacks, admission fees, care supplies, activity supplies which cost less than \$25.00 each and do not exceed a combined total of \$100 during any calendar quarter;

(b) Itemized invoices and receipts to record purchase of any single item which costs \$25.00 or more;

(c) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(d) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(e) Written professional support plans, assessments, and reviews to document acceptable provision of behavior support, physical therapy, occupational therapy, speech and language, nursing, and other professional training and consultation services; and

(f) Pay records, including timesheets signed by both employee and employer, to record employee services.

(2) Procedures for confirming the receipt, and securing the use of, specialized equipment and environmental accessibility adaptations:

(a) The CDDP shall record the purpose, final cost, and date of receipt of any specialized equipment purchased for a child;

(b) The CDDP shall secure use of equipment or furnishings costing more than \$500 through a written agreement between the CDDP and the child's family or other legal representative which specifies the time period the item is to be available to the child and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(c) The CDDP shall ensure that projects for environmental accessibility adaptations involving building renovation or new construction in or around a child's home costing \$5000 or more per single instance or cumulatively over several modifications are approved by SPD before work begins and before final payment is made, are completed or supervised by a contractor licensed and bonded in the State of Oregon, and that steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means. Further, the CDDP shall obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(3) Return of advanced funds and purchased goods.

(a) Any funds advanced to a family that are not spent according to the child's CFSP, as indicated by acceptable records, shall be returned to the local CDDP when the current Child and Family Support Plan expires or immediately if requested at any time by the CDDP.

(b) Any goods purchased with Family Support funds that are not used according to the child's CFSP or according to an agreement securing the State's use may be immediately recovered.

(4) Failure to furnish written documentation upon written request from SPD, the Oregon Department of Justice Medicaid Fraud Unit or Centers for Medicare and Medicaid Services or their authorized represen-



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tatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

Statutory Auth.: ORS 409.050  
Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350  
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2170

### Quality Assurance

(1) The CDDP shall, in collaboration with its Family Support Policy Oversight Group develop and implement a quality assurance plan for local Family Support services. The plan shall indicate:

(a) How information from consumer, advocate, professional and other sources will be gathered and used to determine community needs and to evaluate progress in development of local resources to better support children with developmental disabilities and their families;

(b) How customer satisfaction information will be gathered and used to evaluate the ability of local Family Support Services to improve access to supports, sustain important family relationships, provide flexible and individually-unique supports, promote family choice and control over supports; and respond to changing needs and preferences of children and families;

(c) Service outcomes related to, and strategies for measuring, achievement of family goals and effective use of resources; and

(d) That the Family Support Policy Oversight Group shall conduct activities as assigned in the plan and submit a written report at least every two years advising the CDDP on the quality of local services based on these activities.

(2) The CDDP and its Family Support Policy Oversight Group shall participate in statewide evaluation and regulation activities as directed by SPD.

Statutory Auth.: ORS 409.050  
Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350  
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

## 309-041-2180

### Variations

(1) Criteria for a variance. Variations may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in OAR 309-041-2000 through 309-041-2180, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances. OAR 309-041-2120 and 309-041-2130 are specifically excluded from variance.

(2) Variance application. The CDDP requesting a variance shall submit a written application to SPD that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to a child's service, evidence that the variance is consistent with the child's current CFSP.

(3) SPD review. The SPD Administrator or Administrator's designee shall approve or deny the request for a variance.

(4) Notification. SPD shall notify the CDDP of the decision. This notice shall be sent within 30 calendar days of the receipt of the request at SPD with a copy to other relevant sections of SPD.

(5) Appeal. Appeal of the denial of a variance request shall be made in writing to the SPD Administrator or Administrator's designee, whose decision shall be final.

(6) Duration of variance. SPD shall determine the duration of the variance.

(7) Written approval. The CDDP may implement a variance only after written approval from SPD.

Statutory Auth.: ORS 409.050  
Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350  
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03

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**Notice Publication Date:**

**Rules Amended:** 309-041-2010, 309-041-2030, 309-041-2040, 309-041-2070, 309-041-2080, 309-041-2090, 309-041-2110, 309-041-2120, 309-041-2150, 309-041-2170

## Rules Suspended: 309-041-2100

**Subject:** The Family Support Services for Children with Developmental Disabilities rules are being temporarily amended to reflect a reduction in required local activities commensurate with a reduction in funds available for the 2003-05 biennium, essentially requiring that Community Developmental Disability Programs perform only the first two of the five activities originally required of them. These Rules were initially developed at a time when Medicaid funds were not available for Family Support services. The Department has since applied for renewal of its comprehensive home and community-based services waiver for individuals with developmental disabilities and has requested that SPD-funded supports for children living in family homes be considered waiver services when those supports cost more than \$20,000 a year. Several rulemaking actions were necessary to bring the services and expectations into compliance with Medicaid requirements.

**Rules Coordinator:** Pam Rouske—(503) 945-6954

## 309-041-2010

### Definitions

As used in OAR 309-041-2000 through OAR 309-041-2180:

(1) "Abuse" of a child is defined in ORS 419B.005 and includes, but is not limited to, physical abuse, neglect, threat of harm, mental injury, abandonment, and child selling.

(2) "Activities of Daily Living" or "ADL's" means the following activities that must be accomplished by or for an individual in the course of a normal day to ensure the individual's continued well-being:

(a) Acquiring adequate nutrition;

(b) Dressing and grooming;

(c) Bathing and personal hygiene;

(d) Toileting (including bowel and bladder care);

(e) Personal mobility; and

(f) Management of any prescribed medications and treatments.

(3) "Administrator" means the Assistant Director, Department of Human Services, and Administrator for Seniors and People with Disabilities Services.

(4) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and monitor services.

(5) "Case Manager" means an employee of Seniors and People with Disabilities Services, a community developmental disability program or other agency which contracts with the County or Division, who is selected to plan, procure, coordinate and monitor Child and Family Support Plan services and acts as a proponent for children with developmental disabilities and their families.

(6) "Child" means an individual who is less than 18 years of age.

(7) "Child- and Family-Centered Planning" means a process, either formal or informal, for gathering and organizing information that:

(a) Facilitates the full participation, choice and control by families of children with developmental disabilities in decisions relating to the supports that will meet the priorities of the family;

(b) Responds to the needs of the entire family in a timely and appropriate manner;

(c) Is easily accessible to and usable by families of children with disabilities;

(d) Helps a child and family to determine and describe choices about the child's life and goals and to design strategies for supporting the child and family in pursuit of these goals;

(e) Helps the child, the family, and others chosen by the child or family to identify and use existing abilities, relationships and resources, strengthening naturally occurring opportunities for support at home and in the community; and

(f) Is conducted in manner and settings consistent with the child's and family's needs and preferences, including but not limited to simple interviews with the child and family, informal observations in home and community settings, or formally structured meetings.

(8) "Child and Family Support Plan" or "CFSP" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's family or other legal representative develops the Child and Family Support Plan with the assistance of the child's Case Manager. The CFSP articulates decisions and agreements made through a child- and family-centered process of planning and information-gathering conducted or arranged for by the child's Case Manager and which involves the child to the extent normal and appropriate for his or her age and other persons who have been identified and

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invited to participate by the child's family or other legal representative. The CFSP is the only plan of care and services required by SPD for a child receiving Family Support services.

(9) "Community Developmental Disability Program" or "CDDP" means an entity responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with Seniors and People with Disabilities or a local mental health authority.

(10) "Department" means the Oregon Department of Human Services.

(11) "Developmental Disability":

(a) Is always provisional for children five years and younger and means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely; AND

(A) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care, receptive and expressive language, learning, mobility, and self-direction; OR

(B) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in (11)(a)(A).

(b) Is always provisional for children six years and older and means:

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(i) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: self care, receptive and expressive language, learning, mobility, self-directions; AND

(ii) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(iii) The individual is expected to need multiple, specialized supports indefinitely.

(12) "Direct Assistance Funds" means two categories of Family Support funds managed by CDDP's to assist families with purchase of supports for children with developmental disabilities according to each child's Child and Family Support Plan. Unique financial limitations and order of service apply to each Direct Assistance Fund:

(a) Direct Assistance Fund 1 is limited to CDDP-defined Plan Year costs for each child and, with some exceptions, is available on a first-come, first-served basis; and

(b) SPD-Designated Funds are available only to children for whom SPD designates funds to the CDDP by written contracts which specify the children by name.

(13) "Director" means the Director of the Oregon Department of Human Services or that person's designee.

(14) "Employer-related supports" means activities that assist a family with directing and supervising provision of services described in a child's Child and Family Support Plan. Supports to a family assuming the role of employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(15) "Entry" means admission to a SPD-funded service provider.

(16) "Exit" means either termination from a Seniors and People with Disabilities-funded program or transfer from one Seniors and People with Disabilities-funded program to another. Exit does not mean transfer within a service provider's program.

(17) "Family," for determining a child's eligibility for Family Support services as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the child with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with disabilities who is related to one of the partners by blood, marriage, or legal adoption.

(18) "Family Satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the family receiving the service or support.

(19) "Family Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Child and Family Support Plans, and purchase of supports as social benefits required for a child to live in the family home. Supports, resources, and other assistance are designed to:

(a) Support families in their efforts to raise their children with disabilities in the family home;

(b) Strengthen the role of the family as the primary caregiver;

(c) Support families in determining their needs and in making decisions concerning necessary, desirable, and appropriate services;

(d) Promote the use of existing formal and informal supports and social networks, strengthening natural sources of support, and helping build connections to existing community resources and services;

(e) Involve youth with disabilities in decision-making about their own lives, consistent with their unique strengths, resources, priorities, concerns, abilities and capabilities;

(f) Prevent unwanted out-of-home placement and maintain family unity; and

(g) Whenever possible, reunite families with children with disabilities who have been placed out of the home.

(20) "Family Support Funds" means public funds contracted by SPD the CDDP to assist families with purchase or development of supports for children with developmental disabilities.

(21) "Family Support Policy Oversight Group" or "Policy Oversight Group" means a group appointed by the CDDP to provide consumer-based leadership and advice regarding Family Support issues such as development of policy, evaluation of services, and use of resources. The Family Support Policy Oversight Group may be a subgroup of an advisory body which has a broader scope or it may be a separate body with a specific focus on Family Support.

(22) "Family Support Principles" means principles outlined in ORS 417.340 and indicating that Family Support services:

(a) May use private and volunteer resources, publicly funded services and other flexible dollars to provide a family with the services needed to care for the family member with a disability or chronic illness.

(b) Must be sensitive to the unique needs, strengths and multicultural values of an individual and the family rather than fitting the individual and family into existing services.

(c) Must be built on a relationship of respect and trust that recognizes that families are better able to determine their own needs than have their needs determined by the state or a public agency.

(d) Shall be provided in a manner that develops comprehensive, responsive and flexible support to families in their role as primary caregivers for family members with disabilities or chronic illnesses.

(e) Shall focus on the entire family and be responsive to the needs of the individual and the family.

(f) May be needed throughout the lifespan of the individual family member living at home who has a disability or chronic illness.

(g) Shall be available to families before they are in crisis.

(h) May be a service option offered to families, but not imposed on them.

(i) Shall encourage maximum use of existing social networks and natural sources of support and should encourage community integration.

(j) Shall not be confined to a single program or set of services but shall be a philosophy that permeates all program and services.

(23) "Fiscal Intermediary" means a person or agency that receives and distributes Family Support funds on behalf of the family of an eligible child according to the child's CFSP. The fiscal intermediary responsibilities include payments to vendors as well as activities and records related to payroll and payment of employer-related taxes and fees as an agent of families who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(24) "General business provider" means an organization or entity selected by the parent or other legal representative of an eligible child, and paid with Family Support funds that:

(a) Is primarily in business to provide the service chosen by the parent or other legal representative to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.

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(25) "Guardian" means a parent for children less than 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the child.

(26) "Home" means a child's primary residence which is not licensed or certified by, and under contract with, the Department of Human Services to provide care to the child as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(27) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(28) "Independent Provider" means a person who is selected by a child's parent or other legal representative and paid with Family Support funds and who personally provides services to the child.

(29) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(30) "Legal Representative" means the parent of a child, unless the court appoints another person or agency to act as guardian.

(31) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(32) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the child and how those needs will be met. It includes which tasks will be taught, assigned and/or delegated to the qualified provider or family.

(33) "Plan Year" means twelve (12) consecutive months used to calculate what Family Support funds may be made available annually to support an eligible child. The initial Plan Year begins on the date the child's first Child and Family Support Plan after entry into Family Support services is signed by the child's parent or other legal representative and Case Manager. Subsequent Plan Years begin on the anniversary date of the approval of this initial plan.

(34) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(35) "Provider Organization" means an entity selected by a child's parent or other legal representative and paid with Family Support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(36) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(37) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom — The ability for an individual with a developmental disability together with freely-chosen family and friends to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority — The ability for a person with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy — The arranging of resources and personnel — both formal and informal — that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility — The acceptance of a valued role in a person's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for persons with developmental disabilities.

(38) "Seniors and People with Disabilities" or SPD means Seniors and People with Disabilities of the Department of Human Services.

(39) "Social Benefit" or "Social Service" means a service provided to a family solely to assist a child with developmental disabilities to function in and around the home and to participate in activities comparable to that of a child of similar age who does not have such disability. Such a benefit

or service is pre-authorized by and provided according to the description and financial limits written in an eligible child's current Child and Family Support Plan and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(d) Replace other governmental or community services available to child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(40) "Support" means assistance eligible children and their families require solely because of the effects of developmental disability on the child to maintain or increase the child's age-appropriate independence, to achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. This assistance is flexible and subject to change with time and circumstances.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2030

### Family Support Service Information and Entry

(1) Providing information about Family Support. The CDDP shall develop and implement a process for informing families of eligible children about Family Support services. The process shall include:

(a) Recording the date and time the child's parent or other legal representative is informed of, and requests, Family Support services;

(b) Providing accurate, up-to-date information about the CDDP's Family Support services to families who request Family Support services. This information shall include but not be limited to:

(A) A declaration of Family Support services philosophy;

(B) Criteria for entry and for determining how much assistance with purchasing supports will be available;

(C) Common processes encountered in using Family Support services, including child- and family-centered planning, evaluation, and how to raise and resolve concerns about Family Support services;

(D) Clarification of CDDP employee responsibilities as mandatory reporters of child abuse;

(E) A brief description of family responsibilities in regard to use of public funds;

(F) An explanation of family rights to select and direct the providers of services authorized through the eligible child's Child and Family Support Plan and purchased with Family Support funds from among those qualified according to OAR 309-041-2140 to provide supports; and

(G) An assurance that additional information about Family Support services shall be made available at the family's request. Additional information shall include, but is not limited to:

(i) A description of the CDDP's organizational structure;

(ii) A description of any contractual relationships the CDDP has in place or can establish to accomplish the Family Support service functions required by this rule; and

(iii) If applicable, a description of the relationship between the CDDP and its Family Support Policy Oversight Group.

(c) The CDDP shall make information required in OAR 309-041-2030(1)(b)(A-G) available using language, format, and presentation methods appropriate for effective communication according to each family's needs and abilities.

(2) Entry into Family Support services.

(a) An eligible child shall enter Family Support services:

(A) When the CDDP determines that the eligible child is the next child to be served according to the priorities and order of service described in OAR 309-041-2030(2)(b) and that sufficient resources are available to initiate service; and

(B) At any time that funds are made available through a SPD contract with the CDDP specifically to supports required to prevent out-of-home placement of the eligible child.

(b) Order of service. Except as provided in OAR 309-041-2030(2)(c), eligible children shall enter Family Support services as follows:

(A) For assistance with purchase of support through Direct Assistance Fund 1, the CDDP shall assign order of entry either according to when, according to the CDDP's records, the child's parent or other legal representative was informed of and requested Family Support services or the

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date of the child's placement on a wait list for services previously provided by the CDDP under OAR 309-041-1110 through 1170 (Self-Directed Support Services), whichever is earliest.

(i) If no order for service can be determined according to OAR 309-041-2030(2)(b)(A) at the time services for children transition from Self-Directed Support services provided under OAR 309-041-1110 through 1170 to Family Support services provided under these rules, then the names of all children whose families are known to have requested either Self-Directed Support or Family Support services and who are not eligible to enter Family Support services directly from Self-Directed Support services according to OAR 309-041-2030(2)(c) shall be pooled and drawn at random to determine order of entry to Family Support services.

(ii) If more than one child's parent or other legal representative requests services at the same time, then the CDDP shall assign order among those children according to random selection.

(B) For assistance with purchase of support through SPD-Designated Funds, the child shall enter Family Support services on a date agreed upon by SPD and the CDDP when funds to support the eligible child have been specifically contracted to the CDDP.

(c) Exception to order of service. To the extent that Family Support funds are available in the CDDP of each child's county of residence and to avoid disruption of services, children with Self-Directed Support Plans formulated according to OAR 309-041-1130 and current as of the SPD-designated date of transition to Family Support services shall directly enter Family Support services on that date according to the provisions of OAR 309-041-2090(2).

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2040

### Family Support Service Duration and Exit

(1) Duration of Services. Once a child has entered a CDDP's Family Support services, the child and family may continue receiving services from that CDDP through the last day of the month during which the child turns 18, as long as the child remains eligible for Family Support, annual CFSP's are developed and kept current, the need for service remains, and funds are available at the CDDP to continue services, except in the following cases:

(a) Short-term assistance. Families and children receiving assistance according to provisions of or 309-041-2080(1)(c) shall be short-term recipients of services. Services shall not extend beyond the end date of the contract between SPD and the CDDP current at the time the CDDP offers such short-term assistance. Using this assistance shall not affect a child's order of service for longer-term Family Support services without written approval of the child's parent or other legal representative.

(b) Changing county of residence. If a child and family move from the CDDP's area of service, the CDDP shall arrange for services purchased with Family Support funds to continue, to the extent possible, in the new county of residence through the end date of the child's CFSP when the CFSP conforms to OAR 309-041-2070 and is current at the date of the move.

(2) Exit from Family Support services. A child shall leave a CDDP's Family Support services:

(a) At the end of a service period agreed upon by all parties and specified in the Child and Family Support Plan;

(b) At the written request of the child's family or other legal representative to end the service relationship;

(c) At the end of the last day of the month during which the child turns 18;

(d) When the child and family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP; or

(e) No less than thirty (30) days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:

(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate;

(B) Funds are no longer available for Family Support services in the family's county of residence; or

(C) The CDDP has sufficient evidence to believe that the family has engaged in fraud or misrepresentation, failed to use resources as agreed

upon in the CFSP, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2070

### Family Support Services Child and Family Support Plan

(1) The CDDP shall provide or arrange for a child- and family-centered planning process to assist families to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The CDDP, the child, as appropriate for age, and family shall develop a written Child and Family Support Plan for each child as a result of this process within the first 90 days of entry in Family Support services and annually thereafter if services are to continue. The Child and Family Support Plan shall include, but shall not be limited to:

(a) The eligible child's first and last name and the name of the family if different than the child's name or the name of the child's legal representative;

(b) A description of the supports that are required, including the reason the support is necessary;

(c) Beginning and end dates of the Plan Year as well as when specific activities and supports are to begin and end;

(d) Projected Family Support fund costs, if any, with sufficient detail to support estimates;

(e) The types of supports to be purchased with Family Support funds, including the type of provider;

(f) The proposed schedule of plan reviews;

(g) Signatures of the child's Case Manager, the child's parent or other legal representative, and the child, as appropriate for age.

(2) The CFSP or records supporting development of each CFSP shall include evidence that:

(a) Family members, the child (as appropriate for age), and others of the family's choosing have participated in the planning process;

(b) Family Support funds are used only to purchase goods or services necessary for a child to be supported in the family home;

(c) The Case Manager has assessed the availability of other means for providing the supports before using Family Support funds and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible.

(3) Additional requirements for plans involving SPD-Designated Funds. Plans and records supporting plan development for children receiving services purchased through SPD-Designated Funds shall indicate that basic health and safety needs and supports have been addressed, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the child's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support for child and family to recognize and report abuse.

(4) Implementing plans developed by someone other than the child's Case Manager. The CDDP shall not use Family Support funds to implement any plan proposed and written as a result of assistance with planning provided by someone other than the child's Case Manager until the child's Case Manager determines that the new plan meets the applicable requirements of OAR 309-041-2070(1)-(3). In such cases, the Case Manager's signature on the plan shall indicate acceptance of the plan as the child's CFSP.

(5) Option for abbreviated plan and process for services purchased from Direct Assistance Fund 1. When the CDDP determines a child may receive services that include purchases through Direct Assistance Fund 1, the parent or legal representative of the child may choose to develop the CFSP through an abbreviated planning process consisting of an interview with the child's Case Manager and a statement of assurances that the conditions of OAR 309-041-2070(2) have been met.

(a) The CFSP resulting from this process shall be written on forms provided by SPD.

(b) Services purchased through this plan option are limited to one or more of the following services:

(A) Behavior Consultation services as described in 309-041-2120(1)(a-b) and provided at SPD-approved rates;

(B) Community Inclusion services as described in 309-041-2120(2)(a-b);

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(C) Environmental Accessibility Adaptations as described in 309-041-2120(3)(a-d);

(D) Family Caregiver Supports as described in OAR 309-041-2120(4)(a-e);

(E) Family Training as described in OAR 309-041-2120(5)(a-b);

(F) In-Home Support as described in OAR 309-041-2120(6)(a)(A) and 309-041-2120(6)(b);

(G) Respite Care services as described in 309-041-2120(9)(a-b);

(H) Specialized Equipment and Supplies as described in OAR 309-041-2120(11)(a-b), except that purchases shall be limited to incontinence supplies; or

(I) Transportation Services as described in 309-041-2120(13)(a-b) and provided at SPD-approved rates.

(6) The Case Manager shall obtain and attach a Nursing Care Plan to the written Child and Family Support Plan when Family Support funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(7) Review of plan and resources. The Case Manager shall conduct and document reviews of plans and resources with families as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the Child and Family Support Plan;

(b) At least annually, and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the plan;

(B) Record final Family Support funds costs;

(C) Note effectiveness of purchases based on Case Manager observation as well as family satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of Family Support funds to purchase supports.

(8) Transition to another county of residence. The CDDP shall assist Family Support service recipients when the family and eligible child move to a county outside its area of service by:

(a) Continuing Family Support fund payments authorized by the CFSP which is current at the time of the move, if the support is available, through the end date of the CFSP; and

(b) Arranging orientation for the child and family to Family Support services provided by the CDDP of the new county of residence, including discussion of the process for assigning placement on the new CDDP's wait list if Family Support services are not immediately available.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2080

### Managing and Accessing Family Support Funds

(1) The CDDP shall allocate 100% of funds contracted by SPD for Family Support, but not for specifically-named children, to Direct Assistance Fund 1. This fund shall only be used to purchase one or more of the supports described in OAR 309-041-2120 for children according to each child's CFSP.

(a) The CDDP shall develop and implement a written plan for managing access to assistance with purchasing supports through Direct Assistance Fund 1 which is available for SPD review and which includes, but is not limited to:

(A) The number of children anticipated to receive service each year;

(B) The amount of Direct Assistance Fund 1 funds available per Plan Year for each child; and

(C) How unusual purchases and extraordinary costs are defined and the administrative process for review and approval of such purchases and costs based on cost-effectiveness and the necessity of the support for maintaining the child in the family home.

(b) Purchase of supports through Direct Assistance Fund 1 shall be offered to children and families in an order of service established according to OAR 309-041-2030(2)(b) as long as funds are available.

(c) The CDDP shall review Direct Assistance Fund 1 purchases and obligations at least every 90 days and shall provide opportunities for time-limited, short-term access to Family Support services to children and families waiting for services when additional long-term obligations cannot be supported by the funds available.

(2) SPD-Designated Funds. Funds contracted to a CDDP by SPD to serve specifically-named children to avoid out-of-home placement shall be used only to support those children. Services shall be provided according to each child's SPD-approved CFSP. This fund shall only be used to purchase supports described in 309-041-2120; however, when SPD-Designated

funds to support a child exceed \$20,000 per Plan Year, additional restrictions, specified in 309-041-2120 for each service, shall also apply. Continuing need for services shall be regularly reviewed according to SPD procedures.

(3) No child's supports shall be purchased using more than one Direct Assistance Fund concurrently.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2090

### Financial Limits of Family Support Services

(1) In any Plan Year, as defined in 309-041-2100(33), Family Support funds used to purchase supports for a child shall be limited to the amount of Family Support funds specified in the child's CFSP.

(2) Amounts specified in a child's CFSP for expenditure from Direct Assistance Fund 1 shall not exceed limits established by the CDDP, except that:

(a) Families and children receiving Self-Directed Support Services under OAR 309-041-1110 through 1170 as of July 1, 2003, the date of SPD-designated transfer of Self-Directed Support services for children to Family Support services governed by these rules, shall continue to receive assistance with purchase of supports through Family Support services provided that the CDDP receives sufficient Family Support funds from SPD to continue that assistance. Assistance shall be provided according to Self-Directed Support plans developed in conformance with OAR 309-041-1130 and current at the time of transfer and

(b) If a child's Self-Directed Support plan is current as of July 1, 2003, and is not time-limited, the level of assistance with purchasing supports authorized through that plan shall be continued through Family Support Direct Assistance Fund 1 through the end date of the current SDS plan and one additional Plan Year as long as:

(A) The child remains eligible for Family Support services;

(B) The child continues to require the level of support specified in the SDS plan in order to be maintained in the family home;

(C) The child's CFSP is current and conforms to the provisions of 309-041-2070; and

(D) Sufficient funds are available in the CDDP's Direct Assistance Fund 1.

(c) While the level of assistance with purchasing supports may continue, the types of supports purchased shall be limited to those described in 309-041-2120 and purchases shall be subject to review and approval processes specified by the CDDP according to 309-041-2080(1)(a)(D).

(3) Estimates used to establish the limits of financial assistance in the CFSP shall be based on written guidelines for costs of frequently-used services published and updated periodically by SPD whenever available and applicable.

(a) SPD guidelines notwithstanding, final costs shall not exceed local usual and customary charges for these services as evidenced by the CDDP's own documented review.

(b) The CDDP shall establish a process for review and approval of all purchases which exceed published guidelines and shall monitor the CFSP's involved for continued cost effectiveness.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2100

### Determining Eligibility for Access to Direct Assistance Fund 2 Due to Exceptional Needs

A child shall be determined eligible for services purchased through Direct Assistance Fund 2 when:

(1) The CDDP determines that the child has extraordinary physical management and health needs that require long-term, intensive, and specialized services on a daily basis as indicated by having:

(a) One or more of the following care requirements:

(A) Total assistance with all activities of daily living, i.e. acquiring nutrition, personal hygiene, toileting, dressing, personal mobility, and management of medications and treatments;

(B) Constant visual or auditory supervision; or

(C) Requires Licensed Practical Nurse or Registered Nurse care at home or caregiver who has been trained to do skilled nursing tasks; and

(b) Circumstances and conditions included in three or more of the following categories:

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(A) Feeding: Uses G-tube, J-tube, or NG-tube; experiences reflux with airway involvement (i.e. requires special positioning, medication to control); or difficult/prolonged feeding due to high risk of aspiration rather than any behavioral cause, e.g. uncontrolled seizures, unable to chew, swallowing issues;

(B) Respiratory: Uses oxygen; has tracheotomy; requires suction; or uses ventilator;

(C) Physical Management: Weight over 50 pounds; stage 2-4 skin breakdown; or frequent re-positioning, i.e. child is unable to reposition self and requires re-positioning at minimum of every three hours including nighttime due to issues such as skin breakdown, compromised lungs, reflux, or orthopedic impairments;

(D) Urinary: Incontinence after the age of 7; uses catheter; or requires regular dialysis;

(E) Neurological: Severe seizures, uncontrolled, which require emergency medication to stop or physical intervention;

(F) Metabolic: Insulin-dependent diabetes or other significant metabolic disorder; or

(G) Vascular: Must use IV at home; or

(2) The CDDP determines that the child has extraordinary behavior support needs, exhibiting behavior that causes injury to self or others, extensive property damage, or both and which requires intervention. A child shall only be considered to have such extraordinary, severe behavior when, in the absence of intervention which may keep the incidence of behavior low or non-existent:

(a) At least one of the following statements is true:

(A) The child's behavior causes serious injury to self, others, or both;

or

(B) The child's behavior causes significant damage to property; and

(b) All of the following statements are true:

(A) The child's behavior requires modifications to the environment, including but not limited to constant supervision, to prevent the damaging or injurious behavior from occurring;

(B) The child's behavior continues, or—in the opinion of a medical or behavioral professional—would continue in the absence of continuous preventive measures—over a sixty (60) day period at a rate of three (3) times a week; and

(C) The child's behavior prevents the family from participating in routine family activities; or

(3) The CDDP determines that the child's primary caregiver's health or household composition severely negatively affects the ability of the caregiver to provide care the child requires to remain in the home. This determination shall only be made when:

(a) The primary caregiver has a chronic or temporary physical or psychological condition which has been diagnosed by a medical professional, and which negatively affects the caregiver's ability to support the child in activities of daily living as defined in and meet the child's health and safety needs; or

(b) The primary caregiver is caring for at least one other person in the home, in addition to the child, who has a disability, e.g. a spouse, another child, or an elderly parent, and for whose care the primary caregiver does not receive pay. Because of disability, additional person(s) are either completely dependent on physical assistance with any one activity of daily living or require some level of physical or verbal assistance to complete three or more activities of daily living.

(4) After initial determination of eligibility for Direct Assistance Fund 2, the CDDP shall review eligibility:

(a) With recipients of Direct Assistance Fund 2 services during development of each annual CFSP and

(b) With children and families who have been waiting for services for at least a year prior to entry into Direct Assistance Fund 2 services to confirm continued eligibility.

(5) Direct Assistance Fund 2 eligibility determination and eligibility reviews shall be conducted by the child's Case Manager. Information used to make determinations and conduct reviews must include personal observation and discussions with the child and family in the family home.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Suspended by MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2110

### Conditions for Family Support Direct Assistance Fund Purchases

(1) Plan required. A CDDP shall only use Family Support funds to assist families to purchase supports in accordance with Child and Family

Support Plans that meet requirements for development and content in 309-041-2070.

(2) Assistance is a social benefit. Goods and services purchased with Family Support funds to support specific individual children and families shall be provided only as social benefits as defined in OAR 309-041-2010(39).

(3) The CDDP shall arrange for supports purchased with Family Support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to freely redirect Family Support funds to purchase supports and services from another qualified provider.

(A) The CDDP shall provide written instruction about the limits and conditions of group services to families who choose to combine Family Support funds to purchase such services;

(B) Each child's support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one child; and

(C) The CDDP must evaluate combined arrangements that result in creation of provider organizations or general business providers to determine whether license or certification is required under Oregon law for the organization to provide services for children.

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 309-041-2010(34) and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the child or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home;

(e) According to Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) According to OAR 309-041-2140 governing provider qualifications.

(4) Independent Provider, Provider Organization, General Business Provider agreements and responsibilities. When Family Support funds are used to purchase care, training, supervision or other personal assistance for children, the CDDP shall require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse as defined in 309-041-2010(1);

(b) Responsibility to immediately notify the child's legal representative, or any other person specified by the child's legal representative, of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual care, training, or supervision and which may have a serious effect on the health, safety, physical or emotional well-being, or level of services required; and

(c) Limits of payment:

(A) Family Support fund payments for the agreed-upon services shall be considered full payment and the provider under no circumstances shall demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program;

(B) The provider shall bill all third party resources before using Family Support funds unless another arrangement is agreed upon by the CDDP and described in the Child and Family Support Plan.

(d) The provisions of 309-041-2110(7) regarding sanctions that may be imposed on providers.

(5) Amount, method and schedule of payment. The CDDP may disburse Family Support funds to or on behalf of families up to the amount agreed upon in a Child and Family Support Plan that has been signed by the Case Manager and the child's parent or other legal representative.

(a) The method and schedule of payment shall be specified in written agreements between the CDDP and the individual's legal representative; and

(b) In the case of children whose Plan Year costs in SPD-Designated Funds exceed \$20,000, the CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. In such cases, the CDDP shall pay, or arrange through fiscal intermediary services to pay, qualified providers after approved services

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described in Child and Family Support Plans have been satisfactorily delivered.

(6) Documentation required. The CDDP shall inform families in writing of records and procedures required in 309-041-2160 regarding expenditure of Family Support funds for direct assistance. During development of the Child and Family Support Plan, the Case Manager shall determine the need or preference for the CDDP to provide support with documentation and procedural requirements and shall delineate responsibility for maintenance of records in written service agreements.

(7) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) Sanction(s) may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with Family Support funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Had his/her professional license suspended, revoked, or otherwise limited, or surrendered his/her license;

(D) Failed to safely and adequately provide the services authorized;

(E) Had an allegation of abuse or neglect substantiated against him or her;

(F) Failed to cooperate with any Department or CDDP investigation and/or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Not adhered to the provisions of OAR 309-041-2110(4) and 309-041-2130; or

(K) Been suspended or terminated as a provider by another agency within the Department.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with Family Support funds;

(B) The provider may not be allowed to provide services for a specified length of time and/or until specified conditions for reinstatement are met and approved by the CDDP or Department, as applicable;

(C) The CDDP may withhold payments to the provider.

(c) If the CDDP makes a decision to sanction a provider, the CDDP shall notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator of the Department or designee.

(e) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by any Department agency may not be authorized as providers of Medicaid services.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2120

### Supports Purchased with Direct Assistance Funds

When conditions of purchase in OAR 309-041-2110 are met, and provided purchases are not prohibited under OAR 309-041-2130, Direct Assistance Funds may be used to purchase:

(1) Behavior Consultation. Behavior consultation consists of: assessment of the child, the needs of the provider or family and the environment; development of a positive behavior support plan; implementation of the positive behavior support plan with the provider or family; and revision and monitoring of the plan as needed. Services may include training, modeling, and mentoring the family or provider, development of visual communication systems as behavior support strategies, and communicating as authorized by the family with school, medical or other professionals about the strategies and outcomes of the behavior support plan.

(a) Providers may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists who:

(A) Have education, skills, and abilities necessary to provide behavior consultation services;

(B) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

(C) Submit a resume to the CDDP indicating at least one of the following:

(i) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(ii) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(b) Behavior consultation does not include: mental health therapy or counseling; health or mental health plan coverage; educational services, including, but not limited to, consultation and training for classroom staff, adaptations to meet needs of the child at school, assessment in the school setting, or any service identified by the school as required to carry out the child's Individual Education Plan.

(2) Community Inclusion. Community inclusion services assist a child to acquire, retain or improve skills. These services take place in a non-residential, non-educational setting, separate from the home in which the child lives. The services are provided on a regularly-scheduled basis. Community Inclusion Supports include assistance to participate in generic community services, facilities, businesses, recreation and leisure. These supports are provided for a child to participate in activities to facilitate independence and promote community inclusion in settings chosen by the child and the child's parent(s) or other legal representative(s).

(a) Community inclusion services available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include, but are not limited to: personal assistance with eating, toileting, mobility during recreational activities; the cost of individualized support provided to the child in specialized camps (but not general, administrative or room and board fees); the cost of daily support in after-school activities when a child of the same age (twelve and over) without disabilities would not require such support.

(b) Community inclusion services available to children other than those children specified in OAR 2120(2)(a) include, but are not limited to, the services indicated in OAR 2120(2)(a) as well as fees and supplies required for the child and provider to participate in individualized services; peer coaching or mentoring to participate in community activities; specialized camps, and adaptive recreational programs.

(c) Community Inclusion services do not: replace normal parental roles and responsibilities in a child's acquisition and retention of communication, socialization, recreation, and self-help skills; replace normal parental responsibility for child care while the parents work or go to school; or include education and other instruction and support available according to the Individuals with Disabilities Education Act. Examples of activities that are not provided as Community Inclusion services include, but are not limited to: substitute care for child under 12 years of age while parents work or go to school; education services; tuition to private schools; payment of programs or services in lieu of school; legal fees such as those for setting up trusts, guardianships, providing representation at hearings regarding educational services; incentive payments to employers to hire youth with disabilities.

(3) Environmental Accessibility Adaptations. Environmental accessibility adaptations are physical adaptations to a child's home or family vehicle which are necessary to ensure the health, welfare, and safety of the child in the home, or which enable the child to function with greater independence around the home and in family activities.

(a) Environmental Accessibility Adaptations available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of shatter-proof windows; hardening of walls or doors; specialized, hardened, waterproof or padded flooring; an alarm system for doors or windows; protective covering for smoke detectors, light fixtures, and appliances; sound and visual monitoring systems; fencing; installation of ramps and grab-bars, installation of electric door openers; adaptation of kitchen cabinets/sinks; widening of doorways; handrails; modification of bathroom facilities; individual room air conditioners for children whose temperature sensitivity issues cre-

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ate behaviors or medical conditions that put themselves or others at risk; installation of non-skid surfaces; overhead track systems to assist with lifting or transferring; specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the child.

(b) Environmental Accessibility Adaptations available to children other than those children specified in OAR 309-041-2120(3)(a) include adaptations listed in OAR 309-041-2120(3)(a) as well as modifications to a vehicle to meet the unique needs of the child (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle). Adaptations may also include modifications to a second site, such as the home of a non-custodial parent or a neighbor providing frequent respite services, when those modifications are required for the child to be supported in the family home and are not a provider's responsibility as a reasonable accommodation under the Americans with Disabilities Act.

(c) Examples of what environmental accessibility supports do not provide include, but are not limited to: adaptations or improvements to the home which are not cost effective, are of general utility to the household, or are not of direct medical or remedial benefit to the child, such as carpeting, roof repair, central air conditioning; adaptations that add to the total livable, heated square footage of the home; generic fire safety equipment; general household maintenance and repair.

(c) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans to make homes safe and accessible.

(e) Environmental accessibility adaptation providers must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

(4) Family Caregiver Supports. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for their children.

(a) Family Caregiver Supports available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 are restricted to:

(A) Child- and family-centered planning facilitation and follow-up;

(B) Fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family; and

(C) Assistance with development of tools such as job descriptions, contracts, and employment agreements.

(b) Family Caregiver Supports available to children other than those children specified in OAR 309-041-2120(4)(a) include services listed in OAR 309-041-2120(4)(a) as well as:

(A) Assistance with family costs associated with recruiting, hiring, and directing providers, including advertising, translation services;

(B) Cost of additional homeowner's insurance, but not Workers Compensation Insurance, required to cover domestic employees providing in-home care and supervision; and

(C) Workplace materials and supplies that may be required for paid caregivers in the family home.

(5) Family Training. Family training services are training, coaching, and support provided to the family of a child with developmental disabilities to increase capabilities to care for, support and maintain the child in the home.

(a) Family Training services available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include, but are not limited to: instruction about treatment regimens and use of equipment specified in the Child and Family Support Plan; information, education and training about the child's disability, medical, and behavioral conditions. Family training services may be provided in various settings by various means, including but not limited to: psychologists licensed under ORS 675.030; professionals licensed to practice medicine under ORS 677.100; social workers licensed under ORS 675.530; counselors licensed under ORS 675.715; organized conferences and workshops, prior-authorized by the CDDP, that are specifically related to the child's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Family Training services available to children other than those children specified in OAR 309-041-2120(5)(a) include services listed in OAR 309-041-2120(5)(a) as well as materials such as computer programs, books, and audio/video media; organized conferences and workshops, prior-authorized by the CDDP, offering training and information about disabilities and disability resources in general; parent-to-parent information-

sharing and mentoring; and support for the family to relieve the stress associated with caring for child with disabilities.

(c) Examples of what family training services do not provide include, but are not limited to: mental health counseling, treatment, or therapy; more than \$500 per family in registration fees, lodging, and travel costs for any single training event; training for paid caregivers; legal consultation fees; training for families to carry out educational activities in lieu of school; vocational training for family members.

(6) In-home Support. In-home support services are care, training, and supervision provided based on the needs of the child that must be met for the child to live in the family home. These services support the child to live as independently as appropriate for the child's age.

(a) In-home support services available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include, but are not limited to providers who come into the family home and assist the child with: activities of daily living; medical and physical health care — including delegation of nursing tasks; behavior management; maintenance of skills and behaviors required for the child to live in the community; and training and support in personal environmental skills such as planning and preparing meals, budgeting, laundry, and housecleaning to the extent that a child without disabilities would normally be acquiring such skills.

(b) In-Home Support services available to children other than those children specified in OAR 309-041-2120(6)(a) include services listed in OAR 309-041-2120(6)(a) as well as: maintenance of expressive and receptive skills in verbal and non-verbal language to the extent required to function in the home; functional application of acquired reading and writing skills; assistance with extraordinary household costs incurred only because of a child's disability such as space for paid overnight caregivers to sleep, payment of water or sewage bill above normal use due to child's use of water to self-calm.

(c) Examples of what in-home support services do not provide include, but are not limited to: support generally provided at the child's age by parents or other family members; educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act; services provided by the parent, stepparent, foster parent, or other legal representative of the child; behavior management supports that are not based on positive behavioral theory and practice; health insurance; legal consultation fees for establishing domestic employment arrangements; clothing; mortgage or rent payments; home schooling; telephone, television, internet services.

(d) In-Home Support services available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 shall not be provided on a 24-hour shift-staffing basis. The child's parent(s) or other legal representative(s) shall be expected to provide at least eight (8) hours of care and supervision for the child each day; In-Home Support services may only be provided when the child is home and available for service during the remainder of the 24-hour period.

(7) Occupational Therapy. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family and provider training, consultation, feeding adaptations, and direct therapy provided by an appropriately licensed or certified occupational therapist.

(b) Occupational therapy services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(8) Physical Therapy. Physical therapy services are services provided by a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified physical therapist.

(b) Physical therapy services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(9) Respite Care. Respite care services are short-term care and supervision provided intermittent basis because of the absence, or need for relief



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of, persons normally providing the care to a child with developmental disabilities.

(a) Respite care services available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include temporary or overnight respite services provided in a variety of settings, including, but not limited to: the home of the child; a licensed group home or foster home; a licensed day care center; or a community care facility or respite program that is not a private residence.

(b) Respite Care services available to children other than those children specified in OAR 309-041-2120(9)(a) include services listed in OAR 309-041-2120(9)(a) as well as services provided in the home of the respite provider and services provided in a specialized camp.

(c) Respite services do not include: ongoing services which occur on a regular schedule such as 8-hours-a-day, 5-days-a-week or are provided to allow the child's parents to attend school or work; vacation travel and lodging expenses; cost of the child's meals unless part of a short-term stay in a licensed group home or foster home.

(10) Special Diets. This service is not available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000. For other children receiving Family Support Services, special diets are specially prepared food supplements or particular types of food supplements needed to sustain the child in the family home, ordered by a physician, and monitored at least every six months by a dietitian licensed according to ORS 691.415 through 691.465. These supplements may include, but are not limited to, high caloric supplements, gluten-free supplements, or metabolic supplements. Special diet services are not intended to meet an individual's complete daily nutritional requirements and do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability. Special diets do not include experimental nutritional supplements or regimens, such as combinations of vitamins and minerals purported to cure or alleviate symptoms of autism, Downs' Syndrome, or other developmental disabilities and which have not achieved general professional acceptance as essential to management of these conditions.

(11) Specialized Equipment and Supplies. Specialized equipment and supplies are devices, aids, controls, supplies, or appliances specified in the Child and Family Support Plan that enable children to increase their abilities to participate in or perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment.

(a) Specialized Equipment and Supplies available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples of specialized equipment and supplies include, but are not limited to: mobility, communication, incontinence, and positioning devices; age-appropriate hospital beds; apnea monitors; generators for technology-dependent individuals; equipment required to obtain urgent medical assistance; a manual wheelchair to use while power chair is being repaired; a second wheelchair that can fit into interior doors while larger power chair remains outside; latex gloves and similar supplies used in personal care; adaptive communication devices and supplies; customized equipment such as plates, bowls, utensils, glasses, trays that allow a child to eat independently or with minimum assistance.

(b) Specialized Equipment and Supplies services available to children other than those children specified in OAR 309-041-2120(11)(a) include services listed in OAR 309-041-2120(11)(a) as well as: equipment, furnishings, or supplies which are not commercially manufactured specifically to serve a medical or remedial function, but which have or may be easily modified to have important characteristics that safely and cost-effectively provide necessary supports; extra-heavy bed to help prevent injuries and property destruction; water table, swing, other sensory devices or equipment used by child with autism to self-calm extra cost of shoes or other clothing due to required modifications or frequency of replacement caused by extraordinary wear; used equipment that has been certified by an appropriate professional as safe for mobility or positioning; adaptive switches.

(c) Examples of items that are not Specialized Equipment and Supplies include, but are not limited to: equipment or supplies which are not of direct medical or remedial benefit to the child; equipment or supplies that may be purchased through other means such as the Medicaid State plan or other public or private means available to the child; standard items of clothing in amounts normally required by children of the same age; cost equivalent of toys and activities typically purchased by parents of children of the same age; equipment and furnishings of general household use; items required solely to allow a child to participate in school; fees for maintain-

ing telephone services; trampolines other than small "jogger" type; beds which restrict a child's freedom of movement when the bed is used to control behavior and when the child has passed the age when cribs and similar arrangements are normally used to protect a child from falling out of bed.

(12) Speech, Hearing, and Language Services. Speech, hearing and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified physical therapist.

(b) Speech, hearing, and language services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(13) Transportation Services. Transportation services allow children to gain access to community services, activities, and resources.

(a) Transportation services available to children whose Plan Year costs in SPD-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. These services are provided to meet non-medical transportation needs that are beyond the scope of normal parental responsibility for transporting a child for leisure, recreation, and other non-medical community pursuits. Examples of such transportation services include, but are not limited to: transportation provided by common carriers, taxicab or bus in accordance with standards established for these entities; assistance with purchase of a pass for public transportation required to accommodate wheelchair or other equipment and supervision needs; reimbursement of operational expenses of agency/staff vehicles used for transporting children, not to exceed established rates.

(b) Transportation services available to children other than those children specified in OAR 309-041-2120(13)(a) include services listed in OAR 309-041-2120(13)(a) as well as payment per mile for extraordinary mileage required to transport a child to urban medical centers from distant rural communities.

(c) Transportation services do not include: transportation normally provided by schools and by parents for children of similar age without disabilities; purchase of any family vehicle; vehicle maintenance and repair; reimbursement for out-of-state travel expenses; ambulance services; transportation services that may be obtained through other means such as the State Medicaid Plan or other public or private resources available to the child.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

### 309-041-2150

#### Family Support Services Administration and Operation

(1) Family leadership. The CDDP may appoint a Family Support Policy Oversight Group to advise and assist the CDDP in matters related to Family Support services such as evaluating the effectiveness of Family Support services, evaluating family satisfaction with Family Support services, improving availability of resources to meet children's support needs, and developing the plan for management of Direct Assistance Fund 1 required by OAR 309-041-2080(1)(a) When the CDDP elects to appoint such a group, the CDDP shall develop and have available for review brief written descriptions of the group's purpose and scope, how membership is determined, and what process shall be used to resolve concerns or disagreements between the CDDP and its Family Support Policy Oversight Group about the provision of Family Support services.

(2) Case Manager training. The CDDP shall provide or arrange for Case Managers to receive SPD-approved training needed to provide Family Support services, including, but not limited to, child- and family-centered planning processes, employer-related supports, and individualized budgeting for supports.

(3) Fiscal Intermediary requirements. Providers of fiscal intermediary services purchased by the CDDP with Family Support Direct Assistance Funds according to Child and Family Support plans shall:

(a) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;

(b) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(c) Establish and meet the time lines for payments;

(d) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

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(e) Generate service, management, and statistical information and reports required by the CDDP to effectively manage Family Support services and by families to effectively manage supports;

(f) Maintain flexibility to adapt to changing circumstances of children and families; and

(g) Provide training and technical assistance to families as required and specified in Child and Family Support Plans.

(4) General record requirements. The CDDP shall maintain records in compliance with this rule, applicable state and federal law, other state rules regarding audits and clinical records, and the most current edition of the Mental Health and Developmental Disability Services Division Handbook on Confidentiality.

(a) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, CDDP's under these rules shall be considered "providers" as defined in ORS 179.505(1), and 179.505 shall be applicable. Access to records by SPD does not require authorization by the family. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) Individual records. Records for children who receive Family Support services shall be kept up-to-date and shall include:

(A) Assigned placement in order of service, with information used to determine placement;

(B) An easily-accessed summary of basic information, including child's name, parents' names, legal representative if other than parents, conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, and child's financial benefit information.

(C) Records related to receipt and disbursement of Family Support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 309-041-2140 and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule;

(D) Incident reports involving CDDP staff;

(E) Assessments used to determine supports required, preferences, and resources;

(F) Child and Family Support Plan and reviews;

(G) Case Manager correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(c) General financial policies and practices. The CDDP shall:

(A) Maintain up-to-date accounting records accurately reflecting all Family Support services revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(d) Records retention. Records shall be retained in accordance with OAR 166-005-000 through 166-040-1050 (State Archivist). Financial records, supporting documents, statistical records, and all other records (except individual records) shall be retained for a minimum of three years after the close of the contract period, or until audited. Individual records shall be kept for a minimum of seven years.

(5) Complaints, Grievances, Appeals. The CDDP shall provide for review of complaints, grievances, and appeals by or on behalf of children related to Family Support services as set forth in OAR 411-320-0170(c). In addition, each time the CDDP takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid:

(a) The CDDP shall notify the child and the child's parent(s) or other legal representative(s) of the right to a hearing and the method to obtain a hearing. The CDDP shall mail the notice, or personally serve it to the child's parent(s) or other legal representative(s) ten (10) days or more prior to the effective date of an action.

(A) The CDDP shall use the Oregon Medical Assistance Program (OMAP) form 3030 or comparable Department-approved form for such notification.

(B) This notification requirement shall not apply if an action is part of, or fully consistent with, the Child and Family Support Plan and the child's parent(s) or other legal representative(s), have agreed with the action by signature to the plan.

(b) The child's parent(s) or other legal representative(s) may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the CDDP. At the time the CDDP denies a written request for additional or different services, it must notify

the appealing party, in writing, of the information specified in paragraph (2)(c) of this section.

(c) A notice required by paragraph (5)(a) or (5)(b) of this section shall be served upon the appealing party personally or by certified mail. The notice shall state:

(A) What action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to a contested case hearing in accordance with the Oregon Attorney General's model rules at OAR 137-003-501 through 137-003-0700 and 42 CFR Part 431, Subpart E;

(E) That the CDDP's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice shall take effect by default if the Department representative does not receive a request for a hearing from the party within 45 days from the date that the CDDP mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(H) An explanation of the circumstances under which CDDP services will be continued if a hearing is requested.

(d) If the child's parent(s) or other legal representative(s) disagree with a decision or proposed action by the CDDP, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the CDDP mailed the notice of action.

(e) The child's parent(s) or other legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(f) If the child's parent(s) or other legal representative(s) request an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department shall continue the services. The Department shall continue the services until whichever of the following occurs first, but in no event shall services be continued in excess of ninety days from the date of the child's parents' or other legal representatives' request for an administrative hearing:

(A) The current authorization expires;

(B) The hearings officer issues a proposed order and the Department renders a final order about the complaint; or

(C) The child is no longer eligible for Medicaid benefits.

(D) The Department shall notify the child's parent(s) or other legal representative(s) that it is continuing the service. The notice shall inform the child's parent(s) or other legal representative(s) that, if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department shall reinstate services if:

(A) The Department takes an action without providing the required notice and the child's parent(s) or other legal representative(s) requests a hearing;

(B) The Department does not provide the notice in the time required in this rule and the child's parent(s) or other legal representative(s) requests a hearing within ten days of the mailing of the notice of action; or

(C) The post office returns mail directed to the child's parent(s) or other legal representative(s), but the location of the child's parent(s) or other legal representative(s) becomes known during the time that the child is still eligible for services.

(D) The Department shall promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the child, or the Department decides in the child's favor before the hearing.

(h) The Department representative and the child's parent(s) or other legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575 "Prehearing Conference". The informal conference may also be used to:

(A) Provide an opportunity for the Department and the child's parent(s) or other legal representative(s) to settle the matter;

(B) Ensure the child's parent(s) or other legal representative(s) understands the reason for the action that is the subject of the hearing request;

(C) Give the child's parent(s) or other legal representative(s) an opportunity to review the information that is the basis for that action;

(D) Inform the child's parent(s) or other legal representative(s) of the rules that serve as the basis for the contested action;

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(E) Give the child's parent(s) or other legal representative(s) and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the child's parent(s) or other legal representative(s) wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the CDDP.

(i) The child's parent(s) or other legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(j) The Department may provide to the child's parent(s) or other legal representative(s) the relief sought at any time before the final order is served.

(k) Withdrawals. A child's parent(s) or other legal representative(s) may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The Department shall send a final order confirming the withdrawal to the last known address of the child's parent(s) or other legal representative(s). The child's parent(s) or other legal representative(s) may cancel the withdrawal up to the tenth workday following the date such an order is issued.

(l) Proposed and final orders.

(A) In a contested case, the hearings officer shall serve a proposed order on the child, the child's parent(s) or other legal representative(s) and the Department.

(B) If the hearings officer issues a proposed order that is adverse to the child, the child's parent(s) or other legal representative(s) may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department not later than ten days after service of the proposed order. The child's parent(s) or other legal representative(s) may not submit additional evidence after this period unless the Department prior-approves. After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

(6) Other operating policies and practices. The CDDP shall develop and implement such written statements of policy and procedure in addition to those specifically required by this Rule as are necessary and useful to enable the agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Publications referenced are available from the agency.]

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

## 309-041-2170

### Quality Assurance

The CDDP shall participate in statewide quality assurance, service evaluation and regulation activities as directed by SPD.

Statutory Auth.: ORS 409.050

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007 & 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03

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## Department of Human Services, Public Health Chapter 333

**Adm. Order No.:** PH 8-2003

**Filed with Sec. of State:** 6-20-2003

**Certified to be Effective:** 6-20-03

**Notice Publication Date:** 4-1-03

**Rules Adopted:** 333-069-0075, 333-069-0085

**Rules Amended:** 333-069-0005, 333-069-0015, 333-069-0020, 333-069-0030, 333-069-0040, 333-069-0050, 333-069-0060, 333-069-0070, 333-069-0080, 333-069-0090

**Subject:** OAR 333-069-0005 is amended to limit certification to legally registered firms; to expand the scope of the rules to apply to paint removal and stabilization; and to incorporate EPA language describing lead-based paint work that can be done by a property owner.

OAR 333-069-0015 is amended to support the following changes: 1) Adoption of EPA Section 403, *Identification of Dangerous Levels of Lead*; Final Rule (40 CFR 745); Final Rule (1/5/01); 2) Regulation of paint removal and stabilization; 3) Establishment

of a procedure for 'preliminary clearance'; 4) Adoption of EPA Section 406B, *Requirements for Hazard Education Before Renovation of Target Housing*; (40 CFR 745). Final Rule (6/1/98); and Clarification of matters concerning certification, abatement, testing and evaluation, and enforcement.

OAR 333-069-0020 is amended to make the following changes: 1) Clarification of the expiration date of certifications; 2) Application of certain work practice standards for paint removal and stabilization; 3) Establishment of the passing score on qualifying examination; 4) Establishment of the course completion date as the standard for certification eligibility; 5) Change identification badge availability requirements; and 6) Authorizes revocation of exemption for a public agency that violates the terms of the 'in-house' exemption.

OAR 333-069-0030 is amended to make the following changes: 1) Clarify language about qualifications by eliminating reference to accreditation standards; 2) Change eligibility requirements for Risk Assessor; 3) Change eligibility requirements for Project Designer; 4) Allows certification candidates to complete a refresher course if certificate has been expired for more than six months but less than one year.

OAR 333-069-0040 is amended to make the following changes: 1) Requires that individuals removing or stabilizing paint on target housing and child occupied facilities obtain a Permit; 2) Establishes the process for applying for a Permit. 3) Requires self-employed individuals applying for certification to submit an affidavit to document work experience; 4) Eliminates the Respiratory/Personal Protective Equipment training requirement; 5) Updates and enhances program contact information; and 6) Requires Permit holders to give notice of address change.

OAR 333-069-0050 is amended to make the following changes: 1) Provides for annual renewal of a Permit; 2) Exempts Permit holders from examination requirements; 3) Changes language to streamline certificate renewal/recertification requirements; 4) Requires recertification no more than three years after issuance of original certificate; 5) Requires certification applicants to pass a standard training course and qualifying exam if certificate has been expired for more than one year.

OAR 333-069-0060 is amended to make the following changes: 1) Establishes the Permit expiration date; 2) Eliminates application process for applicants with certificates expiring on dates other than June 30.

OAR 333-069-0070 is amended to make the following changes: 1) Adoption of EPA Section 403, *Identification of Dangerous Levels of Lead*; Final Rule (40 CFR 745); Final Rule (1/5/01), including changes in work practices for Risk Assessment, for soil abatement, clearance sampling and analysis, and determinations of lead-based paint hazards; 2) Requires that paint removal and stabilization use prescribed and avoid proscribed work practices; 3) Requires lead-hazard warning signage for every abatement and paint removal worksite and specifies standards for readability; 4) Requires Inspectors to use NLAPP accredited laboratory for analysis of dust and soil samples; 5) Re-instates EPA language about on-site presence requirements for abatement Supervisor; 6) Establishes qualifying projects for which a certified Project Designer is required; 7) Assigns supervisory responsibilities to either a certified Supervisor or certified Project Designer; 8) Establishes specific requirements for submission of Notice of Abatement; 9) Requires certified Supervisor or certified Project Designer to generate a written occupant protection plan and have it available for inspection; 10) Requires an abatement scope of work (defined) to be available at the worksite for inspection; 11) Establishes the Clearance Report requirement; 12) Establishes timelines for required reports to be submitted to the building owner or client. 12) Provides a sample form on which all required reports may be submitted to DHS; 12) Authorizes the agency to post warning signage at a property upon a determination that a lead-based paint hazard exists; 13) Forbids removal of signage posted by the agency upon determination that a lead-based paint

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exists until such hazards have been remediated; 14) Clarifies that this rule requiring status reports if a claim is being decided in court or arbitration applies to large commercial claims and other claims filed under ORS 701.146.

OAR 333-069-0075 is adopted to incorporate the provisions of EPA Section 406B, Requirements for Hazard Education Before Renovation of Target Housing; Final Rule. 6/1/98. All renovators (defined) are required to notify clients and/or occupants of pre-1978 target housing and child-occupied facilities about possible lead-based paint hazards. The notice requires the distribution of a specified pamphlet. The renovator must obtain signed acknowledgment and maintain records for three years.

OAR 333-069-0080 is amended to make the following changes: 1) Changes identification badge worksite availability requirements for certified individuals; 2) Adds being subject to an administrative order of the Construction Contractors Board to criteria justifying denial, suspension or revocation of certification; 3) Eliminates OAR 333-069-0080(1)(m) as redundant of OAR 333-069-0080(1)(c); 4) Adds being subject to an administrative order of the Construction Contractors Board to criteria justifying denial, suspension or revocation of certification.

OAR 333-069-0085 is adopted to establish a Schedule of Penalties for violation of Division 69 of OAR Chapter 333. Penalties are progressive in terms of 1) severity (impact deemed on the environment or public health) and 2) compliance history. Levels One, Two and Three correspond to degree of violation severity. A civil penalty is established for removing a lead-hazard warning sign posted by the agency. Provides that civil hearings associated with civil penalty proceedings will be conducted in accordance with the procedures of the Construction Contractors Board per OAR 812-005-0000(1) and (2).

OAR 333-069-0090 is amended to make the following changes: 1) Eliminate the fee for certification, renewal or recertification for certificates expiring between January 1 and June 30; 2) Establish an application fee for a Permit.

All amended sections contain the following correction: References to “the Oregon Health Division”, “the Health Division” and “the Division” are changed, respectively to “the Oregon Department of Human Services” or “the Department”. This change reflects the administrative reorganization of the agency.

**Rules Coordinator:** Jana Fussell—(503) 731-4320

## 333-069-0005

### Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 431.920.

(2) Purpose:

(a) The purpose of these rules is to address Oregon’s need for a qualified and properly trained workforce to perform inspection, risk assessment and removal of hazards associated with lead-based paint, to safeguard the environment and protect human health, and the health of building occupants, especially for high-risk groups (children under 6 years of age), from lead-based paint hazards.

(b) These rules prescribe the requirements for certification of individuals and legally registered Firms engaged in lead-based paint activities in target housing and child occupied facilities.

(c) These rules will establish work practice standards for the performance of lead-based paint inspection, risk assessment, and paint removal and stabilization activities for individuals and Firms and will require that all lead-based paint activities be performed only by certified individuals and Firms.

(3) Scope:

(a) These rules apply to all individuals and Firms who are engaged in lead-based paint activities as defined in OAR 333-069-0015(38), except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner’s immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(b) These rules establish the requirement that lead-based paint activities be performed only by certified individuals and legally registered Firms.

(c) These rules prescribe the requirements for, and the manner of, certifying competency of applicants for certification of Lead-Based Paint Inspector, Risk Assessor, Supervisor, Project Designer, and Worker, and of legally registered Firms employing such individuals.

(d) These rules prescribe work practice standards for the removal or mitigation of lead-based paint hazards and for the performance of lead-based paint inspection and risk assessment, and those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the Department may deny, suspend, or revoke certification.

(e) These rules establish fees to the extent necessary to defray costs of those activities prescribed herein.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0015

### Definitions

As used in these rules unless otherwise required by context:

(1) “Abatement” means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

(a) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(b) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures,

(c) Specifically, abatement includes, but is not limited to:

(A) Projects for which there is a written contract or other documentation, which provides that an individual or Firm will be conducting activities in or to a residential dwelling or child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards and described in subsections (1)(a) and (1)(b) above.

(B) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed Firms or individuals, unless such projects are covered under subsection (1)(d) of this definition.

(C) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by Firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under subsection (1)(d) of this section.

(D) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

(d) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) “Accredited Training Program” means a training program provisionally accredited or accredited by the Department, either directly or through a reciprocity agreement with other jurisdictions, to provide training for individuals engaged in lead-based paint activities.

(3) “Administrator” means the Assistant Director for Health Services of the Department of Human Services.

(4) “Arithmetic mean” means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

(5) “Certified” means successful completion of a training program accredited by the Department, passage of a certification examination administered by the Department and satisfaction of any other requirements for the appropriate discipline, and submittal and approval of the appropriate application by the Department for inspection, risk assessment or abatement activities in target housing and child occupied facilities.

(6) “Certified Firm” means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the Department has issued a certificate under these rules.

(7) “Chewable surface” means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable

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surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

(8) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, six years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

(9) "Clearance examination standards" means a maximum of 40 micrograms of lead in dust per square foot on floors, 250 micrograms of lead in dust per square foot on interior window sills, and 400 micrograms of lead in dust on window troughs.

(10) "Common area" means a portion of a building that is generally accessible to all occupants that may include, but that is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(11) "Common area group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

(12) "Component" means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

(13) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(14) "Contact hour" means 60 minutes of lead-based paint related training which may include a break of not more than ten minutes.

(15) "Containment" means a process or arrangement of materials to protect workers and the environment by controlling exposure to the lead-contaminated dust and debris created during an abatement.

(16) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited lead-based paint training course.

(17) "Course completion certificate" means documentation issued by an accredited training provider to an individual as proof of successful completion of a Department-accredited lead-based paint training course.

(18) "Critical barrier" means a containment structure that allows for the passage of persons or materials.

(19) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during a course or continuing education instruction.

(20) "Department" means the Oregon Department of Human Services.

(21) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(22) "Discipline" means a specific type or category of lead-based paint activity.

(23) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(24) "Documented methodologies" are written methods or protocols used to sample for the presence of lead in paint, dust, and soil as recommended in U.S. Department of Housing and Urban Development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing", revised, October, 1997; "Agency Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil", September, 1995; and "EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling", March 1995.

(25) "Dripline" means the area within 3 feet surrounding the perimeter of a building.

(26) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40  $\mu\text{g}/\text{ft}^2$  on floors or 250  $\mu\text{g}/\text{ft}^2$  on interior window sills based on wipe samples.

(27) "Emergency" means a situation in which failure to act promptly would likely result in immediate harm to persons or property.

(28) "Emergency renovation operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that

were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

(29) "Firm" means a sole proprietorship, corporation, association, firm, partnership, or joint stock company.

(30) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(31) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

(32) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(33) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(34) "Inspector" means an individual who is certified by the Department and licensed by the Construction Contractors Board, except where exempt by these rules, to conduct in target housing and child-occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing; and conduct clearance procedures in accordance with 333-069-0070. An Inspector may also collect dust and soil samples and perform clearance testing. An Inspector may cite the applicable standard for the medium being sampled, but may not evaluate the results or assess risk.

(35) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

(36) "Job tasks" mean the specific activities performed in the context of work.

(37) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

(38) "Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk-assessment, and abatement.

(39) "Lead-based paint hazard" means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in these rules.

(40) "Lead hazard standard" means the amount of lead the Department considers to be a hazard in target housing or child-occupied facilities. The standards are: greater than 40 micrograms of lead in dust per square foot on floors, or greater than 250 micrograms of lead in dust per square foot on interior window sills, or 400 parts per million of lead in bare soil in children's play areas, or 1200 parts per million of lead on average in bare soil in the rest of the yard (not including play areas).

(41) "Licensed" means a person who has been certified by the Department in one or more disciplines and has completed the requirements of the Construction Contractors Board.

(42) "Loading" means the quantity of specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

(43) "Multi-family housing" means a housing property consisting of more than four dwelling units.

(44) "Notice of Noncompliance" is a description, in writing, of activities conducted in violation of these rules observed or documented by the Department, and of requirements for corrective action.

(45) "Paint in poor condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

(46) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

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(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(47) "Painter" means any individual who, for consideration, removes or stabilizes one square foot or more of paint or any cosmetic or protective coating to the interior or exterior surfaces of target housing or pre-1978 child-occupied facilities.

(48) "Paint stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

(49) "Pamphlet" means the EPA pamphlet entitled "Protect Your Family from Lead in Your Home". This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Single copies of this pamphlet may be obtained from the Department of Human Services, Lead-Based Paint Program, PO Box 1450, Portland, OR 97214-0450, or electronically at <http://www.epa.gov/lead>.

(50) "Permit" means a written authorization obtained from the Department without which a painter may not remove or stabilize paint on target housing or pre-1978 child-occupied facilities.

(51) "Permanent" means having an expected design life of twenty years.

(52) "Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

(53) "Person" means an individual.

(54) "Play area" means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

(55) "Preliminary clearance" means clearance of interior living areas according to which an Inspector or Risk Assessor determines that residual lead levels (as determined by laboratory analysis) do not exceed clearance levels.

(56) "Project Designer" means an individual who is certified by the Department and licensed by the Construction Contractors Board to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for lead abatement projects in target housing and child occupied facilities, including occupant notification and protection, clean-up and clearance, and abatement reports.

(57) "Public Agency" means an entity that functions as part of a governmental body or organization at the local, state, or federal level.

(58) "Refresher training course" means a minimum 7 hour training program accredited by the Department to update an individual's knowledge and skills so that he/she can effectively and safely continue to practice in the field.

(59) "Renovation" the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by these rules. The term renovation includes (but is not limited to): the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity such as sanding, scraping, or other such activities that may generate paint dust); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

(60) "Renovator" means any person who performs for compensation a renovation.

(61) "Residential building" means a building containing one or more residential dwellings.

(62) "Residential dwelling" means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

(63) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the Firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(64) "Risk Assessor" means an individual who is certified by the Department and licensed by the Construction Contractors Board, unless where exempt by the rules, to conduct in target housing and child occupied facilities on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based paint hazards; and who may conduct a lead-hazard screen, in accordance with OAR 333-069-0070.

(65) "Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

(66) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

(67) "Scope of work" means a written description of all of the abatement activities to be conducted at a specific abatement project site.

(68) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (mg/g) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

(69) "Soil sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method. ASTM standards can be obtained from ASTM International, PO Box C700, West Conshohocken, PA, 19428-2929, via phone at (610) 832.9525, or electronically at [www.astm.org](http://www.astm.org)

(70) "Supervisor" means an individual who is certified by the Department and licensed by the Construction Contractors Board to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child occupied facilities, and to prepare occupant protection plans and abatement reports in accordance with OAR 333-069-0070.

(71) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

(72) "These rules" means OAR 333-069-0005 through 333-069-0090.

(73) "Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example the weighted arithmetic mean of a single surface sample containing  $60 \mu\text{g}/\text{ft}^2$ , a composite sample (three subsamples) containing  $100 \mu\text{g}/\text{ft}^2$ , and a composite sample (4 subsamples) containing  $110 \text{mg}/\text{ft}^2$  is  $100 \mu\text{g}/\text{ft}^2$ . This result is based on the equation  $[60+(3*100) + (4*110)]/(1+3+4)$ .

(74) "Window trough" means for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well".

(75) "Wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E 1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust." ASTM standards can be obtained from ASTM International, PO Box C700, West Conshohocken, PA, 19428-2929, via phone at (610) 832-9525, or electronically at [www.astm.org](http://www.astm.org)

(76) "Worker" means an individual who is certified by the Department and licensed by the Construction Contractors Board to conduct

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lead-based paint abatement activities in target housing and child occupied facilities in accordance with OAR 333-069-0070.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; OHD 11-2000, f. & cert. ef. 12-8-00; OHD 4-2001(Temp) f. & cert. ef. 4-10-01 thru 10-5-01; OHD 25-2001, f. & cert. ef. 11-15-01; PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0020

### Certification Required

(1) No person, Firm, or public agency shall offer to perform or perform lead-based paint inspection, risk assessment, or abatement activities in target housing or child occupied facilities without first receiving certification from the Department and a license from the Construction Contractors Board (CCB), except if such a person, Firm, or public agency is exempt from CCB licensing requirements.

(2) All certificates to perform lead-based paint activities shall expire on June 30, and are renewable upon meeting all of the requirements as determined by the Department.

(3) Certified persons or Firms conducting lead-based paint activities shall comply with the work practice standards for performing lead-based paint activities as prescribed in these rules. Painters shall follow the work practices described on the Permit application.

(4) It shall be considered a violation of these rules and the Construction Contractors Board regulations for any person to conduct any of the lead-based paint activities described in these rules unless the individual has received certification from the Department and licensure from the Construction Contractors Board, except if such a person, is exempt from CCB licensing requirements.

(5) Applicants for inspector, risk assessor, project designer and supervisor shall pass with a score of 70 or more on a certification examination administered by the Department for each discipline for which certification is desired.

(6) Individuals may take the certification examination no more than 3 times within 6 months of the course completion date of the accredited lead-based paint training course.

(7) If an individual applicant does not complete all certification requirements (including passing the certification examination for required disciplines) within 6 months of the course completion date of the accredited lead-based paint training course, the individual shall successfully complete the appropriate accredited standard or refresher training course before reapplying for certification.

(8) A certificate for an individual will be issued by the Department in the form of an identification card and a numbered certificate. This card will identify each discipline for which a person is certified and must be available on demand for inspection at all times while conducting inspection, risk assessment, or abatement activities.

(9) A numbered certificate for a certified Firm will be issued by the Department.

(10) A public agency whose employees perform 'in house' lead-based paint services need not be certified, but shall furnish the Department with a letter of compliance certifying the following:

(a) The agency will use only certified individuals of the appropriate discipline to conduct lead-based paint activities as described in these rules, and;

(b) The agency will follow the standards for conducting lead-based paint activities as prescribed in these rules, and;

(c) The agency will maintain records of all such activities per these rules.

(d) The letter of compliance will be signed by an individual authorized to sign on the agency's behalf.

(e) Any public agency determined by the Department to be in violation of this exemption shall be subject to the certification requirements of a non-exempt Firm.

(11) A firm or public agency that contracts with a certified Firm or public agency to provide lead-based paint activities on its behalf need not be certified.

(a) The contracting firm or public agency shall submit to the Department a letter of compliance stating the following:

(A) The firm or agency will use only certified Firms and certified individuals of the appropriate discipline to conduct lead-based paint activities as described in these rules, and;

(B) The firm or agency will ensure that the standards for conducting lead-based paint activities as prescribed in these rules will be followed, and;

(C) The firm or agency will maintain records of all such activities per these rules.

(D) The letter of compliance will be signed by an individual authorized to sign on the firm or the agency's behalf.

(b) The contracting firm shall submit to the Department, upon request, a copy of the contract agreement between the contracting firm and the certified Firm or Firms.

(12) Employees or agents of regulatory agencies are exempt from these rules if (1) those employees or agents are acting in a regulatory capacity and (2) if they are carrying out activities within the scope of the agency's regulatory authority and (3) if they have been trained in a manner consistent with the public and environmental health objectives of these rules.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0030

### Eligibility

(1) Inspector. To qualify, an individual shall complete all elements on the application form and meet the following eligibility requirements:

(a) Successfully complete and receive a course completion certificate from an accredited Lead-Based Paint Inspector training course;

(b) Pass the certification examination administered by the Department for Inspector.

(2) Risk Assessor. To qualify, an individual shall complete all elements on the application form and meet the following minimum eligibility requirements:

(a) Successfully complete and receive a course completion certificate from an accredited Lead-Based Paint Risk Assessor training course;

(b) Pass the certification exam administered by the Department for Risk Assessor;

(c) Have completed one of the following education and applicable experience criteria:

(A) Certification as an industrial hygienist, an engineer, a registered architect, certified safety professional, registered sanitarian, or registered environmental health specialist; or

(B) A bachelor's degree and one year of experience in a related field (e.g. lead, asbestos, environmental remediation work, or construction); or an Associates degree and two years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(C) A high school diploma (or equivalent), plus at least 3 years of experience in a related field (e.g. lead, asbestos, environmental remediation work, or construction).

(3) Supervisor. To qualify, an individual shall complete all elements on the application form and meet the following minimum eligibility requirements:

(a) Successfully complete and receive a course completion certificate from a provisionally accredited or accredited Lead-Based Paint Abatement Supervisor training course;

(b) Pass the certification exam administered by the Department for Supervisor;

(c) Have completed one of the following experience requirements:

(A) One year of experience as a certified lead-based paint abatement worker; or

(B) At least 2 years of experience in a related field (e.g. lead, asbestos, or environmental remediation work) or in the building trades.

(4) Abatement Worker. To qualify, an individual shall complete all elements on the application form and successfully complete and receive a course completion certificate from an accredited Lead-Based Paint Abatement Worker training course.

(5) Project Designer. To qualify, an individual shall comply with all application requirements and meet the following minimum eligibility requirements:

(a) Successfully complete and receive a course completion certificate from accredited Lead-Based Paint Supervisor, and Lead-Based Paint Project Designer training courses;

(b) Have completed one of the following education and applicable experience criteria:

(A) A Professional Engineering license and one year of project management experience in building construction or renovation, or a related field.

(B) Bachelor's degree in engineering, architecture, or certification as a Remodeler and two years of project management experience in building construction or renovation, or a related field; or

(C) A high-school diploma (or equivalent) and three years of project management involving lead-based paint, asbestos, or hazardous materials.

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(D) Pass the certification examination administered by the Department for Project Designer.

(6) Applicants for certification may complete a refresher course in the same discipline in satisfaction of the training requirement if no more than one year has passed since the original course was completed and the original course was accredited by the Department.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0040

### Application Requirements

(1) No person, firm or public agency removing lead-based paint from or stabilizing lead-based paint in or on target housing and/or child-occupied facilities, shall conduct such activities without first applying to the Department for and receiving a Permit to conduct such activities.

(2) Applications for certification or Permits shall be accompanied with a check or money order made out to the 'Department of Human Services' in the amount as described in OAR 333-069-0090.

(3) Applications for a person shall be submitted on forms prescribed by the Department and shall be accompanied, as appropriate, by:

(a) Documentation of applicant's training, experience, and education including:

(A) Lead-based paint training course completion diploma issued by a Department-accredited training provider.

(B) Documentation of experience must include name and address of employer, name and telephone number of supervisor; or indicate if self-employed. Documentation must also include employment dates, description of specific duties performed, estimated percentage of time associated with conducting inspections and assessing health, safety or environmental hazards. This documentation must be signed by supervisor or employer verifying, under penalty of perjury, that the information is true and correct. A self-employed individual must submit a notarized affidavit attesting to the work experience claimed for the purposes of application.

(C) Evidence of completion of educational requirements under OAR 333-069-0030, such as a transcript or diploma, if applicable.

(b) Two current, passport size photos.

(c) Applicant's name, printed or typed, date, and signature, verifying, under penalty of perjury, that all information submitted is true and correct.

(4) Applications for a Certification or Permit shall be submitted on forms prescribed by the Department. Application materials can be obtained by mail from Department of Human Services, Lead-Based Paint Program, PO Box 1450, Portland, OR 97214-0450, or electronically at <http://www.dhs.state.or.us/publichealth/leadpaint/index.cfm>

(5) Applications for certification of a Firm shall be accompanied by a letter of compliance certifying the following:

(a) The Firm will employ only certified employees of the appropriate discipline to conduct lead-based paint activities as prescribed in these rules.

(b) The Firm will follow the standards for conducting lead-based paint activities as prescribed in these rules.

(c) The Firm shall maintain all records pursuant to these rules.

(d) The letter of compliance shall be signed by an officer of the Firm, or an individual authorized to sign on the Firm's behalf.

(6) Certified individuals and Firms and Permit holders shall notify the Department within 30 calendar days of a change of address.

(7) For the purposes of application, photocopies of original documents are acceptable.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; Administrative correction 8-25-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0050

### Renewal and Recertification

(1) To maintain a Permit or a Certification in a particular discipline, application for renewal shall be made annually to the Department. Applicants shall submit completed application forms available from the Department, and shall pay the appropriate fee per OAR 333-069-0090. Applicants for certification shall also submit two current passport-size photos.

(2) Recertification is required for individuals by June 30, no more than three years after the issue date of an original certification or recertification, whichever is most recent. To obtain recertification, an individual shall fulfill the following:

(a) Submit to the Department an application for recertification that shall include two (2) current passport-size photos and the appropriate fee per OAR 333-069-0090.

(b) Submit to the Department a copy of the course completion certificate from an accredited lead-based paint refresher training course in the appropriate discipline.

(c) Pass a qualifying examination (if applicable) administered by the Department.

(d) Renewal of a Permit does not require the holder to take an examination.

(3) An individual whose certification has been expired for more than six months must complete a standard or refresher course in that discipline and pass a qualifying examination administered by the Department before the certification may be renewed. An individual whose certification has been expired for more than one year shall successfully complete a standard course in that discipline and pass a qualifying examination administered by the Department before the certification may be renewed.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 5-1996(Temp), f. & cert. ef. 9-30-96; HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0060

### Certification Procedures

(1) The Department shall inform the applicant, in writing, when his/her application is granted, denied or incomplete and of the additional information and/or documentation that is required to complete the application.

(a) If granted, a certificate shall be mailed to the applicant and the effective date shall be the issuance date of certification or renewal.

(b) A unique certification number will be assigned to each certificate holder.

(c) If an application is denied, the Department shall state, in writing, the reasons for denial.

(d) An application may be withdrawn at any time by written request to the Department.

(2) The Department may take into consideration various factors in determining whether to grant or deny a Permit or Certification including, but not limited to:

(a) Failure to satisfy eligibility requirements for certification;

(b) Failure to satisfy training requirements;

(c) Failure to provide required documentation or information requested by the Department;

(d) History of citations or violations of existing regulations or standards;

(e) History of revocation of a certificate;

(f) Making false or misleading statements in the application.

(3) Certification and Permits shall be non-transferable.

(4) All Certifications and Permits shall expire on June 30.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0070

### Work Practice Standards

(1) When performing paint removal or stabilization, or any lead-based paint activity described by a certified and licensed individual as an inspection, lead hazard screen, risk assessment or abatement, a certified and licensed person must perform that activity in compliance with these rules, documented methodologies, procedures and work practice standards.

(2) Inspection. An inspection shall be conducted only by a person certified by the Department and licensed by the Construction Contractors Board (CCB) as an Inspector or Risk Assessor. Persons exempt from CCB licensing requirements shall be certified by the Department. Employees of public agencies who conduct 'in-house' lead-based paint activities are exempt from licensing by the CCB.

(a) Locations shall be selected according to documented methodologies and tested for the presence of lead as follows:

(A) In target housing and child occupied facilities, each component with a distinct painting history shall be tested, except those components determined to have been replaced after 1978 or to not contain lead-based paint; and

(B) In a multi-family dwelling or child occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or to not contain lead-based paint.



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(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip, dust, and soil samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

- (A) Inspection date;
- (B) Building address;
- (C) Date of construction;
- (D) Apartment identification (numbers, letters, names if applicable);
- (E) Name, address and telephone number of owner or owners of each unit;

(F) Name, signature, and certification number of each Inspector and/or Risk Assessor conducting testing;

(G) Name, address and telephone number of the certified Firm employing each Inspector and/or Risk Assessor;

(H) Each testing method and device and/or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any x-ray fluorescence (XRF) device; and

(I) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(3) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the Department and licensed by the Construction Contractors Board as a Risk Assessor, except if such a person, is exempt from CCB licensing requirements, and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(b) A visual inspection shall be conducted to determine the presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined, using documented methodologies, to be in poor condition and to have a distinct painting history shall be tested for the presence of lead.

(d) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age 6 or under are likely to come in contact with dust.

(e) In multi-family dwellings and child-occupied facilities, floor and window composite dust sampling shall be conducted as specified in 0070(3)(d). In addition, composite dust samples shall be collected in common areas where one or more children age 6 or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(A) Information in a risk assessment report as specified in section 0070(4), including paragraphs (4)(i)(A) through (4)(i)(N) and excluding paragraphs (4)(i)(O) through (4)(i)(R). Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(B) Any recommendations for follow-up risk assessment and other further actions.

(4) Risk assessment. A risk assessment of target housing or child-occupied facility shall be conducted only by a person certified by the Department and licensed by the Construction Contractors Board as a Risk Assessor. Persons exempt from CCB licensing requirements shall be certified by the Department. Employees of public agencies who conduct 'in-house' lead-based paint activities are exempt from licensing by the CCB. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under.

(c) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(A) Each friction surface or impact surface with visibly deteriorated paint.

(B) All other surfaces with visibly deteriorated paint.

(d) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come in contact with dust.

(e) For multi-family dwellings and child-occupied facilities, the samples required in subsection (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(A) Common areas adjacent to sampled target house or child-occupied facility; and

(B) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come in contact with dust.

(f) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age 6 and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from the following locations:

(A) Exterior play areas where bare soil is present; and

(B) The rest of the yard (i.e., non-play areas) where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified Risk Assessor shall prepare a risk assessment report which shall include as a minimum the following information:

(A) Assessment date.

(B) Address of each building.

(C) Date of construction of buildings.

(D) Apartment identification (numbers, letters, names if applicable).

(E) Name, address and telephone number of each owner of each building.

(F) Name, signature, and certification number of each risk assessor conducting the assessment.

(G) Name, address and telephone number of the certified Firm employing each risk assessor.

(H) Name, address and telephone number of each laboratory conducting analysis of collected samples.

(I) Results of the visual inspection.

(J) Testing method and sampling procedure employed for paint analysis.

(K) Specific locations of each painted component tested for the presence of lead.

(L) All data collected from on-site testing, including quality control data, and if used, the serial number of any x-ray fluorescence (XRF) device.

(M) All results of laboratory analysis on collected paint, soil, and dust samples.

(N) Any other sampling results.

(O) Any background information collected pursuant to subsection (4)(b) of this section.

(P) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

(Q) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(R) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement. An abatement shall be conducted only by a person certified by the Department and licensed by the Construction Contractors Board. Persons exempt from CCB licensing requirements shall be certified by the Department. Employees of public agencies who conduct 'in-house' lead-based paint activities are exempt from licensing by the CCB. Abatement shall be conducted as follows:

(a) A certified and licensed Supervisor or Project Designer is required for each abatement project and shall be onsite during all work site prepara-

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tion and during post-abatement cleanup of work areas. At all other times, the certified Supervisor or Project Designer shall be onsite or available by telephone, pager, or answering service, and be able to be present at the work site in no more than two hours.

(b) A certified and licensed Project Designer is required for each abatement project that:

(A) Consists of 10 or more target housing units built prior to 1960, or;

(B) Consists of 20 or more target housing units built during or after 1960, or;

(C) Consists of 25,000 square feet or more of target housing.

(c) The certified and licensed Supervisor or Project Designer, as well as, the certified and licensed Firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of these rules and all Federal, State and local requirements.

(d) A certified and licensed Project Designer may replace and assume the responsibilities of a certified and licensed Supervisor required for an abatement project. If a certified and licensed Project Designer provides supervision on an abatement project, the Project Designer shall be responsible for preparing the Occupant Protection Plan and the Abatement Report.

(e) Any Firm or individual conducting lead-based paint abatement activities in target housing or child-occupied facilities must notify the Department at least seven (7) business days before the start date of the project by completing and submitting a "Notice of Abatement" form available from the Department.

(A) The "Notice of Abatement" shall specify the time of day that abatement activities will start and the date on which abatement activities will be completed.

(B) Amendments to or cancellations of the original "Notice of Abatement", including completion-date changes must be submitted 24 hours prior to the original start date.

(C) In the event of an emergency, an original or amended "Notice of Abatement" describing the emergency must be submitted within 24 hours of the emergency.

(D) A request for waiver of the 'seven-business day' advance notice requirement must be submitted in writing and granted in writing by the Department before work under the waiver can start.

(E) The Department may reject a "Notice of Abatement" form that has not been completed in full and signed by the applicant.

(f) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified and licensed Supervisor or Project Designer, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. The written occupant protection plan shall be present at the project site and must be made available on demand for inspection.

(g) A scope of work for the abatement project shall be present at the project site and must be made available on demand for inspection.

(h) These work practices shall be restricted during abatement and paint removal:

(A) Open-flame burning or torching of lead-based paint is prohibited;

(B) Uncontained hydro blasting or high-pressure washing of lead-based paint is prohibited;

(C) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(D) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(E) Operating a heat gun on lead-based paint is permitted only at temperatures below 750 degrees Fahrenheit.

(i) When soil abatement is conducted,

(A) If the soil is removed:

(i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm.

(ii) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(B) If the soil is not removed, the soil shall be permanently covered as defined in these rules.

(j) The following clearance procedures shall be performed only by a certified and licensed Inspector or Risk Assessor and according to the following procedures:

(A) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(B) If exterior work on a project cannot be completed due to inclement weather or other factors, the project supervisor may apply in writing to the Department for authorization of a preliminary clearance.

(i) The application must include the following:

(1) The project address.

(2) The name and certification number of the abatement project Supervisor or Project Designer.

(3) A description of the conditions that justify issuance of a waiver.

(4) A description of the abatement work that remains to be done on the project.

(5) A schedule for completion of the abatement work that remains to be done.

(6) A plan for monitoring and controlling potential lead-based paint contamination until work can be completed.

(ii) At the conclusion of all work on a project for which preliminary clearance has been authorized, the project supervisor shall present the Department with documentation that clearance testing has been performed on exterior and interior areas according to these rules and that all clearance test results are below clearance levels.

(C) Following the visual inspection and any post-abatement clean up required by paragraph (5)(j)(A) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(D) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of 1 hour after completion of final cleanup activities.

(E) Post-abatement clearance activities shall be conducted based upon the extent or manner of work activities conducted in or on the target housing or child-occupied facility as follows:

(i) After conducting an abatement with containment between containment and non-containment areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If a room containment consists of more than one critical barrier, one dust sample shall be taken outside each critical barrier. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(ii) After conducting an abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are fewer than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(iii) Following exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surfaces shall be found to be cleaned of visible dust and debris. The surfaces shall be re-cleaned when visible dust and debris is present. The visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior abated surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(F) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(G) The certified and licensed Inspector or Risk Assessor shall compare residual lead levels (as determined by laboratory analysis) from each single surface dust sample with clearance examination standards as defined in these rules for lead in dust on floors and interior window sills, and window troughs, divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance examination standard or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance examination standard divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be re-cleaned and retested until clearance examination standards are met.

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(k) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(A) The certified individuals who work on or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(B) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection (5) (j) of this section.

(C) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceeds the appropriate clearance examination standards.

(l) An abatement report shall be prepared by a certified and licensed Supervisor or Project Designer and shall include as a minimum the following information:

(A) Start and completion dates of abatement.

(B) The name, address and telephone number of each certified Firm conducting the abatement and the name of each Supervisor or Project Designer assigned to the abatement project.

(C) The occupant protection plan.

(D) The name, address and signature of each certified and licensed Inspector or Risk Assessor conducting clearance sampling and the date(s) that clearance sampling was performed.

(E) The results of clearance sampling and all soil analyses and the name each laboratory conducting analysis of collected samples.

(F) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(m) A clearance report shall be prepared by a certified Inspector or Risk Assessor. The clearance report shall include the following information:

(A) The property address where the clearance sampling occurred.

(B) The abatement cleanup completion date and time.

(C) The date and time of clearance sampling.

(D) Name and certification number of each Inspector or Risk Assessor conducting the clearance.

(E) The signature of the Inspector or Risk Assessor conducting the clearance.

(F) Name, address, telephone number, and certification number of the certified Firm employing the Inspector or Risk Assessor.

(G) Results of the visual inspection.

(H) Identification of containment or non-containment applications.

(I) Identification of location(s) where clearance samples were collected.

(J) Name, address, and telephone number of the laboratory analyzing the collected samples.

(K) All results of laboratory analysis on collected samples, including quality control results.

(L) Documented methodology used for sampling.

(6) Sampling. Any paint chip, dust, or soil samples collected pursuant to these work practice standards shall be collected by a certified and licensed Inspector or Risk Assessor. Persons exempt from CCB licensing requirements shall be certified by the Department. Employees of public agencies who conduct 'in-house' lead-based paint activities are exempt from licensing by the CCB. Such samples shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(7) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or post abatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(8) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified Firms or individual who prepared the report or, if an acknowledgement of notification, by the renovator, for no fewer than three years and six months. Also, the certified Firm or individual shall provide copies of these reports to the building owner or client who contracted for the services, unless otherwise specified by contract, within 30 days of the lead-based paint activity, or within 15 days if a child less than six years of age with a confirmed elevated blood level  $\geq 10 \mu\text{g}/\text{dL}$  is an occupant of the building. All reports required by these rules may be submitted on a "Lead Hazard Evaluation Report Form" available from the

Department. The Exhibit referred to in this rule is not printed in the OAR. Copies are available by mail from Department of Human Services, Lead-Based Paint Program, PO Box 1450, Portland, OR 97214-0450, or electronically at <http://www.dhs.state.or.us/publichealth/leadpaint/index.cfm>

(9) Certified individuals and Firms shall, upon request, make available to the Department records and documents regarding regulated lead-based paint activities so that the Department may inspect said records and documents for the purposes of monitoring compliance with these rules. The Department shall respect the proprietary nature of business records.

(10) Signage. Every work site where either lead-based paint removal or abatement is being conducted shall bear signage warning of lead-based paint hazards.

(a) The text on warning signage shall warn of "Lead-Based Paint Hazards" and be readable from 30 feet.

(b) If the Department determines that a paint-lead hazard, dust-lead hazard, or soil-lead hazard exists at target housing or pre-1978 child-occupied facilities, the Department shall post signage to that effect on the building exterior in one or more visible locations.

(c) Signage posted by the Department warning of lead hazards must remain in place until the lead hazard or hazards determined by the Department have been remediated per clearance examination standards.

(11) Determinations.

(a) Lead-based paint is present:

(A) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(B) On any surface similar to a surface tested in the same room equivalent that has a similar painting history and is found to be lead-based paint.

(b) A paint-lead hazard is present:

(A) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in 0015 (9) of these rules;

(B) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(C) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against a door frame); and

(D) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust lead-hazard is present in a residential dwelling or child-occupied facility:

(A) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills is equal to or greater than  $40 \mu\text{g}/\text{ft}^2$  for floors and  $250 \mu\text{g}/\text{ft}^2$  for interior window sills, respectively;

(B) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(C) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present in a residential dwelling or child-occupied facility:

(A) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(B) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; OHD 11-2000, f. & cert. ef. 12-8-00; PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0075

### Notification

(1) Renovations in dwelling units and child-occupied facilities. No more than 60 days before beginning renovation activities in any residential

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dwelling unit of target housing or child-occupied facilities, the renovator shall:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) In addition to the requirements in paragraph (1)(a) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-family housing or child-occupied facilities, the renovator shall:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) Notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the renovator.

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the renovator shall provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the renovator initiates work beyond that which was described in the original notice.

(3) Written acknowledgment. The written acknowledgments required in paragraphs (1)(a)(A), (1)(b)(A), and (2)(a)(A) of this section shall:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation.

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

(d) Sample language for the written acknowledgments required in paragraphs (1)(a)(A), (1)(b)(A), and (2)(a)(A) of this section can be obtained from the Department of Human Services, Lead-Based Paint Program, PO Box 14450, Portland, OR 97214-0450, or electronically at <http://www.ohd.hr.or.us/esc/lead/index.cfm>

(4) Exemptions. Rule 0075 of these rules applies to all renovations of target housing performed for compensation, with the following exceptions:

(a) Minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 1 square foot or less of painted surface per component.

(b) Emergency renovation operations.

(c) Renovations in target housing in which a written determination has been made by a certified Lead-Based Paint Inspector or Risk Assessor that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per

square centimeter or 0.5 percent by weight, where the renovator has obtained a copy of the determination.

(5) Recordkeeping requirements. Renovators shall retain the following records in accordance with section 0070(8) of these rules:

(a) Reports certifying that a determination had been made by a certified Lead-Based Paint Inspector or Risk Assessor that lead-based paint is not present in the area affected by the renovation, as described in subsection 0075(4)(c) of these rules.

(b) Signed and dated acknowledgments of receipt as described in paragraphs (1)(a)(A), (1)(b)(A), and (2)(a)(A) of this section.

(c) Certifications of attempted delivery as described in paragraph 0075(1)(b)(A) of these rules.

(d) Certificates of mailing as described in paragraphs 0075(1)(a)(B), (1)(b)(B), and (2)(a)(B).

(e) Records of notification activities performed regarding common area renovations, as described in paragraphs 0075(2)(c) and (d).

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0080

### Denial, Suspension or Revocation of Certification

(1) The Department may deny issuance of, suspend, or revoke certification for an individual or a Firm for circumstances including but not limited to the following:

(a) Performing work requiring certification at a job site without having a current valid certificate identification card available at the job site for inspection;

(b) Permitting the duplication or use of the individual's own certificate by another;

(c) Performing work for which appropriate certification has not been received from the Department;

(d) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under Department or Construction Contractor Board rules;

(e) Failing to comply with relevant local, state, or federal statutes or regulations including execution of a consent agreement in settlement of an enforcement action;

(f) Failing to comply with work practices and standards set forth in these rules and other generally accepted work practices;

(g) Obtaining certification through fraudulent representation of documentation satisfying eligibility requirements;

(h) Failing to renew certification or to recertify in a timely manner;

(i) Gaining admission to and completing education through fraudulent representation of initial or previous education documentation;

(j) Obtaining certification through fraudulent representation of certification requirements such as education, training, professional registration, or experience;

(k) Performing work requiring certification at a job site with individuals who are not certified;

(l) Failing to maintain required records; and

(m) Failing to comply with these rules including execution of a consent agreement in settlement of an enforcement action.

(2) The Department may deny issuance of, suspend, or revoke certification for an individual for circumstances including but not limited to the following:

(a) Obtaining training documentation through fraudulent means, and/or;

(b) Gaining admission to and completing education through fraudulent representation of initial or previous education documentation.

(3) The Department may deny issuance of, suspend, or revoke certification for a Firm for circumstances including but not limited to the following:

(a) Performing work requiring certification at a job site with individuals who are not certified;

(b) Failing to maintain required records.

(4) Hearings on the denial, suspension or revocation of a certificate shall be conducted as a contested case in accordance with ORS 183.310 to 183.550.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03

# ADMINISTRATIVE RULES

## 333-069-0085

### Schedule of Penalties

The Department may assess penalties, not to exceed the actions or amount shown in the following guidelines:

(1) A Level One violation includes, but is not limited to, the following violations:

(a) Offering to perform or performing lead-based paint activities without DHS certification and CCB licensing, unless specifically exempted by these rules.

(b) Clearance-sampling inconsistencies including, but not limited to, the following:

- (A) Failure to conduct clearance testing;
- (B) Allowing rehabilitation before clearance has been achieved;
- (C) Allowing rehabilitation when lead hazard levels exceed the standard;

(c) The collection of samples as described in these rules by a non-certified individual or Firm;

(d) Obtaining certification via fraud or duplication of certification documents;

(e) Conducting lead-based paint activities with a revoked, suspended or expired certification;

(f) Employing uncertified individuals to conduct lead-based paint activities;

(g) Failure to comply with a consent agreement or an administrative order;

(h) Falsification of results of lead-hazard sampling;

(i) Removing paint from target housing or child-occupied facilities without a Permit;

(j) Failure to provide notification prior to the conduct of renovation activities;

(k) Use of prohibited abatement methods;

(2) A Level Two violation includes, but is not limited to, the following violations:

(a) Failure to comply with prescribed work practice standards;

(b) Improper collection or handling of samples or sampling information collected for an inspection, risk assessment, clearance, or lead-hazard screen;

(c) Failure to use an NLLAP laboratory for analysis of samples referred to in paragraph (b) of this section;

(d) Incomplete, missing or late reports;

(e) Failure to provide Notice of Abatement, or notice given in a manner that obstructs proper oversight;

(f) Failure to provide client with report of lead-based paint activity in a timely manner, as specified for in these rules;

(g) Failure to maintain or to provide for Department inspection lead-based paint activities reports and documents;

(h) Performance by a certified individual of lead-based paint activity outside of the scope of that individual's certification;

(3) A Level Three violation includes, but is not limited to, the following violations:

(a) Conducting lead-based paint activities without a valid certification badge;

(b) Conducting 'in-house' lead-based paint activities by a public agency without having submitted a letter of compliance to the Department;

(c) Conducting lead-based paint activities that have been contracted for by a non-certified Firm or agency, without the Firm or agency having submitted a letter of compliance to the Department;

(d) Conducting lead-based paint abatement without an occupant protection plan;

(4) The penalties for Levels One, Two and Three as described in this section, will be assessed according to the following schedule:

(a) Level One:

(A) First offense: a Notice of Noncompliance and up to \$1,000.

(B) Second offense: a Notice of Noncompliance, a fine of up to \$3,000, and suspension of certification for up to 90 days.

(C) Third offense: a Notice of Noncompliance, a fine of up to \$5,000, and either suspension of certification for up to 180 days or revocation of certification.

(b) Level Two:

(A) First offense: A Notice of Noncompliance and a fine of up to \$500.

(B) Second offense: Notice of Noncompliance and a fine of up to \$2,000.

(C) Third offense: Notice of Noncompliance, a fine of up to \$5,000, and suspension of certification for up to 30 days.

(c) Level Three:

(A) First offense: A Notice of Noncompliance.

(B) Second offense: A Notice of Noncompliance and/or a Letter of Warning from the Construction Contractors Board.

(C) A Notice of Noncompliance and/or a Letter of Warning from the Construction Contractors Board and a fine of up to \$100.

(5) Violations that are not specifically addressed in sections (1) through (4) of this rule, such as in the case of serial violations of different Levels, shall be assessed appropriate penalties by the Department in accordance with the hazard to public health produced by the activity and the compliance history of the violator.

(6) Removal of Signage. It shall be a violation to remove a sign posted by the Department to warn the public of lead hazards, and such action shall be punishable by a fine of \$100 per day.

(7) The Department may revoke, suspend, or refuse to issue or reissue the Certification or Permit of any individual, Firm, or Painter who fails to pay on demand a civil penalty that has become due and payable.

(8) Procedures, including a hearing, pursuant to the assessment of a civil penalty shall be conducted according to OAR 812-0005(1) and (2).

Stat. Auth.: ORS 431.920, ORS 701.992

Stats. Implemented: ORS 431.920, ORS 701.992

Hist.: PH 8-2003, f. & cert. ef. 6-20-03

## 333-069-0090

### Fees

The following fees are established:

(1) Firms shall pay a non-refundable certification application, renewal or recertification fee of \$85 for a one year certification.

(2) Inspectors, Risk Assessors, Supervisors, and Project Designers shall pay a non-refundable certification, renewal or recertification fee of \$85 for a one year certification.

(3) Workers shall pay a non-refundable certification, renewal or recertification fee of \$50 for a one-year certification.

(4) The fee for applications for certification received by the Department between April 1 and June 30 shall be as follows: Worker, \$25; all other disciplines, \$45.

(5) The application fee for a Permit for painting shall be \$5.

Stat. Auth.: ORS 431.920

Stats. Implemented: ORS 431.920

Hist.: HD 6-1997, f. 4-25-97, cert. ef. 5-1-97; OHD 12-1998, f. & cert. ef. 10-27-98; PH 8-2003, f. & cert. ef. 6-20-03

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**Adm. Order No.:** PH 9-2003

**Filed with Sec. of State:** 6-26-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 333-008-0010, 333-008-0020, 333-008-0040

**Subject:** Provides a registration fee reduction for Oregon Medical Marijuana Program applications. The \$150.00 registration fee for a new application remains unchanged. The registration fee for renewal applications is reduced from \$150.00 to \$100.00. For those persons who can demonstrate current, valid eligibility in the Oregon Health Plan, or receipt of current Supplemental Security Income monthly benefits, the proposed new or renewal application fee is established as \$50.00. Defines the conditions under which application fee reductions and eligibility for the Oregon Health Plan or Supplemental Security Income will be accepted.

**Rules Coordinator:** Jana Fussell—(503) 731-4000

## 333-008-0010

### Definitions

For the purposes of OAR 333-008-0000 through 333-008-0090, the following definitions apply:

(1) "Attending physician" means a physician who has established a physician/patient relationship with the patient, is licensed under ORS Chapter 677, and who, with respect to a patient diagnosed with a debilitating medical condition:

(a) Is primarily responsible for the care and treatment of the patient;

(b) Is primarily responsible for providing medical specialty care and treatment of the patient as recognized by the American Board of Medical Specialties;

(c) Has been asked to consult and treat the patient by the patient's primary care physician who is licensed under ORS chapter 677, a Physician Assistant licensed under ORS Chapter 677, or a Nurse Practitioner licensed under ORS Chapter 678; or

# ADMINISTRATIVE RULES

(d) Has reviewed a patient's medical records at the patient's request, has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(2) "Debilitating medical condition" means:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, agitation due to Alzheimer's disease, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(i) Cachexia;

(ii) Severe pain;

(iii) Severe nausea;

(iv) Seizures, including but not limited to seizures caused by epilepsy; or

(v) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

(c) Any other medical condition or treatment for a medical condition adopted by the Department by rule or approved by the Department pursuant to a petition submitted under OAR 333-008-0090.

(3) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

(4) "Department" means the Oregon Department of Human Services.

(5) "Designated primary caregiver" means an individual eighteen years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Department. Designated primary caregiver" does not include the person's attending physician. Each patient may have only one designated primary caregiver at any given time.

(6) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(7) "Mature plant" means the following: A marijuana plant shall be considered mature when male or female flower buds are readily observed on the plant by unaided visual examination. Until this sexual differentiation has taken place, a marijuana plant will be considered immature.

(8) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to alleviate the symptoms or effects of his or her debilitating medical condition.

(9) "New application" means an application defined under OAR 333-008-0020 signed, dated, and submitted by:

(a) A new applicant to qualify for an initial registry identification card;

(b) A patient after the patient's previous application has been denied or after the patient's registry identification card has been suspended; or

(c) A patient after the expiration date of the patient's previously issued registry identification card.

(10) "Oregon Health Plan" means the medical assistance program administered by the Department under ORS chapter 414.

(11) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(12) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(13) "Registry identification card" means a document issued by the Department that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(14) "Renewal application" means an application as defined under OAR 333-008-0040, signed, dated, and submitted by a patient within 3 months prior to the expiration date of the patient's current registry identification card and no later than the expiration date of that current card. Applications received after the expiration date of the patient's current registry identification card must meet all criteria for a "new application" under OAR 333-008-0010(9).

(15) "Supplemental Security Income" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(16) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(17) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.005, ORS 677.010, ORS 475.302 & ORS 475.309(3)

Stats. Implemented: ORS 475.300 - ORS 475.346

Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03

## 333-008-0020

### Registration Application and Verification

(1) The Department shall create registration application forms and issue them to requesting physicians, applicants, or designated primary caregivers.

(2) Except as provided in subsection (4) of this section, the Department shall issue a registry identification card to any person who pays a new or renewal application fee as set forth in subsections (2)(a) and (2)(b) of this section and who provides to the Department a completed application as set forth in subsections (2)(c) and (2)(d) of this section.

(a) For the period July 1, 2003 through June 30, 2005, the following fees will be charged: \$150 (one hundred-fifty dollars) for a new application; \$100 (one hundred dollars) for a renewal application; or, \$50 (fifty dollars) for either a new or renewal application by any patient who can demonstrate current eligibility in the Oregon Health Plan or who can demonstrate being a recipient of current Supplemental Security Income monthly benefits.

(A) Eligibility in the Oregon Health Plan is demonstrated by providing a current, valid eligibility determination statement from the Department's Office of Medical Assistance Programs. To qualify for a reduced fee, a copy of the patient's current eligibility statement must be provided at the time the patient submits an application. The Department will verify the patient's Oregon Health Plan eligibility with the Office of Medical Assistance Programs.

(B) Eligibility for Supplemental Security Income is demonstrated by providing a copy of a receipt of a current monthly benefit. To qualify for a reduced fee, a copy of a receipt of a current Supplemental Security Income monthly benefit must be provided at the time the patient submits an application. The Department will verify the patient's current Supplemental Security Income receipt of monthly benefits through the Department or with the Social Security Administration.

(b) The Department will notify any patient who submits a reduced fee for which the patient is not eligible and will give the patient 14 days from the date of notice to pay the correct fee or to submit a current, valid eligibility determination statement for the Oregon Health Plan, or to submit a copy of a receipt for current Supplemental Security Income monthly benefit, as applicable. The Department will not suspend processing of the patient's application pending receipt of an eligibility statement. The Department will not grant application fee refunds for any eligibility determination made on or after the issue date of the patient's registry identification card.

(c) To supply a completed application, the patient must provide to the Department either: (1) completed copies of all patient application, attending physician declaration, and parent/legal guardian (if applicable) forms; or (2) legible written statements that include all information required on the Department's forms. A copy of the relevant portions of the patient's medical record may serve as written documentation from the attending physician as long as it states that the patient has been diagnosed with a debilitating medical condition; the medical use of marijuana may mitigate the symptoms or effects of the patient's debilitating medical condition; and contains the physician's signature and the date the medical record was made.

(d) In addition to the information required in ORS 475.309(2), the patient and the designated primary caregiver (if applicable) must provide a copy of current, legible photographic identification (i.e., Oregon driver's license, Oregon identification card, or Voter Registration card plus another current, legible photographic identification). The designated primary caregiver (if applicable) must also supply his or her address and date of birth.

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The patient must provide the Department with the address of the site where marijuana will be manufactured or produced, and indicate whether the property is under the control of the patient or the designated primary caregiver of the patient.

(3) Optional information may be added to application forms at the discretion of the Department if such information serves the best interest of the patient and assists agencies in the implementation of the Act. Optional information need not be provided by the patient, attending physician, or designated primary caregiver, and failure to provide optional information will have no bearing on the approval or denial of a registry identification card.

(4) The Department shall issue a registry identification card to a person who is under eighteen years of age if the person submits the materials required under subsection (2) of this section, and one of the person's parents or legal guardians signs and has notarized a written declaration that states:

(a) The person's attending physician has explained to the person and to one of the person's parents or legal guardians the possible risks and benefits of the medical use of marijuana;

(b) The parent or legal guardian consents to the use of marijuana by the person for medical purposes;

(c) The parent or legal guardian agrees to serve as the person's designated primary caregiver; and

(d) The parent or legal guardian agrees to control the acquisition of marijuana and the dosage and frequency of use by the person.

(5) The Department will verify information on all initial registration applications or written documentation.

(a) The Department will contact each patient and designated primary caregiver (if appropriate) by telephone or by mail to confirm that the information provided is accurate. In cases where the patient is less than eighteen years old, the Department will also contact the parent or legal guardian to verify the information. In cases where proof of identity is uncertain, the Department may require a face-to-face meeting with the patient or designated primary caregiver and/or the production of additional identification materials for verification purposes.

(b) The Department will verify with the Oregon Board of Medical Examiners that the attending physician is licensed to practice in the state and is in good standing. The Department will also contact each attending physician to confirm that the information provided is accurate and valid, and that the physician is an "attending physician" as defined by 333-008-0010(1).

(6) Upon annual renewal of a registration application, the Department will verify all new information, but may use its discretion in determining the need to verify information that has not changed.

Stat. Auth.: ORS 475.309, ORS 475.312 & ORS 475.316

Stats. Implemented: ORS 475.300 - ORS 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03

## 333-008-0040

### Annual Renewal and Interim Changes

(1) A person who possesses a registry identification card shall register on an annual basis to maintain active registration status.

(2) Between 30 and 45 calendar days prior to expiration, the Department shall mail notification to the patient's address of the upcoming expiration date.

(a) The patient must submit, prior to the expiration, the following:

(A) Written documentation to reconfirm the person's debilitating medical condition;

(B) A copy of the patient's current, valid Oregon Health Plan eligibility determination statement or a copy of a receipt of the patient's current Supplemental Security Income monthly benefit, if applicable;

(C) The name of the person's designated primary caregiver, if a primary caregiver has been designated for the upcoming year; and

(D) Confirmation that existing application information has not changed.

(b) If the application is not received by the expiration date, the patient's registry identification card and the designated primary caregiver's card (if applicable) will be deemed expired. The expiration date may be extended, due to personal hardship, at the discretion of the Department.

(c) A patient must notify the Department within 30 working days of any change in his or her name, address, telephone number, attending physician, designated primary caregiver, or grow site.

(d) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition shall return the

registry identification card to the Department within seven calendar days of notification of the diagnosis. Any designated primary caregiver shall return his or her registry identification card within the same period of time.

Stat. Auth.: ORS 475.309 & ORS 475.312

Stats. Implemented: ORS 475.309 & ORS 475.312

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03

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

**Adm. Order No.:** SSP 14-2003(Temp)

**Filed with Sec. of State:** 6-18-2003

**Certified to be Effective:** 6-18-03 thru 9-30-03

**Notice Publication Date:**

**Rules Amended:** 461-135-0780

**Subject:** Rule 461-135-0780 is being amended as part of the cost-of-living increases which may provide continued Medicaid eligibility for those who have their SSI entitlement due to the COLA increase. Without this determination, someone may incorrectly lose their medical assistance without this calculation. It is usually updated every January as part of the cost-of-living adjustment.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-135-0780

#### Eligibility for Pickle Amendment Clients; OSIPM

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, but is over income because of SSB cost-of-living increases after July 1977, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) To determine the SSB amount the client received when last eligible for SSI or the state supplement, the cost-of-living increases for SSB are deducted from the current SSB level. The amount of the increase is determined by multiplying the current SSB amount by the number that corresponds to the month the client last received SSI (see table in section (4) of this rule). The resulting total is added to any other countable income.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Table not printed See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03

**Adm. Order No.:** SSP 15-2003

**Filed with Sec. of State:** 6-25-2003

**Certified to be Effective:** 6-30-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 461-200-2080, 461-200-3290

**Rules Amended:** 461-200-3020, 461-200-3100, 461-200-4560, 461-200-5240

**Subject:** OAR 461-200-2080 was adopted to provide that the Child Support Program Director will decide which office or agency is responsible for providing services on a case when there is a conflict of interest or a perceived conflict of interest and the local offices cannot reach an agreement or the constituent disagrees with the local decision.

OAR 461-200-3290 was adopted to clarify that when a notice and finding has been issued for a child in the care and custody of the state, but the child leaves care or custody prior to the entry of a final order,

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the administrator or a hearings officer should enter a final order which is contingent on the child residing in a state financed or supported residence, shelter or other facility. The rule also clarifies that when a child has left the states care and custody, the administrator will sign a certificate establishing any periods of non-residency and satisfying the order for such periods of non-residency.

OAR 461-200-3020 was amended to clarify the processes parties must follow to request additional parentage tests under ORS 109.252. Parties may request additional tests, but must select an accredited laboratory and advance the costs of the tests. Once an accredited laboratory is selected and the costs of the tests have been paid to the laboratory, the administrator or the court must order the additional tests. There are also provisions for what happens when a party fails to appear for the additional tests, depending on whether the party failing to appear was the party requesting additional tests. If the party failing to appear is the party who requested additional tests, an order establishing paternity will be entered. If the party failing to appear is not the party who requested additional tests, the administrator will take appropriate steps to compel obedience to the order for additional tests.

OAR 461-200-3100 was amended to clarify that the provisions of the rule, which provides that an order establishing paternity will be entered when a party fails to comply with a parentage test order, do not apply to orders for additional parentage tests, except when the party failing to appear for the additional tests is the party who requested the additional tests.

OAR 461-200-4560 was amended to allow for an objection to credit reporting if the obligor is not delinquent in making payments under a support order.

OAR 461-200-5240 was amended to allow the credit for support payments not made to the Division of Child Support process to apply to orders of another state if neither the state which issued the order nor the obligees state of residency has an active child support accounting case.

**Rules Coordinator:** Michelle Kутten—(503) 986-6240

## 461-200-2080

### Office Responsible for Providing Services when Conflict of Interest

(1) The Child Support Program (CSP) will, to the maximum extent possible, assign support cases to avoid the potential for or the appearance of a conflict of interest.

(2) If an actual or potential conflict of interest is identified by either an employee or a party or potential party to a case, the manager of the affected office shall make a determination whether the case should:

- (a) Remain assigned to the current employee;
- (b) Be reassigned to another employee within the same office; or
- (c) Be reassigned to a different office.

(3) If the determination made under section (2) of this rule is to reassign the case to a different office, the manager of the affected office shall contact the manager of another CSP office, which may be either a district attorney or Division of Child Support office, to reach an agreement and arrange for the case to be reassigned.

(4) If the branch offices cannot reach an agreement for the case to be reassigned or if the party or potential party disagrees with the determination made by the manager of the affected branch office, the CSP Director shall decide which office has the responsibility for providing services for that particular case.

Stat. Auth.: ORS 409.021  
Stats. Implemented: ORS 25.080  
Hist.: SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03

## 461-200-3020

### Paternity Establishment Procedures

(1) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.

(2)(a) In all cases in which a child was conceived in Oregon, the administrator will initiate legal proceedings to establish paternity under ORS chapter 109 or ORS chapter 416.

(b) Except for proceedings filed under ORS chapter 109, past support shall be established as provided by ORS chapter 416 and OAR 461-200-3220.

(3) In all cases in which a party alleges facts, which if true, conclusively establish paternity under ORS 109.070, and if a man other than the man who is alleged to be conclusively presumed as the legal father has been named by a party as a possible biological father of the child in question, the administrator will certify the case to the appropriate circuit court for a determination of whether the conclusive presumption found in ORS 109.070 applies.

(4) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have excluded a man as the father of the child, the following provisions apply:

(a) If there is only one remaining untested possible biological father, that man is constructively included as the father by virtue of the other man's exclusion as the father.

(b) If there are more than one remaining untested possible biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain parentage tests which either exclude or include the man.

(5) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested possible father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

(6)(a) The Child Support Program may initially pay the costs of parentage tests, and will seek reimbursement of those costs, but may agree to waive the costs.

(b) If an alleged father fails to appear as ordered for parentage tests, but the mother and child have appeared, reimbursement will be sought from the alleged father for the costs incurred.

(c) The maximum amount allowed to be entered as a parentage test judgment against a party is the amount the Child Support Program agrees to pay a parentage testing laboratory used to perform the tests.

(d) A judgment for parentage test costs reimbursement will not be sought:

(A) Against a person who has been excluded as a possible father of a subject child;

(B) If the mother stated that more than one man could be the father of the child, and has been unable to name a most likely alleged father, and the man tested has not objected to the entry of an order establishing paternity; or

(C) If the alleged father has applied for services under ORS 25.080 and requested paternity establishment in accordance with OAR 461-200-3080.

(7) A judgment for parentage test costs reimbursement will not be sought against any person found to be the legal father for costs attributable to testing other alleged fathers in any case in which the mother stated that more than one man could be the father of the child.

(8) When a party requests additional parentage testing as provided in ORS 109.252(2), the following provisions apply:

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Department of Human Services; and

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.

(9) Upon receipt of a party's request for additional parentage testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court shall order additional testing.

(10) If a non-requesting party fails to appear for the additional parentage testing, the administrator shall take appropriate steps to compel obedience to the order for additional testing.

(11) If a requesting party fails to appear for the additional parentage testing, the administrator may enter an order in accordance with OAR 461-200-3100.

(12) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.

Stat. Auth.: ORS 409.021  
Stats. Implemented: ORS 416.430  
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1020; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03

## 461-200-3100

### Order Establishing Paternity for Failure to Comply with Order for Parentage Test

(1) In an action to establish paternity initiated pursuant to ORS 416.415, the administrator may serve simultaneously the Notice and



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Finding of Financial Responsibility and an administrative order for parentage tests.

(2) An administrative order for parentage tests may require either the mother of the child(ren) in question or a person who is a possible father of the child(ren) to file a denial of paternity in order to receive a parentage test, or it may allow testing prior to a the party filing a responsive answer to the allegation of paternity.

(3) The administrator shall enter an order establishing paternity based upon a party's failure to appear for parentage testing, provided that all parties have been served with a Notice and Finding of Financial Responsibility and with an order requiring parentage tests if:

(a) The mother of the subject child(ren) has named the male party who failed to appear for parentage tests in a sworn statement as a possible father of the child(ren) in question; or

(b) A male party has claimed in a sworn statement to be the father of the child(ren) in question and the mother and her child(ren) have failed to appear for such tests.

(4) An order establishing paternity based on a failure to submit to parentage tests may be entered:

(a) Whether or not a responsive answer has been filed; and

(b) Whether or not corroboration exists to support a sworn statement of a party naming a male party as a father or possible father of the child(ren) in question, provided that the male party has either:

(A) Been named in a sworn statement by the mother as a possible father of the child; or

(B) Has named himself in a sworn statement as the father of the child.

(5) The provisions of this rule do not apply to the additional parentage tests described in OAR 461-200-3020(8) through 461-200-3020(11).

Stat. Auth.: ORS 409.021

Stats. Implemented: ORS 109.252 & 416.430

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00,

Renumbered from 461-195-1030; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03

## 461-200-3290

### Entry of Contingency Orders When Child Out of Care

Whenever a notice and finding of financial responsibility is issued pursuant to ORS 416.415 for a child in the care and custody of the Department of Human Services, or a youth offender or other offender in the legal or physical custody of the Oregon Youth Authority, and the child leaves care or custody prior to entry of a final order, the administrator or an administrative law judge shall:

(1) Enter a final order, in accordance with ORS 416.417, which is contingent upon the child, youth offender or other offender residing in a state financed or supported residence, shelter or other facility or institution; and

(a) If the administrator is entering the final order, sign a certificate establishing the period of non-residency and satisfying the order for the period of non-residency; or

(b) If an administrative law judge is entering the final order, advise the administrator that the child is no longer in care or custody of the Department of Human Services or Oregon Youth Authority.

(2) Upon receipt of information from an administrative law judge that a child is no longer in care or custody of the Department of Human Services or Oregon Youth Authority, if appropriate, the administrator shall sign a certificate establishing the period of non-residency and satisfy the order for the period of non-residency.

Stat. Auth.: ORS 409.021

Stats. Implemented: ORS 409.417

Hist.: SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03

## 461-200-4560

### Consumer Credit Reporting Agencies

(1) The Division of Child Support (DCS) shall enter into agreements with consumer reporting agencies to disclose information under Section (2) of this rule only to an entity that has furnished evidence satisfactory for DCS to determine that the entity is a consumer reporting agency as defined in ORS 25.650. Under these agreements, DCS shall provide such agencies with the names of obligors who owe past due support and shall indicate the specific amount each obligor owes. Under these agreements, DCS shall provide such information:

(a) Whether or not the agency has requested information on any specific obligor; and

(b) On a recurring or periodic basis.

(2) Before issuing a periodic report to a consumer reporting agency with information on any obligor, the DCS shall provide the obligor and obligee with advance notice of the intent to report the obligor's support bal-

ance to the consumer reporting agencies. The notice shall be sent to the obligor's and obligee's last known address. The notice shall:

(a) Indicate the balance to be reported to the consumer reporting agencies;

(b) Advise that the current balance shall be reported to the consumer reporting agencies on a recurring basis without sending further notice to the obligor and obligee;

(c) Advise of the obligor's right to contest the action within 30 calendar days of the date of the notice.

(d) Explain the process for contesting and advise that objections must be in writing on the form provided with the notice;

(e) Advise that the only issues that may be contested are:

(A) Whether the obligor is the person who owes the support balance indicated by the case record; or

(B) Whether the support balance indicated in the notice is correct.

(3) If the obligor does not contest the action within the allowed 30-day period, DCS shall release the information to the consumer reporting agencies.

(4) If the obligor contests the balance indicated in the notice:

(a) The administrator shall conduct an administrative review on the case and shall mail the results of the review to the obligor and obligee as soon as the review is complete;

(b) Once the administrative review is complete, DCS may notify the consumer reporting agencies of the arrears amount resulting from the review except as specified in section (8) of this rule.

(c) The obligor or obligee may contest the administrator's review and determination as provided in ORS 183.484.

(5) If the obligee contests the balance in the notice, the obligee may initiate an arrears establishment request pursuant to OAR 461-200-3240.

(6) If a court or agency of appropriate jurisdiction determines the balance owing is other than previously reported, DCS shall send the court's or agency's findings to the consumer reporting agencies no sooner than 10 days after receiving a copy of the final order.

(7) When consumer reporting agencies ask DCS for information regarding the balance an obligor owes on a support case, DCS may provide available information after complying with the requirements of sections (1) through (6) of this rule. DCS shall not charge the requesting agency a fee for this information.

(8) DCS shall refer to the consumer reporting agencies, the name and support balance of all obligors who meet the criteria of section (1) or (7) of this rule unless:

(a) The obligor pays the support balance in full;

(b) The obligor is not the person who owes the child support balance indicated by the case record; or

(c) The administrator determines that the obligor is not delinquent in the payment of support.

(9) When DCS has made a report to a consumer reporting agency under section (1) of this rule, DCS shall promptly notify the consumer reporting agency when the case record shows that the obligor no longer owes past due support.

(10) If paternity has been established and a consumer report is needed for the purpose of establishing or modifying a child support order, the administrator may request that a consumer reporting agency provide a report. At least 10 days prior to making a request for such report, the administrator must notify the obligor or obligee whose report is requested, by certified mail, that the report will be requested.

Stat. Auth.: ORS 409.021

Stats. Implemented: ORS 25.650

Hist.: AFS 79-1985(Temp), f. & ef. 12-26-85; AFS 22-1986, f. & ef. 3-4-86; AFS 12-1989, f. 3-27-89, cert. ef. 4-1-89; Renumbered from 461-035-0051; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0670; AFS 11-1990, f. 3-27-90, cert. ef. 4-1-90; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 7-1996, f. 2-22-96, cert. ef. 4-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 18-2000, f. & cert. ef. 7-12-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0230; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03

## 461-200-5240

### Credit for Support Payments not Made to the Division of Child Support

(1) In accordance with ORS 25.020, on any support case where the obligor is required to pay support through the Division of Child Support (DCS), DCS shall not credit the obligor's support account for any payment not made through DCS, except as provided in ORS 25.020 and this rule.

(2) The other provisions of this rule notwithstanding, on any case where an order of another state is registered in Oregon under ORS Chapter 110 for enforcement only, and either the issuing state, as defined in ORS 110.303 (9), or the obligee's state of residence has an active child support accounting case open, DCS does not have authority to give credit for pay-

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ments not paid through Oregon DCS. In any such case, the obligor seeking credit must request credit from the issuing state or the obligee's state of residence, whichever has the active child support accounting case. DCS shall adjust its records to reflect credit for such payments only upon receiving notification from the issuing state or the obligee's state of residence, in writing, by electronic transmission, by telephone, or by court order, that specified payments shall be credited.

(3) DCS shall give credit for payments not made to DCS when:

(a) Payments are not assigned to the State of Oregon or to another state, and the obligor and obligee agree in writing that specific payments were made and should be credited;

(b) Payments are assigned to the State of Oregon, and all of the following additional conditions are true:

(A) The obligor and obligee make sworn written statements that specific payments were made;

(B) The obligor or obligee present canceled checks, or other substantial evidence, to corroborate that the payments were made; and

(C) The administrator has given written notice to the obligee, prior to the obligee making a sworn written statement under subsection (a), of any potential criminal or civil liability that may attach to an admission of receiving the assigned support. Potential criminal or civil liability may include, but is not limited to:

(i) Prosecution for unlawfully receiving public assistance benefits.

(ii) Liability for repayment of any public assistance overpayments for which the obligee may be liable.

(iii) Temporary or permanent disqualification from receiving public assistance, food stamp, or medical assistance benefits due to an intentional program violation being established against the obligee for failure to report, to the administrator, having received payments directly from the obligor.

(c) The administrator is enforcing the case at the request of another state, regardless of whether or not support is assigned to that other state, and that state verifies that payments not paid to DCS were received by the other state or by the obligee directly. Such verification may be in writing, by electronic transmission, by telephone, or by court order.

(d) An order of an administrative law judge, or an order from a court of appropriate jurisdiction, so specifies.

(4) To receive credit for payments not made to DCS, the obligor may apply directly to the administrator for credit, by providing the documents and evidence specified in Section (3) of this rule.

(5) Except as provided in section (2) of this rule if the obligee or other state does not agree that payments were made, pursuant to subsection (3)(a) or (3)(c) of this rule, or does not make a sworn written statement under subsection (3)(b), the obligor may make a written request to the administrator for a hearing.

(a) An administrative law judge may order, by written final order following a hearing, that DCS shall credit the obligor's support account for a specified dollar amount of payments not made through DCS, or for all payments owed through a specified date.

(b) DCS shall credit the obligor's account to the extent specified by written order of an administrative law judge.

(c) Prior notice of the hearing and of the right to object shall be served upon the obligee in accordance with ORS 25.085.

(d) Prior notice of the hearing and of the right to object may be served upon the obligor by regular mail to the address provided by the obligor when applying for credit.

(e) Any such hearing conducted under ORS 25.020 and this rule is a contested case hearing in accordance with ORS 183.413 through 183.470. Any party may also seek a hearing de novo in the Oregon circuit court.

(f) The other provisions of this section notwithstanding, an administrative law judge does not have jurisdiction under this section in cases where the administrator is enforcing another state's order.

(6) When an obligor wishes to request a contested case hearing, or when an obligor or obligee wishes to request a hearing de novo in the Oregon circuit court or to appeal a court order or a hearing order, responsibility for doing so rests solely with that obligor or obligee. Such responsibility includes preparation and filing of all forms and documents required by the court or administrative law judge, and payment of all fees required by the court. The administrator shall not have any such responsibility on behalf of the obligor or obligee, except as specifically required by law or administrative rule.

(7) Nothing in this rule precludes DCS from giving credit for payments not made through DCS when a judicial determination has been made giving credit or satisfaction, or when the person to whom the support is owed has completed and signed a "satisfaction of support judgment" form adopted by DCS in accordance with OAR 461-200-5220.

Stat. Auth.: ORS 25.020 & ORS 409.021

Stats. Implemented: ORS 25.020

Hist.: AFS 42-1995, f. 1-28-95, cert. ef. 1-1-96; AFS 8-1996, f. 2-23-96, cert. ef. 3-1-96; AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0157; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03

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**Rules Adopted:** 461-135-0301, 461-135-0721

**Rules Amended:** 461-025-0310, 461-025-0315, 461-120-0125, 461-120-0345, 461-125-0370, 461-135-0505, 461-135-0832, 461-135-0835, 461-135-1110, 461-135-1120, 461-145-0080, 461-145-0460, 461-145-0540, 461-145-0820, 461-145-0830, 461-155-0035, 461-155-0150, 461-160-0120, 461-160-0600, 461-160-0610, 461-160-0620, 461-175-0010, 461-195-0511

**Subject:** Rule 461-025-0310 is being amended by adding a new section which states positively that there is no right to a contested case hearing to dispute a program requirement established by law and gives three examples of issues not subject to hearing. The Department is also changing "Division" to "Department" to reflect the reorganization of the Department of Human Services.

Rule 461-025-0315 is being amended to make it clearer that the rule authorizes an expedited hearing over continuation of benefits only to the extent required by ORS 411.095(2). This rule is also being amended to make it more clear that the decision notice informs the client of the extent to which there is a right to hearing.

Rule 461-120-0125 is being amended because Social Security Administration (SSA) clarified that noncitizens who were in the United States prior to August 22, 1996 and were receiving SSI will continue to be eligible for SSI. Qualified noncitizens who entered the U.S. before the enactment of PRWORA but were not receiving SSI as of August 22, 1996 can qualify for SSI only if they meet SSI criteria for disability. SSI based on old age (age 65 or over) does not apply to noncitizens regardless of when they were admitted if they were not receiving the benefits on or before August 22, 1996. There are some exceptions, however. Qualified noncitizens who were: 1) admitted as refugees; 2) granted political asylum; 3) not deported because their deportation is being withheld; 4) admitted as a Cuban/Haitian entrant; or 5) admitted as an Amerasian immigrant, may be eligible for SSI for 7 years beginning with the date their status was granted. If their eligibility for SSI is based on being age 65 or older, their SSI benefits end when the 7 years are up. OSIP and OSIPM eligibility is based on SSI eligibility. This rule is also being amended to state that noncitizens who were certified as victims of a severe form of trafficking meet the alien status requirement for TANF.

Rule 461-120-0345 is being amended to clarify that clients eligible for the Citizen/Alien Waived Emergent Medical (CAWEM) program are exempt from referral to the Family Health Insurance Assistance Program (FHIAP). This rule already exempts American Indians and Alaska Natives and should have exempted CAWEM clients as well when it was last revised February 2003. This amendment simply clarifies CAWEM clients are not to be referred because FHIAP eligibility rules cannot include coverage to individuals who do not meet citizenship or alien requirements.

Rule 461-125-0370 is being amended to clarify policy with respect to the Code of Federal Regulations that make disability determinations made by the Social Security Administration binding on the State of Oregon.

Rule 461-135-0301 is being adopted to close the Emergency Assistance (EA) program.

Rule 461-135-0505 is being amended to change the administrative rule number that links to the 100% federal poverty level (FPL) standard. This 100% FPL link creates the 185% figure used for categorical eligibility for the Food Stamp program.

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Rule 461-135-0721 is being adopted to terminate the Oregon Supplemental Income Program Medical-Medically Needy (OSIPM-MN) program.

Rule 461-135-0832 is being amended to define “Disabled Child” for purposes of estate recovery program.

Rule 461-135-0835 is being amended to replace the reference to a surviving child that is “permanently and totally disabled” with a reference to “no surviving disabled child.”

Rule 461-135-1110 is being amended to include the 2002-2003 school year income requirements for a Pell grant. To be eligible as a student of higher education for the Oregon Health Plan (OHP), an individual must meet the income requirements for a Pell grant by having an expected family contribution (EFC) less than the income amount determined by the U.S. Department of Education.

Rule 461-135-1120 is being amended to clarify that the Oregon Health Plan (OHP) premium amount charged under the OHP-OPU medical program will change during the certification period when a health plan new/non-categorical (HPN) client is no longer a member of the benefit group.

Rule 461-145-0080 is being amended to specify that payments from non-custodial parents that should go to a TANF financial group member are to be counted as unearned income.

Rule 461-145-0460 is being amended to clarify how the proceeds from the sale of a home are treated for an OHP client.

Rule 461-145-0540 is being amended to clarify that not only the client’s personal needs allowance but also any applicable room and board standard must be distributed first from an income cap trust in order to calculate the correct client liability payment. Also, a pooled trust must be created for a disabled client before the client reached the age of 65 and the non-profit association must pool trust accounts for purposes of investment and management.

Rule 461-145-0820 is being amended to reference the calculation of deemed income from a noncitizen’s sponsor to OAR 461-145-0840 and to show how resources from a noncitizen’s sponsor are calculated as deemed resources for a noncitizen for the different programs administered by DHS.

Rule 461-145-0830 is being amended to clarify under what circumstances the assets of a noncitizen’s sponsor will not be deemed available to the noncitizen’s household. For example, deeming does not apply when there is no legally binding affidavit of support signed; the sponsor is on SSI, TANF or FS; the sponsored noncitizen becomes a naturalized citizen; or the noncitizen worked or can be credited with 40 qualifying quarters of work.

Rule 461-155-0035 is being amended because the amount of the Cooperation Incentive Payment (COI) is being reduced based on need group size.

Rule 461-155-0150 is amended to lower the Employment Related Day Care (ERDC) income limit from 185% to 150% of the Federal Poverty Level, to increase copays by \$18 to \$50 a month, and to eliminate the reduced copay for the first two months of ERDC eligibility. This rule is also being amended to reflect the correct OAR reference reflecting the annual increase in the federal poverty levels as published in the Federal Register. This rule includes references based on the federal poverty levels. This rule is also being amended to clarify the child care monthly payment rate is the maximum monthly subsidy payment per child.

Rule 461-160-0120 is being amended to correct a rule citation.

Rule 461-160-0600 is being amended to remove the reference to Oregon Health Plan (OHP) recipients who have a community spouse in the determination of awarding waived services or institutional care. OHP clients will no longer be eligible for Department-paid services under the Home and Community Based Waiver or in a nursing facility or other institutional setting beyond what is offered under the Oregon Health Plan standard benefit package.

Rule 461-160-0610 is being amended to remove the ability of those who are eligible for the Oregon Health Plan (OHP) standard package to have their income treated as if they were eligible for Medicaid as an aged or disabled individual. As with OAR 461-160-0600,

OHP standard recipients will not continue to receive the services described under the Department’s Home and Community Based Waiver nor institutional setting beyond the OHP standard package.

Rule 461-160-0620 is being amended to bring the rule into compliance with Section 1924(d)(3)(B) of the Social Security Act which indexes the community spouse income allowance for those married individuals who receive home and community based services or services in an institutional setting. The index is based on 150% of the federal poverty level for a couple and is effective July 1st each year.

Rule 461-175-0010 is being amended to more clearly describe a decision notice and so that the Department is not obliged to provide in decision notices — other than in the Food Stamp program — the name and phone number of a Department employee or the identity of the office for the client to contact for additional information.

Rule 461-195-0511 is being amended to add and clarify exceptions in considering child care overpayment situations. Situations involving more than one full-time provider or child care provided under contract can result in an overpayment.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-025-0310

#### Hearing Requests

(1) A claimant has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) The Department has not acted on a request or application for public assistance within 45 days of the application.

(b) The Department has not acted on an application for food stamps within 30 days of the filing date.

(c) The Department acts to deny, reduce, close or suspend a *grant* of public assistance (see ORS 411.095), a *grant* of aid (see ORS 418.125), a shelter payment permitted in the JOBS program (see OAR 461-190-0211 and following), medical assistance (see ORS 414.055), child care benefits authorized under division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs, or food stamp benefits. When used in this subsection, *grant of public assistance* and *grant of aid* mean the *grant* of cash assistance calculated according to the client’s need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of food stamps was an overissuance.

(e) The claimant claims that the Department previously underissued public assistance or food stamps and the Department denies the claim.

(f) The household disputes its current level of food stamp benefits.

(g) The filing group is aggrieved by any action of the Department that affects the participation of the filing group in the Food Stamp program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client’s premium for the Oregon Health Plan.

(j) In the Assessment Program, the Department denies payment for a basic living expense (see OAR 461-135-0475).

(k) The right to a hearing is provided for the TA-DVS program (see OAR 461-135-1235).

(1) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a *case plan* (defined in OAR 461-190-0151) or on the question of whether a support service payment should be authorized or made, unless the right to hearing is specifically authorized by the Department’s rules. On these questions and in any dispute arising in the JOBS program, the client is entitled to use the Department’s conciliation process (see OAR 461-190-0231).

(3) There is no right to a hearing to dispute a program requirement established by law. Examples are the closure of a program or a change to a payment standard.

(4) A request for hearing is complete:

(a) In public assistance programs, when the Department’s Administrative Hearing Request form (AFS 443) is completed and signed by the claimant or the claimant’s representative and is received by the Department.

(b) In the Food Stamp program when:

(A) The Department receives the claimant’s oral or written statement that he or she wishes to appeal a decision affecting the claimant’s food stamp benefits to a higher authority; or

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(B) The Department's Administrative Hearing Request form (form AFS 443) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(5) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Panel for a hearing on the question of timeliness.

(6) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Panel for a hearing on the question of whether the claimant has the right to a contested case hearing.

(7) To be timely, a completed hearing request must be received by the Department not later than:

(a) The 45th day following the date of the decision notice in public assistance and medical programs.

(b) The 90th day following the date of the decision notice in the Food Stamp Program.

(c) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(d) In a case described in section (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(8) In determining timeliness under section (7) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(9) In computing the time periods provided by this rule, if the last day of the time period falls on a Saturday, Sunday, or legal holiday, the period is extended until the next working day.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 411.060, ORS 411.816 & ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.095, ORS 411.816 & ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-025-0315

### Expedited Hearings

(1) A claimant has the right to an expedited hearing if:

(a) The Department denies or fails to issue a timely decision on claimant's request for TA-DVS or emergency assistance;

(b) The claimant contests the form or amount of a TA-DVS or an emergency assistance payment;

(c) The claimant has the right to a hearing over a reduction, suspension or closure and disagrees with the Department's decision to deny the continuation of cash, food stamp or medical benefits pending a requested hearing;

(d) The claimant's request for expedited food stamp service is denied, or the claimant is aggrieved by an action of the Department that affects the expedited participation of the household in the Food Stamp program; or

(e) The claimant is denied a shelter payment in the JOBS program or a payment for basic living expenses in the Assessment program (see OAR 461-135-0475).

(2) Public Assistance programs: An expedited hearing is a telephone hearing held within five working days of the Department's receipt of the written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service or by certified mail. In the TANF program, if the claimant requests a face-to-face hearing, the hearing may be postponed or continued as necessary to accommodate the claimant. However, the hearing must be held not later than 21 days following the receipt by the Department of the request for hearing if the claimant lives within 100 miles of Salem, Oregon, and not later than 35 days in all other cases. The final order must be issued within three working days from the date the hearing closes.

(3) Food Stamp program: An expedited hearing is a telephone hearing held within five working days of the receipt of a verbal or written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service or by certified mail. Following the expedited hearing, a final order must be issued not later than the ninth working day after the hearing was requested.

Stat. Auth.: ORS 411.060 & ORS 418.100

Stats. Implemented: ORS 411.095

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 21-1990(Temp), f. 8-28-90, cert. ef. 9-1-90; AFS 2-1991, f. 1-15-91, cert. ef. 2-1-91; AFS 4-1995, f. & ef. 2-1-95; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-120-0125

### Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, a person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program — a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) The following people meet the alien status requirements:

(a) American Indians born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the TANF program, the following people meet the alien status requirements:

(a) A person who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(4) In the BCCM, GA, GAM, MAA, MAF, OHP, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she:

(a) Was a qualified non-citizen on or before August 22, 1996;

(b) Was a resident of the United States before August 22, 1996; became a qualified non-citizen after August 22, 1996; resided in the United States continuously for five years immediately prior to the date he or she became a qualified non-citizen; and did not leave the United States between August 22, 1996 and the date he or she became a qualified non-citizen; or

(c) Is a person granted any of the following alien statuses:

(A) Refugee—under section 207 of the INA.

(B) Asylum—under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(5) In the GA, GAM, OSIP, and OSIPM programs, a qualified non-citizen meets the alien status requirement by meeting any of the following criteria:

(a) By being a qualified non-citizen of a status not listed in section (4)(c) of this rule and meeting the disability-related eligibility criteria for SSI.

(b) By meeting eligibility criteria for SSI and by applying for SSI within seven years following the date he or she was granted an alien status listed in section (4)(c) of this rule.

(c) If it has been more than seven years since the client was granted an alien status listed in section (4)(c) of this rule, by meeting:

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(A) The disability-related eligibility criteria for SSI; or  
(B) One of the alien status requirements listed in section (6) of this rule.

(d) By having been a recipient of SSI benefits on August 22, 1996 or by receiving SSI benefits based on an application filed before January 1, 1979.

(6) In all programs except TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. § 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of a person described in subsection (a) or (b) of this section.

(d) In the FS, OSIP or OSIPM program, a qualified non-citizen who meets the requirement in section (9) of this rule.

(7) Except as provided in sections (2), (4), (5), and (6) of this rule, non-citizens who entered the United States or were given qualified non-citizen status on or after August 22, 1996, are ineligible for the BCCM, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status. They meet the alien status requirement following the five-year period.

(8) In the FS program, the following non-citizens meet the alien status requirement:

(a) A person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(b) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(c) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(d) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (c) of this section.

(e) A qualified non-citizen who is disabled, as defined in OAR 461-110-0110(4).

(9) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS, OSIP, and OSIPM programs, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certifica-

tion cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, ORS 411.816, ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.816, ORS 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-120-0345

### Clients Required to Obtain Medical Coverage

This rule explains the obligation of clients to obtain medical coverage for members of the benefit group. A client is excused from the requirements of section (1)(a) of this rule for *good cause* defined in OAR 461-120-0350.

(1) To be eligible for any program except ERDC or FS, each adult client must:

(a) Assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial parent of a child in the benefit group to provide health care for that child.

(b) Make a good faith effort to obtain available coverage under Medicare.

(2) To be eligible for the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM (except OSIPM-MN), REFM, and SAC programs, once informed of the requirement, a person who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). For OSIPM, the client is not required to incur a cost for the health insurance.

(3) In the OHP-OPU program, except for American Indians and Alaska Natives and for persons eligible under the CAWEM program, a person who has health insurance available through his or her employer must cooperate in determining eligibility for the Family Health Insurance Assistance Program (FHIAP). If eligible for FHIAP, the person must apply for and accept the employer-sponsored health insurance. Rules for FHIAP are at OAR 442-004-0000 and following.

(4) A person who fails to meet the requirements of section (1), (2) or (3) of this rule is removed from the need group except that in the OHP program the person is removed from the benefit group.

(5) In the case of a person failing to meet the requirements of section (1)(a) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(6) The penalty provided by this rule ends when the client meets the requirements of this rule.

(7) If the TANF grant is affected by the penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without the reduction due to the penalty.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-125-0370

### Disability as the Basis of Need; OSIP and OSIPM

(1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), clients meet the requirement to be disabled if any of the following is true:

(a) They are receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as their SSDI or SSI eligibility continues.

(b) They were eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.

(c) They are found by the Department to meet or equal the listing of impairments found in 20 CFR Part 404, Subpart P, Appendix 1 or to meet the medical vocational guidelines found in 20 CFR Part 404, Subpart P, Appendix 2 for SSI.

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(d) They have been determined by the Social Security Administration (SSA) to meet or equal the listing of impairments found in 20 CFR Part 404, Subpart P, Appendix 1 or to meet the medical vocational guidelines found in 20 CFR Part 404, Subpart P, Appendix 2 for SSI.

(2) Disability determinations made by SSA are binding on the Department except for the following situations (see 42 CFR § 435.541(c)(4)):

(a) The client alleges a new medical condition; or

(b) The client alleges that their condition has changed or deteriorated, it has been more than 12 months since SSA issued a denial, and the client is not currently appealing that denial.

(3) In the OSIP-EPD and OSIPM-EPD programs, *disabled* means having a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for SSI or SSDI per 20 CFR Part 404.

(a) A determination by SSA that finds the individual *disabled* will be accepted by the Department; or

(b) If there is no currently effective SSA determination finding the individual *disabled*, the case will be referred to the Department's central office for a *disability determination* using the standards of 20 CFR Parts 404 and 416 and considering all relevant medical and vocational information.

Stat. Auth.: ORS 411.060, ORS 411.070 & ORS 414.042  
Stats. Implemented: ORS 411.060, ORS 411.070 & ORS 414.042  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 9-2003(Temp), f. & cert. ef. 4-11-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-135-0301

### Closure of the Emergency Assistance (EA) Program

(1) Effective January 1, 2003, the EA program is not funded. Notwithstanding other rules of the Department, the program is closed effective that date.

(2) Effective December 31, 2002, all persons eligible for or receiving benefits of the program become ineligible for the program. The Department will not authorize or provide any benefit for any period after December 31, 2002.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-135-0505

### Categorical Eligibility for FS

(1) A person is categorically eligible for food stamps if the person:

(a) Receives or is authorized to receive GA or SSI benefits or cash benefits funded by TANF;

(b) Receives or is authorized to receive in-kind benefits or services funded by TANF;

(c) Is deemed to be receiving SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)); or

(d) Is a member of a financial group with *countable income* less than 1.85 times the amount given in OAR 461-155-0225(2)(a) — rounded to the next lower whole dollar — and has received a pamphlet about Information and Referral Services.

(2) A benefit or service is "funded by TANF" (see section (1) of this rule) if it is provided as part of the ADC-PLS, Assessment, EA, ERDC, JOBS, TA-DVS, transition, or other TANF-funded program.

(3) For an entire filing group to be categorically eligible for food stamps, it must contain only clients who are categorically eligible for food stamps. For the purpose of determining who is categorically eligible for food stamps, in some programs all members of the filing group are considered receiving the benefits of the program even if not all members receive the benefit. Those programs are the ERDC and TA-DVS programs and any housing assistance or transition service funded by TANF.

(4) A filing group that is eligible for transition services or the TA-DVS program is considered receiving benefits for the entire period of eligibility even if benefits are not received during each month of that period.

(5) A person categorically eligible for the Food Stamp program is presumed to meet the eligibility requirements for resources, countable and adjusted income limits, social security account number, sponsored alien information, and residency.

(6) When a filing group contains both members who are categorically eligible for food stamps and those who are not, a resource owned in whole or in part by a categorically eligible member is excluded.

(7) A person cannot be categorically eligible for food stamps in either of the following circumstances:

(a) The person is disqualified from receiving food stamps because of an intentional program violation.

(b) The person is a *primary person* disqualified from receiving food stamps for failure to comply with an OFSET activity or component contained in an OFSET *case plan*.

Stat. Auth.: ORS 411.816  
Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 29-2000(Temp), f. & cert. ef. 12-1-00 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-135-0721

### Terminate OSIPM-MN

(1) Effective February 1, 2003, the Oregon Supplemental Income Program Medical — Medically Needy (OSIPM-MN) program is not funded. Notwithstanding other rules of the Department, the program is closed effective that date.

(2) Effective January 31, 2003, all persons eligible for or receiving benefits of the OSIPM-MN program become ineligible for the program. The Department will not authorize or provide any benefit under the program after January 31, 2003.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-135-0832

### Estate Administration; Definitions

Effective July 18, 1995, for purposes of ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340, the terms listed below have the meanings ascribed to them herein; provided, however, as used in this section, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 U.S.C. § 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department of Human Services applies the definitions and procedures set forth in OAR 461-135-0835 through 461-135-0845 to recoveries and claims made pursuant to ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340.

(1) *Assets* means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death.

(2) *Assign* means a Person who acquires an interest in Real or Personal Property or an Asset pursuant to a written or oral assignment of such Real or Personal Property or Asset from a Person with the legal right to assign it.

(3) *Bona Fide Purchaser for Value* means any Person who provides consideration, including money or property, to a seller or transferor of Real Property or Personal Property equal to the fair market value of the Real or Personal Property sold or transferred.

(4) *Consideration Furnished Test* means the method by which the ownership of Real or Personal Property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(5) *Convincing Evidence* includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(6) *Disabled child* means a natural or adopted son or daughter of the deceased client, of any age, who met SSI disability criteria at the time the

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Department's claim was asserted and who presented evidence to the Department substantiating the disability within two years after the Department asserted the claim.

(7) *Estate* means:

(a) With respect to the collection of payments made for services provided on or after July 18, 1995, all Real Property, Personal Property or other Assets wherever located in which a deceased individual had any Legal Title or ownership or beneficial interest at the Time of Death, including Real Property, Personal Property or Assets conveyed by the deceased individual to a Survivor, Heir or Assign of the decedent through Joint Tenancy, Tenancy In Common, Survivorship, Life Estate, Living Trust, an annuity purchased on or after April 1, 2001, or other similar arrangement.

(b) With respect to the collection of payments made for services provided before July 18, 1995, all Real and Personal Property and other Assets included within an individual's estate as such estate is defined by applicable state probate law.

(8) *Heir* means any individual, including the surviving spouse, who is entitled under Intestate Succession to the Real Property, Personal Property, and Assets of a decedent who died wholly or partially Intestate.

(9) *Interest* means any form of legal, beneficial, equitable or ownership interest.

(10) *Intestate* means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(11) *Intestate Succession* means succession to Real Property, Personal Property or Assets of a decedent who dies Intestate or partially Intestate.

(12) *Joint tenancy* means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(13) *Legal Title* means legal ownership by a Person.

(14) *Life Estate* means an Interest in Real or Personal Property that terminates upon the death of a measuring life.

(15) *Living Trust* means a revocable inter vivos trust.

(16) *Medical Institution* means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(17) *Ownership Documents* means any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or Legal Title held by a Person.

(18) *Permanently Institutionalized* means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(19) *Person* means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(20) *Personal Property* means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(21) *Real Property* means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties.

(22) *Recipient of Property* means:

(a) Any Survivor, Heir, Assign, devisee under a will, beneficiary of a trust, transferee or other Person to whom Real Property, Personal Property or other Assets pass upon the death of the decedent either by law, Intestate Succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such Real Property, Personal Property or Asset, or proceeds from the sale thereof, through any form of conveyance, that is not a Bona Fide Purchaser for Value.

(23) *Survivor* means any Person who, as a co-tenant, is automatically entitled to an expanded share of Real or Personal Property upon the death of a fellow co-tenant.

(24) *Survivorship* means an interest in Real or Personal Property that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(25) *Tenancy in Common* means ownership of Real or Personal Property by an individual together with one or more other Persons which ownership Interest shall not pass by Survivorship upon the death of the individual.

(26) *Time of Death* means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall Time of Death be construed to mean a time after which an Interest in Real or Personal Property or other Assets may:

(a) Pass by Survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(27) *Value* means the fair market value as of the Time of Death of the Medicaid recipient or the Time of Death of the surviving spouse, if estate recovery is deferred until the surviving spouse dies. Fair market value is the price at which Real or Personal Property would change hands between a willing buyer and a willing seller. In the event the Real or Personal Property was not reported to the Department by the deceased Medicaid recipient, the Value would be established based on its fair market value at the time of discovery.

Stat. Auth.: ORS 411.105

Stats. Implemented: ORS 414.105

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-135-0835

### Limits on Estate Claims

(1) For BCCM, GA, GAM, OHP, OSIP, OSIPM, and QMB, the Department has a priority claim against the property or any interest therein belonging to the estate of any deceased person as provided in ORS Chapters 411, 412, 413, and 414. The Estate Administration Unit of the Department (EAU) is authorized to present and file such claim against the estate. It will be treated as a preferred claim and filed in a like manner as the claims of other creditors.

(2) If there is a surviving spouse, the Department shall have a claim against the estate of the surviving spouse for aid paid to the surviving spouse. In addition, the Department shall have a claim against the estate of the surviving spouse for aid paid to the deceased client, but only to the extent that the surviving spouse received property or other assets from the deceased client through probate or through operation of law. However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving child under age 21, no surviving blind child of any age, and no surviving disabled child.

(3) The amount of the claim is as follows:

(a) For GA and GAM, the amount of the claim will not exceed the total amount of cash and medical benefits paid. The claim will include benefits provided under the Home and Community-Based Care Waiver program. This applies to all General Assistance programs, even those that are no longer active.

(b) For BCCM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB, the amount of the claim shall include the total amount of cash paid at any age and all medical benefits provided after the client reached age 55. If the client was *permanently institutionalized*, the claim shall include the total amount of cash and medical benefits paid at any age. This applies to all Old Age Assistance and Aid to the Disabled clients, including those served by Home and Community-Based Care Waiver programs. It also includes clients covered by programs that are no longer active.

(c) For OHP, OSIP-AB, and OSIPM-AB, the claim shall include the total amount of cash paid at any age and all medical benefits provided after the client reached age 55. If the client was *permanently institutionalized*, the claim shall include the total amount of cash and medical benefits paid at any age. The claim shall include benefits provided under the Home and Community-Based Care Waiver program.

(d) For OSIP, OSIPM-AB, OSIPM-AD, and OSIPM-OAA, the amount of the claim shall also include the total amount of medical benefits provided to clients who were age 55 to 64 on the date the medical benefits were provided if the benefits were provided after July 18, 1995. Medical benefits will be considered to have been provided to a client on the day of provision of medical services for which medical assistance payments are made.

(4) The priority for payment of claims against the estate will be as established under ORS 115.125.

(5) EAU may nominate a personal representative for an estate if the Department has a claim and it appears that no person with a higher preference, as established in ORS 113.085, is willing to be the representative.

(6) Property disposal will be in accordance with OAR 461-135-0838.

Stat. Auth.: ORS 410.070 & ORS 411.060

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Stats. Implemented: ORS 411.795, ORS 412.600, ORS 413.200 & ORS 415.105  
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-135-1110

### Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, a person who is enrolled *full time* in *higher education* is ineligible to receive benefits, unless one of the following is true:

(a) The student:

(A) Meets the income requirements for a Pell grant;  
(B) Is not currently covered by private major medical health insurance or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 U.S.C. § 2296).

(2) For the purposes of this rule:

(a) *Higher education* includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) *Full time* is defined by the school.

(c) *Meets the income requirements for a Pell grant* means the student's Student Aid Report shows an "expected family contribution" less than \$3,801 for the 2002-2003 school year or \$3,851 for the 2003-2004 school year.

(3) A student's enrollment status continues during school vacation and breaks. A student's *higher education* status ends when the student graduates, drops out (as verified by their disenrolling), reduces their credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-135-1120

### Premium Requirement; OHP-OPU

In the OHP-OPU program, a monthly premium must be paid when the benefit group includes at least one non-exempt (HPN) client (see OAR 461-135-1100).

(1) The following HPNs are exempt from the premium requirement:

(a) American Indians and Alaska Natives.

(b) Clients who are eligible for the CAWEM program (see OAR 461-135-1070).

(2) The amount of the premium is determined in accordance with OAR 461-155-0235.

(3) All non-exempt clients in the benefit group are responsible for payment of premiums.

(4) Once the amount of the premium is established, the amount will not change during the certification period unless:

(a) An HPN client becomes pregnant.

(b) A pregnant client becomes an HPN client following the end of her assumed eligibility period provided for in OAR 461-135-1100.

(c) An HPN client becomes eligible for another program (for example, GA, OSIP or TANF).

(d) An HPN client leaves the filing group.

(e) OHP cases are combined during their certification periods.

(f) An HPN client's exemption status changes.

(g) An HPN client is no longer a member of the benefit group.

(5) A premium is considered paid on time when the payment is received by the Oregon Health Plan billing office on or before the 25th day of the month after the month in which it is due. The day the payment arrives in the office's post office box is the date it is received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-145-0080

### Child Support

(1) Child support is income paid (voluntarily, per court order or per administrative order) by a noncustodial parent for a dependent child or minor parent in the financial group. All child support is considered the dependent child's or minor parent's income.

(2) For MAA, MAF, REFM, and TANF:

(a) In determining eligibility, except for clients working under a JOBS Plus agreement, count as unearned income all child support received by the Division of Child Support, if continued receipt of the child support is reasonably anticipated. Exclude these payments when determining the benefit amount.

(b) For clients working under a JOBS Plus agreement:

(A) Exclude child support in determining countable income.

(B) Exclude child support when calculating the TANF portion of the benefit equivalency standards.

(C) Count all child support paid directly to the client as unearned income when calculating the wage supplement.

(c) Count as unearned income all other child support payments paid directly to the financial group or to a third party on behalf of a financial group member.

(3) For ERDC, child support is countable unearned income if it is received by the financial group or is countable under OAR 461-145-0280. Otherwise it is excluded.

(4) For FS, treat child support as follows:

(a) Exclude child support payments the group receives that must be assigned to the Department to maintain TANF eligibility, even if the group fails to turn the payments over to the Department.

(b) Exclude child support payments received by filing groups with at least one member working under a JOBS Plus agreement, except in calculating the supplemental payment per subsection (2)(b) of this rule.

(c) Count all other child support as unearned income.

(d) Exclude payments made by the noncustodial parent to a third party for the benefit of the financial group.

(5) For OHP, count all child support paid directly to the financial group or paid to a third party for the benefit of the financial group as unearned income.

(6) For OSIP, OSIPM, and QMB, count all child support paid to the financial group as unearned income. Do not allow an income deduction for child support paid by the financial group.

Stat. Auth.: ORS 411.060, ORS 411.816 & ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.816 & ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-145-0460

### Sale of a Resource

(1) In all programs except ERDC, EXT, MAA, MAF, SAC, and TANF, proceeds from the sale of a resource are treated as follows:

(a) Proceeds from the sale of a resource (other than a home) received on a monthly basis are counted as unearned income. Proceeds received other than monthly are treated as follows:

(A) If the proceeds are from the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.

(B) The proceeds from all other sales are counted as a resource. If the proceeds put the benefit group over the resource limit, they are counted as periodic or lump-sum income.

(b) For all clients except those eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the financial group's home are excluded for three months if the financial group intends to use them to buy another home.

(c) For clients eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the financial group's home are excluded for 12 months if the financial group intends to use them to buy another home.

(d) The proceeds from the sale of a home that are not reinvested in another home are counted as a resource. In the GA, GAM, and REF programs, if the proceeds put the benefit group over the resource limit, they are counted as periodic or lump-sum income.

(e) In the FS program, if a self-employed client sells a work-related asset, including equipment and inventory, the proceeds of the sale are treated as self-employment income. Any proceeds of the sale reinvested in another excluded resource are excluded, and the remainder are countable.



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(2) In the MAA, MAF, SAC, and TANF programs, if the proceeds are from the sale of an excluded resource, the amount reinvested in another resource is excluded; all other proceeds from the sale of the resource are counted as a resource.

(3) In the ERDC and EXT programs, all proceeds from the sale of a resource are excluded.

Stat. Auth.: ORS 411.060, ORS 411.816 & ORS 418.100  
Stats. Implemented: ORS 411.010, ORS 411.816 & ORS 418.100  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-145-0540

### Trusts

(1) Trust funds are money, securities or similar property held by a person or institution for the benefit of another person.

(2) This section applies to all trust funds in the FS, MAA, MAF, OHP, REF, SAC and TANF programs. It also applies to GA, GAM, OSIP, OSIPM and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group for items covered by program benefits.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(3) In the ERDC program, all trust funds are excluded.

(4) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (11) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (9) of this rule.

(5) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

- (a) The client.
- (b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(6) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:

- (a) The purpose for which the trust was established.
- (b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(8) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(9) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made

for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(10) Notwithstanding the provisions above in this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined disabled by SSI criteria, and created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

- (A) The client's parent.
- (B) The client's grandparent.
- (C) The client's legal guardian or conservator.
- (D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. A trust established under this provision enables a client who, because of income, would have been eligible for OSIPM-MN and ineligible for paid nursing facility care or waived services to qualify for OSIPM. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

- (A) Personal-needs allowance.
- (B) Community spouse monthly maintenance needs allowance.
- (C) Medicare and other private medical insurance premiums.
- (D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. A trust established under this provision enables a client who, because of income, would have been eligible for OSIPM-MN and ineligible for paid nursing facility care or waived services, to qualify for OSIPM. The trust contains all the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

- (i) Trustee fees;
- (ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income; and
- (iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical care costs that are not reimbursed by a third party. Contributions to reserves for personal liabilities including but not limited to child support, alimony, and property and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan on a monthly basis and contributions to a reserve for home maintenance if the client's name remains on the title.

(F) Patient liability not to exceed the cost of waived services or nursing facility care.

(d) A trust containing the resources or income of a client who is disabled as defined by SSI criteria and created before the client reached age 65, meeting the following conditions:

- (A) The trust is established and managed by a non-profit association.
- (B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who are disabled.

(D) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays

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to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid.

(1) In the GA, GAM, OSIP, OSIPM and QMB programs, the provisions of this rule may be waived if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, ORS 411.816 & ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.700, ORS 411.816 & ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-145-0820

### Deemed Assets; Noncitizen's Sponsor

(1) An individual or organization may sponsor the admission of a noncitizen under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154).

(2) An affidavit of support (INS Form I-864) is the agreement between the sponsor and the United States Immigration and Naturalization Service in which the sponsor agrees to provide financial support for the noncitizen so that the noncitizen will not become a public charge.

(3) For all programs except ERDC, REF, and REFM, the countable assets of an individual sponsor and the sponsor's spouse are considered countable assets of the noncitizen as provided in this section and the following rules. The sponsor's assets are considered available to the noncitizen whether or not the sponsor lives in the same household as the noncitizen. The assets of the sponsor's spouse are considered available only when the spouse lives in the sponsor's household.

(4) The income deemed available to the noncitizen is calculated according to OAR 461-145-0840.

(5) The value of the resources deemed available to each noncitizen is determined as follows:

(a) The value of the countable resources of the sponsor and the sponsor's spouse is determined according to the rules of the program the noncitizen applies for.

(b) In the Food Stamp program only, \$1,500 is deducted from the value.

(c) The remaining value is divided by the number of noncitizens sponsored by the individual or couple. The result is the value of the resources deemed available to the noncitizen.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-145-0830

### When to Deem the Assets of a Noncitizen's Sponsor

The assets of a sponsor and the sponsor's spouse are considered the assets of the sponsored non-citizen unless:

(1) The sponsor has not signed a legally binding affidavit of support, for instance an INS form I-864 or I-864A;

(2) The sponsor is unable to meet the non-citizen's needs. A sponsor who receives Food Stamp, TANF or SSI benefits is presumed unable to meet the non-citizen's needs;

(3) The sponsor is deceased. The estate of a deceased sponsor is not responsible for the non-citizen;

(4) The sponsored non-citizen claims indigence;

(5) The sponsored non-citizen is a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent, as long as the battered non-citizen does not live in the same household as the person responsible for the battery;

(6) The sponsored non-citizen does not meet the alien status requirement for the program for which he or she applies;

(7) The sponsored non-citizen becomes a naturalized citizen; or

(8) The sponsored non-citizen can be credited with 40 qualifying quarters of work.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-155-0035

### Cooperation Incentive Payment Standard; TANF and REF

(1) The cooperation incentive is a monthly payment added to the TANF cash grant. OAR 461-135-0210 explains who is eligible for this incentive payment.

(2) When there is an adult in the need group, the incentive payment is based on the number of people in the need group as follows:

(a) One person — \$22;

(b) Two people — \$27;

(c) Three people — \$37;

(d) Four people — \$44;

(e) Five people — \$44;

(f) Six people — \$65;

(g) Seven people — \$65;

(h) Eight or more people — \$97.

(3) When there is no adult in the need group, the incentive is calculated as follows:

(a) The payment authorized by section (1) of this rule is determined based on the number of people in the household group rather than in the need group. For instance, if there are three people in the household group, the amount used for this calculation is \$37.

(b) The figure obtained in subsection (a) is divided by the number of people in the household group, and the result is rounded to the next lower whole number.

(c) The figure obtained in subsection (b) is multiplied by the number of people in the need group. The result is the incentive payment.

Stat. Auth.: ORS 411.060 & ORS 418.100

Stats. Implemented: ORS 411.060 & ORS 418.100

Hist.: AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-155-0150

### Child Care Eligibility Standard, Payment Rates, and Copayments

This rule covers child care in the ERDC, JOBS, JOBS Plus, OFSET and TANF programs.

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: A child aged birth through 12 months.

(b) Toddler: A child aged 1 year through 30 months.

(c) Preschool Child: A child aged 31 months through 5 years.

(d) School Child: A child aged 6 years or older.

(e) *Special needs child*: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

(a) The *Standard Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The *Enhanced Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider meets:

(A) The training requirements of the Professional Development Registry (PDR) entry level, established by the Oregon Center for Career Development in Childhood Care and Education; or

(B) The training requirements established by the Child Care Division for registered family providers who apply to become registered after October 1, 1999.

(c) The *Enhanced Group Rate* applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Group Child Day Care Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(d) The *Standard Center Rate* applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

## ADMINISTRATIVE RULES

(e) The *Enhanced Center Rate* applies to child care provided in a center that is certified by the Child Care Division or in an exempt center whose staff meet the training requirements of the PDR entry level established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the PDR entry level training requirements noted in section (2)(b)(A) of this rule.

(B) New staff must meet the PDR entry level training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(f) An exempt center is eligible to receive the enhanced rate for a maximum of six months while in the process of meeting the requirements of section (2)(e) of this rule if it files a statement of intent to meet the requirements on a form prescribed by the Department.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of section (2)(b), (c), (e) or (f) of this rule.

(3) Subject to the provisions in section (6) of this rule, the monthly limit for child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

(4) The number of payable billable hours for a child is limited as follows:

(a) For the ERDC-BAS, OFSET and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-190-0161 and OAR 461-190-0310); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS or OFSET program.

(b) For the ERDC-SBG program, the total may not exceed the number of hours of care necessary for the client to maintain his or her education, training or employment. The total may not exceed 125 percent of the sum of 200 percent of class hours and the time the client is at work.

(c) In the ERDC-BAS and TANF programs, for a client who earns less than state minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage. The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the client's or child's circumstances, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, limited to 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in section (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly). [Tables not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is 1.50 times the amount given in OAR 461-155-0225(2)(a), rounded down to the next whole number. The ERDC copay is \$43 or the amount determined by the formula in subsection (b) of this section, whichever is greater.

(b) The maximum copay equals the constant determined by the table in subsection (c) of this section, added to the product of a constant determined by the table in subsection (d) of this section times the constant determined by the table in subsection (e) of this section raised to a power equal to the family's gross income, expressed in dollars. The formula is as follows:  $y = k + (b \times m^x)$ .

(c) The constant  $k$  is determined by the number of people in the need group, as follows:

(A) 2 persons:  $k = -12$ ;

(B) 3 persons:  $k = -37$ ;

(C) 4 persons:  $k = -32$ ;

(D) 5 persons:  $k = -33$ ;

(E) 6 persons:  $k = -62$ ;

(F) 7 persons:  $k = -74$ ;

(G) 8 or more persons:  $k = -85$ .

(d) The constant  $b$  is determined by the number of people in the need group, as follows:

(A) 2 persons:  $b = 18.0$ ;

(B) 3 persons:  $b = 23.0$ ;

(C) 4 persons:  $b = 20.9$ ;

(D) 5 persons:  $b = 20.6$ ;

(E) 6 persons:  $b = 33.2$ ;

(F) 7 persons:  $b = 33.2$ ;

(G) 8 or more persons:  $b = 40.4$ .

(e) The constant  $m$  is determined by the number of people in the need group, as follows:

(A) 2 persons:  $m = 1.001885$ ;

(B) 3 persons:  $m = 1.001550$ ;

(C) 4 persons:  $m = 1.001380$ ;

(D) 5 persons:  $m = 1.001250$ ;

(E) 6 persons:  $m = 1.000990$ ;

(F) 7 persons:  $m = 1.000910$ ;

(G) 8 or more persons:  $m = 1.000795$ .

(11) Copayment (copay) reduction benefit is limited as follows:

(a) For the period March 1, 2000 through December 31, 2002, a client's copay is limited to \$25 each month during the first two consecutive months the client is eligible for ERDC. The copay reduction benefit cannot be applied more than two months in any 12 consecutive months.

(b) For a client who becomes eligible for ERDC in January 2003, the copay is limited to \$25 for January and \$43 for February 2003. This copay reduction benefit does not apply to clients who have received the benefit after January 2002.

# ADMINISTRATIVE RULES

(c) The copay reduction benefit described in this section does not apply to a client who becomes eligible for ERDC after January 2003.

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-160-0120

### Income of Father of Unborn, Ineligible Non-Citizens; MAF

(1) A need group ineligible for MAA that includes the father of an unborn or an ineligible citizen, may be evaluated for the MAF program by counting the income of the father of the unborn or the ineligible non-citizen(s) as follows.

(2) If a person in the MAA financial group is excluded from the need group because he is the father of an unborn, the deduction is the payment standard in OAR 461-155-0030(2) for one person.

(3) If one or more people are excluded from the need group for failure to meet the requirements of OAR 461-120-0120 (regarding citizenship and alien status), the deduction is the payment standard in OAR 461-155-0030(2) for the number of people who do not meet the citizenship or alien status requirements.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-160-0600

### Availability of Income; Couple with an Institutionalized Spouse

This rule applies to an OSIP or OSIPM institutionalized spouse who began a continuous period of care on or after October 1, 1989.

(1) Do not deem any of the community spouse's income available to the institutionalized spouse at any time during the institutionalized spouse's continuous period of care.

(2) Determine the ownership of income from property that belongs to the institutionalized or community spouse as follows, unless legal documents specifically provide otherwise:

(a) If the payment is made solely to the institutionalized spouse or the community spouse, the income is available only to that spouse.

(b) If the payment is made to both the institutionalized and the community spouse, one-half of the income is available to each.

(c) If the payment is made to one spouse and another person, or to both spouses and another person, the income available to each spouse is whatever their share of the income is. If the payment is made to both spouses and another person, and it is not clear what each spouse's share of the income is, each spouse's share will be one-half of the couple's portion of the payment.

(d) If the institutionalized spouse can prove that the ownership of income is other than provided above, allow that amount.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-160-0610

### Client Liability and Spend-Down for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)

Clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who live in or entering a long-term care setting or who receive Title XIX waived services must, in order to remain eligible, make the payment required by this rule.

(1) Clients who receive SSI, or are deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), are eligible for OSIP and OSIPM (except OSIPM-MN) without having to make a payment.

(2) Clients who do not receive SSI, but whose countable income is under the countable income limit, may be eligible for OSIP and OSIPM (except OSIPM-MN). These clients must apply their adjusted income to the cost of their care or service. This is their client liability. If their adjusted income exceeds their cost of care or service, they must pay the full cost of care but have no additional liability.

(3) Clients whose countable income exceeds the countable income limit are not eligible for OSIPM-MN unless they meet OSIPM-MN spend-down requirements in this section. The spend-down is the difference between adjusted income and the OSIPM-MN income standard. A client meets the spend-down requirement as follows:

(a) If the anticipated cost of care equals or exceeds the spend-down, the client is deemed to have met the spend-down requirement.

(b) If the anticipated cost of care is less than the spend-down, the cost of care is subtracted from the spend-down. The client must pay the full amount of care and incur additional medical expenses to meet the remainder of the spend-down requirement.

Stat. Auth.: ORS 411.060, ORS 411.07 & ORS 414.042

Stats. Implemented: ORS 411.060, ORS 411.070 & ORS 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-160-0620

### Income Deductions; Long-Term Care or Waivered Services

Deductions from income in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs are made as follows:

(1) Deductions are made in the order below for clients who do not receive SSI and who:

(a) Reside in or are entering a long-term care facility; or

(b) Receive Title XIX waived services.

(2) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs. No earned income deduction is allowed for OHP or OSIPM-MN.

(3) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-140-0420.

(4) One of the following need standards is deducted:

(a) A \$30 personal needs allowance for clients in long-term care.

(b) A \$90 personal needs allowance for clients in long-term care who are eligible for VA benefits based on unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(c) The OSIP maintenance standard for clients who receive waived services.

(5) A community-spouse income allowance is deducted if income of the institutionalized spouse is made available to (or for the benefit of) the community spouse. The community spouse's income allowance is computed as follows:

(a) A maintenance needs allowance (not to exceed \$2,267) is calculated for the community spouse as follows:

(A) \$1,515 is added to

(B) The amount over \$455 that is needed to pay monthly shelter expenses for the couple's principal residence. Shelter expenses are rent or mortgage payment (interest and principal), taxes, insurance, required maintenance charge for a condominium or cooperative, plus the FS program's standard utility allowance for the spouse and eligible dependents.

(b) The community spouse's total gross monthly income is subtracted from the maintenance needs allowance calculated in subsection (a) above. The remaining amount is the community spouse's income allowance, unless a spousal-support court order or exceptional circumstances resulting in significant financial distress require a greater amount.

(6) A dependent income allowance is deducted for each eligible dependent as follows:

(a) For a case with a community spouse, a deduction is permitted only if the eligible dependent's monthly income is below \$1,515. To determine the eligible dependent's income allowance:

(A) The eligible dependent's monthly income is deducted from \$1,515.

(B) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the eligible dependent's income allowance.

(b) For a case with no community spouse:

(A) The allowance is the OSIPM-MN adjusted income standard for the client and eligible dependents.

(B) The OSIPM-MN standard is not reduced by the dependent's income.

(7) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

# ADMINISTRATIVE RULES

(8) In the OSIPM (except OSIPM-MN) program, medical deductions allowed by OAR 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(9) After taking all the deductions allowed by this rule, the remaining balance is used as follows:

(a) In the OSIPM (except OSIPM-MN) program, the balance is the adjusted income. The patient liability is as follows:

(A) For waived clients (except in OSIPM-IC), the liability is the waived service cost or the client's adjusted income, whichever is less. This amount must be paid to the Department each month as a condition of receiving waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For long-term care clients, the cost of care or their adjusted income, whichever is less.

(b) In the OSIPM-MN program, the balance is the spend-down amount.

Stat. Auth.: ORS 411.060 & ORS 411.070

Stats. Implemented: ORS 411.060 & ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-175-0010

### What a Decision Notice Must Include

(1) A *decision notice* is a document describing the Department's proposed action on an application or with respect to the client's benefits. It does the following:

(a) Specifies the action the Department intends to take, the effective date of the action, and the date the notice is mailed.

(b) Specifies the reason(s) for the action.

(c) In the Food Stamp program only, provides the name and phone number of the Department staff person or identifies the office to contact for additional information.

(d) Informs the client of the extent to which the client has a right to a hearing before an impartial person.

(e) Specifies the method and deadline for requesting a hearing.

(f) Informs the client of the right to representation, including legal counsel, and the right to have witnesses testify on his or her behalf.

(g) Provides information about the availability of free legal help.

(h) Cites the rule(s) that supports the action.

(2) In addition to the information listed in section (1) of this rule, a *continuing benefits decision notice* includes notification of the client's right to continue receiving benefits (see OAR 461-025-0311, "Continuation of Benefits").

Stat. Auth.: ORS 411.060, ORS 411.816 & ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.816 & ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03

## 461-195-0511

### Child Care Overpayments

This rule defines overpayments in the Department's child care programs and explains when clients and providers are liable for an overpayment.

(1) A child care overpayment is a payment for child care made by the Department to or on behalf of a client that is paid to an ineligible provider or exceeds the amount authorized by law for the care provided, except that it is not a child care overpayment in any of the following situations:

(a) A client fails to make a required report of a change in income during a reporting period, other than the changes covered in OAR 461-170-0015;

(b) The total due and paid to two or more providers exceeds the monthly limit the Department may pay on behalf of the client. The exception provided by this subsection does not apply if—

(A) Two or more providers are paid at the full-time rate; or

(B) One of the providers provides child care under a contract with the Department;

(c) The client unintentionally provides an inaccurate estimate of prospective income or other information.

(2) A child care payment made for care provided when a client was not engaged in an activity that made the client eligible for child care, for instance, an activity of the JOBS program (see OAR 461-190-0110 and following), or for care provided when the client was not eligible for child care benefits, is a client overpayment.

(3) A child care overpayment occurring after November 30, 1999, not caused by the client or the provider is collectible as follows:

(a) The provider is liable for a provider overpayment made on behalf of a client eligible for child care payments.

(b) The client is liable for an overpayment if the client was not eligible for the payment.

(4) A client is liable for a client overpayment, and a provider is liable for an overpayment caused by the provider. They are jointly and severally liable for an overpayment caused by both. In the case of an alleged provider overpayment, a provider's failure to provide contemporaneous records of care provided creates a rebuttable presumption that the care was not provided.

(5) The Department may recover a child care overpayment caused by provider error or due to the Department's use of information supplied by the provider by reducing up to 100 percent any future child care payments for which the provider bills the Department.

(6) The adult who cosigns an application with a minor provider applicant, as required by OAR 461-165-0180(3)(b)(C)(i), is responsible to repay an overpayment incurred by the minor provider.

Stat. Auth.: ORS 411.060, ORS 418.100

Stats. Implemented: ORS 411.660, ORS 411.122, ORS 418.100

Hist.: AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 16-2003, f. & cert. ef. 7-1-03

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**Adm. Order No.:** SSP 17-2003

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 461-110-0115, 461-115-0540, 461-135-0725, 461-145-0025, 461-160-0015

**Rules Repealed:** 461-110-0115(T), 461-135-0725(T)

**Subject:** Rule 461-110-0115 is being amended to incorporate new definitions used in determining eligibility for the OSIP-EPD and OSIPM-EPD programs. Temporary version being replaced with the finalized version.

Rule 461-115-0540 is being amended to incorporate changes to the certification period for the OSIP-EPD and OSIPM-EPD programs.

Rule 461-135-0725 is being amended to define the amount of time a person may maintain OSIP-EPD and OSIPM-EPD eligibility after they lose their employment. Temporary version being replaced with this finalized version.

Rule 461-145-0025 is being amended to redefine Approved Accounts.

Rule 461-160-0015 is being amended to reduce the countable resource limit to \$5,000.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-110-0115

### Terms Used in Determining Eligibility; OSIP-EPD and OSIPM-EPD

(1) *Approved account* means a segregated account in a financial institution, the purpose of which is to save for future disability-related expenses that would increase the individual's independence and employment potential. Also included in this definition are accounts regulated by the Internal Revenue Code and used for retirement planning, such as IRAs, 401(k)s, TSAs, and KEOGHs.

(2) *Attached to the workforce* means a person is employed and has, in each countable quarter, earnings sufficient to receive credit from the Social Security Administration for a quarter of coverage for purposes of obtaining Social Security benefits (see 42 U.S.C. § 413).

(3) *Blind Work Expenses* (BWEs) are those costs defined by the Social Security Administration (SSA) that can be used as reductions to earned income as defined in 20 CFR 416.1112(c)(8).

(4) *Client contribution* is the amount that must be paid monthly as a condition of eligibility for the EPD program. This contribution is the combination of the Cost Share and the Premium.

# ADMINISTRATIVE RULES

(5) *Cost share* means the amount of unearned income in excess of the OSIP income and payment standard that is given to the state.

(6) *Disabled* means having a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by the Social Security Administration when determining eligibility for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) as defined in 20 CFR Part 404.

(7) *Disability determination* means the process used to establish whether the individual's disability meets the definitions used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI).

(8) *Employment* means an ongoing work activity for which income is received and a potential tax liability is incurred.

(9) *Employment and independence expense* (EIE) means the cost of any expense that can be reasonably expected to enhance the individual's independence and employment potential.

(10) *Impairment Related Work Expenses* (IRWEs) are those costs defined by the Social Security Administration (SSA) that can be used as reductions to earned income. To be allowed, the item/service must be related to the impairment and necessary to enable the person to perform their job as defined in 20 CFR 416.976.

(11) *Premium* means the payment given to the state that is based on a graduated percentage of the individual's total income.

Stat. Auth.: ORS 411.060, ORS 411.070 & ORS 414.042

Stats. Implemented: ORS 411.060, ORS 411.070 & ORS 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 17-2003, f. & cert. ef. 7-1-03

## 461-115-0540

### Certification Period; OSIP-EPD and OSIPM-EPD

(1) In the OSIP-EPD and OSIPM-EPD programs, the Department determines eligibility and assigns a redetermination date by which the next determination of eligibility is required. A certification period is the period for which a client is certified eligible for the program. The Department determines the length of the certification period based on the stability of the client's circumstances, as follows:

(a) The period may extend up to 12 months if the client's circumstances are sufficiently predictable.

(b) If the client's circumstances are not stable or changes are expected in the near future, the period may be a minimum of three and a maximum of six months.

(2) To receive uninterrupted benefits for the next certification period, OSIP-EPD and OSIPM-EPD clients must submit a completed redetermination form in the last month of their current certification period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 17-2003, f. & cert. ef. 7-1-03

## 461-135-0725

### Specific Requirements; OSIP-EPD, OSIPM-EPD

(1) To be eligible for OSIP-EPD and OSIPM-EPD, a person must:

(a) Be disabled, as defined in OAR 461-125-0370(2);

(b) Have adjusted income below the limit provided in OAR 461-155-0250(6); and

(c) Be attached to the workforce as defined in OAR 461-110-0115.

Once found eligible, a client remains attached to the workforce while not working if the employer treats the client as an employee, such as when the client is absent from the job under the provisions of the Family Medical Leave Act.

(2) If an OSIP-EPD or OSIPM-EPD client becomes unemployed and meets all financial and nonfinancial eligibility requirements for the other OSIP or OSIPM sub-programs except for resources, the client can retain eligibility for OSIP-EPD or OSIPM-EPD for 12 months in order to spend down to the OSIP or OSIPM resource limit. The 12-month period begins the first of the month following the loss of employment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 17-2003, f. & cert. ef. 7-1-03

## 461-145-0025

### Approved Accounts; OSIP-EPD and OSIPM-EPD

(1) All money in an *approved account* is excluded as a resource during the determination of eligibility.

(2) Only money from the client's own earned income, or money contributed from an employer based on earnings, may be deposited into an approved account.

(3) Retirement-related approved accounts must be set up in a financial institution and must comply with IRS regulations.

(4) An asset purchased with money from an *approved account* is excluded if the purpose of the account is to save for disability-related expenses (see OAR 461-110-0115).

(5) If money from the *approved account* is used for a purpose not consistent with the definition of *approved account* in OAR 461-110-0115, the client will be prohibited from utilizing an *approved account* for the next 12 months for the purposes of the determination of eligibility

Stat. Auth.: ORS 411.060, ORS 411.070 & ORS 414.042

Stats. Implemented: ORS 411.060, ORS 411.070 & ORS 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 17-2003, f. & cert. ef. 7-1-03

## 461-160-0015

### Resource Limits

(1) In the MAA, MAF, REF, SAC and TANF programs, the resource limit is:

(a) \$10,000 for need groups with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for need groups with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other need groups, including all TANF applicants.

(2) In the ADCM-EA and EA programs, all countable resources must be used to meet the emergent need.

(3) In the ERDC, EXT, and REFM programs, there is no resource limit.

(4) In the OSIPM-MN program, the resource limit is \$2,000 for one person, \$3,000 for a two-person need group, and \$50 for each additional person in the need group.

(5) In the FS program, the resource limit is:

(a) \$3,000 for need groups with at least one member who is elderly or disabled.

(b) \$10,000 for need groups with at least one member who is working under a JOBS Plus agreement.

(c) \$2,000 for all other need groups.

(6) In the GA and GAM programs, the resource limit is \$1,500 for each need group, of which no more than \$50 can be in the form of cash, bank accounts, stocks, bonds or other securities, including the equity value of any life insurance benefit.

(7) In the OHP program:

(a) There is no resource limit for a person whose eligibility is determined under the OHP-OPC, OHP-OP6 or OHP-OPP programs.

(b) The resource limit for a person whose eligibility is determined under the OHP-OPU program is \$2,000.

(c) The resource limit for children whose eligibility is determined under the OHP-CHP program is \$5,000.

(8) In the OSIP and OSIPM programs (except OSIPM-MN), the resource limit is as follows:

(a) \$2,000 for a one-person need group and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461-135-0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-145-0025 for funds that may be excluded as approved accounts).

(9) In the QMB program, the resource limit is \$4,000 for a one-person need group and \$6,000 for a need group containing two or more people.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03

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Adm. Order No.: SSP 18-2003

Filed with Sec. of State: 7-1-2003

# ADMINISTRATIVE RULES

**Certified to be Effective:** 7-1-03

**Notice Publication Date:**

**Rules Amended:** 461-193-0246, 461-193-0560

**Subject:** Rule 461-193-0246 is being amended to correct language of the minimum attendance criteria for participants in the NAES employment project to be eligible for a training incentive.

Rule 461-193-0560 is being amended because the amount of the Refugee Case Service Project payment standards is being reduced based on case size.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-193-0246

### Employment Incentives; NAES

NAES provides incentives to encourage participants to focus on early employment and economic self-sufficiency. A participant is eligible for an incentive only if the following is true:

(1) The participant is active in the NAES Project.

(2) For a training incentive:

(a) The participant successfully completes a Pre-Employment Training (PET) class and/or vocational training or became employed before the training was completed.

(b) The participant has met the minimum attendance criteria for training. Minimum attendance criteria is:

(A) Less than 4 absences (excused or unexcused) from a Pre-Employment Training class.

(B) Less than 3 absences (excused or unexcused) from a vocational training class.

(3) For an employment incentive:

(a) The participant successfully completes their first 30-day and/or 90-day full-time employment placement. Eligibility for the incentive starts on the 30th and 90th day of employment in the full-time job.

(b) The participant is employed in at least two part-time jobs concurrently. The part-time employments must be equal to at least 35 hours per week. Eligibility for the incentive starts on the 30th and 90th day of the job which makes the work week at least 35 hours per week.

(c) Each participant is eligible for only one 30-day and one 90-day employment incentive, regardless of the number of jobs obtained during their Project eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 22-1997, f. & cert. ef. 12-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 18-2003, f. & cert. ef. 7-1-03

## 461-193-0560

### Full Monthly Payment Standards; Refugee Case Service Project

(1) The level of cash assistance benefit standard is determined by the number of participants in the case.

(2) The following is the monthly basic payment standard:

CASE SIZE — BASIC STANDARD

1 — \$ 332

2 — 422

3 — 497

4 — 609

5 — 704

6 — 820

7 — 905

8 — 1,022

9 — 1,082

10 — 1,187

11 — 1,292

12 — 1,397

13 and over — \$105 for each additional person

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. 2-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 6-1997, f. 5-28-97, cert. ef. 6-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 3-2003(Temp), f. & cert. ef. 2-14-03 thru 6-30-03; SSP 18-2003, f. & cert. ef. 7-1-03

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**Adm. Order No.:** SSP 19-2003(Temp)

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03 thru 9-30-03

**Notice Publication Date:**

**Rules Amended:** 461-135-1120

**Subject:** Rule 461-135-1120 is being amended to change the date an Oregon Health Plan (OHP) premium payment must be received to be considered paid on time. The date will change from the 25th of

the month following the month in which the premium is due to the 20th of the month following the month in which the premium is due.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-135-1120

### Premium Requirement; OHP-OPU

In the OHP-OPU program, a monthly premium must be paid when the benefit group includes at least one non-exempt (HPN) client (see OAR 461-135-1100).

(1) The following HPNs are exempt from the premium requirement:

(a) American Indians and Alaska Natives.

(b) Clients who are eligible for the CAWEM program (see OAR 461-135-1070).

(2) The amount of the premium is determined in accordance with OAR 461-155-0235.

(3) All non-exempt clients in the benefit group are responsible for payment of premiums.

(4) Once the amount of the premium is established, the amount will not change during the certification period unless:

(a) An HPN client becomes pregnant.

(b) A pregnant client becomes an HPN client following the end of her assumed eligibility period provided for in OAR 461-135-1100.

(c) An HPN client becomes eligible for another program (for example, GA, OSIP or TANF).

(d) An HPN client leaves the filing group.

(e) OHP cases are combined during their certification periods.

(f) An HPN client's exemption status changes.

(g) An HPN client is no longer a member of the benefit group.

(5) For premiums billed on or after July 1, 2003, a premium is considered paid on time when payment is received by the Oregon Health Plan billing office on or before the 20th day of the month after the benefit month for which the premium was billed. For premiums billed prior to July 1, 2003, a premium is considered paid on time when payment is received by the Oregon Health Plan billing office on or before the 25th day of the month after the benefit month for which the premium was billed. The day the payment arrives in the office's post office box is the date it is received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 19-2003(Temp), f. & cert. ef. 7-1-03 thru 9-30-03

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

**Adm. Order No.:** SPD 13-2003

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 411-200-0010

**Subject:** The Department's Disability Determination Services section is amending 411-200-0010, General Policy rule under the Rates of Payment — Medical rules to reflect the current fee in the Federal Register.

**Rules Coordinator:** Pam Rouske—(503) 945-6954

## 411-200-0010

### General Policy

(1) The Department of Human Services, herein called the Department, does not have the authority to reimburse vendors for the cost of goods and services if the Department has not authorized payment prior to the provision of goods and services. The Department shall reject all charges without such prior authorization.

(2) Except as provided in subsection (3) of this rule and OAR 411-200-0030, the amount that the Department shall pay vendors for previously authorized medical or psychological services shall be the lesser of the following:

(a) The lowest fee that the vendor charges the general public or other state agencies for the service; or

(b) The maximum fee prescribed by the Oregon Medical Fee and Relative Value Schedule, Oregon Administrative Rules chapter 436, division 009, effective April 1, 2002 and the Federal Register Volume 67, Number 251, effective December 2002.

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(3) With prior written approval by the appropriate Disability Determination Services manager, the Department may exceed the fee prescribed by subsection (2) of this rule when financial or human considerations outweigh the difference in cost.

Stat. Auth.: ORS 344.530

Stat. Implemented: ORS 344.511 - ORS 344.690

Hist.: SDSL 4-2002, f. & cert. ef. 6-12-02; SPD 13-2003, f. & cert. ef. 7-1-03

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

**Adm. Order No.:** DOJ 6-2003(Temp)

**Filed with Sec. of State:** 6-25-2003

**Certified to be Effective:** 7-1-03 thru 12-28-03

**Notice Publication Date:**

**Rules Ren. & Amended:** 461-200-1020 to 137-055-1020, 461-200-1040 to 137-055-1040, 461-200-1060 to 137-055-1060, 461-200-1070 to 137-055-1070, 461-200-1080 to 137-055-1080, 461-200-1100 to 137-055-1100, 461-200-1120 to 137-055-1120, 461-200-1140 to 137-055-1140, 461-200-1160 to 137-055-1160, 461-200-1180 to 137-055-1180, 461-200-1200 to 137-055-1200, 461-200-1320 to 137-055-1320, 461-200-1340 to 137-055-1340, 461-200-1360 to 137-055-1360, 461-200-1500 to 137-055-1500, 461-200-1600 to 137-055-1600, 461-200-2020 to 137-055-2020, 461-200-2040 to 137-055-2040, 461-200-2060 to 137-055-2060, 461-200-2080 to 137-055-2080, 461-200-2120 to 137-055-2120, 461-200-2140 to 137-055-2140, 461-200-2160 to 137-055-2160, 461-200-2180 to 137-055-2180, 461-200-2320 to 137-055-2320, 461-200-2340 to 137-055-2340, 461-200-2360 to 137-055-2360, 461-200-2380 to 137-055-2380, 461-200-3020 to 137-055-3020, 461-200-3040 to 137-055-3040, 461-200-3060 to 137-055-3060, 461-200-3080 to 137-055-3080, 461-200-3100 to 137-055-3100, 461-200-3120 to 137-055-3120, 461-200-3140 to 137-055-3140, 461-200-3220 to 137-055-3220, 461-200-3240 to 137-055-3240, 461-200-3260 to 137-055-3260, 461-200-3280 to 137-055-3280, 461-200-3290 to 137-055-3290, 461-200-3300 to 137-055-3300, 461-200-3340 to 137-055-3340, 461-200-3360 to 137-055-3360, 461-200-3400 to 137-055-3400, 461-200-3420 to 137-055-3420, 461-200-3440 to 137-055-3440, 461-200-3460 to 137-055-3460, 461-200-3480 to 137-055-3480, 461-200-3490 to 137-055-3490, 461-200-3500 to 137-055-3500, 461-200-3620 to 137-055-3620, 461-200-3640 to 137-055-3640, 461-200-4040 to 137-055-4040, 461-200-4060 to 137-055-4060, 461-200-4080 to 137-055-4080, 461-200-4100 to 137-055-4100, 461-200-4120 to 137-055-4120, 461-200-4140 to 137-055-4140, 461-200-4160 to 137-055-4160, 461-200-4180 to 137-055-4180, 461-200-4200 to 137-055-4200, 461-200-4220 to 137-055-4220, 461-200-4240 to 137-055-4240, 461-200-4260 to 137-055-4260, 461-200-4280 to 137-055-4280, 461-200-4300 to 137-055-4300, 461-200-4320 to 137-055-4320, 461-200-4340 to 137-055-4340, 461-200-4360 to 137-055-4360, 461-200-4420 to 137-055-4420, 461-200-4440 to 137-055-4440, 461-200-4460 to 137-055-4460, 461-200-4500 to 137-055-4500, 461-200-4520 to 137-055-4520, 461-200-4540 to 137-055-4540, 461-200-4560 to 137-055-4560, 461-200-4620 to 137-055-4620, 461-200-4640 to 137-055-4640, 461-200-5020 to 137-055-5020, 461-200-5040 to 137-055-5040, 461-200-5060 to 137-055-5060, 461-200-5080 to 137-055-5080, 461-200-5110 to 137-055-5110, 461-200-5120 to 137-055-5120, 461-200-5125 to 137-055-5125, 461-200-5220 to 137-055-5220, 461-200-5240 to 137-055-5240, 461-200-5400 to 137-055-5400, 461-200-5420 to 137-055-5420, 461-200-5520 to 137-055-5520, 461-200-6020 to 137-055-6020, 461-200-6025 to 137-055-6025, 461-200-6040 to 137-055-6040, 461-200-6100 to 137-055-6100, 461-200-6110 to 137-055-6110, 461-200-6120 to 137-055-6120, 461-200-6220 to 137-055-6220, 461-200-6240 to 137-055-6240, 461-200-6260 to 137-055-6260, 461-200-6280 to 137-055-6280, 461-200-7020 to 137-055-7020, 461-200-7040 to 137-055-7040, 461-200-7060 to 137-055-7060, 461-200-7080 to 137-055-7080, 461-200-7100 to 137-055-7100, 461-200-7120 to 137-055-7120, 461-200-7140 to 137-055-7140, 461-200-7160 to 137-055-7160, 461-200-7180 to 137-055-7180

**Subject:** The Division is renumbering all rules in OAR Chapter 461, Division 200 pertaining to the Oregon Child Support Program and move these rules into a new OAR agency and division which is OAR Chapter 137, Division 055. Section 2, chapter 73, Oregon Laws 2003 consolidates the Child Support Program Director's Office of the Department of Human Services (DHS) to the Department of Justice (DOJ), Division of Child Support. The law transfers rulemaking authority for the Child Support Program from DHS to DOJ. There is an emergency clause for a July 1, 2003 effective date.

In doing this renumbering, the Division also is amending the text of these rules to the following extent.

1) Renumbering cross-references to these rules that are contained in other rules in OAR Chapter 461, Division 200, to correspond to the renumbering being assigned under the proposed new OAR Chapter 137, Division 055.

2) Updating obsolete references to organizational entities that perform functions under these rules and changing the name of an agency by reason of a name change prescribed by law.

3) Correcting statutory references.

4) Correcting spelling and correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule.

5) Updating terminology for consistency among the rules.

In addition to the renumbering and technical rule amendments, the Division also has the following rule amendments:

OAR 137-055-1020, Child Support Program Definitions, is amended to bring it up-to-date.

OAR 137-055-1340 and 137-055-1360, Access to the Federal Parent Locator Service, are amended to remove references to the State Parent Locator Service in order to be in compliance with federal law and regulation.

OAR 137-055-5520, Request for Credit Against Child Support Arrears for Social Security or Veterans' Benefits Paid Retroactively on Behalf of a Child, is amended to be consistent with the recently amended child support guidelines by giving dollar for dollar credit against child support arrears up to the amount of the arrears on the case.

OAR 137-055-6020, Application and Distribution of Support Payments, is amended to specify distribution of support payments assigned to the state.

**Rules Coordinator:** Shani Fuller—(503) 986-6232

## 137-055-1020

### Child Support Program Definitions

The following definitions shall apply to OAR 137-055-1000 through 137-055-9999, inclusive:

(1) Unless otherwise stated, "administrator" means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator's or a district attorney's authorized representative.

(2) "Assignee" means the Department of Human Services (DHS), the Division of Child Support, Oregon Youth Authority (OYA) or equivalent agencies in any other state or Tribe to which support rights for a person are assigned.

(3) "Assignment" or "Assigned" means all or a portion of support payments owed to a person will be retained by an assignee if such person or beneficiary of such person is receiving assistance in the form of Temporary Assistance for Needy Families (TANF) cash assistance, foster care, or OYA services. Support payments will be distributed per OAR 137-055-6020. There is also an assignment of rights to medical support for reimbursement of health care costs for any person who has been granted medical assistance.

(4) "Beneficiary" means any child, spouse or former spouse for whom an obligor has been ordered (or has agreed) to pay support, under a court order, an administrative order, or a voluntary agreement.

(5) "Child Support Program" or "CSP" is the program authorized under title IV-D of the Social Security Act to provide child support enforcement services required by federal and state law. The CSP director in Oregon is the Administrator of the Division of Child Support. The CSP consists of the Division of Child Support and those district attorneys that contract to provide services described in ORS 25.080.



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(6) "Court Order" means any judgment, decree, or order of any court, or any administrative order, requiring an obligor to provide child or spousal and/or health care coverage, for specified beneficiaries.

(7) "Court-ordered Amount", or "COA", means the periodic payment amount, usually monthly, ordered by administrative process or by a court for support. The COA can be either the amount for each beneficiary on a support case, or the total amount for all beneficiaries in a single support case.

(8) "Department of Human Services", or "DHS", is the state's health and human services agency. DHS is responsible for public assistance programs such as: Temporary Assistance for Needy Families (TANF), Food Stamps, child-protective services, foster care and adoption programs, the Oregon Health Plan and Medicaid.

(9) "District Attorney", or "DA", means the district attorney for an Oregon county. In most Oregon counties, the DA is responsible for providing support enforcement services, when requested, on all support cases where no support is assigned to the state.

(10) "Division of Child Support", or "DCS", is the Division of Oregon's Department of Justice that is responsible for:

(a) Establishing paternity, obtaining judgments for arrears, and for establishing and enforcing support obligations, on behalf of all children who:

(A) Are receiving or have formerly received TANF cash assistance, foster care, or OYA services, or who have support assigned to the State of Oregon;

(B) Are receiving TANF, or who have support assigned to another state, in cases where an obligor or alleged father resides or works in Oregon; or

(C) Are under the enforcement jurisdiction of an Oregon county that has contracted its support enforcement responsibilities to DCS, in lieu of having the county District Attorney perform these responsibilities.

(b) Accounting and distribution of child support payments as the state disbursement unit.

(11) "Guidelines" refers to the guidelines, the formula, and related provisions established by DCS, in Oregon Administrative Rules 137-050-0320 through 137-050-0490, for determining child support award amounts in Oregon.

(12) "Income Withholding" means a judicial or administrative process under which an obligor's employer, trustee, or other provider of income is ordered to withhold a specified percentage, or a specified amount, from each and every paycheck or benefit payment of an obligor, for the purpose of paying current and/or past-due support. Income withholding is distinguished from garnishment as follows: income withholding will occur continuously under a single order and is not subject to claim of exemption; a garnishment occurs for only a limited duration under a single writ and is subject to certain exemptions provided by law.

(13) "IV-A" refers to Title IV-A of the Social Security Act which is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children (see "TANF"). Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the non-custodial parent, establish paternity and/or a child support order, and/or obtain child support payments.

(14) "IV-D" refers to Title IV-D of the Social Security Act which requires each state to create a program to locate non-custodial parents, establish paternity, establish and enforce child support obligations, and collect and distribute support payments. Recipients of IV-A (TANF), IV-E (foster care) and Oregon Youth Authority (OYA) assistance are referred to their state's IV-D child support program. States must also accept applications from families who do not receive assistance, if requested, to assist in collection of child support. Title IV-D also established the Federal Office of Child Support Enforcement.

(15) "IV-E" refers to Title IV-E of the Social Security Act which established a Federal-State program known as Foster Care that provides financial support to a person, family, or institution that is raising a child or children that is not their own. The funding for IV-E Foster Care programs is primarily from Federal sources.

(16) "Obligee" means any person to whom an obligor has been ordered (or has agreed) to pay child support, spousal support, alimony, and/or medical support, under an administrative order, court order, or voluntary agreement. The obligee is usually the custodial parent, or other designated person, having legal or physical custody of the beneficiary children under a support order.

(17) "Obligor" means any person who is required (or has agreed) to pay child support, spousal support, alimony, and/or medical support, under

an administrative order, court order, or voluntary agreement. The obligor is usually the non-custodial parent of the beneficiary children under a support order.

(18) "Oregon Youth Authority", or "OYA", is the State of Oregon agency responsible for the supervision, management, and administration of state parole and probation services, community out-of-home placements, and youth correction facilities for youth offenders, and other functions related to state programs for youth corrections.

(19) "Support" means cash payments, health care coverage, or other benefits that a person has been ordered by a court or by administrative process, or has voluntarily agreed, to provide for the benefit and maintenance of another person.

(20) "TANF" means "Temporary Assistance for Needy Families", a public assistance program which provides case management and cash assistance to low-income families with minor children. It is designed to promote personal responsibility and accountability for parents. The goal of the program is to reduce the number of families living in poverty through employment services and community resources. Title IV-A of the Social Security Act is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children.

(21) "Title XIX", popularly known as Medicaid, refers to Title XIX of the Social Security Act which mandates health care coverage by states for TANF recipients and certain other means-tested categories of persons. Within broad national guidelines which the federal government provides, each state: establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the rate of payment for services; and administers its own program.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0001; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1020

## 137-055-1040

### "Party Status" in Court and Administrative Proceedings

(1) In any proceeding to establish, modify or enforce a paternity or support obligation initiated by the administrator (as defined in OAR 137-055-1020), the administrator represents only the interests of the state.

(2) In any action taken under ORS 25.080, the State of Oregon, the obligor, and the obligee are parties.

Stat. Auth.: ORS 25.080 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 23-1992, f. 8-14-92, cert. ef. 9-1-92; AFS 3-1994, f. & cert. ef. 2-1-94; AFS 18-1994, f. 8-25-94, cert. ef. 9-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0065; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1040

## 137-055-1060

### Uniform Application for Child Support Enforcement Services

(1) The administrator shall provide a standard application form to any person requesting child support enforcement services. An explanatory cover sheet shall be attached to the application. Except for the application form and cover sheet, the form required under section (3) of this rule, and any statements necessary to respond to inquiries about these forms, no other written or oral statements concerning an applicant's qualification for services nor any contract for service shall be offered.

(2) The application form shall:

(a) Contain a statement that the applicant is requesting child support enforcement services including enforcement of health provisions;

(b) Require the applicant's signature and date of application.

(3) The administrator shall provide a form to applicants for child support enforcement services which includes the following information:

(a) The applicant's rights and responsibilities;

(b) An explanation of enforcement activities for which fees are charged including the application fee referred;

(c) Policies on cost recovery;

(d) Policies on distribution of collections.

(4) The standardized application form and cover sheet, and the form required under section (3) of this rule, shall be readily available to the public in each Child Support Program (CSP) office:

(a) The administrator shall provide the standardized application form and cover sheet, and the form required under section (3) of this rule, upon request to any individual who requests services in person;

(b) When a request for child support enforcement services is made in writing or by telephone, the administrator shall send the individual the standardized application form and cover sheet, and the form required under sec-

# ADMINISTRATIVE RULES

tion (3) of this rule, within five working days from the date the request is made.

(5) The administrator shall accept an application as it is filed, on the day it is received.

(6) The administrator shall create a case on the computerized system within two working days of receipt of the application providing circumstances beyond the control of the administrator do not occur.

(7) The administrator shall provide the information required under section (3) of this rule:

(a) If the requesting individual or a beneficiary of such person is not receiving assistance in the form of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, along with the standard application form;

(b) If the individual or beneficiary of such person receives assistance in the form of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, within five working days of referral from the Department of Human Services or the Oregon Youth Authority.

(8) Once an application for child support enforcement services is accepted, if necessary for establishment and/or enforcement purposes, the administrator shall solicit additional relevant information by means of a form approved by the CSP.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003  
Stats. Implemented: ORS 25.080

Hist.: AFS 16-1994, f. 8-4-94, cert. ef. 12-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0043; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1060

## 137-055-1070

### Provision of Services

(1) For the purposes of this rule, the following definitions apply:

(a) "Full services case" means a case in which the full range of support enforcement services required under ORS 25.080(4) are provided;

(b) "Limited services case" means a case in which the provisions of ORS 25.080 do not apply and one or more collection, accounting, distribution or enforcement services are provided pursuant to state or federal law.

(2) When any Oregon court order for child and/or spousal support is received, the administrator shall:

(a) If the order requires payment of child support or child and spousal support and seeks collection, accounting, distribution and enforcement services:

(A) Create a full services case on the Child Support Enforcement Automated System (CSEAS) if one does not already exist;

(B) Initiate appropriate enforcement action; and

(C) Send the parties the information required in OAR 137-055-1060(4);

(b) If the order requires payment of spousal support only and seeks collection, accounting, distribution and enforcement services:

(A) Create a limited services case on the CSEAS if one does not already exist;

(B) If applicable, add arrears under ORS 25.015 or establish arrears under ORS 25.167; and

(C) Initiate income withholding under ORS 25.372 to 25.427.

(c) If the order is silent, unclear or contradictory on the services to be provided and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry if one does not already exist; and

(B) Send the parties a letter explaining that no services will be provided and why. The letter must include a statement that the obligor or obligee may apply for support enforcement services at any time if the order includes a provision for child support.

(d) If the order seeks only payment through the Department of Justice and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry, if one does not already exist, to receive and distribute payments in accordance with OAR 137-055-6020; and

(B) Send the parties a letter explaining that the program will only provide distribution of support payments and why. The letter must include a statement that the obligor or obligee may apply for support enforcement services at any time if the order includes a provision for child support.

(e) If the provisions of subsection (c) or (d) apply and a party subsequently completes an application or other written request for support enforcement services, the administrator shall process the application or request in accordance with OAR 137-055-1060.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 25.020, ORS 25.080, 25.140 & ORS 25.164

Hist.: AFS 20-2002, f. 12-20-02 cert. ef. 1-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1070

## 137-055-1080

### Application Fee for Non-Assistance Support Enforcement Services

(1) The Oregon Child Support Program shall pay to the federal Department of Health and Human Services a \$1 application fee on behalf of each applicant who applies for support enforcement services after October 1, 1985, and whose family is not receiving assistance in the form of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services.

(2) The Division of Child Support (DCS) shall recover the fee payment from each applicant by deducting it from any unassigned support received by DCS.

Hist.: AFS 56-1985(Temp), f. & ef. 10-1-85; AFS 2-1986, f. & ef. 1-17-86; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0048; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0045; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1080

## 137-055-1100

### Continuation of Service

(1) When a family's assistance grant is closed, support enforcement services shall automatically be continued. The Division of Child Support (DCS) shall notify the support obligee, in writing, of the services to be provided. DCS will notify the obligee that subject to the obligor's right to request services:

(a) An obligee may at any time request that support enforcement services no longer be provided. If the obligee so requests and case closure procedures pursuant to OAR 137-055-1120 have been completed, all support enforcement services on behalf of the obligee shall be discontinued. However, except as provided in section (2) of this rule, if an order has already been established, DCS shall continue efforts to collect arrears assigned to the state. DCS shall apply any collections received against the assigned arrears until this amount has been collected.

(b) An obligee may also request under section (2) of this rule that support enforcement services no longer be provided for either the obligee or the state.

(2) If an obligee believes that physical or emotional harm to the family may result if support enforcement services are provided, the obligee may request that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator shall immediately suspend all activity on the case, add good cause case coding and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(a) If the obligee returns the completed and signed Good Cause portion of the Client Safety Packet on Good Cause, the administrator shall proceed with case closure pursuant to OAR 137-055-1120(1)(i), and DCS shall satisfy any and all permanently assigned arrears as defined in OAR 137-055-6020(1)(g).

(b) If the obligee returns the completed and signed Claim of Risk portion of the Client Safety Packet on Good Cause, the administrator shall remove the good cause case coding and make a finding and order for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(c) If the obligee returns the completed and signed Address of Record portion of the Client Safety Packet on Good Cause, the administrator shall remove the good cause case coding and update the child support case record appropriately.

(d) If the obligee does not send a reply to the Client Safety Packet on Good Cause within 30 days, the administrator shall proceed with case closure pursuant to OAR 137-055-1120(1)(i), and DCS shall satisfy any and all permanently assigned arrears as defined in OAR 137-055-6020(1)(g).

(3) If a case has been closed pursuant to this rule, an obligee may at any time request the child support case be reopened by completing a new application for services. If an application for services is received, arrears may be reestablished pursuant to OAR 137-055-3240, except for permanently assigned arrears which have been satisfied or which accrued to the state prior to the reapplication for services.

Stat. Auth.: ORS 25.080 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 18.400, ORS 25.020, & ORS 25.080

Hist.: AFS 34-1986(Temp), f. & ef. 4-14-86; AFS 65-1986, f. & ef. 9-19-86; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0054; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0055; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1100

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## 137-055-1120

### Case Closure

(1) The administrator, may close a child support case, whenever the case meets at least one of the following criteria for case closure:

(a) There is no longer a current support order, and arrears are under \$500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law;

(b) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(c) Paternity cannot be established because:

(A) A parentage test, or a court or administrative process, has excluded the putative father and no other putative father can be identified;

(B) In a case involving incest or forcible rape, or where legal proceedings for adoption are pending, the Department of Human Services (DHS) or the administrator has determined that it would not be in the best interests of the child to establish paternity; or

(C) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;

(d) The location of the non-custodial parent is unknown, and the state parent locator service has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the non-custodial parent:

(A) Over a three-year period when there is sufficient information to initiate an automated locate effort; or

(B) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

(e) When paternity is not at issue and the non-custodial parent cannot pay support for the duration of the child's minority because the parent is both:

(A) Institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; and

(B) Without available income or assets which could be levied or attached for support;

(f) The non-custodial parent:

(A) Is a citizen of, and lives in, a foreign country;

(B) Does not work for the Federal government or for a company or state with headquarters in or offices in the United States;

(C) Has no reachable income or assets in the United States; and

(D) Oregon has been unable to establish reciprocity with the country;

(g) The state parent locator service has provided location-only services based upon a request under 45 CFR 302.35(c)(3);

(h) The custodial parent, or applicant for services, requests closure, and:

(A) There is no assignment to the state of medical support; and

(B) There is no assignment of arrears that have accrued on the case;

(i) DHS of the administrator pursuant to OAR 137-055-1100 (2), has made a finding of good cause or other exceptions to cooperation and has determined that support enforcement may not proceed without risk or harm to the child or caretaker;

(j) In a non-TANF case (excluding a Medicaid case), the administrator is unable to contact the custodial parent, or applicant for services, within 60 calendar days, despite an attempt of at least one letter sent by first class mail to the last known address;

(k) In a non-TANF case, the administrator documents the circumstances of non-cooperation by the custodial parent, or applicant for services, and an action by the custodial parent, or applicant for services, is essential for the next step in providing enforcement services; or

(l) The administrator documents failure by the initiating state to take an action which is essential for the next step in providing services.

(2)(a)(A) If the administrator elects to close a case pursuant to section (1)(a), (1)(c), (1)(e), (1)(f), (1)(h) or (1)(j) through (1)(l) of this rule, the administrator must notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case.

(B) If the administrator elects to close a case pursuant to section (1)(b) or (1)(d) of this rule, the administrator:

(i) Shall notify the obligee in writing at least 60 days prior to closure of the case of the intent to close the case; and

(ii) Is not required to notify the obligor of the intent to close the case.

(C) If the administrator elects to close a case pursuant to section (1)(i) of this rule, the administrator:

(i) Shall notify the obligee in writing at least 60 days prior to closure of the case of the intent to close the case; and

(ii) Shall not notify the obligor of the intent to close the case.

(D) If the administrator elects to close a case pursuant to section (1)(g) of this rule, the administrator is not required to notify either obligee or obligor of the intent to close the case.

(b) The 60-day time frame in subsection (a)(A) of this section is independent of the 60-day calendar time frame in subsection (1)(j).

(c) The administrator will document the notice of case closure by entering a narrative line, or lines, on the child support computer system and will include the date of the notice.

(d) The content of the notice in subsection (a) of this section shall include, but is not limited to, the specific reason for closure, actions a party can take to prevent closure, and a statement that an individual may reapply for services at any time.

(3) Notwithstanding section (2)(a) of this rule, a case may be closed immediately under section (1)(h) of this rule if:

(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or

(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.

(4) The administrator must keep a case open if, in response to the notice sent pursuant to section (2)(a) of this rule, a party:

(a) Supplies information which could lead to the establishment of paternity or of a support order, or enforcement of an order;

(b) Reestablishes contact with the administrator, in cases where the administrator proposed to close the case under subsection (1)(j) of this rule; or

(c) Completes an application for services.

(5) A party may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order, or enforcement of an order, by completing a new application for services.

(6) The administrator will document the justification for case closure by entering a narrative line or lines on the child support computer system in sufficient detail to communicate the basis for the case closure.

Stat. Auth.: ORS 25.080 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020 & ORS 25.080

Hist.: AFS 35-1986(Temp), f. & ef. 4-14-86; AFS 66-1986, f. & ef. 9-19-86; AFS 27-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-0350-055; AFS 15-1993, f. 8-13-93, cert. ef. 8-15-93; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0050; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1120

## 137-055-1140

### Confidentiality of Records in the Child Support Program

(1) The Oregon Child Support Program (CSP) is bound by the provisions of this rule, except as described in section 14 of this rule.

(2) For purposes of this rule, and subject to the limitations set forth in section (3) of this rule, the contents of a case record include, but are not limited to:

(a) The names of the obligor, beneficiary and obligee or other payee;

(b) The addresses of the obligor, beneficiary and obligee or other payee;

(c) The address of record and address of service of the obligee, beneficiary or obligor;

(d) The name and address of the obligor's employer;

(e) The social security numbers of the obligor, the obligee and beneficiaries;

(f) The record of all legal and collection actions taken on the case;

(g) The record of all accrual and billings, payments and distribution of payments;

(h) The narrative record; and

(i) The contents of any paper file maintained for purposes of establishment and/or enforcement of a child support order or for accounting purposes.

(3) Any data listed in section (2) of this rule or any other data that resides on the Child Support Enforcement Automated System (CSEAS) that is extracted from computer interfaces with other agencies' computer systems is not considered to be child support information until or unless the data is used for child support purposes. Until such data is used for child support purposes it is not subject to any exceptions to confidentiality and it shall not be released to any other person or agency in any circumstance.

(4) Child support case related records, files, papers and communications are considered confidential. The administrator shall not disclose or use the contents of any such records, files, papers or communications for purposes other than those directly connected to the administration of the CSP except that information may be shared as follows:

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(a) Information may be shared for purposes of administration of programs, in Oregon or other states, authorized and operated under:

(A) Part IV-A of the Social Security Act, which includes Temporary Assistance to Needy Families (TANF) administered by the Department of Human Services;

(B) Part IV-B of the Social Security Act, child welfare programs, which includes protective services programs operated by the Department of Human Services;

(C) Part IV-D of the Social Security Act, child support enforcement programs in Oregon and other states;

(D) Part IV-E of the Social Security Act, which includes foster care and adoption assistance programs administered by the Department of Human Services;

(E) Part IV-F of the Social Security Act, the Job Opportunities and Basic Skills (JOBS) Program;

(F) Title I of the Social Security Act, Old Age Assistance;

(G) Title X of the Social Security Act, Aid to the Blind;

(H) Title XIV of the Social Security Act, Aid to the Permanently and Totally Disabled;

(I) Title XVI of the Social Security Act, state programs and Supplemental Security Income for aid to the aged, blind or disabled;

(J) Title XIX of the Social Security Act, Medicaid programs; and

(K) Title XX of the Social Security Act, block grants to states for social services;

(b) Information may be shared for purposes of any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of the plan or program referred to in subsection (a) of this section;

(c) Information may be shared for the administration of any other federal or federally assisted programs that provide assistance, in cash or in kind, directly to individuals on the basis of need;

(d) Information disclosed in connection with collection, enforcement, establishment or accounting processes done by the administrator necessary to the administration of the CSP is not a violation of this rule;

(e) Information disclosed in connection with application of any state or federal statute or rule that authorizes the administrator to take an action or release information is not a violation of this rule;

(f)(A) Elected federal and state legislators and the Governor are considered to be within the chain of oversight of the Child Support Program. Information about a child support case may be shared with these elected officials and their staffs in response to issues brought by constituents who are parties to the case.

(B) County commissioners exercise a constituent representative function in county government for county administered programs. District attorney offices that operate child support programs may respond to constituent issues brought by county commissioners of the same county if the constituent is a party in a case administered by that office. District attorneys are Department of Justice (DOJ) contractors. CSP Administration may also respond to constituent issues brought by county commissioners on district attorney administered child support cases where the constituent is a party.

(C) Information disclosed under paragraphs (A) and (B) of this subsection is subject to the restrictions in section (6) of this rule;

(g) When a party requires the use of an interpreter in communicating with the administrator, information given to such an interpreter is not a violation of any provision of this rule; and

(h) A person who is the executor of the estate of a deceased party shall be entitled to receive any information that the deceased party would have been entitled to receive.

(5)(a) Notwithstanding section (9) of this rule, the Child Support Program, through use of the Child Support Enforcement Automated System, may release to a local regional workforce investment board the names, addresses, telephone numbers and identifying case number information of noncustodial parents residing in the service delivery area of the board.

(b) The information listed in subsection (a) of this section may be provided to a local regional workforce investment board for no purpose other than to identify and contact noncustodial parents regarding participation of the noncustodial parents in the IV-F agency JOBS program.

(c) For the purposes of this section, local regional workforce investment board means a board established in Oregon pursuant to the Workforce Investment Act to increase the employment, retention and earnings of participants and increase the occupational skills of participants residing in the service delivery area of the board.

(6) Information from a case record may be disclosed by the administrator to a party in that case, or attorney representing a party in that case,

except for the following personal information about the other party, unless disclosure of that information is otherwise required by rule or statute:

(a) The residence or mailing address of the other party if that other party is not the state;

(b) The social security number of the other party;

(c) The name, address and telephone number of the other party's employers;

(d) The telephone number of the other party;

(e) Income and asset information of the other party;

(f) Financial institution account information of the other party; and

(g) The driver's license number of the other party.

(7) When the administrator has initiated a legal action and a party or an attorney for a party makes a request for discovery, the administrator shall release to the requestor any information from the case record, including any information derived from another agency, that was used for any calculations or determinations necessary for the legal action. Where there has been a finding and order of nondisclosure of information pursuant to OAR 137-055-1160, the administrator shall black out or otherwise remove any nondisclosable information before documents are released for discovery to the other party or the other party's attorney.

(8) When the administrator provides copies of documentary material from a party's case record to a party or an attorney representing a party upon request, the administrator may charge the requestor the actual costs of staff time and materials for producing those copies of records. The administrator may require payment of such costs before releasing requested documents to requestors.

(9) Information from case records may be disclosed to persons not a party to the child support case who are making contact with the administrator on behalf of a party, if the following conditions are met:

(a)(A) The person who is not a party to the case must provide the social security number of the party for whom they are making the inquiry or the child support case number; and

(B) The person who is not a party to the case making the contact on behalf of the party is:

(i) The current spouse or domestic partner of the party and residing with the party; or

(ii) A parent or legal guardian of the party;

(b) The administrator has determined that the person who is not a party to the case as described in subsection (a) of this section is making case inquiries on behalf of the party and disclosure of such information would normally be made to the party in reply to such an inquiry;

(c) Such disclosure of information to a person who is not a party to the case as described in subsection (a) of this section is limited to the specific inquiries made on behalf of the party and is subject to the restrictions in section (6) of this rule; and

(d) No information from a case record shall be disclosed to a person who is not a party to the case under any other circumstance, unless:

(A) The party has granted written consent to release the information to the person who is not a party to the case; or

(B)(i) The person who is not a party to the case has power of attorney for the party, the duration and scope of which authorizes release of information from a case record at the time that the person not a party requests such information. If a person who is not a party to the case has such power of attorney for a party, any information that would be released to the party may be released to the person having power of attorney.

(ii) When a person who is not a party to the case has power of attorney for a party, the duration and scope of which authorizes release of information from a case record, the power of attorney shall remain in effect until a written request to withdraw the power of attorney is submitted by the party, or by the person who is not a party to the case with power of attorney, to the administrator, unless otherwise noted on the power of attorney.

(iii) A power of attorney given to a collection agency by a party does not change the rights and responsibilities of the parties or a collection agency as described in ORS 25.020, OAR 137-055-6025 or this rule.

(10) Child support case account balance is derived from the child support judgment, which is public information, and from the record of payments, which is not. Therefore, the case balance is not public information and is confidential and may not be released to persons not a party except as otherwise provided in this rule.

(11) Information obtained from the Internal Revenue Service and/or the Oregon Department of Revenue is subject to confidentiality rules imposed by those agencies even if those rules are more restrictive than the standards set in this rule and may not be released for purposes other than those specified by those agencies.

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(12) Criminal record information obtained from the Law Enforcement Data System or any other law enforcement source shall be used for child support purposes only and shall not be disclosed to parties or any other person or agency outside of the CSP. Information about the prosecution of child support related crimes initiated by the administrator may be released to parties in the child support case.

(13) The Administrator shall not access computer records or records of any other nature available to them as employees that pertain to their own child support case or the child support case of any relative or other person with whom the employee has a personal friendship or business association. No employee shall perform casework on their own child support case or the case of any relative or other person with whom the employee has a personal friendship or business association.

(14) When the administrator receives information that gives reasonable cause to believe that a child has suffered abuse as defined in ORS 419B.005(1) the administrator shall cause a report to be immediately forwarded to:

(a) The Department of Human Services as the agency that provides child welfare services and/or to an appropriate law enforcement agency if the child has been subjected to such abuse as a result of any support enforcement services provided under ORS 25.080; or

(b) The Department of Human Services as the agency that provides child welfare services if such abuse is not as a result of any support enforcement services provided under ORS 25.080, and not to any law enforcement agency.

(15) CSP staff who are subject to the Disciplinary Rules of the Oregon Code of Professional Responsibility are expected to conform to those rules. To the extent that those rules mandate a stricter standard than required by this rule, the Disciplinary Rules apply.

(16) If the administrator discloses or uses the contents of any records, files, papers or communications, the administrator is in violation of this rule is subject to progressive discipline, up to and including dismissal from employment.

Stat. Auth.: ORS 25.260, & Sec. 2, ch. 73 OL 2003  
Stats. Implemented: 42 U.S.C. 603 & 654(26), ORS 25.260, ORS 127.005 & ORS 411.320  
Hist.: AFS 31-1995, f. & cert. ef. 11-8-95; AFS 19-1996, f. & cert. ef. 5-10-96; AFS 38-1996, f. & cert. ef. 11-20-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0290; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1140

## 137-055-1160

### Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) Pursuant to ORS 25.020, unless there is a finding of risk and order for nondisclosure of information as defined in subsection (2)(b) of this rule, any judicial or administrative decree or order establishing paternity or that includes a provision concerning support must contain each party's:

- (a) Residence, mailing or contact address;
- (b) Social security number;
- (c) Telephone number;
- (d) Driver's license number; and
- (e) Employers' name, address and telephone number.

(2) For the purposes of this rule the following definitions shall apply:

(a) A claim of risk for nondisclosure of information means a claim by a party to a paternity or support case made to the administrator, an administrative law judge or the court that there is reason to not contain or disclose the information specified in section (1) of this rule because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information;

(b) A finding of risk and order for nondisclosure of information means a finding by the administrator, an administrative law judge or the court, which may be made ex parte, that there is reason to not contain or disclose the information specified in section (1) of this rule because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information.

(3) A claim of risk for nondisclosure of information may be made to the administrator by a party at any time that a child support case is open. Forms for making a claim of risk for nondisclosure of information shall be available from all child support offices and be made available to other community resources. At the initiation of any legal process that would result in a judicial or administrative decree or order establishing paternity or including a provision concerning support, the administrator shall provide parties an opportunity to make a claim of risk for nondisclosure of information.

(4) The administrator shall make a finding of risk and order for nondisclosure of information when a party makes a written and signed

claim of risk for nondisclosure of information pursuant to section (3) of this rule unless the party does not provide an address of record pursuant to section (6) of this rule.

(5) An administrative law judge shall make a finding of risk and order for nondisclosure of information when a party makes a claim of risk for nondisclosure of information in a hearing unless the party does not provide an address of record pursuant to section (6) of this rule.

(6) A party who makes a claim of risk for nondisclosure of information must provide an address of record that is releasable to the other party in legal proceedings. The claim of risk for nondisclosure of information form provided to the party by the administrator shall have a place in which to list an address of record. If a requesting party does not provide an address of record, a finding of risk and order for nondisclosure of information shall not be made.

(7) When a finding of risk and order for nondisclosure of information has been made, the administrator shall ensure that all pleadings, returns of service, orders or any other documents that would be sent to both parties or would be available as public information in a court file shall not contain or shall have deleted any of the identifying information specified in section (1) of this rule. Any document sent to the court that contains any of the information specified in section (1) of this rule shall be in a sealed envelope with a cover sheet informing the court of the confidential nature of the contents.

(8) A finding of risk and order for nondisclosure of information shall be documented on the child support case file and shall remain in force until such time as a party who requested a claim of risk may retract the claim in writing.

(9) A party who requested a claim of risk may retract the claim on a form provided by the administrator. When a signed retraction form is received by the administrator, the administrator will enter, or will ask the court to enter, a finding and order terminating the order for nondisclosure of information.

(10) Any information previously protected under an order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information is terminated. The retraction form provided by the administrator shall advise the requestor that previously protected information may be released to the other party(ies).

(11) In cases where the administrator is not involved in the preparation of the order, any claim of risk for nondisclosure of information pursuant to ORS 25.020 shall be made to the court.

(12) Where the court has made a finding of risk and order for nondisclosure of information and the case is receiving or subsequently receives child support services, the administrator shall implement the court's finding pursuant to this rule. In such a case, if the party fails to provide an address of record within 30 days of a written request from the administrator, the administrator shall use, in order of preference, the party's mailing, contact or residence address as the address of record. The written request from the administrator must advise the party that if no address of record is provided within 30 days, the administrator will use the party's mailing, contact or resident address as the address of record, and the new address of record may be released to the other party(ies).

Stat. Auth.: ORS 25.020 & Sec. 2, ch. 73, OL 2003  
Stats. Implemented: ORS 25.020  
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160

## 137-055-1180

### Confidentiality — Address of Record

(1) "Address of record" means an address provided by a party in a child support or paternity case to the administrator that may be an address other than the party's home address but is an address where the party can receive legal papers. The address of record may be released to the other party.

(2) A party may provide or amend an address of record to the administrator at any time the child support case is open.

(3) The Child Support Program shall provide annual notice to parties that they may provide an address of record to the administrator at any time.

(4) The administrator shall provide notice to parties of the opportunity to provide an address of record at the initiation of any legal action that requires the service of legal documents on a party or would cause the following to be shared with the other party as part of the legal action:

- (a) Home, mailing or contact address;
- (b) Social security number;
- (c) Telephone number;
- (d) Driver license number;
- (e) Employer's name, address and telephone number.

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(5) The administrator shall maintain the address of record on the case record.

(6) If a party has provided an address of record and the address is more than six months old, the administrator will provide the party with notice and opportunity to update the address of record prior to initiating any legal action.

(7) An address of record may be any place that a party can receive mail but must be located within the same state as the party's home.

(8) An address of record shall be documented on the case record and shall remain in force until such time as a party may retract the address of record in writing.

(9) Notwithstanding the provisions of subsection (8), when documents sent to a party's address of record are returned because the address of record is not valid, the administrator shall use, in order of preference, the party's mailing, contact or residence address as the address of record and shall notify the party that such address may be released to the other party(ies).

Stat. Auth.: ORS 25.020 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.011, ORS 25.020, ORS 25.080 & ORS 25.085

Hist.: AFS 23-1998, f. & cert. ef. 11-2-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0292; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1180

## 137-055-1200

### Use of Social Security Number by the Child Support Program

(1) Under the provisions of 42 USC 405(c)(2)(C), individuals who are affected by the Child Support Program shall be required to provide their social security numbers to the administrator.

(2) Social security numbers provided under this rule shall be used by the administrator as necessary for the following purposes:

(a) The identification of individuals who are affected by the administration of the Child Support Program;

(b) The establishment, modification and enforcement of child and medical support obligations;

(c) The accounting and distribution of support payments;

(d) The administration of the general public assistance laws of the State of Oregon.

(3) The Child Support Program shall provide written notice to individuals who are required to provide a social security number under section (1) of this rule that shall include the following:

(a) That providing the social security number is mandatory;

(b) The authority for such requirement; and

(c) The purpose(s) for which the social security number will be used.

(4) When the social security number for an individual is obtained from a source other than that individual, there is no requirement that the Child Support Program provide additional notice to the individual regarding disclosure or use of such social security number.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 25.020 & ORS 25.081 & ORS 25.785

Hist.: AFS 4-1996, f. 2-21-96, cert. ef. 7-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0015; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1200

## 137-055-1320

### Access by Individuals and the Court to FPLS for Purposes of Parentage Establishment and Child Support Establishment or Enforcement

(1) For the purposes of this rule, the following definitions apply:

(a) "FPLS" means the Federal Parent Locator Service operated by the United States Department of Health and Human Services;

(b) "Agent of the court" means an employee of the court who reports directly to a judge;

(c) "Original requestor" means a party to a paternity or child support case who is seeking FPLS information, directly, through an attorney, or through court request;

(d) "Order of protection" means a restraining order against abuse or a stalking protective order issued by an Oregon court or the court of another state;

(e) "Reasonable evidence of possible domestic violence" means:

(A) A record on the Oregon Judicial Information Network or the Law Enforcement Data System that an order of protection has or had been issued against the original requestor in favor of the person being sought; or

(B) A record that the person being sought has or had been granted good cause pursuant to ORS 418.042 not to establish paternity or to establish or enforce a support order against the original requestor; and

(C) A record that the person being sought has or had been granted a claim of risk not to have personal information included in a paternity or

support order pursuant to OAR 137-055-1160 and that the other party in the legal action is or was the original requestor.

(f) "Reasonable evidence of possible child abuse" means that there is a record with the Department of Human Services child welfare program that the original requestor has been investigated for alleged abuse of any child.

(2) Pursuant to federal law, a custodial parent, legal guardian, agent of a child or the attorney of a child, custodial parent or legal guardian (other than for a child who is receiving Temporary Assistance for Needy Families (TANF)) seeking to establish parentage or to establish, modify or enforce a support order may request access to information from FPLS for the purposes of locating a parent or child.

(3) The information that may be provided if available from FPLS for the purposes set out in subsection (2) in this rule includes:

(a) The address and verification of the social security number of the individual sought;

(b) The name, address and federal employer identification number of the employer of the individual sought;

(c) Information about income from employment and benefits from employment, including health care coverage; and

(d) Information on the type, status, location and amount of any assets of, or debts owed by or to, the individual.

(4) An individual as specified in subsection (2) of this rule may make a request for FPLS information directly to the Division of Child Support (DCS) or through a court or agent of a court which has the authority to issue an order of paternity or support and maintenance of a child or to serve as the initiating court to seek such an order from another state.

(5) A request from an individual must be made in writing directly to DCS and must contain the purposes for which the information is requested and the full name, social security number and date of birth or approximate date of birth of the individual sought. The request must also contain the full name and date of birth and social security number of the person making the request. The request may be made on a form adopted by the Child Support Program (CSP) and available from any (CSP) office.

(6) A court may request FPLS information by sending a written request bearing the signature of a judge or of an agent of the court. Such a request shall state the purposes for which the information is requested and contain the full name, social security number and date of birth or approximate date of birth of the individual sought. The request must also contain the full name, date of birth and social security number of the individual making the request to the court.

(7) When DCS receives a request pursuant to subsection (5) or (6) of this rule, it shall determine if there is any record of possible domestic violence by the original requestor against the individual sought or any record of possible child abuse by the original requestor.

(8) Where no record is found pursuant to subsection (7) of this rule, DCS shall furnish the requested information to the individual or the court.

(9) Where there is a record of possible domestic violence or child abuse pursuant to subsection (7) of this rule, DCS shall:

(a) If the request is from an individual, advise the individual in writing that:

(A) There is reasonable evidence of possible domestic violence or child abuse and that DCS will not release the information to the individual; and

(B) The individual may request the information through the court pursuant to this rule, and the court will decide whether to release the information.

(b) If the request came through a court, transmit the requested information to the court with a notice that there is reasonable evidence of possible domestic violence or child abuse.

(c) Pursuant to 42 USC 653(b)(2)(B), upon receipt of the information and the notice of possible domestic violence or child abuse, the court shall determine whether disclosure of that information could be harmful to the parent or child sought, and if the court determines that disclosure of such information to any other person could be harmful, the court and its agents shall not make disclosure.

Stat. Auth.: ORS 25.265 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.265 & ORS 183.380

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0279; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1320

## 137-055-1340

### Access to the FPLS by State and Federal Agencies

(1) For the purposes of this rule, the following definitions apply:

(a) "FPLS" means the Federal Parent Locator Service operated by the United States Department of Health and Human Services.

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(b) An "authorized person" is:

(A) Any agent or attorney of any state who has the duty or authority under the law of such state to enforce a child custody or visitation order;

(B) Any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court;

(C) Any agent or attorney of the United States or of a state who has the duty or authority to investigate, enforce or bring a prosecution with respect to the unlawful taking or restraint of a child; and

(D) A state agency responsible for administering an approved child welfare plan or an approved foster care and adoption assistance plan.

(2) This rule sets out how:

(a) Pursuant to federal law, authorized persons shall have access to FPLS information to search for any parent or child for the purposes of enforcing any custody or visitation order or enforcing any state or federal law regarding the unlawful taking or restraint of a child.

(b) Pursuant to ORS 180.380, authorized persons shall have access to FPLS information to search for any parent or child for the purposes of enforcing any custody or visitation order or enforcing any state or federal law regarding the unlawful taking or restraint of a child.

(3) The information provided to an authorized person from FPLS is limited to the most recent address and place of employment of the parent or child sought, if available.

(4) An authorized person may request FPLS information by sending a written request to the Division of Child Support bearing the signature of the authorized person. Such a request shall state the purposes for which the information is requested and contain the full name, social security number and date of birth or approximate date of birth of the person sought.

(5) The response to a requesting agency shall contain a notice stating that the information provided is confidential and is not to be shared with anyone who is not authorized to have it under that agency's controlling legal authority.

Stat. Auth.: Sec. 2 & 25, ch. 73, OL 2003

Stats. Implemented: ORS 25.265 & ORS 180.380

Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 22-1983, f. & ef. 5-16-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0020; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0280; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1340

## 137-055-1360

### Access by Individuals through the Court to FPLS for Purposes of Custody and Visitation Establishment and Enforcement

(1) For the purposes of this rule, the following definitions apply:

(a) "FPLS" means the Federal Parent Locator Service operated by the United States Department of Health and Human Services;

(b) "Original requestor" means a party to a custody or visitation (parenting time) case who is seeking FPLS information, directly, through an attorney, or through court request;

(c) "Custody determination" means a judgment or other order of the court providing for the custody or visitation (parenting time) of a child, and includes permanent orders, and initial orders and modifications;

(d) "Agent of the court" means an employee of the court who reports directly to a judge;

(e) "Reasonable evidence of possible domestic violence" means:

(A) A record on the Oregon Judicial Information Network or the Law Enforcement Data System that an order of protection has or had been issued against the original requestor in favor of the person being sought; or

(B) A record that the person being sought has or had been granted good cause pursuant to ORS 418.042 not to establish paternity or to establish or enforce a support order against the original requestor; or

(C) A record that the person being sought has or had been granted a claim of risk not to have personal information included in a paternity or support order pursuant to OAR 137-055-1160 and that the other party in the legal action is or was the original requestor; and

(f) "Reasonable evidence of possible child abuse" means that there is a record with the Department of Human Services child welfare program that the original requestor has been investigated for alleged abuse of any child.

(2)(a) Pursuant to federal law, individuals seeking to establish, modify or enforce a custody determination may request, through a court, access to information from FPLS for the purposes of locating a parent or child.

(b) Pursuant to ORS 180.380, individuals seeking to establish, modify or enforce a custody determination may request through a court access to information from FPLS for the purposes of locating a parent or child.

(3) The information provided to the court from FPLS is limited to the most recent address and place of employment of the parent or child sought.

(4) A court may request locate information by sending a written request bearing the signature of a judge or of an agent of the court to DCS. Such a request shall state the reasons for which the information is requested and contain the full name, social security number and date of birth or approximate date of birth of the individual sought. The request shall also contain the name, date of birth and social security number of the individual making the request to the court.

(5) When DCS receives a request pursuant to subsection (4) of this rule from a court, it shall determine if there is any reasonable evidence of possible domestic violence by the original requestor against the individual sought or any reasonable evidence possible child abuse by the original requestor.

(6) Where no record is found pursuant to section (5), DCS shall furnish the requested information to the court.

(7) Where there is a record of possible domestic violence or child abuse pursuant to section 5, DCS shall transmit the requested information to the court with a notice that there is reasonable evidence of possible domestic violence or child abuse.

(8) Pursuant to 42 USC 653(b)(2)(B), upon receipt of the information and the notice of possible domestic violence or child abuse, the court shall determine whether disclosure of that information could be harmful to the individual sought and if the court determines that disclosure of such information to any other person could be harmful, the court and its agents shall not make disclosure.

Stat. Auth.: Sec. 2 & 25, ch. 73, OL 2003

Stats. Implemented: ORS 25.265

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0281; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1360

## 137-055-1500

### Incentive Payments

(1) For purposes of this rule, the following definitions apply:

(a) "Centralized services" may include, but are not limited to: accounting functions, bankruptcy case management, central registry for interstate cases, computer charges, constituent desk, Child Support Program director's office administrative costs, garnishments resulting from a Financial Institution Data Match, locate services, mainframe, Oregon District Attorney Association liaison position, postage, receipt and distribution of support payments, and unemployment compensation and workers' compensation withholdings;

(b) "County" or "Counties" means the county district attorneys under cooperative agreements to provide support enforcement services under ORS 25.080 and any county which enters into an agreement with the Division of Child Support (DCS) under ORS 25.080(5) on or after May 1, 2001, for DCS to assume the functions of the district attorney;

(c) "Counties' Collection Base" is that portion of the "State's Collection Base" attributable only to amounts for cases assigned to the counties;

(d) "DCS' Collection Base" is that portion of the "State's Collection Base" attributable only to amounts for cases assigned to DCS;

(e) "State's Collection Base" has the meaning given in 45 CFR 305.31(f);

(f) "Available incentive payment pool" is the projected amount from the biennial budget of the gross amount of incentives to be received from the federal Department of Health and Human Services (DHHS) for the current fiscal year.

(2) Beginning with incentive payments received for federal fiscal year (FFY) 2002 (October 1, 2001 through September 30, 2002), incentive payments received by the Oregon Child Support Program from the federal DHHS pursuant to 45 CFR 305 et. seq. shall be allocated to each county and the Division of Child Support (DCS) based on their performance in four program areas:

(a) Support order establishment;

(b) Current support collections;

(c) Collection on arrears; and

(d) Cost-effectiveness.

(3) The incentive calculations for the current federal fiscal year shall be based on the performance data from the final Office of Child Support Enforcement 157 report for the previous federal fiscal year and the state's available incentive payment pool for the current federal fiscal year.

(4) The formulas to compute each county's and DCS's performance for the four program areas identified in section (2) of this rule shall be as stated in 45 CFR 305.2.

(5)(a) The level of performance of each county and DCS as calculated using the formulas referenced in section (4) of this rule determines the

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applicable percentage for each of the four performance measures as set out in tables in 45 CFR 305.33;

(b) The cost effectiveness performance category shall include an addition to the total expenditures of the counties for the cost of centralized services and a subtraction of the same amount from the DCS total expenditures for the cost of centralized services provided to the counties.

(6) For the support order establishment and current support collections performance measures, the applicable percentages as determined per section (5) of this rule are multiplied by 100% of the counties' collection base for county computations or 100% of DCS' collection base for DCS computations.

(7) For cases receiving an arrears payment and the cost effectiveness performance measures, the applicable percentages as determined per section (5) of this rule are multiplied by 75% of the counties' collection base for county computations or 75% of DCS' collection base for DCS computations.

(8) The incentive calculations for the four performance areas calculated in section (6) and (7) of this rule are added together to obtain the following amounts:

- (a) The incentive base amount for each individual county; and
- (b) The incentive base amount for DCS.

(9) The sum of the incentive base amounts for all the counties as calculated in (8)(a) is the total incentive base amount for all the counties.

(10) The state aggregate incentive base amount is the sum of the total incentive base amount for all the counties as calculated in (9), and the incentive base amount for DCS as calculated in (8)(b).

(11) The counties' collective incentive payment share is determined by dividing the total incentive base amount for all the counties as calculated in (9), by the state aggregate incentive base amount as calculated in (10), then multiplying the resulting percentage by the available incentive payment pool for the current federal fiscal year.

(a) The counties collective incentive payment share shall be reduced by a proportionate share of costs for centralized services, as determined upon review and agreement pursuant to subsection (15) of this rule, to be retained by DCS to offset the costs of such services provided to the counties by DCS.

(b) Each individual county's incentive payment is determined by dividing its county's incentive base amount by the total incentive base amount for all the counties, then multiplying the resulting percentage by the counties' collective incentive payment share as determined in subsection (11)(a).

(12) DCS' incentive payment is determined by dividing the DCS incentive base amount by the state aggregate incentive base amount as calculated in (10), then multiplying the resulting percentage by the available incentive payment pool for the current federal fiscal year.

(13) Each county's and DCS' incentive payment, as calculated respectively in section (11)(b) and (12) of this rule, shall be distributed in equal quarterly payments for the current federal fiscal year based on the counties' and DCS' performance for the prior federal fiscal year.

(14) When the federal DHHS reconciles and determines the actual annual incentive payment to the state following the end of each federal fiscal year, any resulting positive or negative incentive adjustment amount shall be apportioned according to the calculations in section (4) through (12) of this rule using the performance figures for the corresponding prior federal fiscal year:

(a) If the adjustment results in a positive incentive to the counties, such payment shall be distributed no later than 60 days following the state's receipt of the incentive adjustment from the federal DHHS; or

(b) If the adjustment results in a negative incentive and incentive overpayment to the counties, such overpayment shall be recovered from future incentive payments due and distributed to the individual counties.

(15) The allocation of incentive payments as set out in this rule and the cost of centralized services shall be reviewed every two years, commencing in January 2004.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003

Stats. Implemented: Sec. 2, Ch. 73 OL 2003

Hist.: AFS 80-1985(Temp), f. & ef. 12-31-85; AFS 14-1986, f. & ef. 2-11-86; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0052; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0255; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1500

## 137-055-1600

### Child Support Program Participant Grievance

(1) For the purposes of this rule the following definitions shall apply.

(a) "Program participant" means any obligor, obligee or beneficiary in an Oregon child support case or any person denied services after submitting an application;

(b) "Grievance" means a formal complaint filed against the administrator;

(c) "Grievant" means a program participant who has filed a grievance as set out in this rule.

(2) Program participants are entitled to fair, professional, courteous and accurate service. A grievance procedure has been established to enable program participants a means to formally express when they perceive that they have not received fair, professional, courteous or accurate service. This grievance procedure shall be handled by the Division of Child Support (DCS) under the oversight of the Oregon Child Support Program Director.

(3) Grievances may be filed by program participants or attorneys or other employees of law offices representing program participants.

(4) It is recognized that child support enforcement activities may create negative reactions among some program participants. It is further recognized that a high level of service may not result in desired support payments. Therefore, a grievance filed against the administrator must be investigated to determine if the grievance has merit. Grievances which will be considered to be without merit include:

(a) Grievances that protest actions that are prescribed or permitted by state administrative rule or law, or federal law or regulation;

(b) Grievances that protest that support payments have not been made if the administrator has taken appropriate steps in accordance with state and federal rules to obtain payments;

(c) Grievances filed regarding actions taken by, or failure to take action by, another agency or a child support agency of another state; or

(d) Grievances that do not constitute a complaint but merely convey information to, or request an action by the administrator.

(5) The decision to find the grievance to be without merit or send it to the appropriate office for resolution shall be made by the Child Support Program (CSP).

(6) Grievances shall be made on a form developed by the CSP.

(7) Nothing in this rule precludes any program participant or any other person or entity from expressing complaints to the administrator by any other method.

(8) Grievance forms shall be available to program participants through any CSP office. The address and telephone number where a grievance form can be obtained and information about the grievance process shall be:

(a) Conspicuously posted in all CSP offices;

(b) Included in the standard application for support services;

(c) Included in initial letters sent to obligors and obligees by the CSP;

(d) Included in the CSP's general information pamphlet;

(e) Included in or with an annual notice mailed to obligors and obligees.

(9) Completed grievance forms must be filed by grievants with the CSP constituent desk. Completed grievance forms or photocopies of these forms filed with the administrator shall be immediately forwarded to the CSP's constituent desk. Upon receipt of the grievance, the CSP constituent desk shall:

(a) Record receipt of the grievance;

(b) Investigate the grievance to determine if the grievance is without merit per section (4) of this rule;

(c) If the grievance is without merit per section (4) of this rule, the grievance shall be returned to the grievant with an explanation about why it has been returned;

(d) If the grievance is not returned to the grievant it will be forwarded to the grievance coordinator(s) in the appropriate branch office for resolution.

(10) Upon receipt of the grievance, the office against whom the grievance has been filed shall investigate the grievance. That office will either take corrective action and notify the grievant or contact the grievant to explain why corrective action is not appropriate. The CSP constituent desk will set time limits for the administrator to address the grievance, not to exceed 90 days from the date the grievance is received at DCS. The date received by the CSP constituent desk shall be considered to be the date the grievance is screened and accepted.

(11) Upon completion of grievance processing the office against whom the grievance has been filed will send the grievance form to CSP constituent desk with a report of the grievance investigation and the disposition.

(12) Grievances that allege serious violations of personnel rules or standards of personal conduct, such as, but not limited to, allegations of



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racial or sexual discrimination or sexual harassment, in which allegations are substantiated, shall be removed from this grievance process and be part of the personnel process of the office against whom the grievance has been filed.

(13) A record of grievances and dispositions shall be maintained by the CSP for a period of three years.

(14) The administrator against whom a grievance has been filed shall not discriminate against the grievant because a grievance has been filed.

(15) Performance reviews shall include examination of the administrator's compliance with these grievance procedures and an examination of grievances filed against the administrator and resolution to such grievances for the previous calendar year.

Stat. Auth.: ORS 25.243 & Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.080 & ORS 25.243

Hist.: AFS 1-1995, f. 1-3-95, cert. ef. 5-2-95; AFS 32-1995, f. & cert. ef. 11-8-95; AFS 20-1997, f. & cert. ef. 11-7-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0010; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1600

## 137-055-2020

### Referral of TANF and Medical Assistance Cases to DCS

(1) The Department of Human Services shall notify the Division of Child Support (DCS) when the department provides TANF cash assistance, or medical assistance under the EXT, MAA, MAF, OHP, or SAC programs as defined in OAR 461-101-0010, to children and/or to a pregnant woman when one or both parents of each child, or the father of the pregnant woman's unborn, are absent from the benefit group.

(2) DCS is responsible for establishing paternity and for establishing and enforcing child support and health care coverage for all children receiving TANF cash assistance or EXT, MAA, MAF, OHP, or SAC medical assistance when one or both parents are absent from the benefit group.

(3) Notwithstanding sections (1) and (2) of this rule, if an Oregon county district attorney is already providing child support services pursuant to ORS 25.080(b) on a case where the family, or a family member, is found eligible for MAF or OHP, the district attorney will continue to provide services for both child support and health care coverage on that case.

(4) In non-TANF cases, the obligee may elect not to pursue establishment and enforcement of a child support obligation. If the obligee so elects, the administrator will provide only those services necessary to establish and enforce an order for health care coverage, including establishment of paternity where necessary.

Stat. Auth.: ORS 25.080 & Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.080

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 4-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0035; AFS 7-2002, f. & cert. ef. 4-25-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2020

## 137-055-2040

### District Attorney Enforcement Responsibility for New and Continued Child Support Services

(1) The district attorney of any Oregon county shall provide support enforcement services pursuant to ORS 25.080 for any resident of the same county who applies for service. However, if the person obligated to pay support resides in the same county where the operative support order is entered, the district attorney of the order county shall provide the enforcement services.

(2) The district attorney of any Oregon county shall provide continued support enforcement services as required in OAR 137-055-1100 for any person who resides in the same county. However, if the person obligated to pay support resides in the same county where the operative support order is entered, the district attorney of the order county shall provide the enforcement services.

(3) If the person applying for or receiving continued service resides in another state, the district attorney of the Oregon county where the obligor resides shall provide enforcement services.

(4) If both the person applying for or receiving continued service and the obligated party reside in another state, the person applying for or receiving continued service will be advised to contact the support enforcement agency in the state in which they reside.

(5) The matrix set out in Table 1 is offered as an aid in applying sections (1) through (4) of this rule. [Table not included. See ED. NOTE.]

(6) Notwithstanding the foregoing sections, the district attorney of any Oregon county may elect to perform support enforcement service for any obligee who so authorizes.

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

Stat. Auth.: Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.080

Hist.: AFS 59-1986(Temp), f. & ef. 8-1-86; AFS 9-1987, f. & ef. 2-6-87; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-35-057; AFS 10-1992, f. & cert. ef. 4-3-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0040; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2040

## 137-055-2060

### Cases with Contradictory Purposes

(1) Cases with contradictory purposes are defined as two or more child support cases in which the same person is, or has been, both an obligee and obligor in those cases and the cases are, or have been, assigned to the same Child Support Program (CSP) office.

(2) The administrator represents the interests of the state. There is no conflict of interest when the same CSP office is assigned cases where the same person is, or has been, both an obligor and an obligee. The administrator is responsible for impartial application of the law. Nothing in this rule precludes a CSP office from having cases assigned to them in which the same person is, or has been, both an obligor and obligee.

(3) It is recognized that a person receiving child support services or a person eligible to receive child support services may be reluctant to pursue those services because the CSP office through which they do or would receive services is, or has been, the same CSP office in another case where the person is, or has been, the opposite party.

(4) A person who has cases in which that person is, or has been, or upon application would be, both an obligor and obligee with cases assigned to the same CSP office may ask the CSP office manager to transfer one of the cases to a different CSP office. The CSP office manager shall consider the request and either grant the transfer or explain to the requestor why the transfer is not granted.

(5) If a case is transferred, the assignment to a different CSP office shall take into consideration the needs of the requestor and the other party.

(6) If the CSP office manager denies the request for transfer, the requestor may ask the CSP Director to review the decision of the administrator and to facilitate a resolution.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003  
Stats. Implemented: ORS 25.080

Hist.: AFS 6-1995, f. 2-17-95, cert. ef. 3-1-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0042; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2060

## 137-055-2080

### Office Responsible for Providing Services when Conflict of Interest

(1) The Child Support Program (CSP) will, to the maximum extent possible, assign support cases to avoid the potential for or the appearance of a conflict of interest.

(2) If an actual or potential conflict of interest is identified by either an employee or a party or potential party to a case, the manager of the affected office shall make a determination whether the case should:

- Remain assigned to the current employee;
- Be reassigned to another employee within the same office; or
- Be reassigned to a different office.

(3) If the determination made under section (2) of this rule is to reassign the case to a different office, the manager of the affected office shall contact the manager of another CSP office, which may be either a district attorney or Division of Child Support office, to reach an agreement and arrange for the case to be reassigned.

(4) If the branch offices cannot reach an agreement for the case to be reassigned or if the party or potential party disagrees with the determination made by the manager of the affected branch office, the CSP Director shall decide which office has the responsibility for providing services for that particular case.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003  
Stats. Implemented: ORS 25.080

Hist.: SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2080

## 137-055-2120

### Rules for Contested Case Hearings in the Child Support Program

Contested case hearings in the Child Support Program are conducted in accordance with the Attorney General's Model Rules at OAR 137-003-0501 through 137-003-0700 and with OAR 137-055-2120 through 137-055-2180. The hearings are not open to the public and are closed to non-participants, except the administrative law judge may permit non-participants to attend subject to the parties' consent.

Stat. Auth.: Sec. 2, ch. 73 OL 2003  
Stats. Implemented: Sec. 2, ch. 73 OL 2003

Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0800; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2120

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## 137-055-2140

### Delegations to Administrative Law Judge

Administrative law judges of the Office of Administrative Hearings are authorized to do the following:

(1) Issue final orders without first issuing proposed orders (see OAR 137-003-0501(3)).

(2) Issue final orders by default in cases described in OAR 137-003-0670, except in a case authorized by ORS 416.415. An administrative law judge is authorized to issue a final order by default in a case authorized by ORS 416.425(2) but not in any other case authorized by ORS 416.425.

(3) Provide to each party the information required to be given under ORS 183.413(2) or OAR 137-003-0510(1) (see 137-003-0510(2)).

(4) Order and control discovery (see OAR 137-003-0570(9)).

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: Sec. 2, ch. 73 OL 2003

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0801; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2140

## 137-055-2160

### Requests for Hearing

(1) A request for hearing must be in writing and signed by the party, the party's authorized representative, or the administrator.

(2) A request for hearing may be made on a form provided by the Child Support Program and must contain the party's residence, mailing or contact address, a telephone number where the party can be contacted and the reasons for objection to the contested case notice.

(3) A request for hearing must be received by the CSP office which issued the action within the time provided by law.

(4) A new or amended request for hearing is not required if the administrator amends the order appealed from.

(5) When a party requests a hearing after the time specified by the administrator, the administrator shall handle the request pursuant to OAR 137-003-0528, except that the administrator may accept the late request only if:

(a) The request is received before or within 60 days after entry of a final order by default;

(b) The circuit court has not approved the final order or there is no appeal of the final order pending with the circuit court, and

(c) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or Oregon Child Support Program administrative rules provide a different time frame or standard.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: Sec. 2, ch. 73 OL 2003

Hist.: AFS 5-1995, f. & cert. ef. 2-6-95; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0830; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2160

## 137-055-2180

### Reconsideration and Rehearing

A petition for reconsideration or rehearing authorized by OAR 137-003-0675 must be filed with the administrative law judge who signed the final order. An administrative law judge will rule on the petition and take appropriate action if the petition is allowed.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: Sec. 2, ch. 73 OL 2003

Hist.: AFS 5-1995, f. & cert. ef. 2-6-95; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0930; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2180

## 137-055-2320

### Requirement for Services — Obligor Bankruptcy Situations

(1) The administrator shall have access to an attorney admitted to federal court practice to handle situations of obligor bankruptcy, or contract with suitable counsel so admitted.

(2) For the purposes of this rule, "suitable counsel" means any of the following:

(a) That portion of the Oregon Department of Justice designated to handle bankruptcy situations; or

(b) Any Oregon county district attorney's office with staff admitted to federal court practice to handle situations of obligor bankruptcy; or

(c) Private counsel so admitted, provided that such private counsel complies with the administrative rule(s) and procedures of the Child Support Program that apply to situations of obligor bankruptcy.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 14-1994, f. 7-25-94, cert. ef. 8-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0282; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2320

## 137-055-2340

### Obligor Bankruptcy Situations in General

This rule details Child Support Program responsibilities in situations of obligor bankruptcy and applies to all bankruptcies filed on or after October 22, 1994.

(1) Upon being notified of the bankruptcy, administrator shall:

(a) Enter the appropriate codes for bankruptcy on the case record, and

(b) Narrate the case record with the bankruptcy information to alert other program participants of the bankruptcy situation.

(2) Upon receiving a discharge or dismissal notice and verifying that the bankruptcy was closed, be the administrator shall:

(a) Remove the codes for bankruptcy on the case record, and

(b) Narrate the bankruptcy information on case record.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 2-1995, f. 1-10-95, cert. ef. 1-11-95; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0284; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2340

## 137-055-2360

### Obligor Chapter 7 and Chapter 11 Bankruptcy Situations

This rule details Child Support Program responsibilities in situations of obligor bankruptcy and applies to Chapter 7 and Chapter 11 bankruptcies filed on or after October 22, 1994.

(1) Upon receiving notification of bankruptcy, the administrator shall:

(a) Stop any legal action that is pending, except as follows:

(A) Legal action to establish paternity and/or support.

(B) Modification services.

(b) Leave any existing income, unemployment, or worker's compensation withholding orders in place. In a Chapter 7 bankruptcy, collections shall continue against post-petition earnings for both current support and for both pre-petition and post-petition arrears. In a Chapter 11 bankruptcy, collections shall continue for current support and post-petition arrears. If no withholding order is in place, the administrator shall obtain a withholding order, as appropriate, when employment becomes known as the Automatic Stay does not apply in this situation.

(c) Determine if there are any other enforcement actions in process which may be stayed or which may involve property of the bankruptcy estate, such as a writ of garnishment, license suspension, and interception of tax refunds. Terminate any action that involves property of the bankruptcy estate and notify the Division of Child Support so that property of the estate that has not been distributed can be returned to the bankruptcy trustee.

(2) The administrator shall file no Proof of Claim if no assets are involved in a Chapter 7 bankruptcy.

(3) If there are assets in a Chapter 7 bankruptcy, the administrator shall file a Proof of Claim, if applicable, even if the time period for filing a Proof of Claim has passed.

(4) In a Chapter 11 bankruptcy, the administrator shall file a Proof of Claim for current child support and arrears owed at the time the petition was filed, if any.

(5) The administrator respond to any objections filed to the Proof of Claim.

(6) The administrator shall petition the Bankruptcy Court for a Relief from Stay unless there is evidence that the bankruptcy will close or the Plan Confirmed before a relief from stay can be obtained. This shall apply if the bankruptcy stay prevents the next enforcement action that is needed in a child support case.

(7) In a Chapter 7 bankruptcy, the administrator shall not file or otherwise cause a property lien to be filed until the bankruptcy is closed or dismissed, unless an appropriate Relief of Stay is obtained. In a Chapter 11 bankruptcy, a property lien may be filed after the Plan is confirmed if the property reverts to the obligor.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 409.021

Hist.: AFS 2-1995, f. 1-10-95, cert. ef. 1-11-95; AFS 15-1995, f. 7-7-95, cert. ef. 7-10-95; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0286; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2360

## 137-055-2380

### Obligor Chapter 12 and Chapter 13 Bankruptcy Situations

This rule details Child Support Program responsibilities in situations of obligor bankruptcy and applies to Chapter 12 and Chapter 13 bankruptcies filed on or after October 22, 1994.

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- (1) Upon receiving notification of bankruptcy, the administrator shall:
  - (a) Stop any legal action that is pending, except as follows:
    - (A) Legal action to establish paternity and/or support.
    - (B) Modification services.
  - (b) Terminate any administrative or judicial orders to withhold and any withholding order for unemployment compensation and worker's compensation.
  - (c) Determine if there are any other enforcement actions in process which may be stayed or which may involve property of the bankruptcy estate, such as garnishment of bank accounts and interception of tax refunds. Terminate any action that involves property of the bankruptcy estate and notify the Division of Child Support so that property of the estate that has not been distributed can be returned to the bankruptcy trustee.
- (2) The administrator shall file a Proof of Claim for current child support and arrears owed at the time the petition was filed, in any, if the time period for filing a Proof of Claim has not passed.
- (3) The administrator shall respond to any objections filed to the Proof of Claim.
- (4) The administrator shall review the Summary of Plan or proposed Plan and the Debtor's Schedule J, if available, for the repayment of arrears and for payment of ongoing child support.
  - (a) If the time period for filing objections has not passed, the administrator shall file an objection to a Plan if the plan is not feasible.
  - (b) If the Plan does not provide for pre-petition arrears, the administrator shall file an objection to have the pre-petition arrears included in the plan if the time period for filing an objection has not passed.
- (5) After confirmation, if the property of the estate has reverted in the debtor, the administrator shall resume collection on current child support and post-petition arrears. If the Plan provides for the pre-petition arrears, collection of the pre-petition arrears will be governed by the terms of the Plan.
- (6) The administrator shall petition the bankruptcy court for a Relief from Stay if the bankruptcy stay prevents the next enforcement action that is needed in a child support case.
- (7) The Automatic Stay prevents the filing of a property lien for pre-petition arrears until such time as the bankruptcy is discharged. The administrator shall not file or otherwise cause such property lien to be filed until the bankruptcy is discharged, unless an appropriate Relief of Stay is obtained.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 2-1995, f. 1-10-95, cert. ef. 1-11-95; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0288; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2380

## 137-055-3020

### Paternity Establishment Procedures

- (1) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.
- (2)(a) In all cases in which a child was conceived in Oregon, the administrator will initiate legal proceedings to establish paternity under ORS Chapter 109 or ORS Chapter 416.
  - (b) Except for proceedings filed under ORS Chapter 109, past support shall be established as provided by ORS Chapter 416 and OAR 137-055-3220.
- (3) In all cases in which a party alleges facts, which if true, conclusively establish paternity under ORS 109.070, and if a man other than the man who is alleged to be conclusively presumed as the legal father has been named by a party as a possible biological father of the child in question, the administrator will certify the case to the appropriate circuit court for a determination of whether the conclusive presumption found in ORS 109.070 applies.
- (4) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have excluded a man as the father of the child, the following provisions apply:
  - (a) If there is only one remaining untested possible biological father, that man is constructively included as the father by virtue of the other man's exclusion as the father.
  - (b) If there are more than one remaining untested possible biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain parentage tests which either exclude or include the man.
  - (5) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have included a man as the father of the child at a cumulative paternity index of at least

99, any other untested possible father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

(6)(a) The Child Support Program may initially pay the costs of parentage tests, and will seek reimbursement of those costs, but may agree to waive the costs.

(b) If an alleged father fails to appear as ordered for parentage tests, but the mother and child have appeared, reimbursement will be sought from the alleged father for the costs incurred.

(c) The maximum amount allowed to be entered as a parentage test judgment against a party is the amount the Child Support Program agrees to pay a parentage testing laboratory used to perform the tests.

(d) A judgment for parentage test costs reimbursement will not be sought:

(A) Against a person who has been excluded as a possible father of a subject child;

(B) If the mother stated that more than one man could be the father of the child, and has been unable to name a most likely alleged father, and the man tested has not objected to the entry of an order establishing paternity; or

(C) If the alleged father has applied for services under ORS 25.080 and requested paternity establishment in accordance with OAR 137-055-3080.

(7) A judgment for parentage test costs reimbursement will not be sought against any person found to be the legal father for costs attributable to testing other alleged fathers in any case in which the mother stated that more than one man could be the father of the child.

(8) When a party requests additional parentage testing as provided in ORS 109.252(2), the following provisions apply:

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Department of Human Services; and

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.

(9) Upon receipt of a party's request for additional parentage testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court shall order additional testing.

(10) If a non-requesting party fails to appear for the additional parentage testing, the administrator shall take appropriate steps to compel obedience to the order for additional testing.

(11) If a requesting party fails to appear for the additional parentage testing, the administrator may enter an order in accordance with OAR 137-055-3100.

(12) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.430

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1020; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3020

## 137-055-3040

### Temporary Order for Support

(1) When a party to an order to establish paternity objects to the entry of such order and provided the parentage test results in a cumulative paternity index of 99 percent or greater, the administrator shall request the court to issue a temporary support order.

(2) A party other than the state may request an order establishing temporary support.

(3) If, in response to the initial parentage test results, a party requests additional parentage tests, such request shall be considered an objection to the entry of the order establishing paternity and the administrator shall order the additional parentage tests.

(4) When the administrator requests the court to issue a temporary support order, the administrator shall certify the case to court for:

(a) The establishment of prospective support;

(b) A parentage determination;

(c) A final order for parentage, support and past support.

(5) The temporary order entered by the court shall have the same force and effect as any other order entered by the administrator, court or other tribunal.

(6) If the court makes a determination of non-parentage, the obligor may request that the court order the return of any monies collected as a result of the temporary order.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.430

# ADMINISTRATIVE RULES

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1005; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3040

## 137-055-3060

### Regarding the Initiation of Action Under ORS 416.400 to 416.470 to Establish Paternity When More than One Possible Father Has Been Named

(1) In any action to establish paternity initiated under ORS 416.400 to 416.470, when the mother of the child for whom paternity is being established states that the father of the child could be more than one man, the administrator may initiate action against those men who are named by the mother as possible fathers as provided for in this rule.

(2) If mother is able to name one of the possible fathers as the most likely father based upon the date of conception, the physical characteristics the child shares with that man, or other factors, and information sufficient to effect personal service upon that man is apparently available, the administrator may initiate action against that man only.

(3) If mother cannot identify one of the men who may be the father as the most likely father, the administrator may gather additional information, including information from the mother and from any physician or other licensed health care provider of obstetrical care to mother, which may assist the mother in identifying the most likely father.

(4) If mother remains unable to identify one of the possible fathers as the most likely father, the administrator may initiate legal action against any one or more possible fathers, as named by the mother, upon whom the administrator can apparently effect personal service based on the information it has available.

(5) The administrator shall provide notice to any possible father described in this rule and served in an action to establish paternity that the mother of the child for whom the administrator seeks to establish paternity has named another man or men as a possible father unless that other man (or men) has been excluded by parentage tests.

(6) The administrator will enter no order establishing paternity with respect to a man who has not been named by mother as the most likely father unless the provisions of either subsection (a) or (b) of this section apply.

(a) The man has been subjected to parentage tests which have not excluded him as a possible father of the child in question; or,

(b) All other men named by mother as possible fathers have been excluded as possible fathers by parentage tests.

(7) Notwithstanding any other provision of this rule, its requirements do not apply when there is conclusive presumption of paternity pursuant to ORS 109.070 or when one of the possible fathers is entitled to reasonable notice under ORS 109.096.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.400 - ORS 416.470

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1040; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3060

## 137-055-3080

### Responsibility of Administrator to Establish Paternity at Request of Self-Alleged Father

(1) For purposes of this rule, self-alleged father means a man who both:

(a) Claims that he is, or possibly is, the biological father of a child born out of wedlock as defined in ORS 109.124; and

(b) Wishes to have paternity legally established for the child, establishing himself as the legal father.

(2) The administrator shall be responsible for pursuing establishment of paternity at the request of a self-alleged father, subject to all of the following:

(a) The self-alleged father must either:

(A) Be eligible for services under ORS 25.080, because he is receiving TANF cash assistance or Medicaid assistance for the child born out of wedlock; or

(B) Complete an application for services as provided under ORS 25.080.

(b) Unless otherwise prohibited under this rule, the administrator shall:

(A) Take all appropriate steps to determine if the self-alleged father is the biological father; and

(B) Pursue appropriate action to legally establish paternity unless evidence indicates that he is not the biological father.

(c) The administrator shall not pursue action to establish paternity under this section in any case where adoption of the child is final or where

legal paternity, as specified in ORS 109.070, has already been established for the child;

(d) The administrator shall not pursue action to establish paternity under this rule if the Child Support Program Director has determined that such action would not be in the best interests of the child, in accordance with section (5) of this rule.

(3) For purposes of this rule, legal proceedings for adoption of the child are pending if either of the following provisions is true:

(a) The mother or legal guardian of the child has released or surrendered the child to the adoptive parent(s) for adoption, and such release or surrender has become irrevocable because the child has been placed in the physical custody of the adoptive parent(s) and the other conditions of ORS 109.312 have been met;

(b) The mother or legal guardian of the child has released or surrendered the child to the Department of Human Services or an incorporated child-caring agency for adoption, and such release or surrender has become irrevocable because the child has been placed by the agency in the physical custody of a person or persons for the purpose of adoption, in accordance with ORS 418.270(4).

(4)(a) When a self-alleged father requests the administrator establish his legal paternity for a child, the administrator shall send written notification by first class mail to the last-known address of the mother and (if a separate party) legal guardian of the child. Further, if the administrator knows or is informed that legal proceedings for adoption of the child are pending, the administrator shall also send written notification to the licensed private agency handling the adoption, or if none exists, to the Department of Human Services;

(b) If the mother and (if a separate party) legal guardian cannot readily be found, the administrator shall make a diligent attempt to locate the party. A diligent attempt includes but is not limited to submitting the case to the Division of Child Support for state parent locator services. If unable to locate the mother and legal guardian within 30 days, the administrator shall proceed to process the case as described in section (8) of this rule without the notice described in this section;

(c) The written notification shall state the following:

(A) That the self-alleged father has asked the administrator for establishment of paternity services;

(B) That if legal proceedings for adoption of the child are pending, or if the child's mother (or legal guardian if a separate party) alleges that the child was conceived due to rape or incest, the Child Support Program (CSP) Director will determine whether establishing paternity is in the best interests of the child, on the basis of the responses the CSP Director receives to the written notification;

(C) That a copy of any response to the notification the CSP Director receives will be sent to the self-alleged father, and that the self-alleged father will then have an opportunity to respond to the allegations. The administrator shall ensure that the address of the mother and/or guardian is deleted from any written material it sends to the self-alleged father;

(D) The factors the CSP Director will consider, set out in section (5) of this rule, in determining whether establishing paternity would be in the best interest of the child;

(E) That the mother, legal guardian, and adoption agency or the Department of Human Service child welfare program if appropriate under this rule, has 15 days to respond in writing to the written notification;

(F) That the self-alleged father has 15 days to respond to an allegation or response received by the CSP Director;

(G) That if any of the parties listed in paragraph (D) or (E) of this subsection does not respond to the written notice or allegation within 15 days, the CSP Director shall make its determination based on the responses it does receive;

(H) That if the CSP Director determines that establishing paternity would not be in the best interests of the child, this decision:

(i) Means only that the administrator will not pursue action to establish paternity; and

(ii) Does not preclude the self-alleged father from pursuing establishment of paternity on his own, without the assistance of the administrator.

(5) In any case where legal proceedings for adoption of the child are pending, or where the child was conceived due to alleged rape or incest, the CSP Director shall be responsible for determining whether action to establish paternity would be in the best interests of the child.

(a) If the CSP Director determines that action to establish paternity would not be in the best interests of the child, the administrator shall take no further action to establish paternity for the self-alleged father;

(b) A signed written statement from the mother or legal guardian of the child, stating that the child was conceived as a result of rape or incest,

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shall be sufficient reason for the CSP Director to determine that establishing paternity would not be in the best interests of the child, unless such statement is disputed or denied by the self-alleged father, subject to the following:

(A) If the self-alleged father does not respond to the copy of the allegation or response the CSP Director receives as provided in section (4) of this rule, the CSP Director shall make its determination by default based on the mother's or legal guardian's statement;

(B) If the self-alleged father does respond and acknowledges that the child was conceived by rape or incest, the CSP Director shall determine that establishing paternity would not be in the best interests of the child;

(C) If the self-alleged father does respond and denies that the child was conceived by rape or incest, the CSP Director shall make an administrative decision regarding whether or not the administrator shall pursue action to establish paternity. The CSP Director shall consider factors including, but not limited to:

(i) Whether a police report was filed;

(ii) Whether the self-alleged father was convicted or acquitted of rape or incest charges;

(iii) Whether other persons have information that the child was conceived due to rape or incest;

(iv) Any other factors known or provided to the CSP Director that would support or refute the veracity of the rape or incest allegation;

(v) Whether establishing paternity would be in the best interest of the child, considering the factors listed in subsection (c) of this section;

(vi) The CSP Director's decision in this matter shall be limited to only whether the administrator shall pursue action to establish paternity, and shall in no way be construed or intended as a determination or accusation of whether the self-alleged father is in fact guilty or not guilty of rape or incest;

(c) When the CSP Director finds that legal proceedings for adoption of the child are pending, the CSP Director shall consider the following factors in determining whether establishing paternity would be in the best interests of the child:

(A) The nature of the relationship or contacts between the child and the self-alleged father. This determination may consider whether the child has lived with the self-alleged father or has had frequent visitation with the self-alleged father, thereby establishing a substantial parent-child relationship;

(B) The degree of parental commitment by the self-alleged father to the child. This determination may consider whether the self-alleged father has attempted to stay in contact with the child, and if such attempts would continue or increase in the future;

(C) The degree to which the self-alleged father has contributed or attempted to contribute, consistent with his ability, to the support of the child. This determination may consider the nature and extent of such support, and if such support would continue or increase in the future;

(D) If there is a legal relationship between the child and the self-alleged father, or if there has been an attempt to establish such a legal relationship through filiation proceedings, custody actions, voluntary acknowledgment of paternity, or similar actions. This determination may consider whether the self-alleged father has had an opportunity to establish a legal relationship prior to the initiation of adoption proceeding;

(E) Whether good reasons exist that would excuse the self-alleged father's failure to establish a relationship, or stay in contact with the child, or contribute to the support of the child, or attempt to establish a legal relationship with the child. Such reasons may include, but are not limited to, the self-alleged father's late awareness of the mother's pregnancy or of the child's birth.

(6) Absent judicial review, the decision of the CSP Director shall be final with regard to any responsibility of the administrator to pursue establishment of paternity.

(7) No provision of this rule shall be construed as prohibiting the self-alleged father from pursuing establishing paternity on his own, without the assistance of the administrator.

(8) If the CSP Director determines (when a determination by the CSP Director is necessary under this rule) that the administrator may pursue action to establish paternity at the request of a self-alleged father, or if the administrator does not receive a written assertion requiring such a determination by the CSP Director under this rule, the administrator shall proceed on the case as follows:

(a) The administrator shall make diligent efforts to provide the mother of the child, unless she is deceased, with actual notice of the action to establish paternity. Notice shall be by personal service upon the mother. Diligent efforts shall include mailing of the notice or petition and summons

by first class mail to all reasonably known recent addresses with a request that the mother acknowledge service on the form provided and also mailing the same notice to one or more of the maternal grandparents, if known, addressed to them individually and requesting that they forward the notice and acknowledgment form to the mother;

(b) Notwithstanding the requirement of subsection (a) of this section, no action to establish paternity under this section shall be delayed more than 60 days from the self-alleged father's initial request because of the enforcing agency's inability to provide actual notice to the mother of the child or children;

(c) If the mother of the child or children cannot be served with notice of the action or if the mother is deceased, the enforcing agency shall take no order establishing paternity without parentage tests which fail to exclude the self-alleged father, and with a cumulative paternity index of at least 99;

(d) In any action to establish paternity in which the administrator cannot serve the child's mother, or when the mother is deceased, the administrator shall request that the court appoint a willing, qualified and suitable person to be a guardian ad litem for the child. If no relative or other person agrees to such appointment, the administrator shall request that an attorney be appointed for this purpose;

(e) When an order establishing paternity has been taken in accordance with this section without service of the notice or petition and summons on the mother, the administrator shall mail a copy of the final order to the mother by first class mail to the most recent addresses of record in the case record, the Department of Human Service's TANF files and Motor Vehicles Division files marked please forward, address correction requested. In addition to such mailing, the administrator shall for a period of six months from the date of the final order, continue attempts to locate the mother and personally serve her with a copy of the final order establishing paternity.

(9) All other provisions of this rule notwithstanding, the administrator shall not require the child's mother (or other custodial adult) to cooperate with efforts to establish paternity, and the administrator shall assess no penalty for not cooperating, in any case where a finding that the child's mother (or other custodial adult) is exempt from cooperating due to good cause, pursuant to federal law at 42 U.S.C. 654(a)(29) and 42 U.S.C. 666(a)(5)(B)(i), is either currently in effect or is pending. In any such case, the administrator need not proceed further on behalf of the self-alleged father if it determines that there is no further effective action the administrator can take on behalf of the self-alleged father.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 23-1993, f. & cert. ef. 10-19-93; AFS 3-1994, f. & cert. ef. 2-1-94; AFS 12-1996, f. & cert. ef. 4-1-96; AFS 9-1998, f. 5-29-98, cert. ef. 6-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0068; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOI 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3080

### 137-055-3100

#### Order Establishing Paternity for Failure to Comply with an Order for Parentage Testing

(1) In an action to establish paternity initiated pursuant to ORS 416.415, the administrator may serve simultaneously the Notice and Finding of Financial Responsibility and an administrative order for parentage tests.

(2) An administrative order for parentage tests may require either the mother of the child(ren) in question or a person who is a possible father of the child(ren) to file a denial of paternity in order to receive a parentage test, or it may allow testing prior to a the party filing a responsive answer to the allegation of paternity.

(3) The administrator shall enter an order establishing paternity based upon a party's failure to appear for parentage testing, provided that all parties have been served with a Notice and Finding of Financial Responsibility and with an order requiring parentage tests if:

(a) The mother of the subject child(ren) has named the male party who failed to appear for parentage tests in a sworn statement as a possible father of the child(ren) in question; or

(b) A male party has claimed in a sworn statement to be the father of the child(ren) in question and the mother and her child(ren) have failed to appear for such tests.

(4) An order establishing paternity based on a failure to submit to parentage tests may be entered:

(a) Whether or not a responsive answer has been filed; and

(b) Whether or not corroboration exists to support a sworn statement of a party naming a male party as a father or possible father of the child(ren) in question, provided that the male party has either:

(A) Been named in a sworn statement by the mother as a possible father of the child; or

(B) Has named himself in a sworn statement as the father of the child.

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(5) The provisions of this rule do not apply to the additional parentage tests described in OAR 137-055-3020(8) through 137-055-3020(11).

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 109.252 & ORS 416.430

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1030; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3100

## 137-055-3120

### Changing Child's Surname on Birth Certificate When Paternity Established

(1) In any action or proceeding by the administrator to establish paternity of a child who was born in Oregon, if either parent wishes to have the child's surname changed on the birth certificate of the child and the other parent agrees, the administrator shall so order and notify the Center for Health Statistics of the Department of Human Services.

(2) If the parents do not agree to change the child's name on the birth certificate and either parent requests that the matter be adjudicated, the administrator shall certify the matter to the appropriate Oregon circuit court pursuant to ORS 416.430(6)(b). If neither parent requests that the matter be adjudicated, the administrator will take no action to change the surname on the birth certificate of the child.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 2-2000, f. 1-28-00, cert. ef. 2-1-008; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1045; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3120

## 137-055-3140

### Reopening of Paternity Cases

(1) When a party claims that a man established as the father of a child in fact is not the biological father of the child, the administrator shall open or reopen the issue of paternity when all of the provisions of subsection (a) through (f) apply:

(a) The administrator initiated the action administratively which established paternity or paternity was established by a signed voluntary acknowledgment in Oregon;

(b) Parentage tests have not been conducted;

(c) The order was entered with the circuit court one year ago or less, or the voluntary acknowledgment as described in ORS 432.287 was filed with the Center for Health Statistics one year ago or less;

(d) Neither party asserts that the conclusive presumption of paternity created by ORS 109.070 applies;

(e) The party applying has completed and returned to the administrator a request for reopening prior to expiration of the one year period;

(f) The administrator has jurisdiction over the parties.

(2) If at any point during the process, the administrator obtains information and verifies that the criteria in section (1)(a), (b), (d), (e) or (f) are no longer met, the administrator will make a determination and will send the affected parties written notification within 10 days of verifying the information.

(3) The party who requested parentage tests shall reimburse the administrator for the costs incurred by the Child Support Program for such tests, unless the male party in question is excluded.

(4) An order establishing paternity shall not be vacated, dismissed or set aside under this rule unless parentage tests exclude the male party in question as the father of the child, or a party fails to comply and the issue of paternity is resolved against that party. The administrator shall not submit for the court's approval, any order granting relief which requires repayment to the debtor of money paid by that debtor under the order.

(5) Any judgment of nonpaternity under this rule shall be by circuit court order.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.443

Hist.: AFS 29-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1000; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3140

## 137-055-3220

### Establishment of Past Support Orders

(1) For purposes of this rule the following definitions shall apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the non-custodi-

al parent to the custodial parent or other custodial adult for purposes of support of the child(ren).

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in OAR 137-050-0320 through 137-050-0490.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When a non-custodial parent has made payments in cash or in kind to a custodial parent or other custodial adult for the support of the child(ren) during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support shall be ordered.

(4) When such payments as described in (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment shall be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The non-custodial parent must provide evidence of such payments as described in (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the custodial parent or other custodial adult;

(f) Any other record of payment deemed acceptable by the administrator.

(6) It shall be within the discretion of the administrator to determine whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If either party disagrees with this determination, the support determination may be appealed to an administrative law judge per ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

(a) October 1, 1995; or

(b) The date of the initiation of IV-D services from any state by application for services; or in case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another state, the date of application for services shall be considered to be either:

(a) The date the initiating state requests past support to begin but not before October 1, 1995; or

(b) If the initiating state requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or

(c) If the initiating state does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) Where CSP services did not produce a support order and CSP services were terminated by the applicant or by the CSP agency per state and federal regulations and subsequently CSP services were initiated again, the administrator shall not establish past support prior to the date of the most recent initiation of CSP services. If an initiating state requests that past support be established for two or more periods of time, past support shall be established only for the most recent period.

(10) If there is or was a support order in existence in any state for the non-custodial parent to pay support to the obligee for the same child(ren), no order for past support shall be entered for a period of time before entry of the support order already or previously existing.

(11) Where the order to be entered is for past support only and does not include current support and the past support would be owed only to the State of Oregon or another state, the administrator shall not enter an order for past support for a period of less than four months.

(12) Past support shall be calculated per the Oregon Child Support Guidelines and shall use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.422

Hist.: AFS 28-1995, f. 11-2-95, cert. ef. 11-3-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1010; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3220

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## 137-055-3240

### Establishment of Arrears on Oregon Order Support Cases

(1) The administrator shall establish arrears on support cases when the following conditions have been met:

(a) There has been an application for support enforcement services from either party in the case or there has been a mandatory referral for support enforcement services by an order of the court or because TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services have been provided to the family;

(b) There is an Oregon support order or the order from another state has been registered in Oregon;

(c) The administrator has determined that there is a need to establish the arrears balance on the case because:

(A) The administrator has no record or an incomplete accounting case record ;

(B) An establishment of income withholding has been requested by an obligor or obligee pursuant to ORS 25.381; or

(C) There is a reason which necessitates that the arrears on the case record be reestablished; and

(D) There has been a request for arrears establishment by a party.

(2) A party requesting establishment or reestablishment of arrears must furnish an accounting that shows the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrears.

(3) Where arrears had earlier been established, through a process which afforded notice and an opportunity to contest to both parties, the arrears from that period shall not be reestablished except that if interest had not been included in the establishment, interest may be added for that period.

(4) The enforcing agency may establish or reestablish arrears by either:

(a) Use of the judicial process authorized under ORS 25.167; or

(b) Use of the administrative process authorized under ORS 416.429.

(5) Notwithstanding section (4) of this rule, if the arrears to be established are for spousal support arrears or for both child and spousal support arrears, the administrator shall use the process in ORS 25.167.

(6) Upon completion of the arrears establishment process in subsection (4)(a) or subsection (4)(b) of this rule, the case record shall be adjusted to reflect the new arrears amount.

(7) Notwithstanding any other provision of this rule, arrears may be established when:

(a) There is an Oregon court order and less than 180 days have elapsed since the date the order was entered; and

(b) Notice has been sent to both parties that the Child Support Program will enter arrears established in the order and arrears for the period from the effective date of the order to the date of the notice if neither party requests within the 60-day period following the date of the notice that the arrears be established under the process found in ORS 25.167 and 416.429.

(8) If neither party under section (7) of this rule responds within 60 days of the notice to request arrears be established under the process found in ORS 25.167 and 416.429, the amount of the arrears under section (7) of this rule shall be the amount of arrears added to the case record.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.015

Hist.: AFS 5-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0047; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3240

## 137-055-3260

### Correction of Mistakes in Orders

(1) Clerical mistakes in final orders issued by the administrator pursuant to ORS 416.400 to 416.470 and errors therein arising from oversight or omission may be corrected by the administrator at any time within 60 days of the issuance of the order. The corrected order shall be clearly marked "Corrected Order" and shall contain notice to the parties of appeal rights as provided by ORS 416.427.

(2) The corrected order shall be served on the parties by regular mail at the address of record established for the proceeding under which the order being corrected was issued, or at any other address which a party has subsequently provided to the administrator.

Stat. Auth.: ORS 416.455 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.400 - ORS 416.470

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1050; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3260

## 137-055-3280

### Administrative Law Judge Order Regarding Arrears

(1) If a parent objects to the enforcement of an order under ORS 416.429 on the basis that the amount of the arrears are incorrect, an administrative law judge may determine the correct amount of the arrears, if any, and issue an order enforcing both the newly determined arrears and the current support obligation.

(2) The amount of arrears as stated on the Notice of Intent to Enforce an Order issued under ORS 416.429 shall be presumed to accurately state the arrears. The presumption may be rebutted by evidence of errors in calculation, by a showing that payments were made for which credits were not appropriately recorded, or any other evidence which demonstrates that the arrears amount sought is incorrect.

(3) An administrative law judge may enter an order providing for the enforcement of current support only, pending further proceedings to determine the correct amount of arrears.

Stat. Auth.: ORS 416.455 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.429

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1060; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3280

## 137-055-3290

### Entry of Contingency Orders When Child Out of Care

Whenever a notice and finding of financial responsibility is issued pursuant to ORS 416.415 for a child in the care and custody of the Department of Human Services, or a youth offender or other offender in the legal or physical custody of the Oregon Youth Authority, and the child leaves care or custody prior to entry of a final order, the administrator or an administrative law judge shall:

(1) Enter a final order, in accordance with ORS 416.417, which is contingent upon the child, youth offender or other offender residing in a state financed or supported residence, shelter or other facility or institution; and

(a) If the administrator is entering the final order, sign a certificate establishing the period of non-residency and satisfying the order for the period of non-residency; or

(b) If an administrative law judge is entering the final order, advise the administrator that the child is no longer in care or custody of the Department of Human Services or Oregon Youth Authority.

(2) Upon receipt of information from an administrative law judge that a child is no longer in care or custody of the Department of Human Services or Oregon Youth Authority, if appropriate, the administrator shall sign a certificate establishing the period of non-residency and satisfy the order for the period of non-residency.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.417

Hist.: SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3290

## 137-055-3300

### Special Circumstances Regarding Incarcerated Obligors

(1) For purposes of establishing or modifying a support order, the following definitions apply:

(a) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order, and includes but is not limited to a youth correction facility.

(A) "Correctional facility" applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after acquittal of a crime by reason of mental defect;

(B) "Correctional facility" includes alternative forms of confinement, such as house arrest or confinement, where an obligor is not permitted to seek or hold regular employment.

(b) "Incarcerated obligor" means a person who:

(A) Is or may become subject to an order establishing or modifying child support; and

(B) Is, or is expected to be, confined in a correctional facility for at least six consecutive months from the date of initiation of action to establish a support order, or from the date of a request to modify an existing order pursuant to this rule.

(2) For purposes of computing a monthly support obligation for an incarcerated obligor, all provisions of the Oregon child support guidelines, as set forth in OAR 137-050-0320 through 137-050-0490, shall apply except as otherwise specified in this rule.

(3) The administrator shall not initiate an action to modify a support obligation because of incarceration unless the obligor is an incarcerated

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obligor, as defined in subsection (1)(b) of this rule, and a party to the current order has requested a modification due to incarceration.

(4) The incarcerated obligor's income and assets are presumed available to the obligor, unless such income or assets are specifically restricted, assigned, or otherwise inaccessible pursuant to state or federal laws or rules regarding the income and assets of incarcerated obligors.

(5) If the incarcerated obligor has gross income less than \$200 per month, the administrator shall presume that the obligor has zero ability to pay support.

(6) An order entered pursuant to ORS 416.425 and this rule, that modifies a support order because of the incarceration of the obligor, is effective only during the period of the obligor's incarceration and for 60 days after the obligor's release from incarceration. The previous support order is reinstated by operation of law on the 61st day after the obligor's release from incarceration.

(a) An order that modifies a support order because of the obligor's incarceration must contain a notice that the previous order will be reinstated on the 61st day after the obligor's release from incarceration;

(b) Nothing in this rule precludes an obligor from requesting a modification based on a change of circumstances, pursuant to OAR 137-055-3420.

Stat. Auth.: ORS 416.455 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.425(9)

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0078; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3300

## 137-055-3340

### Medical Support Establishment

(1) In any action to establish or modify an Oregon child support order, the administrator shall petition for an order providing for health insurance for the child(ren) included in the order, unless the obligee or assignee of the support rights elects not to have the insurance.

(2) The petition, contested case notice or motion shall, to the extent reasonably possible, accurately state the amount of child support presumed correct under the formula established by ORS 25.275. When health insurance provisions are included, it shall also state the amount by which the order is to be increased or decreased under the formula established by ORS 25.275, in accordance with ORS 25.255, in consideration of the parties' pro rata share of liability for the out-of-pocket costs of health insurance for the children if information is available about the actual costs of health insurance. Out-of-pocket costs mean the costs incurred by the parties for health insurance for the benefit of the child(ren) included in the order.

(3) The proration adjustment for health insurance shall be based only on the cost of enrolling the child(ren) included in the order, in a health insurance plan, and shall not include any additional insurance premium cost incurred by either the obligor or the obligee for his/her own health insurance coverage or coverage for other dependents, even if the party cannot cover the child(ren) included in the order without purchasing coverage for himself/herself or for additional family members.

(4) If the administrator has no information regarding the availability and cost of insurance, the petition, contested case notice, or motion shall include:

(a) An amount to be paid as child support; and

(b) Subject to an election as provided in ORS 25.255(1), a statement that insurance is to be provided by the obligor when available on a group basis or through an employer or union, at a cost not to exceed the amount of child support calculated pursuant to the formula established in ORS 25.275. Credit shall be computed only if the child(ren) is enrolled and the party to provide health insurance provides proof of the costs of such health insurance prior to entry of the final order.

(5) To ensure that the information necessary to calculate an appropriate order is made available to the court, administrator, or administrative law judge, the administrator shall, at a minimum, take the following actions:

(a) Attempt to contact the obligor or obligee, or any current employer of the obligor or obligee to verify earnings. Attempt to verify the availability and cost of health insurance for the child(ren) included in the order; and

(b) Submit with the petition, contested case notice, or motion served on the parties, a document designed to obtain information regarding the income, availability of health insurance for the child(ren) included in the order, and other factors which may affect the amount of child support ordered. The document shall include:

(A) A notice to any obligee who has not assigned child support or medical support to the state that health insurance may be ordered, but the health insurance coverage is the obligee's election. The notice shall further state that if elected by the obligee, the order will be decreased by a pro rata

share if the obligor provides insurance, or increase by a pro rata share if the obligee provides insurance subject to the limitation pursuant to ORS 25.255;

(B) A notice stating that when child support or medical support is assigned, that unless the obligee and child(ren) already have health insurance coverage other than Medicaid, the administrator will seek an order requiring the obligor to provide health insurance, and that the order entered will reflect any known out-of-pocket costs to the obligor by reducing the amount of the order by the obligee's pro rata share of the obligor's out-of-pocket cost of enrolling the child(ren) included in the order in a health insurance plan;

(C) A notice stating that credit shall be computed only if the child(ren) is enrolled and if the party to provide health insurance provides proof of the cost of such health insurance prior to entry of the final order;

(D) On all petitions, motions, or contested case notices issued on or after March 1, 1995, a notice stating that if the party to provide health insurance does not have health insurance available on a group basis or through an employer or union at the time of the final order, the party may apply for a modification under the provisions of OAR 137-055-3420 if the child(ren) is subsequently enrolled and proof of the costs of such insurance are provided to the enforcement entity.

(6) When neither party has responded to service of the petition, contested case notice, or motion and the administrator does not have current information regarding the availability and cost of health insurance, or the party to provide health insurance does not have health insurance available on group basis or through the employer or union, or if the party to provide insurance fails to provide proof of the cost of insurance and that the child(ren) are enrolled, the administrator may enter an order which:

(a) States that the party must provide insurance at any such time as it is available on a group basis or through an employer or union, at a cost not to exceed the amount of child support calculated pursuant to the formula established in ORS 25.275; and

(b) Provides for the payment of an amount of child support that has not been adjusted to reflect the cost of insurance.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.255

Hist.: AFS 25-1993, f. 10-27-93, cert. ef. 11-4-93; AFS 28-1994, f. & cert. ef. 12-14-94; AFS 25-1995, f. 10-12-95, cert. ef. 10-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0062; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3340

## 137-055-3360

### Entering of Administrative Orders

An administrative order under ORS 416.400 to 416.470 must be entered in accordance with the requirements of this rule:

(1) If the administrative order establishes support or paternity and the child is not residing in a state financed or supported residence, shelter or other facility or institution (see ORS 416.417), the order must be entered in the circuit court in the county in which the child, or either parent of the child, resides.

(2) If the administrative order establishes support or paternity and the child is residing in a state financed or supported residence, shelter or other facility or institution (see ORS 416.417) or resides out of state, the order must be entered in the circuit court in the county in which the obligor resides.

(3) If the administrative order is one that modifies an underlying judicial order or if there is any previous Oregon order entered in circuit court, the order must be entered in the circuit court in the same county as the underlying judicial order.

(4) Notwithstanding any other provision of this rule, nothing in this rule precludes filing liens in other Oregon counties pursuant to ORS 18.320 or transferring judgments pursuant to ORS 25.100 or 107.449.

Stat. Auth.: ORS 416.455 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.440

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1091; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3360

## 137-055-3400

### District Attorney Case Assignment for Modification or Suspension of Support

(1) The purpose of this rule is to provide criteria for determining which Oregon District Attorney shall have responsibility for initiating action to review and modify an Oregon court order or decree, or administrative order, requiring payment of child support. This rule applies only when both of the following conditions exist:

(a) An Oregon District Attorney has responsibility for providing support enforcement services under ORS 25.080; and



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(b) Either of the following is true:

(A) The obligor or obligee has requested a review and modification, as provided in OAR 137-055-3420, for purposes of changing the amount of the monthly support obligation; or

(B) The obligor is presumed entitled to a suspension of the support obligation as a recipient of certain cash assistance, as provided in ORS 25.245.

(2) For purposes of this rule, the following definitions apply:

(a) "Requesting party" means the party requesting the district attorney to review and modify the support obligation;

(A) The requesting party may be either the obligor or the obligee;

(B) An obligor deemed presumptively eligible for a suspension under ORS 25.245 shall be considered the "requesting party";

(b) "Non-requesting party" means whichever party, either the obligor or the obligee, that is not the requesting party as defined in (2)(a), above.

(3) In any case where there are arrears, the district attorney responsible under OAR 137-055-2040 for enforcing the case shall, if the order is in another Oregon county, transfer in the order for review and modification under ORS 25.100.

(4) In any case where there are no arrears:

(a) If both the obligor and obligee reside in the same Oregon county, but the order is in another county:

(A) The district attorney for the county of residence of the obligor and obligee shall be responsible for review and modification action;

(B) The district attorney for the county of residence may transfer the order in for review and modification under ORS 25.100, as the county of residence for the non-requesting party.

(b) If either the obligor or obligee reside in the same Oregon county that is the county of the order, the district attorney for that county shall be responsible for review and modification action;

(c) If the order, the requesting party, and the non-requesting party are all in different counties:

(A) If the district attorney for the county of the requesting party has previously transferred the order to the requesting party's county for enforcement, the district attorney for the enforcing county shall be responsible for review and modification action;

(B) If the case is not currently open as an enforcement case under ORS 25.080, or if the district attorney for the requesting party's county has never transferred the order for enforcement:

(i) That district attorney shall refer the requesting party to the district attorney for the county of the order;

(ii) The district attorney for the county of the order shall then be responsible for review and modification action;

(C) If the case is currently open as an enforcement case under ORS 25.080:

(i) The district attorney for the enforcing county shall transfer the enforcement case to the district attorney for the county of the order;

(ii) The district attorney for the county of the order shall then be responsible for review and modification action;

(iii) Once the review and modification is completed, the district attorney for the county of the order shall transfer the enforcement case back to the proper enforcement county under OAR 137-055-2040.

(5) If the requesting party does not reside in Oregon, and regardless of whether the case has arrears or not:

(a) If the requesting party's case is already being enforced administrator shall advise the requesting party to direct the request to the child support program in that other state. The other state's child support program may then ask the administrator to pursue action under appropriate state and federal statutes;

(b) If the requesting party's support case is not being enforced under the child support program in another state, the administrator shall handle the request under sections (3) and (4) of this rule.

(6) If the non-requesting party does not reside in Oregon, the district attorney shall handle the request under sections (3) and (4) of this rule.

(7) The Matrix set out in Table 1, is included in this rule as an aid, and incorporates preceding sections of this rule: [Table not included. See ED. NOTE.]

(8) All functions and responsibilities assigned to Oregon District Attorneys under this rule shall also be considered assigned to the Division of Child Support (DCS), for those counties where DCS has assumed responsibility from the district attorney for providing support enforcement services.

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

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080, ORS 25.287

Hist.: AFS 33-1992, f. 11-17-92, cert. ef. 12-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0074; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3400

## 137-055-3420

### Periodic and Substantial Change in Circumstance Review and Modification of Child Support Award Amounts

(1) For the purposes of this rule, the following definitions shall apply:

(a) "Determination" means an order resulting from a periodic review which finds that the current order of support is in "substantial compliance" with the Oregon guidelines.

(b) "Guidelines" means the guidelines, the formula, and related provisions in OAR 137-050-0320 through 137-050-0490.

(c) "Periodic Review" means proceedings initiated under ORS 25.287.

(d) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support award amount; and

(B) The need to provide in the order for the child's health care needs through medical insurance coverage or other means, not to include Medicaid, regardless of whether an adjustment in the amount of child support is necessary.

(e) "Substantial compliance" means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support award amount as calculated using the guidelines.

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program shall notify annually the obligor and obligee of their right to request a review of the amount of support ordered.

(3) The purpose of such review is to determine whether the current child support award should be modified to assure substantial compliance with Oregon's child support guidelines.

(4) Such review shall consist of seeking information from all parties and from searching computerized records and other sources as appropriate. The administrator may use a court or administrative hearing process or discovery process in conducting the review, when necessary, to obtain adequate evidence or sworn testimony from any party in order to complete the review.

(5) Unless there is a current assignment of support rights and the the Department of Human Services or the Division of Child Support has determined that a review would not be in the best interests of the child, which is defined as "good cause" in accordance with OAR 461-120-0350, the administrator shall, on the request of any party, initiate a periodic review no sooner than 24 months after the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted Notwithstanding this section, a review may be conducted based upon a change of circumstances sooner than 24 months pursuant to section (10) of this rule.

(6) The administrator shall complete the determination that the order is in substantial compliance with the guidelines or complete the modification of the existing order within 180 calendar days of receiving a written request for a review, or locating the non-requesting parent, if necessary, whichever occurs later. For a change of circumstances modification, a written request means the requesting party has provided the documentation specified in subsection (10)(d) of this rule. For a periodic review, a written request means any written request from a party.

(7) The administrator is responsible for conducting a review in this state or for requesting that another state conduct a review. Pursuant to the provisions of ORS 110.429 and 110.432, the law of the state reviewing the order applies in determining if a basis for modification exists.

(8) Within 15 calendar days of a party's request for a periodic review or a request for a modification based upon a change of circumstances, the administrator shall determine in which state the review will be sought. The administrator is limited by the interstate provisions of ORS 110.300 through 110.441 in making this determination, including:

(a) If the controlling order is an Oregon support order and the obligor, obligee and child reside in this state, Oregon shall be the reviewing state.

(b) If the controlling order is an Oregon support order and one of the parties or the child resides in this state, Oregon shall be the reviewing state.

(c) If the child or a party is subject to the personal jurisdiction of this state and all the parties have filed a written consent in the state which issued the order for the Oregon tribunal to modify the order, Oregon shall be the reviewing state.

(d) If the administrator has registered another state's order for enforcement and none of the parties or the child resides in the state which

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issued the order, the resident state of the non-requesting party shall be the reviewing state.

(9) If none of the conditions in sections (8)(a) through (8)(c) of this rule apply and the administrator determines that the reviewing state is not Oregon, it shall proceed to:

(A) Determine and obtain the information needed by the reviewing state to permit review;

(B) Complete the federal, standardized interstate transmittal form;

(C) Transmit the documents in paragraphs (A) and (B) of this subsection within 20 calendar days of receipt of those documents to the reviewing state;

(D) If the reviewing state is currently providing interstate services for Oregon on this case, the documents shall be transmitted to the local office or agency working the case; and

(E) If the request is the first contact with the reviewing state on this case, the request must be sent to the interstate central registry in the reviewing state.

(10) The administrator shall conduct a review based upon a change of circumstances request for modification only when:

(a) Oregon has jurisdiction to modify;

(b) The existing order of support was entered not less than 60 days prior to the date the administrator receives a request for modification services based upon a change of circumstances, except for those cases where a change of custody is the reason for the change in circumstance modification;

(c) At least one of the following criteria are met:

(A) A change in the physical custody of the child(ren) has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(D) Veteran's benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(E) The obligated parent has been incarcerated after the current order was entered, as defined in and pursuant to OAR 137-055-3300; or

(F) The needs of the child have changed; and

(d) The requesting party:

(A) Completes a request for modification based upon a change of circumstances;

(B) Pursuant to ORS 416.425(6), provides appropriate documentation for the criteria in subsection (c) of this section showing that a change of circumstances has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit.

(e) If the conditions in section (10)(a) through (10)(d) of this rule have not been met or the presumed correct child support award amount under the child support guidelines calculated as the result of a review indicates that the current support order is in substantial compliance, the administrator shall notify the requesting party in writing within 30 days that:

(A) The administrator denies the request for the filing of a motion for modification; and

(B) The party may use a motion for modification as provided for in ORS 416.425. The administrator shall advise the party on how to obtain the Oregon Judicial Department packet which has been prescribed for this purpose.

(11) Upon receipt of a written request for a review, the administrator shall notify the non-requesting party of the review in writing and provide a copy of the notice to the requesting party. The notice shall advise the obligor and obligee:

(a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator shall consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator shall not conduct a review or calculate a presumed correct child support award amount until 30 days has elapsed since the date of the notice unless documentation or written information is received from both the obligor and obligee before the 30 days have elapsed; and

(d) That a modification to the support amount shall effect only support owing on or after the date of filing of the determination or motion.

(12) Based upon a periodic review, the administrator shall notify the obligor and obligee in writing of the presumed correct support amount under the child support guidelines. This notification:

(a) May be by service of a proposed determination that the existing order is in substantial compliance with the guidelines, or a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(b) Shall advise both the obligor and obligee that each party has 30 days from the date of service of the notice to object to the determination or proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(c) If the administrator uses an administrative determination or motion form, the administrator shall include the request for hearing form for each of the parties.

(13) Based upon a review conducted for a change of circumstances, subject to the conditions set out in section (10) of this rule, the administrator shall:

(a) Notify the requesting party as specified in subsection (10)(e) of this rule if the presumed correct support award amount under the child support guidelines is in substantial compliance with the current support order; or

(b) If the current child support award amount is not in substantial compliance with the child support guidelines, notify the obligor and obligee in writing of the presumed correct support award amount under the child support guidelines. This notification:

(i) Shall be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(ii) Shall advise both the obligor and obligee that each party has 30 days from the date of service of the notice to object to the proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(iii) If the administrator uses an administrative motion form, the administrator shall include the request for hearing form for each of the parties.

(14) If a party wishes to object to the proposed determination or modification:

(a) The party shall file a written request for hearing with the administrator or court before the 30 day period has elapsed; and

(b) Upon receipt of a written request for hearing opposing the proposed determination or modification, the administrator shall:

(A) Review the case to determine whether an error was made in applying the guidelines or computing the support amount and, if so, notify both parties of the new presumed amount;

(B) Seek a consent order; or

(C) Ensure that the matter is set for hearing if no other resolution is achieved.

(15) If no request for hearing is filed within the 30 day period, the administrator shall docket or file the appropriate determination or modification of the support order.

(16) If a hearing is held on a determination and the administrative law judge makes a finding that the order is not in substantial compliance with the guidelines, the administrative law judge shall enter a modified order with the support amount that does comply with the guidelines.

(17) An order of the administrative law judge may be appealed to the circuit court of the county in which the support order has been entered, docketed or registered for a hearing de novo. The appeal to the court shall be by petition for review filed within 60 days after the order of the administrative law judge has been docketed.

(18) No provision of this rule shall preclude the obligee or obligor from utilizing the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

Stat. Auth.: ORS 416.455 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080, 25.287, ORS 107.135 & ORS 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420

## 137-055-3440

### Effective Date of Modification Under ORS 416.425

In any proceeding to modify a support order under ORS 416.425, the modification may be effective on or at any time after the date the motion to

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modify was filed. The date of filing is the date the motion to modify was prepared, if the motion is prepared by the administrator. If the motion is prepared by a person or entity other than the administrator, the date of filing is the date the motion is served upon the administrator as required in ORS 416.425.

Stat. Auth.: ORS 416.455 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.425

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1080; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3440

## 137-055-3460

### Processing Modifications When Unable to Find a Party

(1) On any Oregon child support case, whenever Oregon law or administrative rule requires the administrator to process a modification of a support order to zero, and a State of Oregon court or the administrator has jurisdiction to modify the support order, the administrator shall proceed even in the event that the administrator cannot locate the obligee.

(2) For purposes of this rule, before the administrator can determine that the obligee cannot be found, the administrator must first submit a request to the State Parent Locator Service of the Division of Child Support and must allow the State Parent Locator Service at least 90 days to verify an address or employer for the party being sought.

(3) When the motion to modify the support order is for a modification to zero because the obligated parent is either receiving certain cash assistance as provided in ORS 25.245, or is incarcerated, or now has physical custody of the child(ren) named in the support order, and the administrator cannot locate the obligee, the administrator shall request authority from the court to serve by other methods as allowed in and pursuant to ORCP 7.D(6).

(4) Provisions in this rule regarding a motion to modify a support order to zero are also applicable to a motion to terminate support or, if the obligor is receiving certain cash assistance as provided in ORS 25.245, to a notice suspending support.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020(9), ORS 25.085, ORS 25.245 & ORCP 7.D

Hist.: AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1085; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3460

## 137-055-3480

### Modification of a Support Order to Zero

(1) The administrator may, upon its own initiative, or upon the request of a party, initiate the necessary action to modify a child support obligation to zero when one of the conditions listed in subsections (a), (b), (c), and (d) of this section apply.

(a) The child or children for whose benefit the support was ordered no longer are in the physical custody of the obligee.

(b) The family is reconciled (that is, the obligor, obligee and child or children live together as an intact family).

(c) The obligor is incarcerated and has no known assets or income.

(d) The obligee or beneficiary of the obligee is not receiving TANF cash assistance, foster care or Oregon Youth Authority services and has requested that the administrator modify the support obligation to zero.

(2) No order modifying a support obligation to zero shall be taken ex parte.

(3) Nothing in this rule prohibits the suspension of support accrual under any order for the reason that the obligor receives certain cash assistance as provided in ORS 25.245.

Stat. Auth.: ORS 416.455 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.287 & ORS 416.425

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1070; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3480

## 137-055-3490

### Suspension of Enforcement When Motion to Terminate is Filed

(1) For purposes of this rule, "credit balance" means that payments received on a support account exceed all amounts owed by the obligor for ongoing and past-due support.

(2) When a motion has been filed to terminate, vacate, or set aside a support order or to modify a support order to zero, the administrator may suspend enforcement of the support order if:

(a) Collection of support would result in the support account accruing a credit balance if the motion were granted; or

(b) The motion to terminate the order or to modify the order to zero was filed on the basis of the obligor having physical custody of the child(ren).

(A) When enforcement is to be suspended under this subsection, the administrator shall send written notice of the proposed suspension to the obligee and shall also send a copy of such notice to the obligor;

(B) Such notice shall advise the obligee that the obligee has 14 days from the date the notice is sent to object in writing to the proposed suspension of enforcement, and that the obligee wishing to object must send the written objection to the entity that sent the written notice to the obligee;

(C) Such notice shall also advise the obligee that the obligee may object only on the basis that the child(ren) is not in the physical custody of the obligor or that the obligee has not consented to the child(ren) being in the physical custody of the obligor;

(D) When an obligee files a written objection under this subsection, the administrator shall not suspend enforcement. However, if the obligee's written objection results in the obligor accruing a credit balance, the provisions of OAR 137-055-6260 shall apply. In addition, the obligee may incur an overpayment under OAR 137-055-6220.

Stat. Auth.: ORS 25.125 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.125(6)

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0069; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3490

## 137-055-3500

### Joinder of a New Party to a Child Support Proceeding

(1) In any proceeding under ORS 416.400 to 416.470 to establish or modify a child support obligation, any party may join any other person who has physical custody of a child in the proceeding.

(2) Before a person may be joined as a party, the administrator shall determine who has physical custody of the child. The determination of who has physical custody of a child is not affected by who may have legal custody of the child. A person has physical custody when that person is responsible for the care, control and supervision of the child. The administrator shall make this determination upon reliable objective information including one or more of, but not limited to, the following:

(a) Written agreement of all parties to the proceeding and of the person having physical custody of the child;

(b) Current school or day care records of the child, indicating the child's name, address and primary caretaker;

(c) Notarized statements by persons who are knowledgeable about the child's primary place of residence and primary physical custodian;

(d) Letters of guardianship or other court records;

(e) Current state or federal agency records.

(3) The administrator shall send written notification of the determination of physical custody and joinder to all parties and the person proposed to be joined as a party. The notice shall inform the parties and the person proposed to be joined that:

(a) A determination of physical custody will result in joining the person with physical custody as a party to the action;

(b) A person who is joined as a party has the rights of a party, including the right to receive current child support;

(c) An objection to the determination of who has physical custody must be made to the administrator in writing within 30 days of the date that the determination was mailed.

(4) The notice described in section (3) may be served on the parties and the person proposed to be a party as part of an action to modify or establish a support order in the same manner that service is required for that action in ORS 416.400 to 416.470. If an action to establish or modify has already been served, the notice of determination of physical custody and joinder shall be sent to the parties and the person proposed to be a party by regular mail at the last known address. If no objection is received within the time allotted in section (3) the person determined to have physical custody of the child, shall be joined as a party to the action.

(5) If a written objection is filed pursuant to section (3) of this rule, the matter shall proceed as follows:

(a) The administrator shall attempt to resolve the dispute with the persons involved and, if the dispute is resolved, issue an order reflecting how the matter is resolved;

(b) If the dispute cannot be resolved, the written objection shall be considered a request for a hearing and the issues of physical custody and joinder shall then be heard and determined by an administrative law judge, pursuant to procedures established under ORS 416.400 to 416.470. The issues of physical custody and joinder may be determined at the hearing to establish or modify a support obligation. The administrative law judge's determination of physical custody and joinder shall be included in the order to modify or establish support and may be appealed pursuant to ORS 416.427;

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(c) If the issues of physical custody and joinder are raised for the first time during a hearing to modify or establish support, the administrative law judge has authority to postpone the hearing and to order the administrator to serve a person alleged or claiming to have physical custody of the child. After service is accomplished, the administrative law judge may proceed with the hearing and has authority to make a determination of physical custody in accordance with section (2) of this rule. The administrative law judge's determination of physical custody and joinder shall be included in the order to modify or establish support and may be appealed pursuant to ORS 416.427.

(6) Any person who has been previously joined as a party, pursuant to this rule, shall be removed as a party after the administrator has determined that the child is no longer in the custody of that person. In making this determination, the administrator may use the criteria specified in subsections (2)(a) through (2)(e) of this rule.

Stat. Auth.: ORS 416.455 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 416.407

Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1065; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3500

## 137-055-3620

### Administrative Subpoena

(1) The administrator and child support programs of other states that provide services pursuant to Title IV-D of the Social Security Act may issue administrative subpoenas pursuant to ORS 25.082.

(2) Subpoenas issued by the administrator and child support programs of other states shall be in the form adopted by the United States Department of Health and Human Services for that purpose.

(3) Administrative subpoenas issued under this rule may compel the release of financial records and other information needed to establish paternity or to establish, modify or enforce a support order.

(4) Administrative subpoenas issued under this rule may be served on an individual or on a public or private entity.

(a) A public entity means an agency or office of any federal, state or local government;

(b) A private entity means any business entity or organization however organized, including all profit and non-profit entities.

(5) Subpoenas issued by the administrator pursuant to this rule may specify a time for compliance of not less than ten working days.

(6) Subpoenas issued pursuant to this rule may be served by certified mail or personal service.

(7) An administrative subpoena issued by the administrator or a child support program of another state may be enforced by an Oregon court or the administrator.

(8) The administrator may enforce a subpoena by:

(a) Imposition of a civil penalty not to exceed \$250 imposed in the manner provided in ORS 183.090;

(b) Application to a court to compel compliance with the administrative subpoena; or

(c) Suspension of a license pursuant to OAR 137-055-3640 if the individual served with the subpoena is a party to a child support or paternity case.

Stat. Auth.: ORS 25.082 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.082

Hist.: AFS 13-1996, f. 4-15-96, cert. ef. 5-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0076; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3620

## 137-055-3640

### Enforcement of a Subpoena by License Suspension

(1) For the purposes of this rule the following definitions shall apply:

(a) "License" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driving privileges granted by the Department of Transportation under ORS chapter 807 which includes all driving licenses and permits, and all hunting and fishing licenses and tags issued by the Oregon Department of Fish and Wildlife;

(b) "Administrative review" means a review of the obligor's objection to proposed action under this rule performed by the administrator to determine that:

(A) There is not a mistake in identity of the party;

(B) The party has not complied with the subpoena; or

(C) The subpoena was properly served upon the party.

(2) At the discretion of the the administrator, the administrator may use the remedy set out in this rule or any other remedy allowable under Oregon law to enforce compliance with a subpoena issued pursuant to OAR 137-055-3620.

(3) When a party to a child support or paternity case has been served with a subpoena pursuant to OAR 137-055-3620 and the time for compliance set out on the subpoena has expired and the subpoenaed party has not complied with the subpoena, the administrator may serve notice to the party that a license or licenses issued to that party will be suspended.

(4) The notice of license suspension shall contain:

(a) The license(s) subject to suspension;

(b) The name of the person whose license is subject to suspension, the child support case number, the social security number, if available, and date of birth, if known;

(c) The date the original subpoena had been served, the deadline the subpoena set for compliance and the documents or information that had been subpoenaed;

(d) The procedure for contesting license suspension and the bases for contesting the suspension. The only bases for contesting the suspension are:

(A) There is a mistake in identity of the party;

(B) The party has complied with the subpoena; or

(C) The subpoena was not properly served upon the party pursuant to OAR 137-055-3620.

(e) A statement that the party has 30 days to contest suspension in writing by requesting an administrative review on a form provided by the administrator;

(f) A statement that if the party provides the information or documents that were originally specified in the subpoena within 30 days of the date of the notice, the license(s) will not be suspended; and

(g) A statement that failure to contact the administrator within 30 days of the date of the notice to either request an administrative review to contest the suspension or to provide the originally subpoenaed information or documents will result in suspension of the license(s).

(5) If the party contests the suspension of the license(s), the administrator shall conduct an administrative review to determine if the suspension should occur:

(6) If the administrator determines that the suspension of the license should occur, both the obligee and the obligor shall receive written notice of such determination. The notice will include the following:

(a) The basis for the determination;

(b) The right to appeal the determination and a form on which to make the appeal;

(c) The time limit for making an appeal is 14 days from the date of the notice;

(d) That if no appeal of the suspension is received within 14 days, the licensing agency will be notified to suspend the license immediately.

(7) An appeal of the determination in subsection (5) of this rule shall be to an administrative law judge and the suspension of the license is stayed pending the decision of the administrative law judge. The only bases for the appeal are:

(a) There is a mistake in identity of the party;

(b) The party has complied with the subpoena; or

(c) The subpoena was not properly served upon the party pursuant to OAR 137-055-3620.

(8) If the party fails to provide the subpoenaed information or documents or fails to appeal the determination within the time period allowed, or if the administrative law judge affirms the administrative determination, the administrator shall send a notice to the issuing agency to suspend the license. A copy of this order shall be sent to both parties by regular mail.

(9) The notice to the issuing agency to suspend the license shall contain the following:

(a) A statement that a child support or paternity case record is being maintained by the Child Support Program and that the license holder is a party in that case; and

(b) A statement that the holder of the license has failed to comply with a subpoena pursuant to OAR 137-055-3620.

(10) At any time after suspension of the license, the party may request that the administrator conduct a review to determine if the basis for the license suspension continues to exist. The administrator will review the suspension and notify the issuing agency to reinstate the license, when any of the following conditions are met:

(a) The party has furnished the originally subpoenaed information or documents;

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(b) The legal action, enforcement action or other case action has been completed and there is no longer a need for the originally subpoenaed information or documents; or

(c) There is no longer a Child Support Program case.

Stat. Auth.: ORS 25.082, 25.750, & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.082 & ORS 25.750

Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0077; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3640

## 137-055-4040

### New Hire Reporting Requirements

(1) Employers with employees who work only in this state or are interstate employers who have designated Oregon as their reporting state with the United States Secretary of Health and Human Services shall transmit information regarding the hiring or rehiring of any employee by:

(a) Mailing or faxing to the Division of Child Support (DCS) a copy of the IRS W-4 Form completed by the newly hired employee; or

(b) Mailing or faxing to DCS a completed form adopted by DCS; or

(c) Sending to DCS a magnetic tape or diskette, as specified by DCS; or

(d) Any other method approved by DCS.

(2) Reports made under this section must contain the employer's name, address and federal tax identification number and the employee's name, address and social security number.

(3) Reports made by copy of W-4 form or by the form adopted by DCS must be sent to DCS not later than 20 days after the employer hires or rehires the employee. Employers who transmit the reporting data magnetically or electronically must transmit the data within 12 to 16 days of hiring or rehiring the employee.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.790

Hist.: AFS 16-1998, f. 9-16-98, cert. ef. 10-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0236; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4040

## 137-055-4060

### Income Withholding — General Provisions, Requirements and Definitions

(1) OAR 137-055-4060 through 137-055-4280 shall provide for collection of support by means of income withholding, in accordance with ORS chapter 25 and all other applicable Oregon law, on all support cases being enforced by the administrator. These rules shall apply to the following, independently or combined:

(a) Support owed for any current month;

(b) Arrears amounts; and

(c) Interest on support arrears. However, this subsection shall not be construed as indicating that the administrator has a duty to compute, accrue, or record interest on support cases that are on the Child Support Enforcement Automated System (CSEAS).

(2) For purposes of OAR 137-055-4060 through 137-055-4280, the following definitions shall apply:

(a) "Alternative payment method" means the electronic fund transfer method of paying support that is described in OAR 137-055-5020;

(b) "Best interests of the child" means that requiring payment of support by income withholding would be in the best interests of the child because:

(A) In the preceding twelve months, at least three of the obligor's payments have been received by the Division of Child Support (DCS), as the state disbursement unit, seven or more days after the due date; or

(B) At the end of any month, the obligor owes past-due support, even if the past-due amount is less than the amount of support payable for one month; or

(C) Any other circumstance where the court or administrator determines a risk, based on information provided by the obligee or otherwise discovered, that the obligor will not pay support promptly when due each month.

(c) "Disposable income" means the part of an individual's income that remains after the deduction of any amounts required to be withheld by law, except as provided in subsection subsections (B) or (C) of this section.

(A) Amounts required to be withheld by law includes, but is not limited to, required withholding for taxes and social security;

(B) Any amounts withheld for the following shall not be deducted from the obligor's income when computing disposable income, even if such withholding is required by law or by judicial or administrative order:

(i) Health insurance premiums;

(ii) Spousal or child support.

(C) An obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income

withheld. The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and DCS shall not refund to the obligor, on the basis of such claims, any amounts withheld that DCS has already disbursed to the obligee;

(d) "Good cause" for not withholding means a situation that exists when:

(A) A court or the administrator makes a written determination that, and a written explanation in the official record of why, immediate income withholding would not be in the best interests of the child; and

(B) If the case involves the modification of an existing support order, there is proof of timely payment of previously-ordered support and there are no arrears. Timely payment is indicated when the obligor has not previously become subject to initiated income withholding under the existing order.

(e) "Immediate" income withholding means that withholding for support is effective upon entry of the support order, and the order contains a provision requiring income withholding;

(f) "Initiated" income withholding, also known as "automatic" income withholding, means income withholding that shall occur when a support arrears have accrued that are at least equal to the amount of support due for one month on the case, regardless of whether or not the support order requires withholding, or that shall occur at the request of any party to the support case;

(g) "Official record" means either:

(A) The court record, in cases where an exception to income withholding is approved during court proceedings; or

(B) CSEAS payment and case record, in cases where an exception to income withholding is approved by the administrator.

(h) "Order to withhold" means any court order or administrative order, including any notice or order generated by the administrator, that directs a withholder to withhold income pursuant to ORS Chapter 25.

(3) Collection of support by income withholding, pursuant to ORS chapter 25 and to these rules, is in addition to any other remedy provided by law for the collection of support.

(4) Withholding may be extended to forms of income other than income derived from employment, including but not limited to unemployment compensation, worker's compensation, retirement or pension benefits, and cash dividends from stocks or bonds, as permitted or required under state and federal law.

(5) Disposable income is subject to an order to withhold without the need for any amendment to the support order involved or for any other further action, other than those actions required or permitted under ORS chapter 25.

(6) Withholding under these rules has priority over any other legal process under Oregon law against the same income, including having priority over withholding for health insurance.

(7) On any case, the administrator shall take action to assure that withholding promptly terminated in any case where:

(a) There is no longer a current order for support and all arrears have been paid or satisfied; or

(b) The obligor requests termination and withholding has not been terminated previously and subsequently initiated, and the obligor meets the conditions for an alternative payment method set forth in OAR 137-055-4080.

(8) DCS shall promptly refund, to the obligor involved, any and all amounts which have been erroneously withheld due to an error by the administrator.

(9) All support orders issued or modified by the administrator shall include a provision requiring the obligor to keep the administrator informed of:

(a) The name and address of the obligor's current employer;

(b) Whether or not the obligor has access to health insurance coverage at reasonable cost, and if so, the health insurance policy information.

(10) If an obligor changes employment within Oregon when a withholding is in effect, the administrator shall, upon learning the identity and location of the new employer, issue a new order to withhold to the new employer in accordance with OAR 137-055-4180.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.372 - ORS 25.427, ORS 656.234, ORS 657.780 & ORS 657.855

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 12-1994, f. 6-28-94, cert. ef. 7-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0175; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4060

# ADMINISTRATIVE RULES

## 137-055-4080

### Immediate Income Withholding and Exceptions

(1) When any support order is entered or modified, the order shall require the obligor to pay support by income withholding, unless an exception has been allowed under section (2) of this rule. For purposes of this rule, such withholding constitutes immediate income withholding as defined in OAR 137-055-4060(2).

(2) At entry or modification of a support order or when income withholding has been commenced under this rule, the obligor or obligee may request that withholding not be begun or be discontinued, and an exception to withholding may then be allowed, if the following requirements are met:

(a) All arrears are paid in full;

(b) The obligor has not previously been granted an exception from withholding; and,

(c) Either of the following:

(A) A court or the administrator makes a written finding that there is good cause not to require withholding, and enters a written explanation of this finding on the official record, as defined in OAR 137-055-4060(2); or

(B) The obligor and obligee sign a written agreement for an alternative payment method, subject to the following requirements:

(i) The written agreement must be in accordance with OAR 137-055-4120(2), including a requirement that the obligor pay support by means of the electronic fund transfer (EFT) payment method described under OAR 137-055-5020.

(ii) If support is assigned to the State of Oregon, the state must also be a party to the written agreement. The Division of Child Support shall have authority to approve or disapprove the agreement on behalf of the State.

(iii) The administrator shall enter the written agreement into the official record, as defined in OAR 137-055-4060(2).

(3) Notwithstanding any other provision of this rule, when all child support is assigned to the State of Oregon while a child is in state care or custody, the administrator, the Department of Human Services or the Oregon Youth Authority will grant an exception from immediate income withholding when:

(a) The obligor requests such exception in writing and pays to DCS all past-due amounts that have accrued under the order; or

(b) The state has entered into a written alternative payment agreement with the obligor pursuant to OAR 137-055-4130.

(4) When an exception is granted under this rule:

(a) For an existing income withholding order, the administrator shall take the appropriate steps to suspend the withholding and generate written notification to the withholders to suspend income withholding.

(b) When an obligor is excepted from withholding prior to the withholders being notified to begin withholding, the administrator shall take the appropriate steps to halt the withholders' order to withhold income.

Stat. Auth.: ORS 25.396, 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.378 & ORS 25.396

Hist.: AFS 7-1994, f. & cert. ef. 4-1-94; AFS 3-1995, f. 1-27-95, cert. ef. 2-1-95; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 3-1995, f. 1-27-95, cert. ef. 2-1-95; AFS 34-1995, f. 11-27-95, cert. ef. 12-1-95; AFS 39-1995, f. & cert. ef. 12-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0176; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4080

## 137-055-4100

### Initiated Income Withholding and Exceptions

(1) On any support order entered or registered in Oregon, the obligor shall become subject to "initiated" income withholding, as defined in OAR 137-055-4060(2), when a court or the administrator, whichever is appropriate, determines that both of the following are true:

(a) The amount of past-due support owed by the obligor is at least equal to the amount of the ongoing monthly support obligation on the case; and

(b) Thirty days have expired since the obligor's payment due date for the preceding month.

(2) A court or the administrator shall initiate withholding under section (1) of this rule without the need for a judicial or administrative hearing or for advance notice to the obligor of such withholding. If an obligor wishes to contest an order to withhold that is initiated under section (1) of this rule, the obligor may do so in accordance with and pursuant to OAR 137-055-4160.

(3) When arrears exist and notice of the past-due amount has been given to the obligor, a court, upon application, shall issue a withholding order upon the ex parte request of the obligee or the administrator.

(4) The obligor may initiate a withholding order, ex parte, at any time by motion to the court or by request to the administrator.

(5) If an obligor is not otherwise subject to withholding, a court or the administrator may issue a withholding order at the request of the holder of support rights if, after notice and an opportunity to object has been given to the obligor, the court or the administrator makes a finding that issuing a withholding order would be in the best interests of the child as defined in OAR 137-055-4060(2). Such finding is subject to the following:

(a) The obligor must be given advance written notice that the obligor may object in writing to the withholding within 14 days of the date of such notice, and the obligor either:

(A) Does not object in writing to the withholding within 14 days of the date this advance notice was sent; or

(B) Does object, and the court or the administrator finds that income withholding would be in the best interests of the child, as defined in OAR 137-055-4060(2). The court or the administrator shall make this determination within 30 days of receiving the obligor's written objection to the withholding.

(b) If the obligor has been granted an exception to withholding by a court, the holder of support rights who wants withholding must apply for withholding under this Section by motion to the court.

(6) Notwithstanding any other provision of this rule, when all child support is assigned to the State of Oregon while a child is in state care or custody, the Division of Child Support (DCS), OYA or the Department of Human Services will grant an exception from initiated income withholding when:

(a) The obligor requests such exception in writing and pays to DCS all past-due amounts that have accrued under the order; or

(b) The state has entered into a written alternative payment agreement with the obligor pursuant to OAR 137-055-4130.

Stat. Auth.: ORS 25.396, 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.378, ORS 25.396, ORS 656.234 & ORS 657.780

Hist.: AFS 62-1985(Temp), f. & ef. 10-28-85; AFS 30-1986, f. & ef. 4-1-86; AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; Renumbered from 461-035-0049; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1990, f. 12-13-90, cert. ef. 1-1-91; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0177; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4100

## 137-055-4120

### "Alternative Written Agreement" Exceptions from "Immediate" Income Withholding

(1) The purpose of this rule is to describe the requirements for a written agreement for an alternative method of paying support, as an exception to "immediate" income withholding, when an obligor and obligee want such an agreement as an alternative to the immediate income withholding requirements under OAR 137-055-4080.

(2) For all support cases receiving support enforcement services under ORA 25.080, the alternative arrangement must require that support payments be made through the electronic fund transfer (EFT) payment method prescribed in OAR 137-055-5020. However, when an obligor and/or obligee seek to enter into such an agreement as an alternative to immediate income withholding, the following additional requirements must be met:

(a) Both the obligor and the obligee must sign a written statement in which they agree that the EFT payment method prescribed in OAR 137-055-5020 shall be the alternative method of paying support. However, for any case where support has been assigned to the state, the Department of Human Services, OYA or the Division of Child Support (DCS) has the right to approve, deny, or cancel any such written agreement.

(b) The obligor must then do all of the following:

(A) Complete the process of applying for the EFT payment method with DCS.

(B) Pay, to DCS when due, the amount due for current support each month, until DCS activates the EFT payment method on the case.

(C) Pay to DCS an additional amount sufficient to pay all past-due support, if any, that has accrued under the obligor's order to pay support, according to the obligor's case record.

(c) Any such written agreement must be reviewed and entered into the case record by either the appropriate court or the administrator.

(d) The written agreement shall remain in effect regardless of any subsequent modifications to the child support order, provided the obligor pays-off any arrears resulting from the modification within 30 days of when the administrator codes the modification onto the case record, unless a court orders otherwise.

(3) When the obligor and obligee have met all requirements under this rule, the court or the administrator shall grant the exception from income withholding.

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(4) In any case where DCS accepts and implements the EFT payment method under this rule, DCS shall:

(a) Distribute funds collected under paragraph (2)(b)(B) of this rule as regular monthly support payments, according to OAR 137-055-6020, until the electronic fund transfer is activated.

(b) Credit all funds collected under paragraph (2)(b)(C) of this rule as payment of arrears on the obligor's case, and shall distribute such funds according to OAR 137-055-6020

(5) An exception granted under this rule automatically ends if arrears equal to or greater than one month's support obligation occurs.

(a) This shall include cases where the arrears result because the obligor's financial institution refuses to honor an EFT payment, when presented for payment by DCS, due to insufficient funds in the obligor's account.

(b) The administrator shall send advance written notification to the obligor, as required in OAR 137-055-4140, before terminating the exception and reinstating income withholding.

(6) Notwithstanding any other provision of this rule, when child support is currently assigned to the State of Oregon while a child is in state care or custody, DCS may enter into a written alternative payment agreement with the obligor pursuant to OAR 137-055-4130.

Stat. Auth.: ORS 25.396, 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.396

Hist.: AFS 24-1991, f. 11-26-91, cert. ef. 12-1-91; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 30-1994, f. 12-29-95, cert. ef. 1-1-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0178; AFS 14-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4120

## 137-055-4140

### Written Notice to the Obligor of Income Withholding

Whenever an order to withhold is issued on any support case being enforced under ORS 25.080, whether for immediate income withholding under OAR 137-055-4080 or for initiated income withholding under OAR 137-055-4100, the administrator shall send written notice of the order to withhold to the obligor and obligee by regular mail to their last-known addresses.

(1) Such notice shall state the following:

(a) That withholding has commenced;

(b) The amount to be withheld, expressed either as a percentage of income or as a specific dollar amount, whichever is specified in the order to withhold in accordance with OAR 137-055-4200;

(c) The amount of arrears, if any;

(d) That the order to withhold applies to any current or subsequent withholder or period of employment;

(e) The procedures to contest the order to withhold, as specified in OAR 137-055-4160;

(f) That the only basis for contesting an order to withhold is a mistake of fact, meaning an error in the amount due for current support or arrears, or an error in the identity of the obligor;

(g) The availability of, and requirements for, exceptions to income withholding, as specified in OAR 137-055-4080 and 137-055-4100;

(h) That the obligor has 14 days from the date that income is first withheld, pursuant to the order to withhold, to contest the withholding; and

(i) The actions that will be taken if the obligor contests the withholding, as specified in OAR 137-055-4160.

(2) This notice requirement may be met by mailing a copy of the order to withhold, by regular mail, to the obligor and to the obligee. If this notice requirement is met in this manner, the order must contain all of the information required in section (1) of this rule.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003

Statutes. Implemented: ORS 25.399

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 4-1991, f. 1-28-91, cert. ef. 2-1-91; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0179; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4140

## 137-055-4160

### Contested Income Withholding

(1) An obligor who wants to contest an order to withhold income issued under OAR 137-055-4080 and 137-055-4100 must do so within 14 days from the date that income is first withheld pursuant to the order to withhold. If the obligor is contesting the withholding on the basis of an error in the amount due for current support or arrears pursuant to subsection (2)(a) of this rule, the obligor's contest must be in writing.

(2) The only basis for contesting the order to withhold is a mistake of fact. A mistake of fact means either:

(a) An error in the amount due for current support or for arrears; or

(b) An error in the identity of the obligor.

(3) Payment of all arrears shall not, by itself, be a basis for not implementing withholding.

(4) If the order to withhold income was issued by a court of the State of Oregon, the obligor wanting to contest the order must do so in the court that issued the order to withhold.

(5) If the order to withhold was issued other than by an Oregon court, the obligor may contest the order to withhold to the administrator.

(a) The administrator is not required to provide an opportunity for a contested case administrative hearing under ORS 183.310 to 183.550 or a hearing in court;

(b) If the obligor contests the withholding within 14 days from the date when income is first withheld pursuant to the order to withhold, the administrator shall determine, based on an evaluation of the facts, if a mistake of fact has occurred;

(A) The administrator shall make this determination within 45 days from the date when income is first withheld pursuant to the order to withhold;

(B) If a mistake of fact has occurred based on an error in the identity of the obligor, the Division of Child Support (DCS) shall immediately refund all amounts collected in error under the withholding order to the person who was mistakenly misidentified as being the obligor;

(C) If a mistake of fact has occurred based on an error in the amount due for current support or arrears, DCS shall refund to the obligor only those amounts collected, if any, that exceed the total amount that the obligor owes for current support and arrears as of the day that the administrator has made its determination. If the obligor continues to owe any amount for arrears, the income withholding order shall remain in effect;

(D) The administrator shall notify both the obligor and obligee of this determination and of the right of each to appeal the determination;

(E) Any appeal of the decision of the administrator shall be to the circuit court for a hearing de novo.

(6) If the order to withhold was issued by a court or administrative agency of another state and was received directly by an employer in Oregon, the obligor may contest the order to withhold by either:

(a) Seeking relief from enforcement of the order in the appropriate tribunal of the state that issued the order to withhold, in accordance with the applicable laws of that state; or

(b) Registering the order in Oregon and then seeking relief from enforcement of the order in an Oregon circuit court.

(7) If an obligor contests an order to withhold under sections (5) or (6) of this rule, DCS shall hold any funds collected pursuant to the withholding order, and shall not distribute such funds to the obligee, subject to the following:

(a) If the obligor contests the withholding on the basis of an error in the identity of the obligor, DCS shall hold all payments collected pursuant to the withholding order until the administrator has made its determination;

(b) If the obligor contests the withholding on the basis of an error in the amount due for current and/or past-due support, DCS shall hold all payments collected for past-due support pursuant to the withholding order, except for those amounts the obligor does not contest are owed, until the administrator has made its determination;

(c) Once the administrator has made its determination, and regardless of whether or not the obligor or obligee appeals the determination to the court, DCS shall:

(A) Refund, to the obligor, all amounts so held that are determined to have been collected in error;

(B) Disburse, to the obligee or as otherwise appropriate, all amounts so held that are determined to have been collected correctly.

(8) Neither the initiation of proceedings to contest an order to withhold pursuant to this rule, nor a motion or request to contest an order to withhold, nor an appeal of the decision of the administrator with regard to the obligor's contesting of the order to withhold, shall stay, postpone, or defer ongoing withholding unless otherwise ordered by a court.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.405

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0181; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4160

## 137-055-4180

### Order to Withhold Income

(1) On any support case being enforced under ORS 25.080, the administrator shall serve an order to withhold income upon the appropriate withholder whenever:

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(a) The obligor is subject to immediate income withholding and no exception to withholding has been granted, pursuant to OAR 137-055-4080; or

(b) The obligor is subject to initiated income withholding and no exception to withholding has been granted, pursuant to OAR 137-055-4100.

(2) The administrator shall serve the order to withhold income upon the withholder either personally upon the withholder or upon the withholder's agent, an officer of the corporation, bookkeeper, accountant, person responsible for payroll, or local office manager, or by any type of mail which is calculated to give actual notice and is addressed to one of the persons listed above.

(3) The administrator shall not be responsible for initiating service of the withholding order if, prior to initiating service, the administrator receives written notice that service has been completed by another party.

(3) If no payment is received from the withholder within 46 days of the date of Order to Withhold Income, the Child Support Enforcement Automated System (CSEAS) will notify the administrator. The administrator shall then take the following additional action to assure compliance with the Order to Withhold Income:

(a) Telephone or write to the withholder and seek a commitment as to when the withholder will forward payment;

(b) Pend the case for ten days following the date given by the withholder;

(c) If payment is not received by the end of the ten-day pend period under subsection (b), above, or if the withholder otherwise refuses to cooperate, seek a judicial income withholding order in court;

(d) Determine if the employer should be held liable for failure to withhold, pursuant to ORS 25.424 and OAR 137-055-4240.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.378, 25.402 & ORS 25.424

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 22-1993, f. 10-15-93, cert. ef. 11-1-93; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 7-1995, f. 3-27-95, cert. ef. 4-1-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0183; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4180

## 137-055-4200

### Income Withholding Limitations and Distribution

(1) When a withholder receives an order to withhold under OAR 137-055-4180, the withholder shall withhold pursuant to the provisions of the order to withhold and of this rule.

(2) Except as provided in section (3) of this rule, no withholding as calculated under this rule, including the withholder's processing fee under OAR 137-055-4260, shall exceed 50 percent of the obligor's net disposable income. This limit applies whenever withholding is implemented, whether by a single order or by multiple orders against the same obligor.

(3) Notwithstanding any other provision of this rule or of Oregon law and pursuant to ORS 25.387, the administrator or a party holding support rights may file a motion requesting the court to order the withholding of more than the amounts specified under this rule or Oregon law. However, in no case may an order require payment of an amount that exceeds the limits imposed by the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) The withholder shall withhold from the obligor's monthly disposable income, other than workers' compensation under ORS Chapter 656 or unemployment compensation under ORS chapter 657, the amount stated in the order to withhold. On any withholding order sought or issued by the administrator, the administrator shall calculate this amount subject to the following:

(a) If withholding is for current support only, the amount to be withheld is the amount specified as current support in the support order.

(b) If withholding is for current support, and arrears are also due under the order, the amount to be withheld is 120 percent of the amount specified as current support in the underlying support order.

(c) If withholding is only for arrears, the amount to be withheld is whichever of the following is applicable:

(A) The amount of the last-ordered monthly support; or

(B) If there is no last-ordered monthly support amount, the monthly support amount used to calculate the arrears amount specified in the order or judgment for arrears; or

(C) If there is no last-ordered monthly support amount and if no monthly support amount was used to calculate the arrears amount, an amount calculated under the child support guidelines formula established under ORS 25.275. No rebuttals to this calculation may be allowed. For purposes of this paragraph, the administrator shall make this calculation based on:

(i) The obligor's current monthly gross income or, if the obligor's current monthly gross income is not known, on the Oregon hourly minimum wage multiplied by 172 to produce a converted monthly amount; and

(ii) Zero income for the obligee; and

(iii) One joint child, regardless of how many children the parties may actually have.

(D) Notwithstanding the withholding amount determined under paragraphs (A), (B), and (C) of this subsection (c), the withholding must allow the obligor to retain disposable monthly income of at least 160 times the applicable federal minimum hourly wage prescribed by Section 6 (a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) or any future minimum hourly wages prescribed in that section. The withholder may divide this computed amount by the number of pay periods utilized by the withholder in any month to calculate the amount of disposable income per pay period that the obligor must retain prior to withholding.

(5) The amount to be withheld from unemployment compensation payable to a support obligor under ORS chapter 657 is calculated as follows:

(a) If withholding is for a current support order, whether or not arrears exist, the amount to be withheld is the lesser of:

(A) 25 percent of the benefits paid; or

(B) The amount of the current monthly support obligation. The administrator may convert this amount to a percentage to be withheld from each unemployment compensation payment due the obligor, provided that the sum total of all amounts withheld in any month does not exceed 25 percent of the benefits paid or the amount of the current monthly support obligation, whichever is less.

(b) If withholding is for arrears only, the amount to be withheld is the lesser of:

(A) 15 percent of the benefits paid; or

(B) The amount of the last monthly support obligation. The administrator may convert this amount to a percentage to be withheld from each unemployment compensation payment due the obligor for each month, provided that the sum total of all amounts withheld in any month does not exceed 15 percent of the benefits paid or the amount of the last monthly support obligation, whichever is less.

(c) No processing fee shall be charged or collected when withholding is from unemployment compensation.

(6) The amount to be withheld from worker's compensation benefits payable to a support obligor under ORS Chapter 656 shall not exceed:

(a) 25 percent of benefits payable to the obligor due to temporary total disability under ORS 656.210 and temporary partial disability under ORS 656.212, or the amount of the current continuing monthly support obligation, whichever is less. However, if there is no current support obligation and the withholding is for arrears only, withholding shall not exceed 15 percent of benefits payable under ORS 656.210 and 656.212 or the amount previously paid as current support, whichever is less.

(b) 25 percent of benefits payable to the obligor in a lump sum award under ORS 656.210 and 656.212 when the award become final by operation of law or waiver of the right to appeal its adequacy.

(c) 25 percent of benefits payable to the obligor due to permanent total disability under ORS 656.206, permanent partial disability under ORS 656.214, or claims where other disposition is determined under ORS 656.236.

(d) 25 percent of benefits payable to the obligor in a disputed claim settlement under ORS 656.289(4).

(7) When the obligor's income is not sufficient for the withholder to fully comply with each order to withhold on the obligor's cases under sections (2) through (6) of this rule, such as may occur when the obligor owes support on more than one case, the withholder shall withhold as follows:

(a) First, withhold the maximum amount allowable under sections (2) through (6) of this rule.

(b) If all the orders to withhold for the obligor are payable through the Division of Child Support (DCS) of the Department of Justice under ORS 25.020, the withholder shall pay all amounts thus withheld to DCS. DCS shall then allocate the amount thus received as set out in OAR 137-055-6020.

(c) If one or more of the orders to withhold require payment other than through DCS, the withholder shall determine priorities for withholding and allocating income withheld on multiple child support cases as follows:

(A) If the total amount thus withheld is not sufficient to pay the current support due on all of that obligor's support cases for which an order to withhold is in effect, the withholder shall pay each case a proportionate share of the total amount withheld. For each case, the withholder shall



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determine this amount by dividing the amount ordered as current monthly support for that case by the total combined amount ordered as current support on all of the obligor's support cases for which an order to withhold is in effect, and then multiplying the resulting percentage by the total amount withheld.

(B) If the amount withheld from the obligor's income is sufficient to pay the current support due on all cases, but is not enough to comply fully with the order to withhold on all cases where past-due support is owed, the withholder shall:

(i) Pay, to each case, the amount of support due for the current month.

(ii) Pay the remainder of the amount withheld in equal amounts to each case where arrears are owed. However, no case shall receive more than the total amount of current support and past-due support owed on that case at the time this distribution is made. Further, no case shall receive more than the maximum allowable withholding amount, pursuant to this rule, for that case in any month; any remaining arrearage amount shall be distributed to the obligor's other account(s) pursuant to administrative rules governing distribution.

(C) On all such cases where the order to withhold requires payment through DCS, the withholder shall pay all amounts thus allocated for each such case to DCS.

(8) Notwithstanding any other provision of this rule, when withholding is from a lump sum payment or benefit, including but not limited to retroactive workers' compensation benefits, lump sum retirement plan disbursements or withdrawals, insurance payments or settlements, severance pay, bonus payments or any other similar payments or benefits that are not periodic recurring income, the amount subject to withholding for payment of a support obligation may not exceed one-fourth of the amount of the lump sum payment or benefit. For purposes of this rule, "periodic recurring income" is defined as income that is received at least monthly on a regular basis.

(9) Notwithstanding any other provision of this rule, when withholding is only for arrears assigned to the State of Oregon or another state, DCS may set a lesser amount to be withheld if the obligor demonstrates that the withholding is prejudicial to the obligor's ability to provide for a child the obligor has a duty to support, subject to the following:

(a) When an obligor contacts DCS, either orally or in writing, to seek a reduction in withholding under this section, or where DCS becomes aware of circumstances under which these provisions would apply, DCS shall proceed as specified in subsection (b) of this section if both of the following conditions exist:

(A) The income withholding order from which the obligor requests relief is for arrears only.

(B) All arrears under the income withholding order are assigned to the State of Oregon or another state, with none of the arrears owed to a private party.

(b) If the conditions of subsection (a) of this section are met, DCS may authorize a reduced order to withhold, consistent with the obligor's ability to pay.

(c) Any such reduced withholding is subject to review and modification in one year, or at any other time that the obligor's source of income, or financial or household circumstances, change to the extent that reduced withholding or the payment agreement are no longer appropriate. This provision applies specifically to cases where the obligor's financial situation changes, or where the obligor's duty to support other dependent children has ended.

(10) In any determination of an obligor's disposable income that is subject to withholding, the obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income subject to withholding. The obligor's remaining income shall then be subject to withholding pursuant to the other provisions of this rule.

(a) The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and DCS shall not refund to the obligor, on the basis of such claims, any amounts withheld that DCS has already disbursed to the obligee.

(b) The administrator shall make allowance against the amount of income subject to withholding for the obligor's verifiable costs of doing business, including but not limited to:

(A) Equipment and supplies; and,

(B) Paying the obligor's employees and sub-contractors.

(11) When an obligor is paid more often than once a month, the withholder shall withhold up to the full amount specified in the order to withhold, based on the obligor's scheduled pay periods (including any sched-

uled draws), as specified in the order to withhold. The amount withheld may not exceed the maximum amount allowed under this rule and under ORS 25.414(8).

(12) An order to withhold income under this rule is not subject to the limitations for garnishment actions under ORS 23.186.

Stat. Auth.: ORS 25.414, 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.414, ORS 25.417, ORS 656.234, ORS 657.780 & ORS 657.855  
Hist.: AFS 73-1985(Temp), f. & ef. 12-3-85; AFS 32-1986, f. & ef. 4-1-86; AFS 38-1987, f. & ef. 8-18-87; AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; Renumbered from 461-35-050; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 28-1990(Temp), f. & cert. ef. 12-5-90; AFS 14-1991, f. & cert. ef. 7-15-91; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 12-1994, f. 6-28-94, cert. ef. 7-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 14-1996, f. 4-24-96, cert. ef. 5-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 27-2000, f. & cert. ef. 11-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0185; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4200

## 137-055-4220

### Petitioning Court to Order Expanded Income Withholding

(1) Notwithstanding any other provisions of OAR 137-055-4060 through 137-055-4280, the administrator may petition the court to order withholding of more than the amount otherwise authorized under OAR 137-055-4200, pursuant to ORS 25.387 and referred to hereafter in this rule as expanded withholding, provided one of the following are true:

(a) A withholding order currently in place is not collecting at least the full amount due for ongoing support each month, due to the withholding limitations of OAR 137-055-4200; or

(b) The administrator has evidence that the obligor has other income not subject to withholding and current withholding, if any, against the obligor is collecting less than 25 percent of the obligor's total disposable monthly income; or

(c) The obligor owes arrears only, with no ongoing support due on the case, and at least one of the following is true:

(A) Arrears on the case are greater than or equal to the amount of the obligor's last-ordered monthly support obligation times 60; or

(B) Withholding under the limitations of OAR 137-055-4200 will not collect all arrears due on the case before at least a portion of the arrears expire under Oregon law; or

(C) The administrator has evidence that the obligor has other income not subject to withholding and current withholding, if any, against the obligor is collecting less than 15 percent of the obligor's total disposable monthly income.

(2) A contempt of court proceeding, brought by the administrator against an obligor for non-payment of support due under an order and asking the court for relief, may constitute a petition for expanded withholding under section (1) of this rule.

(3) In no case may an income withholding order require withholding of an amount that exceeds the limits imposed by the federal Consumer Credit Protection Act (15 U.S.C. Section 1673(b)).

(4) On any case where no current or arrears are assigned to the State of Oregon or to any other state, the administrator shall petition for expanded withholding under this rule only upon request of the obligee or obligor.

(5) On any case where current or arrears are assigned to the State of Oregon or to any other state, the administrator may petition for expanded withholding under this rule either on its own initiative or upon request of the obligee or obligor.

(6) The administrator may request termination of expanded withholding under this rule at any time that none of the conditions listed in this rule apply, or upon request of the obligee.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.387

Hist.: AFS 2-1998, f. 1-30-98, cert. ef. 2-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0186; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4220

## 137-055-4240

### Withholder Responsibilities and Liability on Income Withholding Cases

(1) When a withholder receives an order to withhold pursuant to OAR 137-055-4180, the withholder shall start withholding not later than five days after the first payday following receipt of the order to withhold.

(2) Within seven business days after the date the obligor receives the income from which the withholder has taken a withholding, the withholder shall pay the amounts withheld pursuant to OAR 137-055-4200 to the Division of Child Support (DCS).

(3) On any case where the withholder is required to remit payments to DCS, the withholder:

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(a) Shall indicate the obligor's name and case number, and the date the income was withheld, for each payment remitted to DCS;

(b) May, when withholding income from more than one obligor for payment of support, combine amounts withheld from the different obligors into a single payment to DCS, provided that each such payment is accompanied by a list that separately identifies which portion of the combined payment is attributable to each obligor and the obligor's name and case number for each such portion.

(4) If a withholder does not withhold support in any month when required to do so under an order to withhold, the withholder shall provide a written explanation of the reason for not withholding.

If the obligor is no longer employed by the withholder, the withholder may include, in the written explanation, the name and address of the obligor's new employer, if known. The withholder is not liable to the obligor for such disclosure.

(5) The withholding order and the withholding required under the order remain in effect and binding upon the withholder until further notice from the court or the administrator.

(6) No withholder who is served with an order to withhold under OAR 137-055-4180 that is regular on its face, and who complies with the terms of the order, is subject to civil liability to any individual or agency for conduct or actions taken in compliance with the order to withhold.

(7) The withholder is liable for all amounts that the withholder fails to withhold or pay as required by the order to withhold or that the withholder withholds or pays in excess of the amount required by the order to withhold. The obligee, the obligor, or the administrator may bring an action against the withholder:

(a) To recover all amounts that the withholder failed to withhold or pay, or withheld or paid in excess of the amount required, pursuant to the order to withhold;

(b) To recover an additional amount as damages, not to exceed the amount referred to in subsection (a) of this section; and

(c) If the failure to withhold or if the excess withholding was willful or the result of gross negligence by the withholder, to have an additional amount imposed as a fine payable to the court, not to exceed \$250 for each occurrence, and to pay reasonable costs of the action including attorney fees.

(8) An employer commits an unlawful employment practice if the employer discharges an employee, refuses to hire an individual, or in any other manner discriminates, retaliates, or takes disciplinary action against an obligor because of the entry or service of an order to withhold income or because of the obligations that the order imposes upon the employer.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.411, ORS 25.421 & ORS 25.424

Hist.: AFS 7-1992(Temp), f. & cert. ef. 3-25-92; AFS 15-1992, f. & cert. ef. 6-18-92; AFS 19-1992(Temp), f. & cert. ef. 7-15-92; AFS 25-1992, f. & cert. ef. 9-1-92; AFS 7-1993(Temp), f. & cert. ef. 4-7-93; AFS 11-1993, f. & cert. ef. 6-17-93; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0187; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4240

## 137-055-4260

### Withholder Fee for Income Withholding Services

When any withholder is served with an order to withhold for the payment of current support and/or arrears, the withholder may, in addition to the amount withheld in compliance with the order to withhold, also deduct from the obligor's income a monthly processing fee not to exceed five dollars (\$5).

(1) If the amount to be withheld for support is the maximum allowable under OAR 137-055-4200, the withholder shall deduct the fee, if charged, from the amount withheld as support.

(2) No processing fee shall be charged or collected when the withholding is from unemployment compensation.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.414

Hist.: AFS 57-1985(Temp), f. & ef. 10-1-85; AFS 24-1986, f. & ef. 3-17-86; AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; Renumbered from 461-035-0047; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0190; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4260

## 137-055-4280

### Order to Withhold Issued by Another State

When a withholder receives an order to withhold that is issued by another state, the withholder shall apply the income-withholding law of the state of the obligor's principal place of employment in determining:

(1) Any withholder's fee for processing the withholding;

(2) The maximum amount that may be withheld from the obligor's income;

(3) The time periods within which the withholder must withhold under the order to withhold and forward amounts thus withheld;

(4) The priorities for withholding and allocating income withheld when the obligor owes support to multiple obligees; and

(5) Any withholding terms or conditions not specified in the order.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.414, ORS 110.394 - ORS 110.397

Hist.: AFS 57-1985(Temp), f. & ef. 10-1-85; AFS 24-1986, f. & ef. 3-17-86; AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; Renumbered from 461-035-0047; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0197; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4280

## 137-055-4300

### Support Enforcement by Methods Other than Income Withholding

(1) Income withholding, pursuant to OAR 137-055-4060 through 137-055-4280, shall be the preferred method that the administrator shall use to collect current and past-due support.

(2) If payment is not received in the amount of current support due for each month plus an amount toward any existing arrears, the administrator shall pursue additional enforcement actions as specified under this rule.

(a) For purposes of this section, "additional enforcement actions" means actions in addition to income withholding under any of the following circumstances:

(b) The administrator shall pursue additional enforcement actions where any of the following circumstances occurs:

(A) Collection by income withholding cannot be attained under OAR 137-055-4060 through 137-055-4280.

(B) Income withholding is collecting less than the amount of current support due for each month; or

(C) Income withholding is collecting the full amount of current support due for each month, but is collecting nothing toward arrears on the case.

(D) No current support is owed, and income withholding is collecting nothing toward arrears or the obligor is not paying a negotiated or agreed-upon amount toward arrears.

(c) All such enforcement actions shall be in compliance with, and as appropriate under, state and federal law. The administrator shall not initiate or take any action under this rule that is precluded or prohibited by state or federal law due to the circumstances of the individual case.

(d) The administrator shall take such action within 30 calendar days of whichever of the following occurs later:

(A) Arrears have occurred; and

(B) The administrator has located the obligor, the obligor's employer, or other assets or sources of income, provided such information is sufficient to enable the next appropriate action on the case.

(e) If service of process is required before taking an enforcement action:

(A) Service must be completed or unsuccessful diligent attempts to serve process must be documented, and enforcement action must be initiated if process is served, no later than 60 calendar days of initially identifying arrears or of locating the obligor or the obligor's employer, assets, or other sources of income, whichever occurs later.

(B) If a court action is necessary, the requirement to initiate enforcement action within no later than 60 calendar days is met if the administrator has initiated action to enter the case with the court for a court hearing or action.

(f) The administrator is not required to perform those "additional enforcement actions" that the Oregon Child Support Program already provides automatically for every case meeting specified criteria. Further, a case does not necessarily need to meet the criteria for "additional enforcement actions", under section (2) of this rule, in order for the Oregon Child Support Program to automatically provide the enforcement methods under this subsection for every case meeting specified criteria. These enforcement methods include, but are not limited to:

(A) Interception of state and federal tax refunds, under OAR 137-055-4320 through 137-055-4340.

(B) Release of information to consumer credit reporting agencies, under OAR 137-055-4560.

(g) If any enforcement action specified under this rule, whether by itself or in combination with collections attained through income withholding, results in collection of current support each month plus payments toward reducing any arrears that exists on a case, the administrator is not required to pursue further additional enforcement actions on that case. However, the administrator shall resume pursuing additional enforcement actions if any of the circumstances under subsection (2)(b) of this rule subsequently occurs.

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(3) The administrator shall take additional enforcement action, under section (2) of this rule, by attempting to determine if the obligor has any income, property, assets, or resources from which support can be collected.

(a) The administrator shall attempt this determination by utilizing any one or more of the following:

(A) Information about the obligor's location, employment, or other income or assets, that the administrator obtains from the obligee or from any other person. The administrator shall respond to the obligee, in writing, by telephone, or in person, within 30 days of ascertaining whether or not information submitted by the obligee, on the obligee's own initiative, was accurate or useable.

(B) Information accessible or attainable through the Child Support Enforcement Automated System (CSEAS), or other electronic data sources

(C) Discovery methods, including financial disclosure exams or written interrogatories, unless any of the following are true:

(i) The administrator has not located the obligor, and is therefore not able to pursue such methods.

(ii) The obligee has not asserted to the administrator, or the administrator has no reason to suspect, that the obligor has specific and verifiable income, property, resources, or assets against which the administrator may take effective action to collect support.

(iii) The administrator has located or verified the obligor's income, property, assets, or resources through other means, or otherwise can do so, and therefore does not need to rely on discovery methods.

(b) The administrator shall document the case record with the following:

(A) The administrator's efforts to determine or verify if the obligor has property, assets, or resources, against which the administrator may take action to collect support.

(B) Actions the administrator takes to collect support against such property, assets, or resources.

(4) When the administrator determines that an obligor has income, property, assets, or resources against which enforcement action may be taken, the administrator shall, in compliance with and as appropriate under other provisions of this rule and of state and federal law, take one or more of the following specific actions:

(a) Ask the court to require the obligor to post bond or security to ensure payment of support, unless the administrator has determined that:

(A) Based on the experiences of the administrator in its locality, a bond or security is not likely to be commercially available to the obligor for this purpose;

(B) The obligor is legally and financially unable to pay the cost of a bond or security;

(C) Such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator;

(D) Any funds the obligor has to purchase a bond would be better applied to requiring the obligor to make payment for current or past-due support. However, on cases where current support is owed to the obligee and not assigned to the state, the obligee must concur with this determination; or

(E) The obligor has taken action to purchase a bond or security without need for court action.

(b) File liens against real property or personal property that the obligor owns in Oregon, to the extent that a lien does not already exist under Oregon law, or take other effective actions to collect support from the value of such property such as by obtaining a writ of garnishment, unless the administrator has determined that:

(A) The obligor owns no property against which such action would be likely to produce a collection; or,

(B) Such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator.

(c) Garnish or attach other assets, or resources of the obligor, unless the administrator has determined that such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator. In cases where such action will result in additional taxes or penalties to the obligor, the administrator may negotiate with the obligor to determine an amount the obligor will need to retain to pay such additional taxes or penalties.

(d) Pursue suspension of any license the obligor may have, to the extent permissible under state law and rules.

(e) Prosecute the obligor for contempt of court, subject to section (5) of this rule.

(f) Prosecute the obligor for criminal non-support, subject to section (5) of this rule.

(g) Refer the obligor for federal criminal prosecution under the Interstate Child Support Recovery Act, subject to section (5) of this rule.

(5) Prosecution for contempt of court or for criminal non-support, or referral of obligors for federal criminal prosecution under the Interstate Child Support Recovery Act, is subject to the prosecutorial discretion of the administrator.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 27-1994, f. & cert. ef. 11-10-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0200; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4300

## 137-055-4320

### Collection of Delinquent Support Obligations Through the Oregon Department of Revenue

(1) The administrator, may claim Oregon tax refunds otherwise due to be paid to an obligor, to collect:

(a) Delinquent support obligations, when the obligation has been assigned for reimbursement of public assistance or is due the obligee;

(b) Unpaid award amounts from any judgment entered against the obligor for birth expenses or for the cost of parentage tests to establish a child's paternity.

(2) The Division of Child Support (DCS) will file such claims with the Oregon Department of Revenue according to rules and procedures established by the Oregon Department of Revenue.

(3) Referral of arrears shall be a liquidated claim, debt, or account established by a court or administrative order.

(4) DCS shall not refer any case where the case record indicate that one or more of the following is applicable:

(a) The arrears are less than \$25;

(b) The obligor has filed for bankruptcy, as defined by federal bankruptcy code, unless the bankruptcy claim has been resolved and the administrator has legal authority to proceed with collection;

(c) The obligee has claimed "good cause" for not cooperating with efforts to establish or enforce support.

(5) DCS shall apply tax refunds recovered by this process as set out in OAR 137-055-6020.

(6) At any time any refund is claimed, the Department of Revenue shall send by regular mail written notice to the obligor and obligee of the intention to apply the tax refund to the obligor's delinquent account. Such notice shall advise the obligor of the right to an administrative hearing regarding this action that:

(a) The obligor and/or obligee, within 30 days from the date of this notice, may request an administrative hearing before an administrative law judge;

(b) The request for hearing must be in writing.

(7) No hearing shall be held if the obligor or obligee, after having been given due notice of rights to a hearing, has failed to exercise such rights in a timely manner as specified in the notice.

(8) No issues may be considered at the administrative hearing that have been litigated previously or where the obligor failed to exercise rights to appear and be heard or to appeal a decision which resulted in the accrual of the arrears.

Stat. Auth.: ORS 25.610 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.610 & ORS 293.250

Hist.: AFS 13-1978, f. & ef. 4-4-78; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-35-004; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 30-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 7-1997, f. & cert. ef. 6-13-97; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0205; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4320

## 137-055-4340

### Collection of Delinquent Support Obligations Through the U.S. Secretary of the Treasury

(1) The administrator, may claim federal tax refunds and administrative offset of other payments from the federal government through the U.S. Secretary of the Treasury (Secretary) otherwise due to be paid to an obligor to collect support arrears.

(2) The Division of Child Support (DCS) will file such claims with the Secretary according to rules and procedures established by the federal government.

(3) Referral of arrears shall be a liquidated claim, debt, or account established by a court or administrative order.

(4) DCS shall not refer any case for federal tax refund or administrative offset where the case record indicate that one or more of the following is applicable:

(a) The arrears assigned to the state are less than \$150 and the support amount is less than three months delinquent;

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(b) The arrears are less than \$500 on a case where none of the arrears have been assigned to the state;

(c) The obligor has filed for bankruptcy, as defined by federal bankruptcy code, unless the bankruptcy claim has been resolved and the administrator has legal authority to proceed with collection; or

(d) The obligee has claimed "good cause" for not cooperating with efforts to establish or enforce support.

(5) DCS shall distribute tax refunds and other federal administrative offsets recovered by this process as set out in OAR 137-055-6020.

(6) A one-time pre-offset notice will be sent to the obligor and obligee by either the federal government or DCS of the intent to claim the tax refund, or other federal payments through the Secretary, and apply them to the obligor's account. Such notice shall advise of the obligor's right to an administrative review regarding this action. The only issues that may be considered in the review are:

(a) Whether the obligor is the person who owes the support as indicated by the case record; or

(b) Whether the arrears indicated in the notice are correct.

(7) Upon receipt of the request for review, the administrator will schedule the review and notify the obligor and obligee of the date, time and place of the review.

Stat. Auth.: ORS 25.625 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.625

Hist.: AFS 7-1997, f. & cert. ef. 6-13-97; AFS 15-1997(Temp), f. & cert. ef. 9-2-97; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0210; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4340

## 137-055-4360

### Internal Revenue Service Full Collection Services

(1) For the purpose of this rule, "Regional Representative" means the Region X office of the Department of Health & Human Services, Administration for Children and Families, Child Support Enforcement.

(2) The administrator may request Internal Revenue Service Full Collection Service on behalf of a given case.

(3) For a case to be eligible for Full Collection Service, all of the following conditions must apply:

(a) There shall be a court or administrative order for payment of child support;

(b) The amount to be collected under the support order shall be at least \$750 in arrears;

(c) At least six months shall have elapsed since the case was last submitted for Full Collection Service;

(d) The administrator, the obligee, or the obligee's representative shall have made reasonable efforts to collect the support by using the state's standard collection procedures. These actions may include all of the following when deemed reasonable and cost-effective:

(A) Orders to withhold income;

(B) Orders to withhold Unemployment Compensation or Worker's Compensation benefits;

(C) Garnishments against liquid assets such as bank accounts, inheritance assets, lottery winnings, or any other liquid assets that may be garnished under state law;

(D) Interception of federal and state tax refunds;

(E) Credit bureau reporting;

(F) Initiating reciprocal support enforcement action with other states;

(G) Filing liens against real property the obligor may own in order to collect past-due support;

(H) Suspension of occupational license(s) the obligor may have to the extent permissible under state law and rules;

(I) Discovery methods, including financial disclosure exams or written interrogatories;

(J) Prosecution for contempt of court or criminal nonsupport.

(4) All requests shall be submitted in the manner and form prescribed by the Regional Representative and must include the following:

(a) Sufficient information to identify the obligor, including the obligor's name and social security number and, the obligor's home address and place of employment, including the source of this information and the date this information was last verified.

(b) A copy of all court or administrative orders for support;

(c) A statement of the amount owed under the support order(s), including a statement of whether the amount is in lieu of, or in addition to, amounts previously referred to the Internal Revenue Service for collection;

(d) A statement that the administrator, the obligee, or the obligee's representative has made reasonable efforts to collect the amount owed using the state's standard collection procedures. The statement shall

describe the collection actions that have been taken, why they failed, and why further state action would be unproductive;

(e) The dates of any previous requests for referral of the case to the Internal Revenue Service for collection;

(f) A statement that the administrator agrees to reimburse the U.S. Secretary of the Treasury (Secretary) for the established fee for paying the costs of collection;

(g) A statement that the administrator has reason to believe that the obligor has assets that the Secretary might levy to collect the support, including a statement of the nature and location of the assets, if known.

(5) Each request for Full Collection Service will be reviewed by the Regional Representative to determine whether it meets federal requirements. The administrator shall cooperate with the Regional Representative in attempting to correct any deficiencies.

(6) The administrator shall immediately notify the Regional Representative of the following changes in case status:

(a) The amount due;

(b) The nature or location of the obligor's assets;

(c) The address of the obligor.

(7) The administrator shall be responsible for paying the fee established under subsection (4)(f) of this rule.

(8) The administrator shall recover the fee amount it has paid on any case under subsections (7) of this rule, from the amount of any collection subsequently attained by the Internal Revenue Service and forwarded to the Division of Child Support in accordance with OAR 137-055-6020.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Statute Implemented: ORS 25.080

Hist.: AFS 31-1989, f. 6-6-89, cert. ef. 6-9-89; AFS 51-1989, f. 8-25-89, cert. ef. 9-1-89; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0655; AFS 11-1990, f. 3-27-90, cert. ef. 4-1-90; AFS 20-1996, f. 5-24-96, cert. ef. 6-1-96; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0225; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4360

## 137-055-4420

### Occupational, Drivers, Oregon Liquor Control and Recreational Licensing

(1) For the purposes of this rule the following definitions shall apply:

(a) "License" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driving privileges granted by the Department of Transportation under ORS chapter 807 which includes all driving licenses and permits, and all permanent and fee-based annual hunting and fishing licenses issued by the Oregon Department of Fish and Wildlife;

(b) "Administrative review" means a review of the obligor's objection to proposed action under this rule performed by the administrator to determine whether:

(A) The arrears exceed the threshold;

(B) The licensee is the obligor;

(C) The obligor is in compliance with a previous agreement;

(D) An income withholding order is in place and producing regular payments;

(E) The obligor has made payments in an amount greater than the monthly support amount for the three months previous to selection of the case and that those payments were not as a result of a garnishment, tax offset or some other enforcement action; and

(F) The obligor is ordered to pay current support payments.

(2) This rule shall govern the process for suspending any license as defined in subsection (1)(a) of this rule of any obligor in a child support case in which there is a judgment to pay current support and the original support order was entered at least three months prior to initiating the process for license suspension; who owes \$2,500 or more in past-due child support or whose support arrears are equal to at least three times the current monthly child support obligation, whichever occurs later, subject to the provisions herein.

(3) Cases that qualify for initiation of the process described in this rule will be identified by data matches and terminal access with license issuing entities, and by information received from other sources. Information from other sources shall be verified with the licensing agency. The Division of Child Support (DCS) shall be the liaison with the licensing agencies. The administrator shall verify issuance of licenses to individuals through DCS when those licenses have been identified by means other than data match or terminal access.

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(4) If any of the following conditions are found, the administrator will take no further action toward suspension of a license under this rule until such a time as the condition no longer exists:

(a) The case is an arrears only case;

(b) The child support arrears are less than the standard set in section

(2) of this rule, excluding any and all spousal support;

(c) The obligor has previously entered into an agreement and is in compliance with the agreement; or

(d) The obligor has made payments for the prior three months that have been for an amount greater than current support each month. These payments shall not have been as a result of garnishment, tax offset or any non-income withholding enforcement action.

(5) If the administrator determines that none of the conditions in section (4) of this rule applies or no longer applies, the administrator may initiate or continue action under this rule. The administrator may use the process described in this rule as one of several enforcement options available and may exercise discretion to optimize collection potential in individual cases. The administrator shall prioritize this enforcement option in decision making based on availability and application of other enforcement options and available staff resources.

(6) If the administrator determines that the case meets the criteria for action under this rule and decides to proceed, the administrator will initiate two notices to the obligor. One notice will be sent to the address of record of the issuing agency, and a second notice to the obligor's address of record on the case record. Both notices will be sent to the obligor by regular mail and will include a form to contest the suspension of the license. If the address of record maintained by the administrator and the issuing agency are the same, the administrator may send only one copy of the notice to suspend and the accompanying forms. The obligee shall receive a copy of the notice and forms sent to the obligor. The obligee's copy shall be sent by regular mail.

(7) The content of notices in section (6) of this rule shall contain the following information:

(a) The specific license(s) subject to suspension and a statement that other licenses may be subject to suspension;

(b) The name of the person whose license is subject to suspension, and social security number, if available, and date of birth, if known;

(c) The child support case number or numbers of the person subject to suspension;

(d) The amount of the arrears and amount of the current child support obligation;

(e) The procedure for contesting the suspension and the bases for contesting the suspension. The only bases for contesting the suspension are:

(A) The child support arrears are less than the standard set in section (2) of this rule;

(B) There is mistake in identity of the obligor; or

(C) The obligor is in compliance with a previous agreement as provided by ORS 25.750 to 25.783.

(f) A statement that the obligor may enter into a written agreement, compliance with which shall preclude suspension of the license. The obligor has 30 days from the date of the notice to contact the administrator about entering into a written agreement. The agreement must be entered into within 30 days of the obligor's contact with the administrator. If the obligor qualifies for a hardship pursuant to section (10) of this rule, the agreement may temporarily be for payment of less than the 120% of the current monthly child support obligation;

(g) A statement that the administrator may make a demand upon the obligor to furnish sufficient income information to determine an agreement amount and that failure to provide sufficient income information will result in license suspension;

(h) A statement that the obligor has 30 days from the date of the notice in order to contest the suspension by requesting an administrative review in writing on a form included with the notice; and

(i) A statement that failure to contact the administrator within 30 days from the date of the notice specified in this subsection and entry into a written agreement within 30 days of contacting the administrator, or to request an administrative review within 30 days from the date of the notice, shall result in notification to the issuing agency to suspend the license.

(8) Any agreement under subsection (7)(f) of this rule must:

(a) Be in writing and signed by the obligor;

(b) Specify the due date for payments or, if the hardship provisions of section (10) of this rule apply, the dates for completion of other negotiated activities required of the obligor. The administrator may negotiate a due date other than the due date on the case record;

(c) State the amount of the payment. Unless the hardship provisions of section (10) of this rule apply, the amount of the payment shall be the amount that could be obtained from an income withholding order pursuant to OAR 137-055-4200. Assume Oregon minimum wage for the obligor in determining income level if the obligor claims income in an amount less than minimum wage and no evidence is found that the obligor has income in an amount greater than Oregon minimum wage;

(d) State that the payment may be made through income withholding (which may occur when the administrator did not previously know about the income source);

(e) State that the agreement may be amended if there is a change in the amount of current child support;

(f) State that the agreement may be amended if there is a change in income which would change the agreement amount per the calculations in subsection (8)(c) or section (10) of this rule;

(g) State that the agreement is terminated if the obligor fails to comply with the terms of the agreement;

(h) State that failure to comply with terms of the agreement will result in notification to the issuing agency to suspend the license;

(i) State that the agreement does not preclude other enforcement actions to collect current child support and arrears, including, but not limited, to income withholding, and state and federal income tax offset;

(j) Include a statement that the obligor is required to notify the administrator within 10 days when there is a change in employment; and

(k) State that information voluntarily provided may be used in other enforcement actions, including contempt actions.

(9) Any agreement made pursuant to this rule may be voided by the administrator if either subsections (9)(a) or (b) of this rule apply. If an agreement has been so voided, the administrator shall begin the process of entering into a new agreement.

(a) The income of the licensee/obligor changes; or

(b) The licensee/obligor has under reported income in establishment of the agreement.

(10) Under the conditions and time frames set out in section (11) of this rule, an exception to the requirements of subsection (8)(c) of this rule may be made if the obligor claims a hardship. Hardships may be granted for conditions that limit an obligor's ability to pay the amount that could be obtained from an income withholding order pursuant to OAR 137-055-4200. If the obligor claims a hardship and complies with the conditions for this exception, the administrator may enter into a compliance agreement with the obligor to:

(a) Require payment of 100 percent of the current support amount for the case if the obligor has only one child support case. If the obligor has multiple child support cases, the administrator may limit the amount of the payment agreement to the lesser amount of 100% of the current support amount or that case's pro rata share of 50 percent of disposable earnings based on amounts of monthly support obligations per case; or

(b) Require other terms of compliance if the obligor demonstrates an inability to pay the amount per subsection (a) of this section. The compliance agreement may:

(A) Require a payment amount lower than 100% of the current support amount;

(B) Require a combination of a lesser payment amount and the obligor's participation in activities to enhance the obligor's ability to pay child support; or,

(C) If the obligor demonstrates no ability to pay, require the obligor to participate in activities to enhance the obligor's ability to pay child support with no payment.

(11) The conditions and time frames for exceptions under section (10) of this rule are:

(a) For a hardship based on a claim of a substantial change in circumstances, the obligor agrees to request a periodic review and modification or a substantial change in circumstance modification under the provisions of OAR 137-055-3420. The compliance agreement shall be reviewed by the administrator after the administrator finishes the review and modification process. If the compliance agreement is granted pending the obligor's request for a modification and the obligor has not completed and returned the necessary paperwork to the appropriate administrator within 30 days, the compliance agreement shall be reviewed for possible termination.

(b) For a hardship claim when the obligor does not qualify for a change in circumstances modification and for any other hardship claim, the administrator shall review the compliance agreement at least once during the initial three month period. The administrator may enter into further compliance agreements with the obligor, however, at minimum, the terms

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of compliance shall be reviewed after each six month period and the payment amount increased until the amount of the payment is the amount that could be obtained from an income withholding order pursuant to OAR 137-055-4200.

(12) The administrator shall provide notice to the obligee of any agreement entered into by sending the obligee a copy of the agreement.

(13) If the administrator determines that the suspension of the license should occur, both the obligee and the obligor shall receive written notice of such determination. The notice will include the following:

(a) The basis for the determination;

(b) The right to appeal the determination and a form on which to make the appeal;

(c) The time limit for making an appeal is 14 days; and

(d) That if no appeal of the suspension is received within 14 days, the licensing agency will be notified to suspend the license immediately.

(14) An appeal of the determination in section (13) of this rule shall be to an administrative law judge and the suspension of the license is stayed pending the decision of the administrative law judge. The only bases for an appeal are:

(a) There is a mistake in the amount of the arrears and the arrears balance is less than the threshold for initiation of action under this rule;

(b) A mistake in identity of the obligor; or

(c) That the obligor has previously entered into an agreement and is in compliance with that agreement.

(15) If the obligor fails to enter into an agreement or fails to appeal the determination within the time period allowed, or if the administrative law judge's order supports the suspension of the license, the administrator shall send a notice to the issuing agency to suspend the license. A copy of this notice shall be sent to the obligor and obligee by regular mail.

(16) The notice to the issuing agency to suspend the license shall contain the following:

(a) A statement that a child support case record is being maintained by DCS and the case is being enforced by the administrator; and

(b) A statement that the holder of the license is in arrears in excess of \$2,500 or three times the current monthly support amount, whichever occurs later, and either:

(A) The holder has not entered into an agreement; or

(B) The holder is not in compliance with an agreement.

(17) At any time after suspension of the license, the obligor may request that the administrator make a review to determine if the condition(s) that resulted in the suspension continues to exist. The administrator will review the suspension and notify the issuing agency if it is determined that the license may be reinstated, contingent upon the requirements of the issuing agency, when any of the following conditions are met:

(a) There is no longer a current child support order;

(b) The arrears are less than the threshold for suspension;

(c) There is no longer a child support program case;

(d) The obligor has entered into an agreement and has shown compliance with the terms of the agreement; or

(e) There is an income withholding order now in place and producing regular payments.

(18) Notwithstanding section (17), at anytime the administrator reviews the case and determines the condition(s) that resulted in the suspension no longer exist, the administrator shall notify the issuing agency that the license may be reinstated, contingent upon the requirements of the issuing agency.

(19) In the event that an obligor has more than one child support case, the Child Support Program Director will determine and assign a single branch office that will be responsible for services relating to that obligor under this rule. All other enforcement services shall be provided by the administrator otherwise assigned to the obligor's case(s).

Stat. Auth.: ORS 25.750 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.750 - ORS 25.783

Hist.: AFS 11-1994, f. & cert. ef. 6-3-94; AFS 22-1994, f. 9-27-94, cert. ef. 10-1-94; AFS 26-1995, f. 10-20-95, cert. ef. 10-23-95; AFS 18-1996, f. & cert. ef. 5-10-96; AFS 37-1996, f. & cert. ef. 11-20-96; AFS 21-1997, f. & cert. ef. 11-7-97; AFS 13-1998, f. 8-21-98, cert. ef. 8-24-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0233; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 1-2002, f. 1-25-02, cert. ef. 2-1-02; AFS 9-2002, f. 6-26-02, cert. ef. 7-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4420

## 137-055-4440

### Liens Against Personal and Real Property

(1) A judgment for support constitutes a lien on real and personal property as provided for in Oregon law.

(2) Whenever there is a judgment for unpaid support and the administrator learns that an obligor has assets, then the administrator may cause a lien to be recorded on any real or personal property owned by the obligor

or unless the property is exempt from lien laws under Oregon law. Upon filing the notice of claim of lien, the administrator shall send a copy of the notice to the property owner by certified mail and to the obligee by regular mail.

(3) Any other state with a judgment for unpaid support may record a lien under the provisions of ORS 18.320, and shall use the form provided by the Office of Child Support Enforcement of the United States Department of Health and Human Services.

(4) Pursuant to OAR 137-055-4300(3), the administrator may use the process described in this rule as one of several enforcement options available and may exercise discretion to optimize collection potential in individual cases. The administrator shall prioritize this enforcement option in decision making based on availability and application of other enforcement options and available staff resources. Prior to forcing a sale of real or personal property, the administrator must consider the following factors:

(a) The market value of the property after subtracting the value of superior claims of senior lien holders;

(b) The market conditions for achieving maximum return;

(c) The long-term impact on the obligor's ability to comply with an unsatisfied or future support duty;

(d) The storage costs, notice and sale costs;

(e) Exemption claims;

(f) Co-ownership of the property, or impact on any existing trust on the property; and

(g) The availability of other, more effective remedies to satisfy the support debt.

(5) The administrator shall not proceed with this enforcement option when a court of appropriate jurisdiction has ordered that the obligor be exempted from referral. The obligor must notify the obligee and the administrator when filing a claim for an exemption with a court.

(6) An obligee may authorize the State of Oregon to release a lien against real property of an obligor when the obligee has submitted a signed and notarized lien release form to the administrator.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 18.320, 25.670 & ORS 25.690

Hist.: AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0235; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4440

## 137-055-4460

### Posting Security Bond or Other Guarantee of Payment of Overdue Support

(1) Whenever there is a judgment for unpaid support, the administrator may ask the court to require the obligor to post security, bond, or some other guarantee to secure payment of the overdue support if the following criteria also exist:

(a) The obligor has a poor payment history; and

(b) The obligor has assets which exceed the amount of the support arrears and the arrears cannot be reached by any other means.

(2) The administrator shall include in the Motion to Show Cause, a section notifying the obligor of the intent to ask the court for security, bond, or some other guarantee of payment. This statement shall constitute advance notice to the obligor of such intent and shall provide the obligor the opportunity to contest the action.

(3) Notwithstanding the provisions of section (1) of this rule, use of this procedure shall be considered inappropriate if the administrator determines:

(a) It is unlikely that the obligor would be able to secure a bond;

(b) The obligor is unable to pay child support, pursuant to ORS 25.245; or

(c) A court of appropriate jurisdiction has ordered that the obligor be exempted from referral due to hardship circumstances. The obligor must notify the obligee and the administrator when filing a claim for hardship exemption with a court.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.230 & ORS 25.715

Hist.: AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0237; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4460

## 137-055-4500

### Financial Institution Data Match — Reasonable Fee

(1) This rule defines "reasonable fees" which the Child Support Program (CSP) will pay to financial institutions for implementing and conducting computerized data matches under ORS 25.640 through 25.646. Appropriations to implement the computerized data matches included fed-

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eral matching funds; therefore, the CSP is required to follow the general principles for determining allowable costs as provided in OMB Circular No. A-87.

(2) Reasonable fee means direct costs only as defined in OMB Circular No. A-87 and shall be limited to those expenses. Reasonable fee shall not include any indirect costs.

(3) Direct costs mean those expenses that are of a type that would generally be recognized as ordinary and necessary to establish and conduct a data match, such as:

(a) Compensation of employees time specifically related to the establishing and conducting the data match;

(b) Computer system expenses specifically related to establishing and conducting the data match;

(c) Costs of material acquired, consumed or expended specifically for the purpose of establishing and conducting the data match;

(d) Necessary travel expenses and similar expenses directly associated with establishing and conducting the data match.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.643

Hist.: AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1098; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4520

## 137-055-4520

### Collection and Distribution of Support Through Garnishment Proceedings

(1) The administrator may, at its discretion, utilize garnishment proceedings in accordance with ORS Chapter 18 for the purpose of collecting past due support.

(2) When the administrator receives a collection from a garnishment proceeding, the Division of Child Support (DCS) shall hold the collection for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages before distributing any amounts due the obligee from the collection.

(a) This requirement is to accommodate the possibility that the administrator may have to return funds from the collection to the garnishee, the obligor, or the court, as a result of the obligor or any person who has an interest in the garnished property having made a challenge to garnishment in accordance with ORS Chapter 18.

(b) The administrator shall waive this requirement to hold the collection, and shall apply the collection to the case for immediate distribution, in any case where the obligor provides the administrator with a signed and notarized statement expressly waiving the right to make a challenge to garnishment and requesting that the administrator apply and distribute the payment immediately.

(3) Notwithstanding subsection (1) of this rule, when the administrator initiates garnishment proceedings under ORS Chapter 18 against the following kinds of lump sum payments, the amount garnished shall be limited to 25% of such lump sum payments. These include lump sum payments on a settlement or judgment from:

(a) Disability benefits (except SSI);

(b) Public or private pensions, unless otherwise ordered by a court;

(c) Health insurance proceeds and disability proceeds from life insurance policies;

(d) Veteran's benefits and loans;

(e) The first \$10,000 of payment on account of personal bodily injury, amounts over \$10,000 are not limited to 25%;

(f) Payment in compensation of loss of future earnings reasonably necessary for support of an obligor and any current dependents; and

(g) Workers' compensation benefits.

(4) If the administrator initiated the garnishment at the request of another state for automated administrative enforcement services and the obligor chooses to make a challenge to garnishment under ORS Chapter 18 with the clerk of the court, the obligor shall include a copy of the writ of garnishment and pay the filing fee required for an appearance under ORS Chapter 21.

(5) Upon receipt of a notice of the challenge to garnishment from the clerk of the court, the administrator may file with the clerk of the court a response to the challenge to garnishment, attaching copies of the writ of garnishment and the original certificate of garnishee, certified by the administrator, and any supporting documentation necessary or helpful to the court in making a determination of the challenge to garnishment.

(6) When the contents of a bank account are garnished and the obligor makes a challenge to garnishment which claims that all or some portion of the contents of the account came from lump sum payments listed in section (3) of this rule, the administrator may return to the obligor the portion

of such lump sum payments received from that account in excess of 25%, as appropriate.

(7) When the garnishee is a credit union, the credit union may retain the par value of the garnished account, defined as the face value of an individual credit union share necessary to maintain a customer's membership.

Stat. Auth.: ORS 25.020 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 18.645, ORS 25.020 & ORS 25.080

Hist.: AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0238; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4520

## 137-055-4540

### Restriction of Passports

(1) When the Division of Child Support submits delinquent child support accounts for IRS tax refund offset pursuant to OAR 137-055-4340, the federal Department of Health and Human Services (DHHS) will select cases in which the delinquency is \$5,000 or more for passport restriction.

(2) Passport restriction means the United States Secretary of State will refuse to issue a passport or may revoke, restrict or limit a passport which was previously issued.

(3) The obligor and the obligee will receive notice of passport restriction with the notice of tax refund offset specified in OAR 137-055-4340. The notice will advise the obligor and the obligee of the right to an administrative review regarding this action:

(a) The obligor or obligee may request an administrative review as specified in the notice;

(b) The only issues that may be considered in the review are:

(A) Whether the obligor is the person who owes the support balance as indicated by the case record; or

(B) Whether the support balance indicated by the official case record is correct.

(4) Upon receipt of the request for review, the administrator will schedule the review and notify the obligor and obligee of the date, time and place of the review. The decision made in the review and the basis for this decision shall be recorded in writing and mailed to the obligor and obligee.

(5) Passport restriction may continue when the delinquency is reduced to less than \$5,000.

(6) Where a passport has been restricted and the obligor has either paid the delinquency in full or entered into and shown compliance with a payment agreement pursuant to this rule, the CSP shall give notice to the State Department to release the passport restriction. Notice shall be by the process specified by DHHS.

(7) A payment agreement is either payments made by income withholding or an agreement pursuant to section (8) of this rule.

(8) Any agreement under this subsection must:

(a) Be in writing and signed by the obligor;

(b) Specify the due date for payments. The administrator may negotiate a due date other than the due date on the case record;

(c) Assume Oregon minimum wage for the obligor in determining income level if the obligor claims income in an amount less than minimum wage and no evidence is found that the obligor has income in an amount greater than Oregon minimum wage;

(d) State the amount of the payment. When feasible, there shall be a lump sum payment to pay the delinquency in full or an initial lump sum payment to significantly reduce the delinquency. The amount of any ongoing payments shall be the amount that could be obtained from an income withholding order pursuant to OAR 137-055-4200;

(e) State that the agreement may be amended if there is a change in the amount of current child support;

(f) State that the agreement may be amended if there is a change in income which would change the agreement amount per the calculations in subsection (8)(d) of this rule;

(g) State that the agreement is terminated if the obligor fails to comply with the terms of the agreement;

(h) State that failure to comply with terms of the agreement will result in notification to the State Department to restrict the passport;

(i) State that the payment agreement does not preclude other enforcement actions to collect current child support and arrears, including, but not limited, to income withholding, and state and federal income tax offset;

(j) Include a statement that the obligor is required to notify the administrator within 10 days when there is a change in employment;

(k) State that information voluntarily provided may be used in other enforcement actions, including contempt actions.

(9) Any agreement made pursuant to this rule may be voided by the administrator if either subsections (9)(a) or (b) of this rule apply.

# ADMINISTRATIVE RULES

- (a) The income of the holder of the passport/obligor changes; or
- (b) The holder of the passport/obligor has under reported income in establishment of the agreement.

(10) When ongoing monthly support is owed, under the following circumstances, an exception to the requirements in the subsection (8)(d) of this rule may be made if the obligor claims a hardship. If an obligor claims a hardship and all of the conditions are met for this exception, the enforcement entity shall make an exception and limit the maximum amount of the payment agreement to 100 percent of the current support amount for the case. If the obligor has multiple child support cases, the administrator may limit the amount of the payment agreement to the lesser of 100% of the current support amount or the case's pro rata share of 50 percent of disposable earnings based on amounts of monthly support obligations per case. The conditions and time frames for exceptions are:

(a) The obligor requests a periodic review and modification or a substantial change in circumstance modification under the provisions of OAR 137-055-3420 or requests such a review and modification and is referred to the appropriate enforcement entity office to make the request. This exception shall terminate after the administrator finishes the review and modification process. If the exception is granted pending the obligor's request for a periodic or substantial change in circumstances review and modification and the obligor has not made such a request to the appropriate administrator within ten days, the exception may be terminated. If the obligor must ask another state for a review and modification, the obligor must furnish verification to the administrator within 30 days that such a request was made to the other state. If such verification is not provided, this exception may be terminated.

(b) All other hardship periods shall terminate after a three-month period. These hardships may be granted for temporary conditions that limit an obligor's ability to make support payments.

(11) The administrator shall provide notice to the obligee of any payment agreement entered into by sending the obligee a copy of the payment agreement.

Stat. Auth.: ORS 25.625 & Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.625  
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-99; AFS 15-2000, f. 5-31-00, cert. ef. 6-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0234; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4540

## 137-055-4560

### Consumer Credit Reporting Agencies

(1) The Division of Child Support (DCS) shall enter into agreements with consumer reporting agencies to disclose information under Section (2) of this rule only to an entity that has furnished evidence satisfactory for DCS to determine that the entity is a consumer reporting agency as defined in ORS 25.650. Under these agreements, DCS shall provide such agencies with the names of obligors who owe past due support and shall indicate the specific amount each obligor owes. Under these agreements, DCS shall provide such information:

(a) Whether or not the agency has requested information on any specific obligor; and

(b) On a recurring or periodic basis.

(2) Before issuing a periodic report to a consumer reporting agency with information on any obligor, the DCS shall provide the obligor and obligee with advance notice of the intent to report the obligor's support balance to the consumer reporting agencies. The notice shall be sent to the obligor's and obligee's last known address. The notice shall:

(a) Indicate the balance to be reported to the consumer reporting agencies;

(b) Advise that the current balance shall be reported to the consumer reporting agencies on a recurring basis without sending further notice to the obligor and obligee;

(c) Advise of the obligor's right to contest the action within 30 calendar days of the date of the notice.

(d) Explain the process for contesting and advise that objections must be in writing on the form provided with the notice;

(e) Advise that the only issues that may be contested are:

(A) Whether the obligor is the person who owes the support balance indicated by the case record; or

(B) Whether the support balance indicated in the notice is correct.

(3) If the obligor does not contest the action within the allowed 30-day period, DCS shall release the information to the consumer reporting agencies.

(4) If the obligor contests the balance indicated in the notice:

(a) The administrator shall conduct an administrative review on the case and shall mail the results of the review to the obligor and obligee as soon as the review is complete;

(b) Once the administrative review is complete, DCS may notify the consumer reporting agencies of the arrears amount resulting from the review except as specified in section (8) of this rule.

(c) The obligor or obligee may contest the administrator's review and determination as provided in ORS 183.484.

(5) If the obligee contests the balance in the notice, the obligee may initiate an arrears establishment request pursuant to OAR 137-055-3240.

(6) If a court or agency of appropriate jurisdiction determines the balance owing is other than previously reported, DCS shall send the court's or agency's findings to the consumer reporting agencies no sooner than 10 days after receiving a copy of the final order.

(7) When consumer reporting agencies ask DCS for information regarding the balance an obligor owes on a support case, DCS may provide available information after complying with the requirements of sections (1) through (6) of this rule. DCS shall not charge the requesting agency a fee for this information.

(8) DCS shall refer to the consumer reporting agencies, the name and support balance of all obligors who meet the criteria of section (1) or (7) of this rule unless:

(a) The obligor pays the support balance in full;

(b) The obligor is not the person who owes the child support balance indicated by the case record; or

(c) The administrator determines that the obligor is not delinquent in the payment of support.

(9) When DCS has made a report to a consumer reporting agency under section (1) of this rule, DCS shall promptly notify the consumer reporting agency when the case record shows that the obligor no longer owes past due support.

(10) If paternity has been established and a consumer report is needed for the purpose of establishing or modifying a child support order, the administrator may request that a consumer reporting agency provide a report. At least 10 days prior to making a request for such report, the administrator must notify the obligor or obligee whose report is requested, by certified mail, that the report will be requested.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.650

Hist.: AFS 79-1985(Temp), f. & ef. 12-26-85; AFS 22-1986, f. & ef. 3-4-86; AFS 12-1989, f. 3-27-89, cert. ef. 4-1-89; Renumbered from 461-035-0051; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0670; AFS 11-1990, f. 3-27-90, cert. ef. 4-1-90; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 7-1996, f. 2-22-96, cert. ef. 4-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 18-2000, f. & cert. ef. 7-12-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0230; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4560

## 137-055-4620

### Enforcing Health Insurance and Medical Support Orders

(1) Where an obligor is required by judicial or administrative order to provide health insurance coverage for the child(ren), the administrator shall enforce the health insurance provisions under the provisions of this rule. For the purpose of this rule, the following definitions apply:

(a) "ERISA employer" means an employer, or an employee organization, who provides a group health plan as defined by Section 607(1) of the Employee Retirement Income Security Act of 1974;

(b) "Non-ERISA employer" means an employer, or an employee organization, involved in a group health plan other than a group health plan as defined by Section 607(1) of the Employee Retirement Income Security Act of 1974.

(2) The administrator shall contact the employer to determine if the obligor is complying with the medical support provisions of the order and if not, will determine whether the employer is an ERISA employer or a non-ERISA employer.

(3) If the obligor's employer is an ERISA employer and the obligor is enrolled and family coverage is available but the child(ren) is not enrolled, the administrator shall obtain or issue a Medical Child Support Order pursuant to section 609 of the Employee Retirement Income Security Act of 1974 and serve it on the Plan Administrator without further notice. Subsections (4) through (6) of this section shall not apply to enforcement actions if the employer is an ERISA employer.

(4) If the obligor's employer is a non-ERISA employer and the obligor is enrolled and family health coverage is available but the child(ren) is not enrolled, the administrator will serve a notice-order on the obligor's employer to provide health coverage as authorized by ORS 25.255.

(5) The notice-order shall require the employer to:



# ADMINISTRATIVE RULES

- (a) Enroll the dependent children as beneficiaries provided the obligor is enrolled in a plan providing for family health coverage;
- (b) Enroll the obligee as a beneficiary, if health coverage is available at no additional cost to the obligor;
- (c) Withhold any required premium from the obligor's income or wages.

Stat. Auth.: Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.255 & ORS 25.727  
Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 25-1995, f. 10-12-95, cert. ef. 10-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0060; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4620

## 137-055-4640

### Medical Child Support Order — Type of Coverage

This rule applies when a medical child support order is required under section 609 of the Employee Retirement Income Security Act to enforce the medical support provisions of a support order.

(1) The administrator drafting the medical child support order must either provide a reasonable description of the type of coverage to be provided or describe the manner in which such type of coverage shall be determined by the plan administrator. To provide consistency in services, the administrator shall use the following criteria to describe the manner in which the type of coverage is to be determined by the plan administrator:

(a) If the obligor is enrolled in a plan option that provides for family coverage, the plan administrator shall enroll the alternate recipient(s) in that plan;

(b) If the obligor is not enrolled in a plan option that provides family health coverage, the obligor shall select a plan option that provides family health coverage;

(c) If the obligor is not enrolled in a plan option providing family health coverage or does not select a plan option providing family health coverage within a reasonable amount of time as defined by the plan administrator, the plan administrator shall enroll the alternate recipient(s) in the plan option offering family health coverage which is least costly to the obligor.

(2) Nothing in this rule precludes a party from petitioning the court to modify the underlying order to specify a method for determining the type of health coverage to be provided that differs from the criteria specified in section (1) of this rule.

Stat. Auth.: Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.255  
Hist.: AFS 38-1995, f. 12-4-95, cert. ef. 12-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0063; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4640

## 137-055-5020

### Payment of Support Obligations

(1) Regardless of the provisions of a support order, the obligor must make all support payments to the Division of Child Support (DCS) while the obligee receives assistance in the form of TANF cash assistance, foster care or Oregon Youth Authority services.

(2) The obligor must continue to pay support to DCS after assistance ends, for as long as arrears are assigned to the state or support enforcement services are provided.

(3) When a case with a support order is activated on the Child Support Enforcement Automated System, DCS will send notice to the obligor and obligee of the requirement to pay through DCS. Except as provided in OAR 137-055-5060, DCS will begin billing in the first full calendar month following 30 days from receipt of the referral or from the date the TANF benefits are issued. DCS shall determine the arrears on a newly activated case pursuant to OAR 137-055-3240.

(4) An obligor may pay DCS by money order, personal check, certified check, cashier or traveler's check, earnings allotment, cash or by authorizing an electronic fund transfer from the obligor's account at a financial institution.

(5) Payment by electronic fund transfer may be established by completing an application furnished by and delivered to DCS, subject to the following conditions:

(a) The obligor's financial institution must be a participant in the Oregon Automated Clearinghouse Association;

(b) The obligor must be subject to a support order requiring payment to DCS or support enforcement services are being provided under ORS 25.080;

(c) The application must be complete and signed by all signatories to the obligor's account at the financial institution;

(d) The application must establish a monthly withdrawal date, no later than the monthly support due date, and the amount to be paid to DCS on

each monthly withdrawal date from the obligor's account at the financial institution;

(e) DCS will notify the applying obligor and the obligee by mail if they qualify for the electronic fund transfer process and of the initial withdrawal date;

(f) The obligor may revoke the electronic fund transfer authorization by notifying DCS at least 10 days before the monthly withdrawal date;

(g) DCS may revoke the authorization when there are insufficient funds in the obligor's account to make the authorized payment and no advance notice of that has been received. DCS will mail a notice of revocation to the obligor and obligee;

(h) DCS may refuse an obligor's application if it is not fully completed, or if the obligor has made any support payment to DCS with insufficient funds in the 12-month period preceding the obligor's application.

Stat. Auth.: ORS 25.427 & Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.020 & ORS 25.396  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 4-1991, f. 1-28-91, cert. ef. 2-1-91; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0020; AFS 14-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5020

## 137-055-5040

### Accrual and Due Dates

This rule applies to any court order or administrative order requiring the payment of child support, or child and spousal support through the Division of Child Support (DCS), in accordance with ORS 25.020:

(1) Each support payment due under a support order is a final judgment, effective on the due date indicated in the order.

(2) When an order does not specify the date payments are to begin, the first payment shall be due on the last day of the month in which the order was signed, and the amount owed becomes a judgment effective on that day. The payment owed for each subsequent month shall be due, and become a judgment, effective on the last day of each month.

(3) When the support obligation terminates during any month, the support obligation shall not be pro-rated for the month, unless the order for support provides otherwise. In any month:

(a) If the support obligation terminates on or before the due date for the month, no amount shall be due for that month.

(b) If the support obligation terminates after the due date for the month, the entire monthly support amount shall be due for that month.

(c) If the order specifies that payments are due on a basis other than monthly, such as weekly, bi-weekly, or semi-monthly, the provisions of subsections (a) and (b) above shall apply to the specified payment period rather than monthly.

(4) If the administrator discovers that the support provisions in the body of a support order are inconsistent with the money judgment summary, the administrator shall:

(a) On a case in which the Division of Child Support is providing distribution only services, send a courtesy notice to all parties;

(b) On a case in which services are being provided under ORS 25.080 and the order is a judicial order which was not entered by the administrator, send a written notice to all parties requesting action be taken to correct the error. The notice will advise the parties that their support case will be enforced per the judgment register Oregon Judicial Information Network (OJIN) until DCS is provided with a copy of the court corrected order and money judgment summary;

(c) On a case in which services are being provided under ORS 25.080 and the order is an administrative order which has been entered with the court or a judicial order entered by the administrator, file a motion to correct the error. Until the error is corrected, the support case will be enforced per the judgment register OJIN;

(d) Notwithstanding subsection (b) of this section, the administrator may instead file a motion to correct the error if the child support rights, as defined in ORS 25.010, have been assigned to the state.

Stat. Auth.: Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.020 & ORS 25.080  
Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 15-1988, f. & cert. ef. 2-24-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0040; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0080; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5040

## 137-055-5060

### Billings for Support Payments

(1) Except as provided in subsection (2) of this rule, when the administrator determines that a support payment is due, a billing will be sent to the obligor.

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(2) When support is paid by income withholding pursuant to ORS 25.378 for a period of six months, or by electronic payment withdrawal pursuant to OAR 137-055-5020 for a period of six months, the Division of Child Support may discontinue monthly billings unless:

- (a) The obligor requests otherwise; or
- (b) The administrator determines that monthly billings should continue.

Stat. Auth.: Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.020  
Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 88-1980, f. & ef. 12-10-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0001; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0105; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5060

## 137-055-5080

### Adding Interest Calculations to Individual Support Cases

(1) For a support case with an Oregon support order as the controlling order, the administrator shall add interest calculations to the case by using the establishment of arrears process set out in OAR 137-055-3240 under the following conditions:

(a) The party makes a written request that the interest be added to the case;

(b) The requesting party provides a month by month calculation showing support accrual, principal due and interest accrual for each month with total principal and interest due as separate totals at the end of the calculations; and

(c) The interest is calculated per ORS 82.010 from the date of entry of a judgment in Oregon.

(2) The administrator may limit adding interest to the case under section (1) of this rule to one time every 24 months.

(3) For a case with a support order from another state, the law of the state which issued the controlling order governs the computation and accrual of interest under the support order. Interest accrued from the state which issued the order may be added to the Oregon case by administratively reconciling the state's case record when interest amounts are provided to the Oregon Child Support Program (CSP) by the other state. The CSP shall send an informational notice to the parties.

(4) When the administrator has initiated a request to another state to establish a support order in that state or to enforce an already existing support order, the law of the state which issued the controlling order governs the computation and accrual of interest under the support order. If the controlling order was not issued by Oregon, interest accrued from the other state may be added to the Oregon case by administratively reconciling the state's case record when interest amounts are provided to the Oregon CSP by the other state. The CSP shall send an informational notice to the parties.

Stat. Auth.: Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.167, ORS 82.010 & ORS 416.429  
Hist.: AFS 6-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0048; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5080

## 137-055-5110

### Child Attending School Definitions

As used in OAR 137-055-5120 and 137-055-5125, the following terms have the meanings outlined below:

(1) "Child attending school" means a child of the parties who is unmarried, is 18 years of age or older and under 21 years of age and is a student regularly attending school. Unless the child otherwise qualifies as a child attending school, a child attending school does not include:

(a) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the "armed forces") who is serving on active duty; or

(b) A member of the National Guard who is serving full-time National Guard duty.

(2) "Class order" means a monthly child support order amount for multiple children that does not specify an amount of support per child.

(3) "Normal break" means:

(a) Summer semester or term;

(b) The period of time between graduation from or completion of high school and the beginning of the next regularly scheduled term, semester, or course of study at a school;

(c) The period of time between the end and beginning of regularly scheduled consecutive school semesters, terms, or courses of study; or

(d) Any other scheduled break between courses of study that is defined by the school as a normal break.

(4) "Quarterly" means annual quarters ending on March 31, June 30, September 30, and December 31. This is the reporting schedule the Child

Support Program may require for a child who is attending a school which does not have traditional terms or semesters, or has courses which last longer than six months.

(5) "Regularly attending" means the child is enrolled in an educational course load of at least half-time as defined by the school.

(6) "School" means any of the following:

(a) An educational facility such as a high school, community college, four-year college, or university;

(b) A course of vocational or technical training, including Job Corps, designed to fit the child for gainful employment;

(c) A high school equivalency course, including (but not limited to), a General Educational Development (GED) program; or

(d) A school in grade 12 or below, including home schooling approved by the local school district.

(7) "Termination of official accounting functions" means the Division of Child Support shall cease to perform billing, accrual, distribution, and record-keeping functions for ongoing support with regard to the child attending school. If the order is a class order and there is an additional child(ren) for whom ongoing support is still ordered, termination of official accounting functions means:

(a) Any support paid directly to such child will cease and will be redirected to the obligee; and

(b) Support accrual for such child will be prorated to the other child(ren) for whom ongoing support is still ordered.

Stat. Auth.: ORS 25.020, & Sec. 2, ch. 73 OL 2003  
Stats. Implemented: ORS 25.020 & ORS 107.108  
Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110

## 137-055-5120

### Support for Child Attending School — Oregon Orders Entered On or After October 4, 1997

(1) The purpose of this rule is to define how the Division of Child Support (DCS) will apply the provisions of ORS 107.108, regarding support or maintenance for a child attending school, in performing its official billing, accrual, distribution, and record-keeping functions for ongoing support when:

(a) The most recent order or modification for support was entered on or after October 4, 1997; and

(b) The order or modification provides for support until the child is age 21 so long as the child is a child attending school in accordance with ORS 107.108.

(2) The terms used in this rule shall have the meanings set out in OAR 137-055-5110.

(3) DCS shall perform its official billing, accrual, distribution, and record-keeping functions for each child on a support obligation who qualifies as a child attending school after attaining age 18, unless the child:

(a) has failed to comply with the provisions set out in section (4) of this rule and the administrator has received a written objection from the obligor; or

(b) has failed to provide written notification as provided in section (7) of this rule.

(4) Beginning with the first full term or semester after the child attains age 18, or the first full term or semester after a pre-October 4, 1997 order is modified to include post October 4, 1997 provisions as set out in ORS 107.108, whichever occurs later:

(a) The child must submit the completed Child Support Program (CSP) Child Attending School Compliance Form to the obligor and to the administrator. The completed compliance form must be received by the obligor and the administrator within 30 calendar days from the first official day of classes for each term or semester. If the 30th day falls on a state holiday, a Saturday, or a Sunday, the compliance form must be received by the next working day. For schools which do not have traditional terms or semesters, or have courses which last longer than six months, the administrator may require that a compliance form be submitted "quarterly" in addition to within 30 calendar days from the first day of class.

(b) The child must maintain the equivalent of a cumulative "C" grade average or better as defined by the school or, if the child is still attending high school the child may have either a cumulative "C" grade average or better or a "C" grade average or better for each term or semester after attaining age 18;

(c) The child must submit, to the obligor and to the administrator, copies of the grades for the last term or semester and a list of courses in which the child is currently enrolled;

(d) If there has been a finding and order of nondisclosure on behalf of the child pursuant to ORS 25.020, the child may send the obligor's copy of

# ADMINISTRATIVE RULES

the documents to the administrator for the administrator to forward to the obligor. The child must submit a copy of the documents to the CSP per the time periods set out in subsection (a) of this section. The administrator shall redact the following information prior to sending a copy of documents to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(5) Notwithstanding the form requirement of subsection (4)(a) of this rule, as of the Fall term or semester of 2002, the child may submit to the obligor and to the administrator, within the time frames set out subsection (4)(a) of this rule, the CSP Child Attending School Compliance Form with only the portion of the form "TO BE COMPLETED BY STUDENT/CHILD ATTENDING SCHOOL" completed, but the child must attach:

(a) An enrollment verification certificate from the school's contracted clearinghouse;

(b) Documentation from the school verifying grades of at least a cumulative "C" grade point average (or equivalent) as set out in subsection (4)(b) of this rule, such as:

(A) An official or unofficial transcript; or

(B) A report card which indicates a cumulative grade point average; and

(c) Copies of the grades for the last term or semester and a list of courses in which the child is currently enrolled.

(6) When a child is attending school and a "normal break" occurs between academic terms at the school, the obligor will continue to owe ongoing support and the DCS shall continue official accounting functions throughout such break if the case records show that the child intends to resume classes at the start of the first regular academic term following the break. The administrator may require the child to provide additional documentation if at least 120 days have passed since the end of the child's last term or semester.

(7) At least 30 days prior to the child's 18th birthday, the administrator shall send written notification to the obligee, the child, and, if appropriate, the Oregon Youth Authority (OYA) that unless the obligee or the child sends written notification to the administrator prior to the child's 18th birthday that the child will continue to attend school, DCS will terminate official accounting functions effective the date the child attains age 18.

(8) Upon receipt of the written notification from the obligee or the child that the child will continue to attend school, the administrator will send the Child Attending School Compliance Requirements, along with a copy of the CSP Child Attending School Compliance Form, to the parties and the child. Such notice shall:

(a) List all of the compliance requirements to continue to receive support as a child attending school;

(b) Include objection information;

(c) Advise the parties of their right to a change in circumstance modification in accordance with OAR 137-055-3420;

(d) Include distribution information for distributing support directly to the child; and

(e) Include information for the child to make a claim of risk for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(9) DCS shall distribute support directly to the child unless good cause is found to distribute support in some other manner. For purposes of this section "good cause" may include:

(a) The child is in the care of the Oregon Youth Authority (OYA);

(b) The child provides written authorization for distribution to the obligee; or

(c) The court, administrative law judge or administrator orders otherwise.

(10) When there are multiple children for whom support is ordered, the amount paid directly to the child under section (9) of this rule shall be a prorated share.

(11) If a child attending school is in the care of OYA, any and all reporting duties of the child as outlined in this rule shall be the duty of OYA.

(12) DCS shall terminate official accounting functions on the case when one of the following conditions occurs:

(a) The obligee or child fails to provide written notification as required under section (7) of this rule;

(b) The child has failed to comply with section (4) of this rule, and the obligor has submitted a written objection under section (15) of this rule;

(c) During a normal school break, the child has failed to provide additional documentation as requested under section (6) of this rule;

(d) The child sends written notice that the child no longer qualifies as a child attending school; or

(e) The child fails to provide a valid compliance form within 30 calendar days from the date of a written notice from the administrator advising that an authorized representative of the school sent a written notice to the administrator that the child no longer qualifies as a child attending school.

(f) The child fails to provide a valid compliance form within 30 calendar days from the date of a written notice from the administrator advising that OYA has notified the administrator that the child is no longer in the care of the OYA.

(13) Once DCS terminates official accounting functions on the case, the official accounting functions cannot be resumed except as provided in section (16) of this rule.

(14) When the administrator receives written notification from the child or authorized representative of the school that the child is no longer qualifies as a child attending school or notification from OYA that the child is no longer in the care of OYA, the DCS shall terminate official accounting functions on the case for any such child effective the date the notice is received by the administrator.

(15) If an obligor submits a written objection asserting that the child no longer is attending school, the administrator shall review the official records for compliance. The administrator will presume that the child's statutory reporting requirements as outlined in section (4) of this rule have been fulfilled if the administrator has record of a completed compliance form with any required documentation for the current or most recent, as appropriate, term or semester.

(a) If compliance has occurred according to case records, the administrator shall send a copy of the proof of compliance to the obligor. If there has been a finding and order of nondisclosure on behalf of the child pursuant to ORS 25.020, the administrator shall redact the following information prior to sending a copy to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(b) If compliance has not occurred according to case records, DCS shall terminate official accounting functions on the case for any such child effective the date the administrator receives the obligor's written objection and shall notify all parties of this termination.

(16) In any case, up until the child attains the age of 21, the DCS shall resume official accounting functions upon receipt of a written statement from the obligor that the obligor wishes to continue paying ongoing support for such child. If such verification occurs, DCS shall inform all parties and resume its official accounting functions effective the payment due date following receipt of such verification. If the obligor later decides to stop paying ongoing support for such child, the obligor shall provide a written statement to the administrator and DCS shall terminate official accounting functions on the case for any such child effective the date the administrator receives the obligor's written statement and shall notify all parties of this termination.

(17) In any case, the administrator shall honor the provisions of a court or administrative order to reinstate or terminate the duty of support to a "child attending school" under ORS 107.108.

(18) If the most recent order or modification for support cites ORS 107.108 or otherwise provides for support of a "child attending school," the administrator shall follow the provisions of ORS 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 107.108

Hist.: AFS 21-1991, f. 10-23-91, cert. ef. 11-1-91; AFS 26-1991, f. 12-31-91, cert. ef. 1-1-92; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 18-1997(Temp), f. 9-23-97, cert. ef. 10-4-97; AFS 18-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0136; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 17-2002(Temp), f. 10-30-02, cert. ef. 11-1-02 thru 4-29-03; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5120

# ADMINISTRATIVE RULES

## 137-055-5125

### Support for Child Attending School — Oregon Orders Entered Prior to October 4, 1997

(1) The purpose of this rule is to define how the Child Support Program (CSP) will apply the provisions of ORS 107.108 regarding support or maintenance for a child attending school, in performing its official billing, accrual, distribution, and record-keeping functions for ongoing support when:

(a) The last order or modification for support was entered prior to October 4, 1997; and

(b) The order or modification provides for support until the child is age 21 so long as the child is a child attending school in accordance with ORS 107.108.

(2) The terms used in this rule shall have the meanings set out in OAR 137-055-5110.

(3) The Division of Child Support (DCS) shall perform its official billing, accrual, distribution, and record-keeping functions for each child on a support obligation who qualifies as a "child attending school" after attaining age 18, unless the obligee or the child has failed to provide written notification as provided in sections (5) and (11) of this rule.

(4) When a child is attending school and a "normal break" occurs between academic terms at the school, the obligor will continue to owe ongoing support and DCS shall continue official accounting functions throughout such break if the case records show that the child intends to resume classes at the start of the first regular academic term following the break.

(5) At least 30 days prior to the child's 18th birthday, the CSP shall send written notification to the obligee, the child, and, if appropriate, the Oregon Youth Authority (OYA) that unless the obligee or the child sends written notification to the CSP prior to the child's 18th birthday that the child will continue to attend school, DCS will terminate official accounting functions effective the date the child attains age 18.

(6) Upon receipt of the written notification from the obligee or the child that the child will continue to attend school, the CSP will send the Child Attending School Compliance Requirements to the parties and the child. Such notice shall:

(a) List all of the compliance requirements to continue to receive support as a child attending school;

(b) Include objection information;

(c) Advise the parties of their right to a change in circumstance modification in accordance with OAR 137-055-3420; and

(d) Include information for the child to make a claim of risk for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(7) Support shall be distributed to the child only upon order of the court or written permission of the obligee.

(8) The obligor, obligee and a child who has attained age 18 and is a child attending school may enter into a written agreement to apply the provisions which are applicable to support orders and modifications entered on or after October 4, 1997, as outlined in OAR 137-055-5120.

(9) DCS shall terminate official accounting functions on the case when one of the following conditions occurs:

(a) The obligee or child fails to provide written notification as required under section (5) of this rule;

(b) The obligor has submitted a written objection under section (11) of this rule and the obligee or child has failed to provide compliance documents as required by that section;

(c) The obligee or child sends written notice that the child no longer qualifies as a child attending school; or

(d) The obligee or child fails to provide a valid compliance form within 30 calendar days from the date of a written notice from the CSP advising that an authorized representative of the school sent a written notice to the CSP that the child no longer qualifies as a child attending school.

(e) The child or the obligee fails to provide a valid compliance form within 30 calendar days from the date of a written notice from the CSP advising that OYA has notified the CSP that the child is no longer in the care of the OYA.

(10) When the CSP receives written notification from the obligee, child or authorized representative of the school that the child is no longer enrolled in school at least half time or notification from OYA that the child is no longer in the care of OYA, DCS shall terminate official accounting functions on the case for any such child effective the date the notice is received by the CSP.

(11) If an obligor submits a written objection asserting that the child no longer is attending school, the administrator shall send written notification

to the obligee and child that a completed CSP Child Attending School Compliance Form must be received within 30 calendar days from the date of the administrator's written notification.

(a) If a valid compliance form is received within 30 days, the administrator will send a copy to the obligor. If there has been a finding and order of nondisclosure on behalf of the child pursuant to ORS 25.020, the administrator shall redact the following information prior to sending a copy to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(b) If the compliance form is not received within 30 days or does not show that child is in compliance, DCS shall terminate official accounting functions on the case for any such child effective the date the CSP receives the obligor's written objection, and shall notify all parties of this termination.

(12) The CSP shall resume official accounting functions for the child anytime prior to the child attaining the age of 21, if the obligee or child submits a valid CSP Child Attending School Compliance Form showing that the child is currently enrolled in school at least half time.

(a) Official accounting functions shall resume effective the date the CSP receives the completed form.

(b) The administrator shall establish arrears in accordance with OAR 137-055-3240, only upon the request of the obligee.

(13) Notwithstanding the CSP Child Attending School Compliance Form requirement of sections (11) and (12) of this rule, as of the Fall term or semester of 2002, the child may submit this Compliance Form with only the portion "TO BE COMPLETED BY STUDENT/CHILD ATTENDING SCHOOL" completed; but the child must attach an enrollment verification certificate from the school's contracted clearinghouse to the Compliance Form.

(14) In any case, up until the child attains the age of 21, DCS shall resume official accounting functions upon receipt of a written statement from the obligor that the obligor wishes to continue paying ongoing support for such child. If such verification occurs, the CSP shall inform all parties and resume official accounting functions effective the payment due date following receipt of such verification. If the obligor later decides to stop paying ongoing support for such child, the obligor shall provide a written statement to the CSP. The CSP shall treat such statement as an objection received under section (11) of this rule.

(15) In any case, the CSP shall honor the provisions of a court or administrative order to reinstate or terminate the duty of support to a "child attending school" under ORS 107.108

(16) If the most recent order or modification for support cites ORS 107.108 or otherwise provides for support of a "child attending school," the CSP shall follow the provisions of ORS 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020 & ORS 107.108

Hist.: AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 17-2002(Temp), f. 10-30-02, cert. ef. 11-1-02 thru 4-29-03; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5125

## 137-055-5220

### Satisfaction of Support Judgments

The purpose of this rule is to define how the Division of Child Support (DCS) will credit "satisfactions of support judgment" in certain circumstances. This rule shall not be construed as limiting the authority of DCS to approve or credit a satisfaction of support judgment in other lawful circumstances not specified in this rule.

(1) When support payment records are kept by the Division of Child Support (DCS) of the Department of Justice (DOJ), an obligee may satisfy amounts indicated on the case record as past due by filing a properly-completed "satisfaction of support judgment" form with the administrator, subject to approval by DCS under the provisions of this rule; or in accordance with OAR 137-055-5240.

(2) When current support or arrears are assigned to the State of Oregon or to another state, and the obligor is seeking credit for support payments not made through DCS:

(a) DCS and its attorneys have authority to approve and sign satisfactions.

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(b) This authority may be exercised only when the obligee has signed a satisfaction of judgment form which acknowledges that the support payment was received.

(3) DCS and its attorneys have authority to sign and approve satisfactions of judgment for money paid through DCS as payment of assigned support.

(4) DCS will record, on the case record, all properly-completed satisfactions of support not assigned, and all satisfactions ordered by a court or a hearing order, and all satisfactions for assigned support that are approved in accordance with this rule. DCS shall also promptly forward the satisfaction form to the appropriate clerk of the court, together with a certificate stating the amount of support satisfaction entered on the case record.

(5) Except when satisfied and approved by DCS and its attorneys, or by a court or hearing order, DCS will not enter a satisfaction on a case record for support that has been assigned to the State of Oregon or another state.

(6) When DCS rejects a satisfaction in part or in full as provided in (5) above, DCS will send written notice to the obligor and obligee, by regular mail to the most recent address of record. Such notice will indicate the reason for the rejection.

(7) All satisfactions must contain the following:

(a) The full names of both the obligor and the obligee;

(b) The name of the Oregon county where the support order was entered;

(c) The Oregon CSP support case number, or the circuit court case number;

(d) Either:

(A) The total dollar amount to be satisfied; or

(B) The period of time for which past due support is satisfied;

(e) A statement that the satisfaction is only for child support and/or spousal support;

(f) The signature of the obligee, except for those satisfactions approved under sections (2) and (3) of this rule, where the obligee's signature is not required; and

(g) The date the form is signed.

(8) All signatures on "satisfactions of support judgment" must be notarized, except on court orders or on those satisfactions approved under Sections (2) and (3) of this rule.

(9) Notwithstanding any other provision of this rule, DCS has the authority to file and execute a satisfaction, without the need to notarize such satisfaction, when all of the following are true:

(a) The obligor provides a sworn affidavit that the judgment has been paid in full, and

(b) DCS certifies that it has a complete payment record for the support payment judgment and that the payment record shows no arrears. DCS shall be considered to have a complete pay record if DCS has kept the pay record for the support judgment from the date of the first support payment required under the judgment, or if the obligee or the administrator established arrears for the time period when DCS did not keep the pay record on the case.

(10) When DCS receives a sworn affidavit under the provisions of section (9)(a) of this rule, DCS shall examine its support records and determine if it has the authority under section (9) of this rule to execute and file a satisfaction of judgment. DCS shall promptly notify the obligor if DCS determines that it does not have authority to execute and file a satisfaction of judgment. DCS shall also determine if any amounts due for support were not assigned to the state. If DCS determines that any amounts were not assigned to the state, DCS shall give notice to the obligee in the manner provided by ORS 25.085. The notice must inform the obligee that DCS will execute and file the satisfaction of judgment unless DCS receives an objection and request for hearing within 30 days after the date of mailing the notice.

(11) If the obligee requests a hearing under section (10) of this rule, a contested case hearing shall be conducted under ORS 183.310 to 183.550 before an administrative law judge.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 18.400 & ORS 25.020

Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 26-1979(Temp), f. & ef. 8-16-79; AFS 22-1980, f. & ef. 4-3-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-35-005; AFS 17-1991, f. & cert. ef. 8-29-91; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 19-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 14-1996, f. 4-24-96, cert. ef. 5-1-96; AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0155; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5220

## 137-055-5240

### Credit for Support Payments not made to the Division of Child Support

(1) In accordance with ORS 25.020, on any support case where the obligor is required to pay support through the Division of Child Support (DCS), DCS shall not credit the obligor's support account for any payment not made through DCS, except as provided in ORS 25.020 and this rule.

(2) The other provisions of this rule notwithstanding, on any case where an order of another state is registered in Oregon under ORS Chapter 110 for enforcement only, and either the issuing state, as defined in ORS 110.303(9), or the obligee's state of residence has an active child support accounting case open, DCS does not have authority to give credit for payments not paid through Oregon DCS. In any such case, the obligor seeking credit must request credit from the issuing state or the obligee's state of residence, whichever has the active child support accounting case. DCS shall adjust its records to reflect credit for such payments only upon receiving notification from the issuing state or the obligee's state of residence, in writing, by electronic transmission, by telephone, or by court order, that specified payments shall be credited.

(3) DCS shall give credit for payments not made to DCS when:

(a) Payments are not assigned to the State of Oregon or to another state, and the obligor and obligee agree in writing that specific payments were made and should be credited;

(b) Payments are assigned to the State of Oregon, and all of the following additional conditions are true:

(A) The obligor and obligee make sworn written statements that specific payments were made;

(B) The obligor or obligee present canceled checks, or other substantial evidence, to corroborate that the payments were made; and

(C) The administrator has given written notice to the obligee, prior to the obligee making a sworn written statement under subsection (a), of any potential criminal or civil liability that may attach to an admission of receiving the assigned support. Potential criminal or civil liability may include, but is not limited to:

(i) Prosecution for unlawfully receiving public assistance benefits.

(ii) Liability for repayment of any public assistance overpayments for which the obligee may be liable.

(iii) Temporary or permanent disqualification from receiving public assistance, food stamp, or medical assistance benefits due to an intentional program violation being established against the obligee for failure to report, to the administrator, having received payments directly from the obligor.

(c) The administrator is enforcing the case at the request of another state, regardless of whether or not support is assigned to that other state, and that state verifies that payments not paid to DCS were received by the other state or by the obligee directly. Such verification may be in writing, by electronic transmission, by telephone, or by court order.

(d) An order of an administrative law judge, or an order from a court of appropriate jurisdiction, so specifies.

(4) To receive credit for payments not made to DCS, the obligor may apply directly to the administrator for credit, by providing the documents and evidence specified in Section (3) of this rule.

(5) Except as provided in section (2) of this rule if the obligee or other state does not agree that payments were made, pursuant to subsection (3)(a) or (3)(c) of this rule, or does not make a sworn written statement under subsection (3)(b), the obligor may make a written request to the administrator for a hearing.

(a) An administrative law judge may order, by written final order following a hearing, that DCS shall credit the obligor's support account for a specified dollar amount of payments not made through DCS, or for all payments owed through a specified date.

(b) DCS shall credit the obligor's account to the extent specified by written order of an administrative law judge.

(c) Prior notice of the hearing and of the right to object shall be served upon the obligee in accordance with ORS 25.085.

(d) Prior notice of the hearing and of the right to object may be served upon the obligor by regular mail to the address provided by the obligor when applying for credit.

(e) Any such hearing conducted under ORS 25.020 and this rule is a contested case hearing in accordance with ORS 183.413 through ORS 183.470. Any party may also seek a hearing de novo in the Oregon circuit court.

(f) The other provisions of this section notwithstanding, an administrative law judge does not have jurisdiction under this section in cases where the administrator is enforcing another state's order.

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(6) When an obligor wishes to request a contested case hearing, or when an obligor or obligee wishes to request a hearing de novo in the Oregon circuit court or to appeal a court order or a hearing order, responsibility for doing so rests solely with that obligor or obligee. Such responsibility includes preparation and filing of all forms and documents required by the court or administrative law judge, and payment of all fees required by the court. The administrator shall not have any such responsibility on behalf of the obligor or obligee, except as specifically required by law or administrative rule.

(7) Nothing in this rule precludes DCS from giving credit for payments not made through DCS when a judicial determination has been made giving credit or satisfaction, or when the person to whom the support is owed has completed and signed a "satisfaction of support judgment" form adopted by DCS in accordance with OAR 137-055-5220.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020

Hist.: AFS 42-1995, f. 1-28-95, cert. ef. 1-1-96; AFS 8-1996, f. 2-23-96, cert. ef. 3-1-96; AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0157; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5240

## 137-055-5400

### Obligor Receiving Cash Assistance, Presumed Unable to Pay Child Support

(1) The purpose of this rule is to outline the responsibilities under ORS 25.245 of the administrator, relating to suspension of child support when an obligor is presumed unable to pay child support because the obligor is eligible for and receiving cash assistance. This rule applies to any support payment due on or after January 1, 1994 when support enforcement services are being provided under ORS 25.080.

(2) The Child Support Program shall identify obligors receiving cash assistance in any of the following programs administered in the State of Oregon by means of a computer match between the Child Support Enforcement Automated System (CSEAS) and Department of Human Services client maintenance system:

- (a) Title IV-A cash assistance;
- (b) General Assistance cash assistance;
- (c) Oregon Supplemental Income Program cash assistance; or
- (d) Supplemental Security Income Program payments by the Social Security Administration.

(3) Obligor who are eligible for and receiving cash assistance under section (2) of this rule will be referred by CSEAS to the administrator and the administrator will suspend accrual and billing for the period the obligor receives cash assistance under section (2) of this rule.

(4) The administrator, shall review CSEAS case referrals on a daily basis for new cases.

(5) Obligor who wish to have their support accrual suspended pursuant to this rule and who are receiving Title IV-A cash assistance or General Assistance cash assistance administered by another state or by a tribe, or who are receiving Supplemental Security Income Program payments by the Social Security Administration and who are not identified by means of a computer match pursuant to section (2) of this rule, shall provide to the administrator written proof of receipt of such cash assistance. Such written proof shall:

(a) Be provided by the obligor to the administrator to initiate suspension and every three months thereafter;

(b) Include the date the cash assistance payment was first made, the amount of the cash assistance for each and every month in which cash assistance was received, and the ending date, if known, of the cash assistance;

(c) Be official documentation, recognized by the issuing agency, that covers each and every month that cash assistance was received, including but not limited to a benefits award letter, deposit record or receipt.

(6)(a) When an obligor has provided written proof of receipt of cash assistance pursuant to section (5) of this rule, administrator shall, subject to section (8) of this rule, credit the case for arrears accrued from the date the obligor submitted written proof of receipt of cash assistance back to the date the cash assistance was first made, but not earlier than October 6, 2001;

(b) When an obligor notifies the administrator that the obligor is no longer receiving cash assistance, the administrator shall begin accrual and billing pursuant to the support order currently in effect with the next support payment due following the end of the last month that the obligor received public assistance;

(c) If the obligor fails to provide written proof of receipt of cash assistance pursuant to section (5)(a) of this rule, the administrator shall begin

accrual and billing pursuant to the support order currently in effect with the next support payment due for the month following the month for which the obligor last provided written proof;

(d) If the obligor provides written proof of receipt of cash assistance pursuant to section (5)(a) of this rule after failing to provide timely written proof of receipt of cash assistance within three months, thereby causing the administrator to begin billing and accrual pursuant to subsection (c) of this section, support accrual may be suspended and arrears may be credited pursuant to subsection (a) of this section.

(7)(a) When a new case is referred, the administrator must send a notice to all parties to the support order within 30 days. The notice will contain a statement of presumption and include the following:

(A) A statement of the month in which cash assistance was first made;

(B) A statement that unless the party objects, that child support payments have ceased accruing beginning with the support payment due on or after the date the obligor began receiving cash assistance, but not earlier than January 1, 1994;

(C) A statement that the administrator will continue providing enforcement services, including medical support enforcement, if applicable, and services to collect any arrears;

(D) A statement that if the obligor ceases to receive cash assistance listed under section (2) of this rule that accrual and billing will begin with the next support payment due following the end of the last month that the obligor receives cash assistance;

(E) A statement that any party may object to the presumption that the obligor is unable to pay support by sending to the administrator a written objection within 20 days of the date of service;

(F) A statement that the objections must include a written description of the resource or other evidence that might rebut the presumption of inability to pay; and

(G) A statement that the entity responsible for providing enforcement services represents the state and that low cost legal counsel may be available.

(b) When an obligor provides written proof of receipt of cash benefits pursuant to section (5) of this rule and monthly support is accruing, the administrator must send a notice to all parties to the support order within 30 days. The notice will include a statement of presumption and:

(A) The information listed under subsection (a)(A) to (C) and (E) to (G) of this section; and

(B) A statement that if the obligor ceases to receive cash assistance under section (5) of this rule, accrual and billing will begin the month following the last month that the obligor received cash assistance or, if the obligor fails to provide written proof pursuant to section (5)(a) of this rule, accrual and billing shall begin with the next support payment due for the month following the month for which the obligor last provided written proof.

(c) Included with each notice under this section will be a separate form for the party to use if they choose to file an objection to the presumption that the obligor is unable to pay support.

(8)(a) The notice under section (7) of this rule will be served on the obligee by personal service or by certified mail. The notice will be served upon the obligor by regular mail. The administrator will document the service of all parties to the support order on the case record, and include the date of service;

(b) If a written objection is received by the administrator, the administrator shall not make a determination with regard to the objection. The administrator shall immediately set the matter for hearing before a court or an administrative law judge, unless the party withdraws the objection;

(c) If the court finds the presumption has not been rebutted, the court's finding will be part of the court record and the administrator does not have to file anything else with the court. If no objection is made, or if an administrative law judge finds that the presumption has not been rebutted, the administrator will file a copy of the notice or hearing order with the court. In all situations, the administrator will continue providing enforcement services, including medical support enforcement, if applicable, and services to collect any arrears; and

(d) If a court or an administrative law judge finds that the presumption has been rebutted, the administrator will narrate the finding on the case record, and will continue to provide all appropriate enforcement services. The administrator will either:

(A) Notify the administrator by electronic means that the presumption has been rebutted so the child support case is adjusted to reflect the findings; or

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(B) The administrator may make the necessary adjustments to the case record to begin billing and accrual and to adjust the case to reflect the findings that the presumption has been rebutted.

(9) The administrator will refer to the information prior to establishing any child support obligation. If services to establish paternity are needed, the administrator shall provide those services, but will refer to the information prior to establishing any child support obligation.

(10) If an obligor ceases to receive cash assistance under section (2) of this rule, the administrator will send notice to all parties to the support order within 30 days. The administrator will document the case record with "O off PA as of (date)", will resume billing and accrual, if applicable. The billing and accrual will begin with the next support payment due following the end of the last month that the obligor receives cash assistance. The notice will include:

(a) A statement that cash assistance under section (2) has ended and the month that cash payment ended;

(b) A statement that by operation of law, the billing and accrual has resumed, if applicable, beginning with the next support payment due following the end of the last month that the obligor received cash assistance;

(c) A statement informing the parties of their right to request a review and modification of the support order based on a substantial change in circumstance or pursuant to ORS 25.287 or any other provision of law; and

(d) A statement that the administrator represents only the state and that low cost legal counsel may be available.

(11) If an obligor notifies the administrator that the obligor has ceased to receive cash assistance under section (5) of this rule, or if the obligor fails to provide written proof of receipt of cash assistance pursuant to section (5)(a) of this rule, the enforcement entity will send notice to parties to the support order within 30 days. The administrator will document the case record with "O off PA as of (date)," and will resume billing and accrual, if applicable. When an obligor notifies the administrator that the obligor is no longer receiving cash assistance under section (5) of this rule, the administrator shall begin accrual and billing pursuant to the support order currently in effect with the next support payment due following the end of the last month that the obligor received cash assistance. When the obligor fails to provide written proof of receipt of cash assistance pursuant to section (5)(a) of this rule, the administrator shall begin accrual and billing pursuant to the support order currently in effect with the next support payment due the month following the month for which the obligor last provided written proof. The notice will include:

(a) A statement that cash assistance under section (5) of this rule has ended and the month that the cash payment ended; and

(b) The information in section (10)(b) to (d) of this rule.

(12) The administrator responsible for the case will file the copy of the notice it receives in section (10) or (11) with the court within 30 days.

(13) An administrative law judge, or the court, may grant credit or satisfaction against arrears that accrue on or after January 1, 1994, for the month or months the obligor receives cash assistance if DCS has not suspended the accrual or credited the child support case.

(14) The presumption, nonaccrual and arrears credit rights apply to all Oregon child support orders and are not limited to cases where payments are made through DCS. However, the administrator is not responsible for providing services for cases not receiving support enforcement services under ORS 25.080. An obligor or obligee may, however, apply for support enforcement services at any time.

Stat. Auth.: ORS 25.245 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.245

Hist.: AFS 4-1994, f. & cert. ef. 3-4-94; AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0120; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5400

## 137-055-5420

### Application for Credit and Satisfaction for Child Support Owning While Obligor Received Cash Assistance

(1) This rule contemplates an application for a credit and satisfaction pursuant to ORS 25.245 section (6) for any child support owing for months during which that obligor received cash assistance as defined in ORS 25.245(1).

(2) The following conditions apply to such application for credit and satisfaction:

(a) No credit or satisfaction shall be given for periods for which the court or administrative law judge has previously declined to suspend the obligor's child support obligation in an action under ORS 25.245;

(b) No credit or satisfaction contemplated by ORS 25.245(6) shall be given for child support coming due before January 1, 1994.

(3) An application for credit and satisfaction may be made to the administrator as follows:

(a) The administrator shall provide a form "Application for Credit and Satisfaction";

(b) The application form shall be provided to any person receiving support enforcement services under ORS 25.080 who requests such application or who raises concerns or questions regarding child support arrears incurred while receiving cash assistance, as defined in ORS 25.245(1);

(c) The administrator shall provide notice to the obligee that an Application for Credit and Satisfaction has been made;

(d) Service of the Notice of Application for Credit and Satisfaction upon the obligee shall be the same as provided in ORS 25.245(2);

(e) The administrator shall provide the form of an Objection and Request for Hearing with service of the Notice of Application for Credit and Satisfaction upon the obligee;

(f) If an obligee completes and returns the Objection and Request for Hearing within 20 days, the administrator shall forward all relevant documents to the Office of Administrative Hearings;

(g) An administrative law judge shall schedule a hearing and advise the parties of the time, place and method of hearing;

(h) If, after 20 days, the obligee has not returned the Objection and Request for Hearing, the administrator shall submit the form of the appropriate order to the administrative law judge for entry.

(4) Nothing in this rule precludes application directly to the court for the relief provided by ORS 25.245(6).

Stat. Auth.: ORS 25.020, ORS 25.245 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020 & ORS 25.245

Hist.: AFS 23-1996, f. 5-31-96, cert. ef. 7-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0125; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5420

## 137-055-5520

### Request for Credit Against Child Support Arrears for Social Security or Veterans' Benefits Paid Retroactively on Behalf of a Child

(1) In accordance with ORS 107.135(6)(b), the purpose of this rule is to define the process for allowing a credit against child support arrears for Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit, as a result of a parent's disability or retirement.

(2) The request for credit against arrears shall be considered if submitted within 180 days of the date of the determination letter from the Social Security Administration (SSA) or the Department of Veterans' Affairs (DVA) regarding a retroactive payment on behalf of the child.

(3) A request for credit against a child support arrears for Social Security or Veterans' disability or retirement benefits paid retroactively on behalf of the child must be made either:

(a) With a request for a periodic review and modification or a substantial change in circumstance modification if there is a current support obligation for that child. The modification must have an effective date on or after October 23, 1999; or

(b) Independently of a request for a modification if there is no longer a current support obligation for that child.

(4) A request for credit against arrears made within the time frames set out in section (2) shall be treated as a request for a change of circumstances modification. The party may otherwise qualify for a modification pursuant to OAR 137-055-3420.

(5) Documentation of the SSA or DVA retroactive payment paid on behalf of the child shall be provided by either the obligor or the obligee.

(6) The credit shall be a dollar for dollar credit against the child support arrears.

(7) Notwithstanding section (6), the maximum credit allowed shall be limited to the amount of the child support arrears. In no circumstances shall the credit exceed the amount of the retroactive SSA or DVA payment made on behalf of the child.

(8) The administrator shall send to the parties by regular mail notice and proposed order of the intended action, including the amount to be credited and how the amount was calculated. Such notice shall advise the obligor and obligee of the right to an administrative hearing regarding this action:

(a) The obligor and/or obligee, within 30 days from the date of this notice, may request an administrative hearing as specified in the notice;

(b) The request for hearing must be in writing;

(c) The only basis upon which the obligor or obligee may object is that:

(A) The lump sum payment was not received; or

(B) The lump sum payment amount used in the calculation is not correct.

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(d) Any appeal of the decision made by an administrative law judge shall be to the circuit court for a hearing de novo. The credit as determined by this rule shall be allowed by the circuit court on de novo hearing if the interests of justice require.

(9) If no timely written request for hearing is received, the order shall be filed in circuit court.

(10) If the credit determined in section (6) is less than the amount of arrears owed per section (7), the file credit shall be applied as follows:

(a) If none of the arrears are assigned to the state, the credit shall be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period covered by the retroactive payment per the SSA or DVA determination letter, the credit shall be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period covered by of the retroactive payment per the SSA or DVA determination letter, the credit shall be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020 & ORS 107.135

Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0159; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5520

## 137-055-6020

### Application and Distribution of Support Payments

(1) For purposes of this rule, the following definitions apply:

(a) "Assistance" means cash assistance under Temporary Assistance for Needy Families (TANF) program, or foster care maintenance payments provided by the Department of Human Services (DHS), or cost of care provided by the Oregon Youth Authority.

(b) "Current support" is the monthly support amount ordered by a court or administrative process for the benefit of a child and/or a former spouse.

(c) "Family's conditionally-assigned arrears" is past-due support that accrues during non-assistance periods, and was not permanently assigned under pre-October 1997 assignments, which revert back to the family on either October 1, 2000, if the family terminates assistance prior to October 1, 2000, or on the date the family leaves the assistance program if on or after October 1, 2000. Family's conditionally-assigned arrears revert to state's temporarily-assigned arrears during periods that the family receives assistance.

(d) "Family's unassigned arrears" is past-due support which accrues after the family's most recent period of assistance, or at any time in the case where a family has never received assistance.

(e) "Family's unassigned arrears during assistance period" is past-due support which accumulates while a family receives assistance and exceeds the total amount of unreimbursed assistance paid to the family.

(f) "Future support" is an amount received which represents payment on current support for future months.

(g) "State's permanently-assigned arrears" is past-due support which accrues during the period the family receives assistance and past-due support which accrued before the family applied for assistance in pre-October 1997 assignments only.

(h) "State's temporarily-assigned arrears" is past-due support assigned to the state during assistance periods, but which accrued during non-assistance periods, and were not permanently assigned under pre-October 1997 assignments. As of October 1, 2000, state's temporarily-assigned arrears revert to family's conditionally-assigned arrears during periods that the family is not receiving assistance.

(i) "Unreimbursed assistance" means the cumulative amount of assistance paid to a family or on behalf of a child(ren) for all months which has not been recovered by assigned support collections. The total amount of unreimbursed assistance that may be recovered is limited by the total amount of the assigned support obligation.

(2) Whenever support payments are assigned to the state, the state share of the payments shall be either:

(a) Distributed to the Department of Human Services if funds were expended to provide foster care assistance to the family;

(b) Distributed to the Oregon Youth Authority if funds were expended by the Oregon Youth Authority to provide care to a member of the family; or

(c) Retained by the Division of Child Support (DCS) if funds were expended to provide Temporary Assistance for Needy Families cash assistance to the family.

(3) Whenever support payments are assigned to a Tribe, the Tribe's share of the payments shall be distributed to the Tribe as provided in 42 USC 657.

(4) Table 1 is included in this rule as an aid in understanding the arrearage types defined in section (1) of this rule. [Table not included. See ED. NOTE.]

(5) DCS shall distribute support payments to the family within two business days after receipt if sufficient information identifying the payee is provided, except for as follows:

(a) Support payments received as a result of tax refund intercepts shall be distributed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund.

(b) Support payments received from a garnishment, issued pursuant to ORS Chapter 18, shall be held for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages unless the obligor waives the right to make a challenge to a garnishment as set out in OAR 137-055-4520 or, if the obligor or any person who has an interest in the garnished property makes a challenge to garnishment, the support payment shall be held pending the court decision;

(c) Support payments for future support, per section (20) of this rule; or

(d) Support payments for less than five dollars may be delayed until a future payment is received which increases the payment amount due the family to at least five dollars.

(e) When a check has been dishonored, future support payments paid by personal check from that payor may be held in accordance with OAR 137-055-6240.

(6) The Oregon Child Support Program (CSP) may send support payments designated for the obligee to another person or entity caring for the child(ren); however, prior to doing so, the CSP shall require a notarized statement of authorization from the obligee or a court order requiring such distribution. The CSP shall change the payee to a private collection agent that the obligee has retained for support enforcement services only in accordance with OAR 137-055-6025.

(7) Child support and spousal support have equal priority in the distribution of payments.

(8) For Oregon support orders or modifications entered on or after October 4, 1997, a prorated share (unless otherwise ordered) of current support payments received within the month due shall be distributed directly to the child qualified as a child attending school per ORS 107.108 and OAR 137-055-5120. Any arrearage resulting from unpaid current support is a judgment owing to the obligee as the judgment creditor.

(9) If the obligor has a current support obligation for multiple children on a single case and those children have different assistance status and the order does not indicate a specified amount per child, current support payments shall be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases shall be distributed per subsections (16)(b) through (e) of this rule. For example, the obligor has a current support obligation for three children of \$300 per month. One child is not receiving assistance, one child is receiving cash assistance under the TANF program, and foster care maintenance payments are being made on behalf of the third child. A \$300 current support payment would be allocated as follows:

(a) \$100 to the family on behalf of the child not receiving assistance;

(b) \$100 to DCS on behalf of the child is receiving cash assistance under the TANF program not to exceed the amount of unreimbursed assistance; and

(c) \$100 to the Department of Human Services for the foster care maintenance payments being made on behalf of the third child.



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(10) Notwithstanding any other provisions of this rule, support payments received on behalf of an obligor with an open bankruptcy case shall be allocated and distributed as directed by the bankruptcy trustee, the obligor's bankruptcy plan and in accordance with federal bankruptcy law.

(11) DCS shall recover the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DCS shall credit the obligor's case for the full amount of collection. DCS shall reimburse the CSP for the prepaid fee, then distribute the balance per section (13) through (16) as applicable.

(12) Within each arrearage type in the sequence of payment distribution in sections (13) through (18) of this rule, DCS shall apply the support payment to the oldest debt in each arrearage type.

(13) DCS shall distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward an support arrearage, not to exceed the amount of arrearage.

(14) DCS shall distribute support payments received on behalf of a family receiving assistance in the following sequence:

(a) Current support to the state, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(b) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(c) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(d) Family's unassigned arrears during assistance period unless the state is making foster care maintenance payments on behalf of the child(ren);

(e) If the state is making foster care maintenance payments on behalf of the child(ren), support payments in excess of unreimbursed assistance, up to the total support obligation owed, shall be reported as excess and be paid to DHS to be used in the manner it determines will serve the best interests of the child(ren).

(15) Prior to October 1, 2000, DCS shall distribute support payments received on behalf of a family who formerly received assistance in the following sequence:

(a) Current support to the family;

(b) Family's unassigned arrears;

(c) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(d) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears during assistance period.

(16) On or after October 1, 2000, DCS shall distribute support payments received on behalf of a family who formerly received assistance in the following sequence:

(a) Current support to the family;

(b) Family's unassigned arrears;

(c) Family's conditionally-assigned arrears;

(d) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears during assistance period.

(17) Notwithstanding any other provisions of this rule, DCS shall distribute support payments received from federal tax refund intercepts in the following sequence:

(a) Fee charged by the Secretary. Despite the fee, DCS must credit the obligor's case for the full amount of collection. If any portion of the federal tax refund intercept payment will be applied to subsection (b), (c), or (d) of this section, the fee will be paid by DCS;

(b) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(c) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(d) Family's conditionally-assigned arrears. However, federal tax refund intercepts applied to family's conditionally-assigned arrears must be retained by the state, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears;

(18) Notwithstanding any other provisions of this rule, DCS shall distribute support payments received from state tax refund intercepts in the following sequence:

(a) Fee charged by the DOR. Despite the fee, DCS must credit the obligor's case for the full amount of collection. If any portion of the state

tax refund intercept payment will be applied to subsection (e), (f) or (g) of this section, the fee will be paid by DCS;

(b) Current support;

(c) Family's unassigned arrears;

(d) Family's conditionally assigned arrears;

(e) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(f) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(g) Parentage testing fee.

(19) Any excess funds remaining after arrears are paid in full shall be processed per OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support per section (20) of this rule.

(20) DCS shall distribute support payments representing future support on a monthly basis when each such payment actually becomes due in the future. No amounts shall be applied to future months unless current support and all arrearage has been paid in full.

(21) When an obligor has multiple support cases, the distribution sequence for each case shall be as set out in sections (13) through (18), but DCS shall allocate support payments to each of the multiple cases as follows:

(a) When an income withholder remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, but the obligor's income is not sufficient for the withholder to fully comply with each order to withhold income, issued pursuant to ORS Chapter 25, DCS shall allocate the amount received as follows:

(A) If the amount is not sufficient to pay the current support due on all of the obligor's support cases for which an order to withhold is in effect, each withholding case shall receive a proportionate share of the total amount withheld. For each case, DCS shall determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases for which an order to withhold is in effect, and then multiplying the resulting percentage by the total amount withheld.

(B) If the amount withheld from the obligor's income is sufficient to pay the current support due on all cases, but is not enough to fully comply with the order to withhold on all cases where arrearage is owed, the amount received shall be allocated as follows:

(i) Current support to each withholding case;

(ii) Equally to each withholding case where arrearage is owed.

However, no case shall receive more than the maximum allowable withholding amount for that case pursuant to OAR 137-055-4200 or, as appropriate, under an expanded income withholding pursuant to OAR 137-055-4220. Any remaining funds shall be equally distributed to the obligor's other cases. Further, no case shall receive more than the total amount of current support and arrearage owed on that case at the time this distribution is made.

(b) When support payments received from federal tax refund intercepts are not sufficient to pay the full arrearage amount on each case certified for federal tax offset, DCS shall allocate the amount received as follows:

(A) If the total amount received is not sufficient to pay the state's permanently-assigned arrears on all of the obligor's certified cases, each certified case shall receive an equal share. However, no case shall receive more than the state's permanently-assigned arrears on that case.

(B) If the total amount is sufficient to pay the state's permanently-assigned arrears on all certified cases, but is not enough to pay in full all the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received shall be allocated as follows:

(i) State's permanently-assigned arrears to each certified case;

(ii) An equal share of the remaining funds for each certified case.

However, no case shall receive more than the state's temporarily-assigned arrears on that case.

(C) If the total amount is sufficient to pay the state's permanently assigned arrears and the state's temporarily-assigned arrears on all certified cases, but is not enough to pay in full the family's arrears on all of the obligor's certified cases, the amount received shall be allocated as follows:

(i) State's permanently-assigned arrears to each certified case;

(ii) State's temporarily-assigned arrears to each certified case;

(iii) An equal share of the remaining funds for each certified case.

However, no case shall receive more than the total amount of arrearage owed on that case at the time this distribution is made.

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(c) When support payments received from state tax refund intercepts are not sufficient to pay the current support and full arrearage amount on each case certified for state tax offset, DCS shall allocate the amount received as follows:

(A) If the total amount received is not sufficient to pay the current support due on all of the obligor's certified cases, each certified case shall receive a proportionate share of the total amount received. For each case, DCS shall determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases certified for state tax offset, and then multiplying the resulting percentage by the total amount received.

(B) If the total amount received is sufficient to pay the current support due on all cases but is not sufficient to pay in full the family's arrears (both conditionally and unassigned arrears) on all of the obligor's certified cases, each certified case shall be allocated an equal share. However, no case shall receive more than the arrearage amount due the family on that case at the time this distribution is made.

(C) If the total amount is sufficient to pay the family's arrears (both conditionally and unassigned arrears) on all certified cases, but is not enough to pay in full all the state's permanently-assigned arrears on all of the obligor's certified cases, the amount received shall be allocated as follows:

(i) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(ii) An equal share of the remaining funds for each certified case toward state's permanently-assigned arrears. However, no case shall receive more than the state's permanently-assigned arrears on that case.

(D) If the total amount received is sufficient to pay both the family's arrears and the state's permanently-assigned arrears, but not sufficient to pay the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received shall be allocated as follows:

(i) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(ii) State's permanently-assigned arrears on all certified cases;

(iii) An equal share of the remaining funds toward state's temporarily-assigned arrears. However, no case shall receive more than the state's temporarily-assigned arrears on that case.

(E) Any remaining funds may be applied toward parentage testing fee.

(d) DCS shall allocate support payments made by personal check, money order, or cash per subsection (21)(f) of this rule unless the obligor designates in writing at the time of payment the amounts to be allocated to each case. DCS shall apply payments in excess of current support and arrearage toward future support per section (20) of this rule.

(e) DCS shall allocate support payments to one case, rather than a proportionate allocation, when:

(A) The support payment resulted from a garnishment, issued pursuant to ORS Chapter 18, on a particular case; or

(B) The support payment resulted from the sale or disposition of a specific piece of property against which a court awarded a specific obligee a judgment lien for child support; or

(C) The support payment resulted from a contempt order in a particular case; or

(D) Any other judicial order that requires distribution to a particular case.

(f) DCS shall allocate all other support payments received as follows:

(A) If the total amount is not sufficient to pay the current support due on all of the obligor's support cases, each case shall receive a proportionate share of the total amount received. For each case, DCS shall determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount received.

(B) If the amount received is sufficient to pay the current support due on all cases, but is not enough to pay in full all cases where arrearage support is owed, the amount received shall be allocated as follows:

(i) Current support to each case;

(ii) Equally to each case where arrearage is owed. However, no case shall receive more than the total amount of current support and arrearage owed on that case at the time this distribution is made. Any remaining funds shall be equally distributed to the obligor's other cases.

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

Stat. Auth.: ORS 25.020 & Sec. 2 & 35, ch. 73 OL 2003

Stats. Implemented: ORS 18.645, ORS 25.020, ORS 25.150, ORS 25.414 & ORS 25.610  
Hist.: PWC 851(Temp), f. & ef. 8-11-77; Renumbered from 461-004-0518; AFS 3-1978, f. & ef. 1-6-78; AFS 88-1980, f. & ef. 12-10-80; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 31-1989, f. 6-6-89, cert. ef. 6-9-89; Renumbered from

461-035-0003; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0410; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0248; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6020

## 137-055-6025

### Distribution of Support Payments to Private Collection Agencies

(1) For purposes of this rule, the following definitions apply:

(a) "Collection agency" means a collection agency as defined by ORS 697.005;

(b) "Enforcement action" means any action taken by a collection agency to ensure payment of support by an obligor, including but not limited to contact for the purposes of discussing payments by the collection agency in person or through mail, e-mail or telephone with the obligor, members of the obligor's household or the obligor's employer. "Enforcement action" does not mean investigative and locate services provided by a collection agency.

(c) "Legally entitled" means support payments that the Division of Child Support (DCS) is required to distribute to the obligee pursuant to OAR 137-055-6020.

(2) When the Oregon Child Support Program (CSP) is notified by a collection agency or an obligee that the obligee has entered into an agreement with a collection agency, the administrator shall send to the obligee the form developed pursuant to section (6) of this rule. Before DCS may adjust the payment records and begin forwarding support payments to the collection agency pursuant to section (3) of this rule, the obligee must first submit the following to the CSP:

(a) A copy of the agreement between the collection agency and the obligee, which shall include:

(A) The terms of the agreement;

(B) The date of the agreement;

(C) The amount of the fee or interest charged by the collection agency; and

(D) The full names of the obligee and obligor(s); and

(b) The form sent to the obligee by the administrator pursuant to this section, which must be signed by the obligee and notarized. The form shall include the following information for each of the child support cases for which the collection agency has been contracted to provide services:

(A) Authorization for DCS to disburse support payments to the collection agency;

(B) The child support case number;

(C) The obligee's and obligor's full names; and

(D) The names of the children on the child support case for whom the obligee is entitled to receive support.

(3)(a) Upon receipt of both the agreement between the collection agency and the obligee and the form submitted by the obligee pursuant to section (2) of this rule, DCS shall review the agreement to ensure that the agreement is in compliance with section (7) of this rule;

(b) If, upon review, DCS finds that the agreement is not in compliance with section (7) of this rule, DCS shall notify the obligee that the agreement is not in compliance and that DCS may not disburse child support payments to the collection agency;

(c) If, upon review, DCS finds that the agreement is in compliance with section (7) of this rule, DCS shall:

(A) Adjust the child support case record for disbursement of support payments to the collection agency. If support payments are currently being disbursed to a different collection agency, DCS shall adjust the child support case record for disbursement of support payments to the collection agency for which the obligee has most recently provided authorization;

(B) Send the notice developed pursuant to section (6)(b) of this rule to the obligor;

(C) Credit the obligor's account for the full amount of each support payment received by DCS;

(D) Disburse support payments received to which the obligee is legally entitled to the collection agency;

(E) Disburse the support payments to which the obligee is legally entitled to the collection agency for no more than 180 days following the date that DCS adjusts the child support case record. The obligee may request that DCS continue to disburse support payments to the collection agency for an additional time period not to exceed 180 days by again providing a copy of the agreement and form or notarized statement pursuant to section (2) of this rule.

(4)(a) DCS shall adjust its child support case record and stop disbursing support payments to a collection agency when:

(A) The obligee notifies the CSP that the agreement with the collection agency has been terminated;

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(B) The obligee provides a copy of the termination agreement with the collection agency;

(C) The obligee requests in writing that the CSP stop disbursing support payments to the collection agency;

(D) The administrator is made aware that the collection agency is not in compliance with the provisions of section (7) of this rule; or

(E) The obligee authorizes, per section (3) of this rule, a new collection agency to receive support payments.

(b) DCS shall stop disbursing child support payments to the collection agency only after the child support case record has been adjusted following the date that notification from the obligee was received or the date the administrator is otherwise made aware that the collection agency is not in compliance with the provisions of section (7) of this rule. DCS shall at no time be responsible for returning support payments to the obligee that were disbursed to the collection agency prior to the child support case record having been adjusted following the date that notification from the obligee was received.

(5) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(6) The CSP shall develop:

(a) A form to be sent to an obligee when the obligee or the collection agency notifies CSP that the obligee has entered into an agreement with a collection agency. Such form shall include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the CSP without paying the interest or fee that is typically charged by a collection agency; and

(b) A form to be sent to an obligor to notify the obligor when the obligee on a case has entered into an agreement with a collection agency and that DCS has been given authorization by the obligee to disburse support payments to the collection agency.

(7) A collection agency that has entered into an agreement with an obligee and in which DCS is disbursing support payments to the collection agency pursuant to this rule:

(a) May provide only investigative and locate services to the obligee;

(b) May disclose relevant information from services provided under subsection (a) of this section to the administrator for purposes of providing support enforcement services under ORS 25.080;

(c) May not charge interest or a fee for services exceeding 20 percent of each support payment received by the collection agency to which the obligee is legally entitled;

(d) May charge interest or a fee not to exceed 20% of each support payment distributed to or collected by a collection agency while the authorization was in effect as described in subsection (3)(c)(A) of this rule;

(e) May not initiate, without written authorization from the administrator, any enforcement action to collect the support judgment described in the authorization; and

(f) Shall report in writing to DCS the full amount of any payment collected as a result of an enforcement action taken within ten days of disbursing the payment to the obligee.

(8) A power of attorney given to a collection agency by an obligee does not change the rights and responsibilities of the parties or a collection agency as described in ORS 25.020 or this rule.

(9) The administrator shall not disclose any information from a child support record to a collection agency except as permitted in OAR 137-055-1140.

Stat. Auth.: ORS 25.020 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020

Hist.: AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6025

## 137-055-6040

### Right to Hearing to Contest Amount of Assigned Support

(1) A party who wants to contest the amount of support that the Division of Child Support (DCS) claims is assigned to the state on the party's child support case may do so by filing a written objection with DCS.

(2) Upon receiving a written objection, DCS shall conduct an administrative review of the case to verify the correct amount of support claimed as assigned and shall make any necessary corrections or adjustments to this amount as determined in the review.

(a) DCS shall complete its review and make a determination within 45 days from the date of receiving the written objection.

(b) DCS shall notify both the obligee and obligor, in writing, of this determination and of the right of each to contest the determination before an administrative law judge. The party must request such hearing in writing within 30 days of the date that DCS sends the written notice of its determination.

(3) Prior to any such hearing:

(a) DCS may contact or meet with the party to explain how DCS has computed the amount of support assigned to the state on the party's case.

(b) The party may withdraw their request for a hearing by notifying DCS in writing.

(4) Once a determination has been made, DCS will not conduct further review of the amount of support that DCS reports as assigned to the state unless:

(a) DCS has made an accounting adjustment to the amount that DCS reports as assigned to the state, and a party then files a written objection to this adjusted amount; or

(b) The assistance status of the family has changed since the date of the last administrative review conducted under this rule, and a party then files a written objection.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020

Hist.: AFS 27-2000, f. & cert. ef. 11-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0250; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6040

## 137-055-6100

### Writing Off Uncollectible Amounts of Assigned Child Support

(1) The Division of Child Support (DCS) may certify to the Secretary of State, according to procedures specified in ORS 293.235, 293.240, and 293.245, that certain child support debts are uncollectible. DCS may certify only those debts that meet all of the following criteria:

(a) The amount certified has been assigned to the state, under ORS 418.032, 418.042, 419B.406, or 419C.597;

(b) DCS has made all reasonable efforts to collect the amount certified and has determined that the amount is uncollectible;

(c) No additional amount of court-ordered or administratively-ordered child support is accruing or will accrue on the account; and

(d) The amount certified is either:

(A) Less than the minimum amount that DCS can certify to the Department of Revenue for collection under ORS 293.250 and to the Internal Revenue Service for tax refund interception, or

(B) Is a judgment which has expired under ORS 25.700.

(2) When the Secretary of State notifies DCS that any such debt is uncollectible and directs DCS to write off the debt, DCS shall write off the debt as directed.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020

Hist.: AFS 12-1989, f. 3-27-89, cert. ef. 4-1-89; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0685; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0170; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6100

## 137-055-6110

### Expiration of Oregon Child Support Judgment

(1) For purposes of this rule, the following definitions apply:

(a) "Child support judgment" means the underlying judgment, decree or order that creates a child support obligation;

(b) "Judgment" means the judgment that results from an obligor's failure to make a periodic child support installment payment.

(2) Pursuant to ORS 25.700, any judgment that results from an unpaid child support obligation under a child support judgment entered after January 1, 1994, expires 25 years after entry of the child support judgment. The judgment and any entered or recorded lien thereof may not be renewed.

(3) For child support judgments entered before January 1, 1994, each unpaid periodic child support installment is a judgment in and of itself. Each judgment expires ten years after it becomes due unless it is renewed or, per section (4) of this rule, has not expired as of January 1, 1994. Pursuant to ORS 25.700, a judgment that results from an unpaid child support obligation under a child support judgment entered before January 1, 1994, and any entered or recorded lien thereof, may be renewed for a ten-year period as provided in ORS 18.360. A judgment and any entered or recorded lien thereof may not be renewed if it has already expired.

(4) Pursuant to ORS 25.700, a child support judgment entered before January 1, 1994, creates a continuing personal obligation of the obligor that is enforceable for 25 years after the date of entry. However, a judgment is not enforceable if it already expired as of January 1, 1994.

(5) A judgment expires by operation of law, without any action required of a party.

(6) Unless otherwise specified in the language of a determination or order, an establishment of support arrears procedure or a modification of a support order does not constitute a renewal of judgment.

(7) Notwithstanding any other provisions of this rule, when the child support judgment being enforced was issued by another state, the expira-

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tion of judgment under the laws of this state or of the issuing state, whichever is longer, applies.

(8) The Department of Justice, Division of Child Support (DCS) shall be the entity responsible for auditing for expiration of judgment on cases receiving support enforcement services under ORS 25.080.

(9) If an audit result is that the expired judgment amount is greater than the current arrears on the case, DCS shall reduce the case arrears to zero.

(10) When an expiration of judgment audit is completed, DCS shall notify the parties if there is any change to the arrears as a result of the audit. The notice shall include:

(a) The current balance or zero, as appropriate, per section (9) of this rule;

(b) Information that a party may make a written request for an administrative review within 30 days of the notice.

(11) If a party requests an administrative review, DCS shall:

(a) Conduct the administrative review within 45 days from the date of receiving the objection to verify the case was adjusted correctly and shall make any necessary corrections or adjustments as determined in the review;

(b) Notify both the obligee and the obligor, in writing, of the results of the review and of the right of each to contest the results before an administrative law judge. The party must request such hearing in writing within 30 days of the date that DCS send the results of the review.

(12) Prior to any such hearing:

(a) DCS may contact or meet with the party to explain how DCS has computed the amount of the support judgment that has expired on the party's case;

(b) The party may withdraw their request for a hearing by notifying DCS in writing.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.700

Hist.: AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6110

## 137-055-6120

### Satisfaction of Arrears for Less Than Full Payment

The Division of Child Support (DCS) may satisfy all or any portion of child support arrears that are assigned to the State of Oregon or to any other state, subject to the following requirements:

(1) DCS may satisfy all or any portion of assigned arrears only if one or more of the following circumstances apply:

(a) The arrears are a substantial hardship to the paying parent or that parent's household; or

(b) A compromise of amounts owing will result in greater collection on the case, considering the maximum amount that DCS could reasonably expect to collect from the obligor if no compromise was made and the probable costs of collecting that maximum amount; or

(c) The obligor has entered into an agreement with DCS to take steps to:

(A) Enhance the obligor's ability to pay child support; or

(B) Enhance the obligor's relationship with the child or children for whom the obligor owes the arrears.

(d) An error or legal defect has occurred that indicates a reduction may be appropriate.

(2) If all or any portion of the assigned arrears are the "state's temporarily-assigned arrears" as defined in OAR 137-055-6020, DCS may satisfy the amount only if the obligee consents and willingly signs the appropriate "satisfaction of support judgment" form.

(3) If all or any portion of the assigned arrears are assigned to another state, DCS may satisfy that assigned amount only with the approval of that other state.

(4) DCS shall not sign any satisfaction for less than full payment of arrears until:

(a) The obligor has paid the full amount agreed to as appropriate consideration, and the obligor's payment instrument has cleared the appropriate financial institutions; or

(b) DCS has determined that the obligor has satisfactorily met, or is complying with, any agreement made with DCS pursuant to this rule.

(5) DCS shall record a summary of each agreement to satisfy arrears for less than full payment on the appropriate microimaging or computer file on the case.

(6) Any satisfaction executed under this rule shall be made pursuant to, and in full compliance with, ORS 18.400.

(7) The provisions of this rule notwithstanding, the obligee may satisfy all or any portion of unassigned arrears due the obligee, pursuant to OAR 137-055-5220.

(8) Nothing in this rule precludes the administrator from negotiating a satisfaction of arrears due or potentially due the obligee for less than full payment by the obligor, but such satisfaction shall take effect only when the obligee consents and willingly signs a "satisfaction of support judgment" pursuant to OAR 137-055-5220.

Stat. Auth.: Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 18.400, ORS 25.020, & ORS 25.080

Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0025; AFS 11-2000, f. 4-28-00, cert. ef. 5-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0150; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6120

## 137-055-6220

### Recovery of Overpayments on Support Accounts

(1) A child support overpayment in favor of the State of Oregon is created when the Division of Child Support (DCS) has transmitted money to an obligee or to a person or entity to whom the obligee has authorized to receive support payments due the obligee, and:

(a) The amount transmitted by DCS is more than the support obligation requires for current and/or past-due support, and DCS has returned the excess amount to the obligor; or

(b) DCS has misapplied money received by DCS, including but not limited to distributing money to an incorrect obligee or distributing money to an obligee when the money is assigned to the State of Oregon or a Tribe; or

(c) The amount transmitted by DCS is attributable in whole or part to a tax refund offset collection, all or part of which has been taken back by the Internal Revenue Service or the Oregon Department of Revenue; or

(d) The amount transmitted by DCS resulted from a withholding that exceeded the amount authorized by law.

(2) A child support overpayment in favor of the State of Oregon is also created when DCS has refunded money to an obligor that, due to DCS error, exceeds the amount that DCS should have refunded, or when DCS erroneously refunds money to the incorrect person. The amount of overpayment is the amount that DCS should not have refunded to the person receiving the refund.

(3) The person to whom DCS transmitted the money owes the amount of the overpayment to DCS, acting on behalf of the State of Oregon. For any such overpayment, DCS shall:

(a) Attempt to recover the overpayment if DCS has determined that it is cost-effective to do so;

(b) Notify the person, in writing, that the person owes the money to DCS, and specify the amount to be returned to DCS; and

(c) Give the person an opportunity to object.

(4) If the person does not file a written objection within 30 days of the date that DCS sent the written notification under subsection (3)(b) of this rule, the overpayment amount determined by DCS and specified in the written notification is final.

(5) If the person files a written objection within 30 days, and DCS does not resolve the objection to the person's satisfaction, an administrative law judge shall then hear the objection.

(a) An order by an administrative law judge is final.

(b) The person may appeal the decision of an administrative law judge to the circuit court for a hearing de novo. The appeal shall be by a petition for review, filed within 60 days after the date that the final hearing order has been mailed to the obligee.

(6) Notwithstanding the other provisions of this rule, if an agency of the State of Oregon or of another state owes the overpayment, that agency shall return the amount of the overpayment to DCS without right to prior notice or opportunity to object.

(7) Once the person has failed to object to the overpayment within 30 days of when DCS sent written notification of the overpayment to the person, or once any objection has been resolved, the amount of the overpayment is a liquidated debt and a delinquent amount owed to the State of Oregon. DCS may collect this debt through any means permitted by law, including but not limited to offsetting tax refunds claimed by the person, obtaining judgments for amounts owed and collecting through garnishment proceedings, and entering into voluntary repayment agreements with the person.

(8) DCS may refer the debt for collection to the Overpayment Recovery Unit (ORU) of the Department of Human Services (DHS) or other appropriate state agency for collection, and delegate the authority to send the written notice in subsection (3)(b) of this rule to the person and to perform any or all other duties or functions required under this rule.

Stat. Auth.: ORS 25.125 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020 & ORS 25.125

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Hist.: AFS 23-1983(Temp), f. & ef. 5-18-83; AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0045; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0265; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6220

## 137-055-6240

### Recovery of Dishonored Payments on Support Accounts

(1) The Division of Child Support (DCS) is authorized to forward payment to the obligee immediately when a payor of support, including either the support obligor or a payor on behalf of the obligor, presents payment to DCS.

(2) A debt in favor of the State of Oregon is created against the support obligor or other payor when:

(a) DCS receives a check (or other payment instrument) from an obligor, or other payor on behalf of the obligor; and

(b) DCS then transmits the appropriate amount from that check to the obligee; and

(c) The check of the obligor or other payor is then dishonored.

(3) When such a debt is created under section (2) of this rule, DCS shall, on behalf of the State of Oregon:

(a) Remove credit for the dishonored amount from the obligor's case record; and

(b) Attempt to recover the debt from the obligor or payor, if cost-effective to do so; and

(c) Notify the obligor or payor who presented the dishonored instrument, in writing, that the obligor or payor owes the amount specified to the State of Oregon and that the obligor or payor must pay the amount specified to DCS.

(4) Once DCS has sent the written notification required under section (3) of this rule, the amount of this debt is a liquidated debt and a delinquent amount owed to the State of Oregon, without any further right to an administrative review or hearing.

(5) DCS may recover this debt in any way permitted under law, including but not limited to offsets against tax refunds claimed by the payor, obtaining judgments for amounts owed and collecting through garnishment proceedings, and entering into voluntary repayment agreements with the payor. DCS may additionally recover any fees permitted by law.

(6) When a check has been dishonored, DCS may hold all future payments by personal check from that payor for 18 working days, or until the instrument clears the payor's financial institution, before forwarding payment to the obligee. DCS may waive this requirement after a one year period if no further payments from that payor have been dishonored, or if the dishonored payment was dishonored for reasons that DCS has determined were beyond the payor's control, such as an error on the part of the financial institution or on the part of DCS.

(7) DCS may refer the debt to the Overpayment Recovery Unit of the Department of Human Services for collection, for sending the written notice in subsection (3)(c) of this rule to the obligor or payor, and for performing any or all other duties or functions required under this rule.

Stat. Auth.: ORS 25.125 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020 & ORS 25.125

Hist.: AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0046; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0270; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6240

## 137-055-6260

### Return of Overcollected Support Amounts

(1) When the Division of Child Support (DCS) receives a support payment on an account for which no current order exists for ongoing support, DCS shall apply the payment to any arrears the obligor may owe on the account. If any excess funds remain from the payment after any arrears are paid in full, and DCS has not forwarded the excess amount to the obligee, DCS shall return the excess amount to the obligor within 30 days of discovering the overcollection.

(2) On any account for which an ongoing support obligation exists, and DCS receives a payment that exceeds the total amount due for current support and arrears and has not forwarded the excess amount to the obligee, DCS shall return the excess amount to the obligor under the following circumstances:

(a) When an income withholding order exists and the withholder does not receive or implement a notice from the administrator to reduce withholding to the amount of the current ongoing support obligation in a timely manner, such as may occur after all arrears are collected or after the ongoing support obligation is modified downward;

(b) When a state or federal tax refund is intercepted in an amount exceeding the amount owed for arrears; or

(c) When TANF cash assistance is being granted to the obligee or children on the support case, unless the obligor and the administrator agree otherwise.

(3) When DCS receives a payment that exceeds the total amount due for current support and arrears and has forwarded the excess amount to the obligee, DCS shall notify the obligee and obligor in writing within 30 days of discovering the overcollection that:

(a) A credit balance in the obligor's favor has resulted from the overcollection; and

(b) The obligee may, within 14 days of the date of the notice from DCS, submit a written request to DCS for an administrative review to determine if DCS' record-keeping and accounting related to calculation of the credit balance is correct.

(4) DCS shall conduct the administrative review within 30 days of receiving the obligee's written request, and shall send written notification to the parties of the results of the review.

(5) In any case where DCS is required to return overcollected funds to an obligor under Sections (1) and (2) of this rule, the obligor may elect to forego the return of some or all of the overcollected funds and to instead use any credit balance amount thus established under this rule to offset the obligor's future ongoing support obligation. An obligor wishing to elect this option must notify DCS in writing before DCS has returned such funds to the obligor.

Stat. Auth.: ORS 25.020, ORS 25.125, & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020 & ORS 25.125

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0272; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6260

## 137-055-6280

### Refund of Improper Tax Refund Collection

(1) Whenever a federal or Oregon tax refund owed to a support obligor has been withheld to pay support arrears and that withholding was made in error or overcollects the amount owed, the Division of Child Support (DCS) shall refund the amount withheld in error or overcollected.

(2) DCS may authorize the amount withheld, or any part thereof, to be refunded to the obligor by means of an advance payment from its administrative account. Such advance payment shall be made:

(a) Immediately when the amount withheld by the taxing agency was improperly withheld as a result of an error by the administrator, and the obligor provides a copy of the notice that the tax refund was being withheld; or

(b) The child support arrears certified for purposes of tax refund intercept no longer exist or are less than the amount withheld from the tax refund; and

(c) Thirty (30) days have elapsed since the date of the notice to the obligor that the tax refund was being withheld and DCS has not received the obligor's tax refund from the taxing agency; and

(d) The obligor provides a copy of that notice to the administrator.

(3) When DCS has made an advance payment of a refund to the obligor it will, upon receipt of the tax refund from the taxing agency, retain that refund up to the amount refunded to the obligor to reimburse its administrative account.

(4) If the DCS has already forwarded to the obligee, part or all of the amount withheld, DCS may establish an overpayment against the obligee for that amount, not to exceed the amount refunded to the obligor, pursuant to OAR 137-055-6220.

Stat. Auth.: ORS 25.020, ORS 25.610, ORS 25.625 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.020, 25.610, ORS 25.620 & ORS 25.625

Hist.: AFS 35-1982(Temp), f. & ef. 4-27-82; AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0030; AFS 26-1994, f. & cert. ef. 11-3-94; AFS 7-1997, f. & cert. ef. 6-13-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0220; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6280

## 137-055-7020

### Interstate Cases

OAR 137-055-7020 through 137-055-7180 constitute the guidelines for processing interstate child support receiving support enforcement services under ORS 25.080.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 110

Stats. Implemented: ORS 25.729, ORS 110 & ORS 409.021

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2300; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7020

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## 137-055-7040

### Central Registry

(1) The interstate central registry as provided for at 45 CFR 303.7, is established within the Department of Justice, Division of Child Support. It is responsible for receiving, distributing and responding to inquiries on all incoming interstate requests.

(2) Within ten working days of receipt of an interstate request from an initiating state or other petitioner, the central registry shall:

(a) Ensure that the documentation submitted with the request has been reviewed to determine completeness;

(b) Forward the request for necessary action either to the State Parent Locator Service for location services or to the administrator for processing;

(c) Acknowledge receipt of the request and ensure that any missing documentation has been requested from the initiating state or other petitioner; and

(d) Inform the initiating state or other petitioner where the request has been sent for action.

(3) If the documentation received with a request is inadequate and cannot be remedied by the central registry without the assistance of the initiating state or other petitioner, the central registry shall forward the request for any action which can be taken pending necessary action by the initiating state or other petitioner.

(4) The central registry shall respond to inquiries from other states within five working days from receipt of the request for a case status review.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 110

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2310; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7040

## 137-055-7060

### Initiating Oregon Administrator's Responsibilities (General Provisions)

(1) The administrator shall use a one state process to establish, enforce, or modify a support order, or to determine parentage whenever appropriate.

(2) Except as provided in section (1) of this rule, within 20 working days of determining that the obligor is in another state, and, if appropriate, upon receipt of any necessary information needed to process the case the administrator shall:

(a) Transmit to the central registry in the responding state sufficient, accurate information to act on the case by submitting any necessary documentation;

(b) Use the federally prescribed forms and procedures and may use computer generated replicas in the same format and containing the same information in place of the forms.

(3) The administrator shall transmit to the responding state any requested additional information or notify the responding state when the information will be provided within 30 calendar days of receipt of the request for information by submitting an updated form, or a computer-generated replica in the same format and containing the same information, any necessary additional documentation.

(4) The administrator shall notify the responding state within ten working days of receipt of new information on a case by submitting an updated form and any necessary additional documentation.

(5) The administrator shall make available the federally prescribed forms.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.729 & ORS 110

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2320; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7060

## 137-055-7080

### Oregon as Initiating State — Establishing Paternity, Support, Medical Insurance and Past-support

(1) The administrator shall use the provisions of ORS Chapter 25 in its entirety, ORS 109.124, 109.125, 109.145, 109.165, 109.225, 109.230, 109.237, 109.250, 109.256, 109.260, 109.262, 109.264, ORS Chapter 110 in its entirety, and ORS 416.400 to 416.470 to establish paternity, support and/or medical insurance in preference to all other remedies available under Oregon law.

(2) Whenever possible, the administrator shall assert jurisdiction over the parties pursuant to ORS 110.318 and use the one-state process.

(3) When a one-state process is not possible, the administrator shall transmit any documents required by state or federal law or rule to the state that can assert jurisdiction over the parties.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.729 & ORS 110

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2330; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7080

## 137-055-7100

### Direct Income Withholding — Oregon as the Initiating State

(1) The administrator may send direct income withholding to an employer located in another state when:

(a) The employer is located in a state which has adopted the direct withholding provisions of UIFSA; and

(b) Any interstate action against this obligor previously initiated to the employer's state has been withdrawn; and

(c) If required under OAR 137-055-7180, an Order Determining Controlling Order has been issued.

(2) Prior to sending a direct income withholding order, the administrator shall ensure that the obligor has received the same advance notice as is required on an intrastate withholding order.

(3) If the obligor files a written contest to the income withholding order in the employer's state, the administrator in Oregon who initiated the direct income withholding order may dismiss the direct income withholding order and initiate a two-state request for registration and enforcement.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.729 & ORS 110.394

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2340; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7100

## 137-055-7120

### Responding Oregon Administrator Responsibilities — General Provisions

(1) Within 75 calendar days of receipt of an Interstate Child Support Enforcement Transmittal Form, a UIFSA Action Request Form or other alternative state form and documentation from its interstate central registry, the administrator shall:

(a) Provide location services in accordance with 45 CFR 303.3 if the request is for location services or the form or documentation does not include adequate location information on the obligor;

(b) If unable to proceed with the case because of inadequate documentation, notify the initiating state of the necessary additions or corrections to the form or documentation;

(c) If the documentation received with a case is inadequate and cannot be remedied without the assistance of the initiating state, the administrator shall process the case to the extent possible pending necessary action by the initiating state.

(2)(a) Within ten working days of locating the obligor in a different jurisdiction within the state, the administrator shall forward the form and documentation to the appropriate branch office and notify the initiating state and central registry of its action;

(b) Notwithstanding the provisions of subsection (2)(a) of this rule, the administrator is prohibited from forwarding cases when such action would unnecessarily delay services.

(3) Within ten working days of locating the obligor in a different state, the administrator shall:

(a) Return the form and documentation, including the new location, to the initiating state, or if directed by the initiating state, forward the form and documentation to the central registry in the state where the obligor has been located; and

(b) Notify its state's central registry where the case has been sent by documenting the case record.

(4) The administrator shall provide any necessary services as it would in intrastate cases by:

(a) Establishing paternity in accordance with OAR 137-055-7140;

(b) Establishing a child support obligation in accordance with OAR 137-055-7140;

(c) Processing and enforcing orders referred by another state using appropriate remedies applied in intrastate cases in accordance with OAR 137-055-7140;

(d) Reviewing and adjusting child support orders upon request in accordance with OAR 137-055-7140; and

(e) Collecting and monitoring any support payments from the obligor and forwarding payments to initiating state no later than 15 calendar days from the date of initial receipt in the responding state. The payment shall include sufficient information to identify the case, indicate the date of collection as defined under 45 CFR 302.51(a), and include the responding state's identifying code as defined in the Federal Information Processing Standards (FIPS) issued by the National Bureau of Standards of the

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Worldwide Geographic Location Codes issued by the General Services Administration.

(8) The administrator shall provide timely notice to the initiating state in advance of any formal hearings which may result in establishment or modification of an order.

(9) The administrator shall notify the initiating state within ten working days of receipt of new information on a case by submitting an updated form or a computer-generated replica in the same format and containing the same information.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.729 & ORS 110

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2350; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7120

## 137-055-7140

### Oregon as Responding State — Establishing, Enforcing and Modifying Support and Medical Insurance Orders

(1) The registering tribunal under UIFSA is the circuit court of Oregon. This does not preclude action by other tribunals.

(2) Administrative contested case hearings shall be conducted by an administrative law judge pursuant to the provisions of ORS 416.427.

(3) Whenever allowed under the law, the administrator shall use the provisions of ORS 416.400 to 416.470 in conjunction with the provisions of ORS Chapter 110 to establish, enforce and modify support orders.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.729 & ORS 110

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2360; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7140

## 137-055-7160

### Oregon as Responding State — Establishing Paternity

(1) When a request to establish paternity is received from another jurisdiction, the administrator shall ensure that an affidavit of the mother naming the alleged father as a possible father has been received prior to initiating legal action.

(2) The administrator shall use the provisions of ORS 25.270, 25.275, 25.280, 109.124, 109.125, 109.145, 109.165, 109.225, 109.230, 109.237, 109.250, 109.256, 109.260, 109.262, 109.264, ORS Chapter 110 in its entirety, and ORS 416.400 to 416.470 to establish paternity, support and medical insurance.

(3) The administrator may advance the costs of parentage tests and shall attempt to establish a judgment for those costs when an order establishing paternity is established.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.729 & ORS 110

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2370; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7160

## 137-055-7180

### Order Determining Controlling Order

(1) For purposes of identifying a single controlling order that will be entitled to prospective enforcement in this and every other state, the following procedures shall apply to all interstate proceedings or upon the written request of a party which meets the requirements set forth by ORS 110.333.

(2) For purposes of this rule, any order modified or issued after October 20, 1994, shall be interpreted as a modification of all orders issued prior to October 20, 1994, by operation of law, unless such order is challenged for want of personal jurisdiction.

(3) When the administrator cannot assert personal jurisdiction over the individual parties, the request for a controlling order determination shall be forwarded to the central registry of the state that can assert personal jurisdiction over the nonrequesting party.

(4) When the administrator can assert personal jurisdiction over the parties, the administrator shall issue an order than contested case order determining the controlling order. The order shall be served upon the parties by certified mail, return receipt requested, at the last known address of the parties. The order shall include:

(a) A statement including the basis for personal jurisdiction over the parties;

(b) A statement of the name of the parties and the name of the dependent child(ren) for whom support was ordered;

(c) A statement of each child support order which was considered, the county and state which issued the order and the date of the order;

(d) A statement of the order which the administrator determined to be the controlling order for prospective support and the basis upon which the tribunal made its determination;

(e) A statement that the controlling order determination is effective on the date the order is issued by the administrator;

(f) A reference to ORS 110.333;

(g) A statement that a party may submit further information and petition the administrator for reconsideration of the order within 60 days of the date of the order;

(h) A statement that OAR 137-004-0080 applies to any petition for reconsideration of the order determining controlling order issued by the administrator;

(i) A statement that a party who is adversely affected or aggrieved by the order may appeal the order to the circuit court of Marion county or the county in which the petitioner resides or has a principal business office in accordance with ORS 183.484.

(5) When the administrator determines that none of the tribunals would have continuing, exclusive jurisdiction under ORS Chapter 110, the administrator shall so notify the parties in writing and establish a new child support order which will be the controlling order.

(6) For the purposes of determining the Oregon county in which the administrator may enter the order determining controlling order, the following provisions apply:

(a) If one or more Oregon court files exist for the same obligor and child, the order shall be entered in each existing court file;

(b) If an Oregon court file does not exist, the administrator shall enter the documents required by ORS 416.400 in the county where the party who lives in Oregon resides.

(7) Within 30 days after the expiration of the appeal or reconsideration period, the administrator shall certify copies of the order determining controlling order and file one with each tribunal that issued or registered an earlier order of child support.

(8) Upon written receipt of an order determining controlling order that a tribunal of this or another state properly issued, the administrator shall:

(a) Adjust the Oregon case record to cease prospective accrual on any noncontrolling order and initiate accrual on any controlling order which was issued or registered by an Oregon tribunal on the date specified in the order determining controlling order or, when not specified, in accordance with OAR 137-055-5040; and

(b) When one of the noncontrolling orders was issued by an Oregon tribunal, ensure that the order determining controlling order is entered in the Oregon circuit court for the county which issued or entered the prior order.

(9) Nothing in this rule shall be construed to limit the authority of another tribunal in this or any other state in issuing an order determining controlling order consistent with the laws and procedural rules which apply to cases heard before it.

Stat. Auth.: ORS 25.729 & Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 25.729 & ORS 110.333

Stats. Implemented: ORS 25.729, ORS 110.333 & ORS 409.021.

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2385; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7180

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**Adm. Order No.:** DOJ 7-2003

**Filed with Sec. of State:** 7-11-2003

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**Rules Adopted:** 137-003-0572

**Rules Amended:** 137-003-0515, 137-003-0520, 137-003-0528, 137-003-0530, 137-003-0535, 137-003-0570, 137-003-0575, 137-003-0580, 137-003-0595, 137-003-0600, 137-003-0650, 137-003-0655

**Subject:** These amended rules relate to the procedures for contested cases held before administrative law judges assigned by the Office of Administrative Hearings. The amended rules are intended to apply to all pending cases on the effective date of the rules. The rules 1) require agencies to send a copy of the referral notice to all parties; 2) permit filing of most documents to be demonstrated by a postmark date; 3) allow alternate means of filing; 4) entitle a person to a hearing on whether a request was late, if the agency or a party disputes the factual basis for the late filing; 5) allow for amendment of documents filed in a contested case; 6) permit administrative law judges and the chief administrative law judge to make initial determinations

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on discovery motions, except those related to depositions; 7) provide that failure to respond to a request for admissions shall be deemed an admission unless explained; 8) permit agencies and hearing officers to set deadlines for the exchange of exhibits and witness lists before hearing; 9) clarify that an agency must submit evidence to obtain a summary ruling on legal issues; 10) permits administrative law judges to take reasonable steps to ensure the safety of participants at a hearing; 11) clarify that administrative law judges must provide copies of any response to exceptions to the parties in writing; and 12) allow administrative law judges to withdraw proposed orders to correct errors.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-003-0515

### Agency Referral to Hearing Officer Panel

(1) When referring a contested case to the Hearing Officer Panel, the agency shall provide written notice of the referral to the Hearing Officer Panel that includes the name of the agency and the name and address of each party and its counsel. The notice may also include the agency case number, the name and address of the agency staff person or the assigned Assistant Attorney General, if any, upon whom pleadings and other papers should be served, and any other information requested by the Hearing Officer Panel.

(2) The agency referral notice must be accompanied by a copy of the agency's contested case notice in the case, a copy of any request for hearing and copies of motions or petitions filed with the agency and orders issued by the agency in the contested case.

(3) The agency shall provide a copy of the referral notice to each party or their counsel, if any.

(4) After a case has been referred by the agency to the Hearing Officer Panel, the agency may withdraw the case from the Hearing Officer Panel if the agency notifies the parties in writing that:

(a) The agency is withdrawing its contested case notice;

(b) All of the issues in the case have been resolved without the need to hold a hearing; or

(c) The agency has determined that it is not appropriate for the case to proceed to a hearing at that time and the reason therefor.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0520

### Filing and Service of Pleadings and Other Documents in Contested Case

(1) Notwithstanding any other provision of these rules, a hearing request is considered filed when actually received by the agency.

(2) Unless otherwise provided by these rules, any documents, correspondence, motions including motions for a discovery order, pleadings, rulings and orders filed for the record in the contested case shall be filed as follows:

(a) With the agency before the case is referred by the agency to the Hearing Officer Panel;

(b) With the Hearing Officer Panel or assigned hearing officer after the agency has referred the case to the Hearing Officer Panel and before the assigned hearing officer issues a proposed order;

(c) With the agency after the assigned hearing officer issues a proposed order, or with the hearing officer if the hearing officer has authority to issue the final order.

(3) The agency shall refer to the Hearing Officer Panel or the assigned hearing officer any motion or other matter filed with the agency that is not within the agency's jurisdiction.

(4) The Chief Hearing Officer or assigned hearing officer shall refer to the agency any motion or other matter filed with the Hearing Officer Panel or assigned hearing officer that is not within the jurisdiction of the Hearing Officer Panel.

(5) The person or agency filing any pleading, motion, correspondence or other document with the agency, the Hearing Officer Panel or hearing officer assigned to the case shall simultaneously provide copies of the documents to the agency and the parties, or their counsel if the agency or parties are represented.

(a) Copies shall be provided to the agency and the parties, or their counsel if the agency or parties are represented, by hand delivery, by facsimile, by mail or as otherwise permitted by the agency by rule or in writ-

ing, or as otherwise directed by the hearing officer with the agreement of the agency and the parties.

(b) The agency may by rule or in writing waive the right to receive copies of documents filed under this rule if the hearing officer is authorized to issue the final order or if the agency is not a participant in the contested case hearing.

(6) Each party shall notify all other parties, the agency and the hearing officer of any change in the party's address or withdrawal or change of the party's representatives, including legal counsel. If an attorney withdraws from representing a party, the attorney shall provide written notice of the withdrawal to the hearing officer, all other parties and the agency, unless the agency has waived the right to receive notice.

(7) The agency shall notify all parties and the hearing officer of any change in the agency's address or withdrawal or change of the agency's representatives, including legal counsel.

(8) Motions, pleadings and other documents sent through the U.S. Postal Service to the agency, Hearing Officer Panel or assigned hearing officer shall be considered filed on the date postmarked. Documents sent by fax or hand-delivered are considered filed when received by the agency, Hearing Officer Panel or assigned hearing officer. If the agency permits or the hearing officer directs alternative means of filing, the agency or the hearing officer should determine when filing is effective for each alternative method permitted or directed.

(9) Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.

(10) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or a legal holiday, including Sunday, in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0528

### Late Hearing Requests

(1)(a) When a party requests a hearing after the time specified by the agency but before entry of a final order by default or, if a final order by default is entered, on or before 60 calendar days after the entry of the final order by default, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or agency rule provides a different timeframe or standard.

(b) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

(c) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit or other writing that explains why the request for hearing is late and may conduct such further inquiry as it deems appropriate.

(d) The agency by rule or in writing may provide a right to a hearing on whether the late filing of a hearing request should be accepted. If a hearing is held, it shall be conducted pursuant to these rules by a hearing officer from the Hearing Officer Panel.

(e) If the late hearing request is allowed by the agency, it shall enter an order granting the request and refer the matter to the Hearing Officer Panel to hold a hearing on the underlying matter. If the late hearing request is denied by the agency, the agency shall enter an order setting forth reasons for the denial.

(f) If the agency or another party disputes the facts contained in the explanation of why the request for hearing is late, the agency shall provide a right to a hearing on the reasons why the hearing request is late. The hearing officer shall issue a proposed order recommending that the agency grant or deny the late hearing request.

(2) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during the agency's consideration of a late hearing request unless the final order is stayed under OAR 137-003-0690.

(3) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency or hearing officer has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.

Stat. Auth.: ORS 183.341



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Stats. Implemented: ORS 183.341  
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0530

### Late Filing and Amendment of Documents

(1) Unless otherwise provided by law, when a party or agency fails to file any document for the contested case proceeding, except a hearing request, within the time specified by agency rules or these rules of procedure, the late filing may be accepted if the agency or hearing officer determines that there was good cause for failure to file the document within the required time.

(2) The decision whether a late filing will be accepted shall be made:

(a) By the agency if OAR 137-003-0520 requires the document to be filed with the agency, or

(b) By the hearing officer if OAR 137-003-0520 requires the document to be filed with the Hearing Officer Panel or the assigned hearing officer.

(3) The agency or hearing officer may require a statement explaining the reasons for the late filing.

(4) Notwithstanding any other provision of these rules, at any time after the issuance of the notice required by ORS 183.415, an agency may issue an amended notice. If an agency issues an amended notice, any party may obtain, upon request, a continuance determined to be reasonably necessary to enable the party to file an amended response, if required by agency rules, or to respond to any new material contained in the amended notice. If the agency files an amended notice after the evidentiary record has been closed, the agency shall inform the hearing officer, who will reopen the record and conduct any further hearing or listen to additional argument required by new matters in the amended notice. If the hearing officer has issued a proposed order, the hearing officer shall prepare an amended proposed order after completion of any further hearing.

(5) Unless otherwise provided by law, when a party or agency files any document for the contested case proceeding, the agency or the hearing officer may permit the party or agency to file an amended document if the agency or hearing officer determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties or the agency.

(6) The decision whether an amended document will be accepted shall be made:

(a) By the agency if OAR 137-003-0520(2) requires the document to be filed with the agency, or

(b) By the hearing officer if OAR 137-003-0520(2) requires the document to be filed with the Hearing Officer Panel or the assigned hearing officer.

(7) The agency or hearing officer may require a statement explaining the reasons for the amendment.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0535

### Participation as Party or Limited Party

(1) The agency may by rule or in writing identify persons or entities who shall be parties or limited parties.

(2) Persons who have an interest in the outcome of the agency's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties. Unless otherwise provided by law, a person requesting to participate as a party or limited party shall file a petition with the agency and shall include a sufficient number of copies of the petition for service on all parties.

(3) The petition shall be filed at least 21 calendar days before the date set for the hearing, unless the agency by rule has set a different deadline or unless the agency and the parties agree to a different deadline. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file within the required time.

(4) The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

(5) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven calendar days from the date of personal service or agency mailing to file a response to the petition.

(6) If the agency determines under OAR 137-003-0530 that good cause has been shown for failure to file a timely petition, the agency at its discretion may:

(a) Shorten the time within which responses to the petition shall be filed; or

(b) Postpone the hearing until disposition is made of the petition.

(7) If a person is granted participation as a party or a limited party, the hearing may be postponed or continued to a later date if necessary to avoid an undue burden to one or more of the parties in the case.

(8) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;

(d) The extent to which the petitioner's interest will be represented by existing parties.

(9) The agency may treat a petition to participate as a party as if it were a petition to participate as a limited party.

(10) If the agency grants a petition, the agency shall specify areas of participation and procedural limitations as it deems appropriate.

(11) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner, all parties and the Hearing Officer Panel or assigned hearing officer. If the petition is allowed, the agency shall also provide petitioner with the notice of rights required by ORS 183.413(2) or request the hearing officer to do so.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(4), 183.450(3) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0570

### Discovery in Contested Case Hearing

(1) Discovery by the agency or any party may be permitted in appropriate contested cases. Any party or the agency may file a motion pursuant to the requirements in this rule for an order requiring discovery. Before requesting a discovery order, a party or the agency must seek the discovery through an informal exchange of information.

(2) A motion for an order requiring discovery should be filed with and decided by the agency or the hearing officer, as required by OAR 137-003-0520(2).

(3) Any party seeking an order from the hearing officer requiring discovery shall send a copy of the motion to the agency, unless the agency has waived notice, and to all other parties. If the agency seeks an order requiring discovery, the agency shall send a copy of the motion to all parties. A request for an order requiring discovery must include a description of the attempts to obtain the requested discovery informally.

(4) After receiving a written request for an order requiring discovery, the agency or the hearing officer shall issue a written order to require or deny discovery, or the agency may issue an order to require discovery on the agency's own motion.

(5) Discovery may include but is not limited to one or more of the following methods:

(a) Disclosure of names and addresses of witnesses expected to testify at the hearing;

(b) Production of documents, which may but need not be limited to documents that the party producing the documents plans to offer as evidence;

(c) Production of objects for inspection;

(d) Permission to enter upon land to inspect land or other property;

(e) Up to 20 requests for admission, including subparts, unless otherwise authorized by the hearing officer or the agency;

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(f) Up to 20 written interrogatories, including subparts, unless otherwise authorized by the hearing officer or the agency;

(g) Prehearing conferences, as provided in OAR 137-003-0575.

(6) Any discovery request must be reasonably likely to produce information that is generally relevant and necessary to the case, or is likely to facilitate resolution of the case. If the relevance or necessity of the requested discovery is not apparent, the agency or the hearing officer may require the party or agency requesting discovery to explain how the request is likely to produce information that is relevant and necessary, or likely to facilitate resolution of the case.

(7) The agency or the hearing officer may authorize the requested discovery if the agency or the hearing officer determines that the requested discovery is reasonably likely to produce information that is generally relevant to the case and necessary, or likely to facilitate resolution of the case. Upon request of a party, a witness, or the agency, the agency or the hearing officer may deny, limit, or condition discovery to protect any party, any witness, or the agency from annoyance, embarrassment, oppression, undue burden or expense, or to limit the public disclosure of information that is confidential or privileged by statute or rule. In making a decision, the agency or hearing officer shall consider any objections by the party, the witness or the agency from whom the discovery is sought.

(8) If the agency or the hearing officer authorizes discovery, the agency or the hearing officer shall control the methods, timing and extent of discovery. The agency or the hearing officer may limit discovery to a list of witnesses and the principal documents upon which the agency and parties will rely. The agency may adopt rules governing discovery in the agency's contested cases as long as those rules are not in conflict with the requirements of this rule. Upon request of a party or the agency, the hearing officer or the agency may issue a protective order limiting the public disclosure of information that is confidential or privileged by law.

(9) Only the agency may issue subpoenas in support of a discovery order. The agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena. (Subpoenas for attendance of witnesses or production of documents at the hearing are controlled by OAR 137-003-0585.)

(10) Unless otherwise prohibited by law, the agency may delegate to a hearing officer its authority to issue subpoenas in support of a discovery order and control discovery. The delegation must be by rule or in writing, and it may be limited.

(11) The hearing officer may refuse to admit evidence that was not disclosed in response to a discovery order, unless the party or agency that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the hearing officer admits evidence that was not disclosed as ordered, the hearing officer may grant a continuance to allow an opportunity for the agency or other party to respond.

(12) Failure to respond to a request for admissions required by a discovery order shall be deemed an admission of matters that are the subject of the request for admissions, unless the party or agency failing to respond offers a satisfactory reason for having failed to do so, or unless excluding additional evidence on the subject of the request for admissions would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the hearing officer does not treat failure to respond to the request for admissions as admissions, the hearing officer may grant a continuance to enable the parties and the agency to develop the record as needed.

(13) Nothing in this rule shall be construed to require the agency or any party to provide information that is confidential or privileged under state or federal law, except that upon request the agency or any party must disclose all documents that the agency or party intends to introduce at the hearing.

(14) A party or agency dissatisfied with a hearing officer's discovery order may ask the Chief Hearing Officer for immediate review of the order. A request for review by the Chief Hearing Officer must be made in writing within 10 days of the date of the discovery order. The Chief Hearing Officer shall review the order and independently apply the criteria set out above in subsection seven of this rule. The Chief Hearing Officer's order shall be in writing and shall explain any significant changes to the discovery order.

(15) If a party is dissatisfied with the Chief Hearing Officer's discovery order, the party may request that the agency review the order. A request for review must be made in writing within 10 days of the filing of the Chief Hearing Officer's discovery order. The agency shall review the order and independently apply the criteria set out above in subsection seven of this rule. The agency order shall be in writing and shall explain any significant changes to the Chief Hearing Officer's discovery order.

(16) If the agency is dissatisfied with the Chief Hearing Officer's discovery order, the agency may review the order on its own motion. Any decision to review the order must be stated in writing within 10 days of the filing of the Chief Hearing Officer's discovery order. The agency shall review the order and independently apply the criteria set out above in subsection seven of this rule. The agency order shall be in writing and shall explain any significant changes to the Chief Hearing Officer's discovery order.

(17) The Chief Hearing Officer or the agency may designate in writing a person to exercise their respective responsibilities under this rule.

(18) In addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law. The party making a public records request of the agency before which the contested case is pending should serve a copy of the public records request upon the agency representative or the attorney representing the agency.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.425 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0572

### Depositions in Contested Cases

(1) Depositions may not be taken in contested cases without agency authorization.

(2) A party or an attorney representing the agency may petition the agency for an order to take a deposition of a witness. A copy of the petition shall be sent to all other parties and the hearing officer. The petition shall include the name and address of the witness, explain why the witness's testimony is material to the proceedings and explain why no other means of obtaining the witness's testimony for the hearing is adequate. As used in this rule, materiality means the testimony sought tends to make the existence of any fact that is of consequence to the determination of the issues more or less probable.

(3) The agency shall consider the petition and issue a written order either granting or denying the deposition. If the agency grants the deposition, the deposition shall be taken on such terms as the agency may order including, but not limited to, location, manner of recording, time of day, persons permitted to be present and duration.

(4) Examination and cross-examination of deponents may proceed as permitted at hearing.

(5) The testimony of the deponent shall be recorded.

(6) All objections made at the time of the examination shall be noted on the record.

(7) At any time during the taking of a deposition, upon motion and a showing by a party, the agency or a deponent that the deposition is being conducted or hindered in bad faith or in a manner not consistent with these rules or in such manner as unreasonably to annoy, embarrass or oppress the deponent, the agency or any party, the agency may order the examination to cease or may limit the scope or manner of the taking of the deposition. The taking of the deposition shall be suspended for the time necessary to make a motion under this subsection.

(8) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party or the agency, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party or the agency.

(9) Deposition of a non-party may be compelled by a subpoena issued by the agency. The agency or the party requesting the deposition may apply to circuit court to compel obedience to a subpoena issued to compel a deposition.

(10) Unless otherwise prohibited by law, the agency may delegate to the hearing officer its authority to authorize depositions. Unless expressly required by law or expressly stated in the delegation by the agency, a hearing officer may not require the agency to pay for any deposition taken by a party.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.425 & OL 1999, Ch. 849

Hist.: DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0575

### Prehearing Conferences

(1) Prior to hearing, the hearing officer may conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The hearing officer may convene the conference on the initiative of the hearing officer or at the agency's or a party's request.

(2) Prior to the conference, the hearing officer shall notify the party(ies) and the agency, if participating, of the purposes of the conference and the matters to be considered. The agency may add additional matters to

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be considered at the conference by providing notice in writing to the hearing officer and the parties.

(3) The party(ies) and the agency, if participating in the contested case hearing, shall appear at a prehearing conference through legal counsel or through persons authorized to represent the party or the agency in the contested case hearing.

(4) The purposes of a prehearing conference may include, but are not limited to the following:

(a) To facilitate discovery and to resolve disagreements about discovery;

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant or immaterial issues;

(d) To obtain stipulations of fact and to admit documents into evidence;

(e) To provide to the hearing officer, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(h) To assist in identifying whether the case might be appropriate for settlement or for a collaborative dispute resolution process and, if the agency agrees that the case is appropriate, to refer the case to the agency for settlement discussions or for exploration or initiation of a collaborative dispute resolution process;

(i) To schedule the date, time and location of the hearing or for any other matters connected with the hearing, including dates for pre-filed testimony and exhibits; and

(j) To consider any other matters that may expedite the orderly conduct of the proceeding.

(5) The prehearing conference may be conducted in person or by telephone.

(6) The failure of a party or the agency to appear at a prehearing conference convened by the hearing officer shall not preclude the hearing officer from making rulings on any matters identified by the hearing officer in the notice issued under section (2) of this rule, and discussion of any of these matters at the conference in the absence of the agency or a party notified of the conference does not constitute an ex parte communication with the hearing officer.

(7) The hearing officer conducting the prehearing conference must make a record of any stipulations, rulings and agreements. The hearing officer shall either make an audio or stenographic record of the pertinent portions of the conference or shall place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the agency and the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

(8) After the hearing begins, the hearing officer may at any time recess the hearing to discuss any of the matters listed in section (4) of this rule.

(9) Nothing in this rule precludes the agency and parties from engaging in informal discussions of any of the matters listed in section (4) of this rule without the participation of the hearing officer. Any agreement reached in an informal discussion shall be submitted to the hearing officer in writing or presented orally on the record at the hearing.

(10) An agency may adopt rules regarding the exchange of exhibits and a list of witnesses before the hearing. In the absence of an agency rule to the contrary, a hearing officer may establish deadlines for the exchange of exhibits and a list of witnesses before the hearing.

Stat. Auth.: ORS 183.341 & ORS 183.502

Stats. Implemented: ORS 183.341, ORS 183.430, ORS 183.502 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0580

### Motion for Ruling on Legal Issues (Summary Judgment)

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The hearing officer may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(4) The agency by rule or in writing may elect not to make available this process for ruling on legal issues. The hearing officer shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

(5) The party and the agency may stipulate to a record upon which the requested legal ruling shall be made.

(6) The hearing officer shall grant the motion for a legal ruling if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The hearing officer shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for ruling on a legal issue is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading.

(11) The hearing officer's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the hearing officer's ruling on the motion resolves all issues in the contested case, the hearing officer shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the hearing officer has authority to issue a final order without first issuing a proposed order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 44.415, ORS 183.341, ORS 183.440, ORS 183.445 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0595

### Public Attendance; Exclusion of Witnesses; Removal of Disruptive Individuals

(1) Unless otherwise required by law, contested case hearings are open to the public unless the agency by rule or in writing determines that the hearing will be closed to non-participants in the hearing.

(2) The hearing officer may exclude witnesses from the hearing, except for a party, a party's authorized representative, expert witnesses, the agency representative, one agency officer or employee and any persons authorized by statute to attend.

(3) A hearing officer may expel any person from the contested case hearing if that person engages in conduct that disrupts the hearing.

(4) Any party, party's representative, agency or agency's representative, having knowledge or reasonable belief that any person participating in the hearing may present a danger or may be a threat to anyone involved in the hearing, should immediately notify the assigned hearing officer, the agency and the parties or their representatives of the potential danger.

(5) A hearing officer may take any other measures reasonably required to ensure the safety and security of the participants in the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0600

### Conducting the Contested Case Hearing

(1) The contested case hearing shall be conducted by and under the control of the hearing officer assigned from the Hearing Officer Panel.

(2) If the hearing officer has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that officer shall comply with the requirements of ORS chapter 244 (e.g., ORS 244.120 and 244.130).

(3) At the commencement of the hearing, the hearing officer shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing shall be conducted, subject to the discretion of the hearing officer, so as to include the following:

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(a) The statement and evidence of the proponent in support of its action;

(b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited;

(c) Any rebuttal evidence; and

(d) Any closing arguments.

(5) The hearing officer, the agency through an agency representative or assistant attorney general, interested agencies through an assistant attorney general, and parties or their attorneys or authorized representatives shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.

(6) The hearing may be continued with recesses as determined by the hearing officer.

(7) The hearing officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, irrelevant or immaterial matter.

(8) Exhibits shall be marked and maintained by the hearing officer as part of the record of the proceedings.

(9) If the hearing officer receives any written or oral ex parte communication during the contested case proceeding, the hearing officer shall notify all parties and otherwise comply with the requirements of OAR 137-003-0625.

(10) The hearing officer may request that any closing arguments be submitted in writing or orally.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.415(9) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0650

### Exceptions to Proposed Order

(1) If the recommended action in the proposed order is adverse to any party or the agency, the party or agency may file exceptions and present argument to the agency or, if authorized to issue a final order, to the hearing officer.

(2) The agency shall by rule or in writing describe:

(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(3) The agency may request the hearing officer to review any written exceptions received by the agency and request the hearing officer either to provide a written response to the exceptions to be made a part of the record or to revise the proposed order as the hearing officer considers appropriate to address any exceptions. The hearing officer shall not consider new or additional evidence unless, pursuant to OAR 137-003-0655(2), the agency requests the hearing officer to conduct further hearing. The hearing officer's response must be in writing, either in the form of a response to the exceptions or a revised proposed order, and sent to all parties and the agency.

(4) Agency staff may comment to the agency or the hearing officer on the proposed order, and the agency or the hearing officer may consider such comments, subject to OAR 137-003-0625 and 137-003-0660.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.460, ORS 183.464 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

## 137-003-0655

### Further Hearing and Issuance of Final Order

(1) After issuance of the proposed order, if any, the hearing officer shall not hold any further hearing or revise or amend the proposed order except at the request of the agency, except as provided in this subsection. The hearing officer may withdraw a proposed order for correction within three working days of issuance of the proposed order. If the hearing officer withdraws a proposed order for correction, the time for filing exceptions shall begin on the date the hearing officer issues the corrected proposed order.

(2) If the agency requests the hearing officer to conduct a further hearing under section (1) of this rule, the agency shall specify the scope of the hearing and the issues to be addressed. After further hearing, the hearing officer shall issue a proposed order.

(3) If the hearing officer's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

(a) The official(s) who are to render the final order have not considered the record; or

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

(4) Any amended proposed order issued under section (3) of this rule shall comply with OAR 137-003-0665(3) and (4) and shall include a statement that the party may file exceptions and present argument to the agency. The agency shall serve the amended proposed order on each party to the contested case proceeding.

(5) The agency or, if authorized to issue a final order, hearing officer shall consider any timely exceptions and argument before issuing a final order. If exceptions are received, the agency or the hearing officer may not consider new or additional evidence unless the agency requests the hearing officer to conduct further hearing under section (1) of this rule. The agency or hearing officer may issue an amended proposed order in light of any exceptions or argument.

(6) The agency or, if authorized, the hearing officer shall issue a final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order as the final order, or modify the proposed order and issue the modified order as the final order.

(7) If an agency decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that decision maker shall comply with the requirements of ORS chapter 244, including but not limited to ORS 244.120 and 244.130.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

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

**Adm. Order No.:** OSFM 4-2003

**Filed with Sec. of State:** 7-2-2003

**Certified to be Effective:** 7-3-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 837-061-0015

**Subject:** Allows Oregon fire service more selection and application of hose appliances. Corrects referenced standard edition error in 837-061-0015(3)(a).

**Rules Coordinator:** Glen Andreassen—(503) 373-1540, ext. 210

### 837-061-0015

#### Exemptions

(1) Fire protection equipment used under the authority of ORS chapters 477 and 526 are exempt from the provisions of this division.

(2) The State Fire Marshal may grant exemption from these rules for private fire protection equipment used for special purposes, research programs, or special features of fire protection equipment found appropriate for uniformity within a particular protection area and not essential to the coordination of public fire protection operations. Any such exemption shall be granted in writing by the State Fire Marshal.

(3) Fire protection equipment having non-threaded couplings or fittings with an inside diameter greater than three inches may be purchased and used without written exemption from the State Fire Marshal under the following conditions:

(a) Non-threaded couplings shall conform to the specifications contained in "**National Fire Protection Association Standard No. 1963, 1998 edition**".

(b) All fire apparatus carrying hose equipped with non-threaded couplings shall also carry inlet and discharge adapters in accordance with the following: 3-1/2 inch or larger Hose: — For the initial 1,000 feet, or portion thereof, and each additional 1,000 feet, or major portion thereof (500 feet or more);

(A) Inlet: — Minimum of one 2 or 3-way 2-1/2 inch threaded female with inlets (clappered) adapted to non-threaded coupling hose size;

(B) Discharge: — Minimum of one 2 or 3-way 2-1/2 inch threaded male gated outlets adapted from non-threaded coupling hose size.

(c) All fire department coupling, i.e., hydrants, sprinkler systems, standpipes, nozzles, adapters, etc., must be equipped with "American National Fire Hose Connection Screw Threads" regardless of size. However, such equipment may be additionally equipped with adapters of the non-threaded type when approved by the chief of the department.

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

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 476.030  
Stats. Implemented: ORS 476.410  
Hist.: FM 3-1988, f. & cert. ef. 2-17-88; OSFM 8-2001, f. 6-27-01, cert. ef. 7-1-01; OSFM 4-2003, f. 7-2-03, cert. ef. 7-3-03

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## Department of Public Safety Standards and Training Chapter 259

**Adm. Order No.:** DPSST 10-2003(Temp)

**Filed with Sec. of State:** 6-16-2003

**Certified to be Effective:** 6-16-03 thru 12-1-03

**Notice Publication Date:**

**Rules Amended:** 259-060-0020, 259-060-0300

**Subject:** These temporary rule changes add moral fitness to the minimum standards for certification or licensure. They also broaden the falsification portion to include falsification of any documents related to certification or licensure.

**Rules Coordinator:** Shawn M. Irish—(503) 378-2100, ext. 2223

### 259-060-0020

#### Minimum Standards for Certification or Licensure

(1) Age.

(a) An applicant for certification as a private security officer, private security officer-alarm monitor or private security instructor shall be:

(A) At least 18 years of age to receive certification as an unarmed security officer, private security officer-alarm monitor, or unarmed private security instructor; and

(B) At least 21 years of age to receive certification as an armed security officer or armed private security instructor.

(b) All applicants for licensing as a proprietary security manager or security contractor shall be at least 18 years of age.

(2) Training. An applicant for certification or licensing shall satisfactorily complete the applicable training requirements as specified in the Private Security Service Providers Act and these rules.

(3) Moral Fitness (Moral Character). All private security providers must be of good moral fitness as determined by a criminal background check or department investigation.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a private security provider. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the private security provider's performance on the job which makes the private security provider both inefficient and otherwise unfit to render effective service because of a loss of confidence in the private security provider's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a private security provider lacks good moral fitness, a rebuttable presumption will be raised that the private security provider does not possess the requisite moral fitness to be a private security provider. The burden shall be upon the private security provider to prove good moral fitness.

(4) Criminal History. An applicant for certification or licensure must not:

(a) Have been convicted of a person felony, as defined in the rules of the Oregon Criminal Justice Commission: ORS 162.165 (Escape I), 162.185 (Supplying Contraband as defined in Crime Categories 6 and 7 (Appendix 3)), 163.095 (Aggravated Murder), 163.115 (Murder), 163.118 (Manslaughter I), 163.125 (Manslaughter II), 163.145 (Negligent Homicide), 163.160(3) (Assault IV Felony), 163.165 (Assault III), 163.175 (Assault II), 163.185 (Assault I), 163.205 (Criminal Mistreatment I), 163.213 (Use of Stun Gun/Tear Gas/Mace I), 163.225 (Kidnapping II), 163.235 (Kidnapping I), 163.275 (Coercion as defined in Crime Category 7 (Appendix 3)), 163.355 (Rape III), 163.365 (Rape II), 163.375 (Rape I),

163.385 (Sodomy III), 163.395 (Sodomy II), 163.405 (Sodomy I), 163.408 (Sexual Penetration II), 163.411 (Sexual Penetration I), 163.425 (Sexual Abuse II), 163.427 (Sexual Abuse I), 163.525 (Incest), 163.535 (Abandon Child), 163.537 (Buying or Selling a Person Under 18 Years of Age), 163.670 (Using Child in Display of Sexually Explicit Conduct), 163.684 (Encouraging Child Sex Abuse I), 163.686 (Encouraging Child Sex Abuse II), 163.688 and 163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child I and II), 163.732 (Stalking), 163.747 (Violation of Officer's Stalking Order), 163.750 (Violation of Court's Stalking Order), 164.075 (Theft by Extortion as defined in Crime Category 7 (Appendix 3)), 164.225 (Burglary I as defined in crime Categories 8 and 9, Appendix 3), 164.325 (Arson I), 164.395 (Robbery III), 164.405 (Robbery II), 164.415 (Robbery I), 164.877(3) (Tree Spiking (Injury)), 166.087 (Abuse of Corpse I), 166.165 (Intimidation I), 166.220 (Unlawful Use of a Weapon), 166.275 (Inmate in Possession of Weapon), 166.385(3) (Felony Possession of a Hoax Destructive Device), 167.012 (Promoting Prostitution), 167.017 (Compelling Prostitution), 468.951 (Environmental Endangerment), 811.705 (Hit and Run Vehicle (Injury)), 830.475 (Hit and Run (Boat)) and attempts or solicitations to commit any Class A or Class B person felonies as defined herein, or an equivalent crime with similar elements in another jurisdiction. Only Class B and Class C felony convictions may be considered by the advisory committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2)(i). There will be no waivers granted for Class A felony convictions.

(b) Within the 10-year period prior to applying for, or during, certification or licensure, must not:

(A) Have been incarcerated, placed on probation or paroled as the result of conviction of any felony, other than those described in subsection (a) of this section in this, or any other, jurisdiction. Class B and Class C felony convictions may be considered on a limited basis by the advisory committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2)(i).

(B) Have been convicted of violating ORS 163.435 (Contributing to the Sexual Delinquency of a Minor), 163.672 (1993 Edition) (Possession of Depiction of Sexual Conduct of a Child), 163.673 (1993 Edition) (Dealing in the Depiction of Sexual Conduct of a Child), 167.007 (Prostitution), 167.062 (Sadomasochistic Abuse or Sexual Conduct in a Live Show), 167.065 (Furnishing Obscene Material), 167.070 (Sending Obscene Material to Minors), 167.075 (Exhibiting An Obscene Performance to a Minor), 167.080 (Displaying Obscene Material to Minors), 167.087 (Disseminating Obscene Material) or an equivalent crime with similar elements in another jurisdiction. There will be no waivers granted for these listed convictions.

(C) Have been convicted of a person misdemeanor, as defined in the rules of the Oregon Criminal Justice Commission: ORS 161.405(2)(d) Attempt or 161.435(2)(d) Solicitation to Commit any Class C person felony as defined by the Oregon Criminal Justice Commission, 162.315 (Resisting Arrest), 163.160 (Assault IV), 163.190 (Menacing), 163.195 (Recklessly Endangering Another Person), 163.200 (Criminal Mistreatment II), 163.208 (Assaulting a Public Safety Officer), 163.212 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace II), 163.545 (Child Neglect II), 163.575 (Endangering the Welfare of a Minor), 163.605 (Criminal Defamation), 163.732(1) (Stalking), 163.750(1) (Violating Court's Stalking Protective Order), 166.065(4) (Harassment (Offensive Sexual Contact)), 166.155 (Intimidation II), 166.385 (Possession of Hoax Destructive Device) or an equivalent crime with similar elements in another jurisdiction;

(D) Have been convicted of the following misdemeanors: ORS 162.075 (False Swearing), 162.085 (Unsworn Falsification), 162.145 (Escape III), 162.247 (Interfering with a Peace Officer), 162.295 (Tampering with Physical Evidence), 162.335 (Compounding a Felony), 162.365 (Criminal Impersonation), 162.369 (Possession of False Law Enforcement Identification Card), 162.385 (Giving False Information to Police Officer), 163.465 (Public Indecency), 163.709 (Unlawful Directing of Light from a Laser Pointer), 164.045 (Theft II), 164.125(5)(b) (Theft of Services), 164.140 (Criminal Possession of Rented or Leased Personal Property), 164.235 (Possession of Burglar's Tools), 164.255 (Criminal Trespass I), 164.265 (Criminal Trespass while in Possession of a Firearm), 164.335 (Reckless Burning), 164.354 (Criminal Mischief II), 164.369 (Interfering With Police Animal), 164.377(4) (Computer Crime), 165.007 (Forgery II), 165.055(4)(a) (Fraudulent Use of a Credit Card), 165.065 (Negotiating a Bad Check), 166.115 (Interfering With Public Transportation), 166.250 (Unlawful Possession of Firearms), 166.350 (Unlawful Possession of Armor Piercing Ammunition), 166.425 (Unlawful

# ADMINISTRATIVE RULES

Purchase of Firearm), 167.262 (Adult Using Minor in Commission of Controlled Substance Offense), 471.410 (Providing Liquor to Person under 21 or Intoxicated Person), or an equivalent crime with similar elements in another jurisdiction. Convictions for any of the listed misdemeanors may be considered on a limited basis by the advisory committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2)(i).

(c) Have been convicted, within the 10-year period prior to applying for, or during, certification or licensure, of a "misdemeanor crime of domestic violence," in this or any jurisdiction. A "misdemeanor crime of domestic violence" means a misdemeanor under the law of any jurisdiction involving the use or attempted use of physical force, or threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is co-habiting with or has co-habited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or a guardian of the victim. Convictions for any of the listed misdemeanors may be considered on a limited basis by the advisory committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2)(i).

(d) Have been convicted, within the seven-year period prior to applying for, or during, certification or licensure, of the following misdemeanors, or a misdemeanor of similar elements, in this or any jurisdiction; 164.043 (Theft III), 164.125(5)(a) (Theft of Services), 162.375 (Initiating a False Report), 166.240 (Carrying of Concealed Weapons), or an equivalent crime with similar elements in another jurisdiction. Convictions for any of the listed misdemeanors may be considered on a limited basis by the advisory committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2)(i).

(e) Have been required to register or be registered as a sex offender under ORS 181.595, 181.596 or 181.597. There will be no waivers granted for any persons in this category.

(5) Firearms Restrictions. An applicant for armed private security officer or instructor certification shall not be eligible for certification if the applicant:

(a) Has been committed to the Mental Health and Development Disability Services Division under ORS 426.130, or similar order in another jurisdiction;

(b) Has been found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

(c) Is prohibited under US Code Title 18, Section 922(g)(8) (relating to civil restraining orders including stalking or harassment) from possessing a firearm in interstate commerce; or

(d) Is prohibited under any law of this state or any federal law from purchasing, owning or possessing a firearm.

(6) Failure to Meet Firearms Criteria. In the event a certified armed private security officer, or an applicant for such certification, should at any time fail to meet the requirements of subsections (4)(a) through (d) herein, the certificant/applicant and the manager, employer or supervisor of the certificant/applicant, shall:

(a) Notify the Department or its designee within 48 hours, in writing, of the circumstance making the certificant/applicant ineligible to purchase, own or possess a firearm. The notification shall list all facts known, including any written documentation, and shall identify a person whom the Department may contact to obtain additional information;

(b) Transfer the employee to an unarmed position until a determination has been made by the Department regarding the status of the certificant/applicant and

(c) Retrieve any issued weapons and ammunition.

(7) ADA Compliance. Individual employers or entities shall be expected to conform to federal ADA guidelines as they relate to physical fitness standards.

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

Stat. Auth.: ORS 181.875, ORS 181.878 & ORS 181.883

Stats. Implemented: ORS 181.875 & ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 10-2003(Temp), f. & cert. ef. 6-16-03 thru 12-1-03

## 259-060-0300

### Denial/Suspension/Revocation

(1) Grounds for Denying, Suspending or Revoking the Certificate of a Private Security Officer (armed or unarmed), Private Security Officer-

Alarm Monitor, Instructor or the License of an Executive or Supervisory Manager; Process for Requesting Board Waiver:

(a) The Department may suspend, revoke or deny a license or certificate after written notice, and a hearing, if requested, based upon a finding that:

(A) The applicant or holder of the certificate or license falsified any information submitted on the application for certification or licensing or on any documents submitted to the Department or falsified any documents pertaining to Private Security certification or licensing;

(B) The license holder or applicant for licensure has violated the temporary assignment provisions of OAR 259-060-0120(1);

(C) The applicant or holder of the certificate or license has failed to timely submit properly completed forms, documentation or fees required under these rules;

(D) The applicant or holder of the certificate or license has violated the provisions of the Private Security Service Providers Act or these administrative rules or has failed to perform any acts required by these rules.

(b) The Department shall revoke or deny a license or certificate after written notice and a hearing, if requested, based upon a finding that:

(A) The applicant or holder of the license or certificate at any time fails to meet the criminal history requirements of OAR 259-060-0020(3);

(B) The holder of an armed security officer or firearms instructor certificate, or an applicant for such a certificate, fails to meet the minimum qualifications and requirements set forth in OAR 259-060-0020(4);

(C) The holder of an armed security officer or firearms instructor certificate, or an applicant for such a certificate, suffers any disqualification, condition or circumstance which, under federal law or the law of this state, would disqualify the person from owning, possessing or purchasing a firearm; or

(c) The Department may suspend a license or certificate after written notice, and a hearing, if requested, based upon a finding that:

(A) The holder of the certificate or license has been arrested for or charged with any crime listed in OAR 259-060-0020(3);

(B) The holder of the certificate or license has failed to successfully complete or timely report the annual or biennial refresher training and examination(s) required in OAR 259-060-0080; or

(C) The holder of the armed private security officer certification has failed to successfully complete or timely report the annual firearms marksmanship requalification required under OAR 259-060-0085.

(2) Denial, Suspension and Revocation Procedure:

(a) Employer Request: When the employer of the private security officer, private security officer-alarm monitor, private security manager or private security instructor requests that the person's certification or licensure be denied, suspended or revoked, the request shall be submitted in writing to the Department or its designated staff, stating the reason for the requested suspension, revocation or denial and all factual information supporting the request.

(b) Department Initiated Request: Upon receipt of factual information from any source, and pursuant to ORS 181.878, the Department or its designated staff may request that the person's certification or licensure be suspended, revoked or denied.

(c) Department Staff Review: The Department or its designated staff shall review the request and the supporting factual information to determine if the request for suspension, revocation or denial meets statutory and administrative rule requirements. If the reason for the request does not meet the statutory and administrative rule requirements for suspension, revocation or denial, the Department's designated staff shall so notify the employer. If the reason for the suspension, revocation or denial meets statutory and administrative rule requirements, but is not supported by adequate factual information, the Department or its designated staff shall request further information from the requesting employer or conduct its own investigation of the matter.

(d) Initiation of Proceedings: The Department's designated staff shall determine if the reason for suspension, revocation or denial and supporting factual data meet the statutory and administrative rule requirements and so advise the Department or its designated committee.

(e) Contested Case Notice: The Department or its designated staff shall cause to be prepared a "Contested Case Notice" in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department or its designated staff shall have a copy of the "Notice" served on the person whose certification or licensure is being affected.

(f) Response Time:

(A) Revocation or Denial: If the Department is seeking revocation or denial of a license or certificate, a party who has been served with the

# ADMINISTRATIVE RULES

“Contested Case Notice” shall have 60 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(B) Suspension: If the Department is seeking suspension of a license or certificate, a party who has been served with the “Contested Case Notice” shall have 90 calendar days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(g) Default Order: In the absence of a timely request for a hearing, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0075(5).

(h) Hearing Request: When a request for a hearing is received in a timely manner, the Department shall refer the matter to the Hearings Officer Panel in accordance with OAR 137-003-0075(5).

(i) Waiver Request: It is the responsibility of the Board to set the standards, and of the Department to uphold them in such a manner so as to ensure the highest levels of professionalism and discipline. Those standards shall be upheld at all times, unless there is a specific finding of substantial and compelling reason that demonstrates that neither the safety of the public nor the respect of the profession will be compromised by a waiver. Certain criminal convictions will not qualify for waiver request, as identified in OAR 259-060-0020(3). In the event that a waiver of denial, suspension or revocation is granted, the Board’s decision shall be in writing. The waiver request will suspend timelines for a contested case hearing until an order granting or denying the waiver has been issued.

(A) The advisory committee may consider limited waivers to the Department’s notice of intent to deny, suspend or revoke certification or licensure, and forward a recommendation to the Board, based upon:

(i) The petitioner having been licensed or certified under the Private Security Service Providers Act of 1995 on or before October 23, 1999; and

(ii) The length of time that has elapsed between petitioner’s disqualifying conviction and application to the Department is substantial and in the case of a lifetime disqualifier, the length of time exceeds 20 years; and

(iii) The substance of reference checks attests to good moral and ethical fitness; and

(iv) The petitioner’s age at the time of the conviction; and

(v) Absence of other criminal convictions; and

(vi) Other substantial and compelling reasons, including but not limited to mitigating circumstances of the arrest.

(B) It shall be the responsibility of the petitioner to present to the advisory committee all information relative to the request for waiver, in writing, not less than 15 days prior to the next regularly scheduled advisory committee meeting. The advisory committee will make its recommendation to the Board, following review of those documents.

Stat. Auth.: ORS 181.878, ORS 181.882 & ORS 181.885

Stats. Implemented: ORS 181.878 & ORS 181.885

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 10-2003(Temp), f. & cert. ef. 6-16-03 thru 12-1-03

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## Division of State Lands Chapter 141

**Adm. Order No.:** DSL 1-2003

**Filed with Sec. of State:** 7-10-2003

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**Rules Adopted:** 141-089-0400, 141-089-0405, 141-089-0410, 141-089-0415, 141-089-0420, 141-089-0425, 141-089-0430, 141-089-0500, 141-089-0505, 141-089-0510, 141-089-0515, 141-089-0520, 141-089-0525, 141-089-0530

**Rules Amended:** 141-085-0006, 141-085-0010, 141-085-0015, 141-085-0020, 141-085-0022, 141-085-0025, 141-085-0028, 141-085-0029, 141-085-0031, 141-085-0036, 141-085-0064, 141-085-0070, 141-085-0075, 141-085-0085, 141-085-0090, 141-085-0115, 141-085-0121, 141-085-0126, 141-085-0136, 141-085-0141, 141-085-0166, 141-085-0176, 141-085-0244, 141-085-0400, 141-089-0100, 141-089-0105, 141-089-0110, 141-089-0115, 141-089-0130, 141-089-0150, 141-089-0165, 141-089-0175, 141-089-0185, 141-089-0200, 141-089-0205, 141-089-0210, 141-089-0215, 141-089-0225, 141-089-0240, 141-089-0275, 141-089-0295, 141-089-0310

**Subject:** Major changes to these rules were adopted in November 2002 and became effective in January 2003. Since then the need to make a number of clarifying changes and minor amendments has become apparent and was the major reason for this most recent revision. One new General Authorization (Piling) is adopted and another dealing with very small projects (less than two cubic yards in Essential Salmon Habitat) has been re-instated with some modifications. In addition to numerous minor non-substantive changes to definitions, etc, a number of changes were also made: (a) making the jurisdiction of channels and ditches created from upland consistent with intermittent streams; (b) allowing for the removal of culverts as an exempt activity and allowing for culvert replacement to remain exempt though the work may extend, in special situations relating to fish passage, beyond the existing road prism; (c) allowing for some greater flexibility for the applicant to submit a single application for multiple location projects; (d) clarifying when applicants may conduct direct mitigation away from the project site and that an applicant is required to purchase credits from a mitigation bank if one is available rather than the payment to provide method of indirect mitigation; and (e) allowing the applicant some flexibility to select the form of financial security to be approved by the Agency to secure any mitigation. A number of changes have been made to the General Authorizations (GA’s). Among the major changes: (a) allowing the fish habitat enhancement and wetland restoration GA’s to be used together and allowing the Agency and the applicant some flexibility to resolve conflicting standards so long as water resources of the state are protected and conserved; (b) changing the review and approval process timelines to 15 days for each, for a total processing time of 30 days, instead of the current 40 days (except for the placer mining GA and the new ‘minimal disturbance’ GA); and (c) in the Transportation GA, allow for bridge replacement and for work to be covered that is incidental to the activity so long as it is needed to protect fish or the structure.

**Rules Coordinator:** June LeTarte—(503) 378-3805, ext. 239

### 141-085-0006

#### Policy

(1) No authorization to place fill or remove material from the waters of the state shall:

(a) Interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation uses; or

(b) Be inconsistent with the protection, conservation and best use of the water resources of this state.

(2) To the extent possible, the Agency shall administer these rules to ensure persons receive timely, fair, consistent and predictable treatment including timely communication and consistent application and interpretation of these rules and the removal-fill law.

(3) The Agency shall actively and continually pursue improvements to the authorization process in order to reduce paperwork, eliminate duplication, increase certainty and timeliness and enhance protection of water resources.

(4) The Agency shall recognize the interests of adjacent landowners, Tribal governments, public interest groups, watershed councils, state and federal agencies, and local government land use planning agencies, and shall provide notice to such interests prior to issuance of an individual removal-fill permit or adoption of a general authorization.

(5) In regard to the regulation of wetlands, the Agency shall administer these rules to ensure that:

(a) The protection, conservation and best use of the state’s wetland resources, including their functional attributes, are promoted through the integration and coordination of the local comprehensive land use plans and the Agency permitting process.

(b) A stable wetland resource base is maintained through impact avoidance and compensation for unavoidable wetland losses.

(6) The restoration of wetlands and other waters through voluntary restoration and conservation programs is encouraged and facilitated.

(7) The Agency shall administer the removal-fill program in a manner consistent with and in support of:

(a) The Oregon Plan as described in ORS 541.405;

(b) The applicable Oregon Wetlands Benchmark; and

(c) The Oregon Coastal Management Program.

# ADMINISTRATIVE RULES

(8) The Agency shall carry out its responsibilities under these rules in compliance with the coordination procedures established in its State Agency Coordination Program (OAR 141-095-0000).

Stat. Auth.: ORS 196.600- 196.692; ORS 196.800- 196.990

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0010

### Definitions

The following definitions will be used in addition to those in ORS 196.600, 196.800, 196.815, 196.830, 196.860 and 196.905

(1) "Activities Customarily Associated with Agriculture" (ORS 196.810(1)(b)) applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat (see OAR 141-102-0020(6)). "Activities customarily associated with agriculture" include maintenance of an existing irrigation structure at an existing point of diversion (as defined in OAR 690-015-0005) to maintain previously constructed agricultural drainage or irrigation channels, or to maintain or replace any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices. Exempt activities also include maintaining existing culverts under farm or ranch roads by removing debris. "Activities customarily associated with agricultural" does not include activities such as filling a slough to expand a farm field, constructing a new farm or ranch road, or constructing a new point of diversion.

(2) "Activity" means the same as "project."

(3) "Adverse Effect" means the same as "reasonably expected adverse impacts".

(4) "Applicant" means a landowner or person authorized by a landowner seeking a permit or authorization to conduct a removal-fill activity under ORS 196.800 to 196.990 and who has authority to fully execute the terms and conditions of the authorization.

(5) "Agency" means the Oregon Division of State Lands and the Director or designee.

(6) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant-species dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(7) "Artificially Created" means constructed by artificial means.

(8) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.

(9) "Authorization" means an individual permit, letter of authorization issued under a General Authorization, or emergency authorization as required by these rules and ORS 196.810 and 196.850.

(10) "Authorization Holder" means the person holding a valid authorization from the Agency.

(11) "Bank" means:

(a) For perennial streams, that portion of a waterway that is exposed at low water and lies below the ordinary high water line or bankfull stage; and

(b) For intermittent streams, the bank extends to the ordinary high waterline; the line between the bed and bank may be indistinguishable during dry months.

(12) "Bankfull Stage" means the two-year recurrence interval flood elevation.

(13) "Baseline Conditions" means the ecological conditions, wetland functional attributes, and the vegetative, soils, and hydrological characteristics present at a site before any change by the applicant is made.

(14) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.

(15) "Beds" means: (a) for the purpose of OAR 141-089-0245 to 141-089-0275, the land within the wet perimeter and any adjacent nonvegetated dry gravel bar; (b) for all other purposes, "beds" means that portion of a waterway that is always covered by water; or, on intermittent streams, the area that carries water when water is present.

(16) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the line of ordinary high water or bankfull stage, and on bays and estuaries by the limits of the highest measured tide.

(17) "Bio-Engineering" means construction methods which use live woody material or a combination of live vegetation material (usually woody) and rock to stabilize a stream bank.

(18) "Borrowed Material" means excavated earth or rock that is removed from one location (e.g. streambed) and used at another location.

(19) "Buffer" means an upland area immediately adjacent to or surrounding a wetland or other water that protects the functioning of that wetland or water.

(20) "Bulkhead" means a vertical or nearly vertical bank protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

(21) "Cease and Desist Order" means a legally binding order compelling a party to cease removal or fill activities in waters of the state.

(22) "Certified Credit" as used in compensatory wetland mitigation banking, results when the wetland mitigation bank has met or exceeded the performance standards established in its Mitigation Bank Instrument. Once credits are certified, they are available for sale or exchange.

(23) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway of perceptible extent that periodically or continuously contains moving water and has a definite bed and banks that serve to confine the water.

(24) "Channel Relocation" means a type of removal in which a new channel is dug and the flow of the stream is diverted from the old channel into the new channel.

(25) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia river basin, where the coastal zone extends to the downstream end of Puget Island.

(26) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project will be undertaken in a manner consistent with the applicable enforceable policies of the Oregon Coastal Management Program.

(27) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(28) "Commercial Aggregate Removal" means excavating sand, gravel or rock for the purposes of exchanging or reselling as a marketable commodity.

(29) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(30) "Compensatory Mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity.

(31) "Compensatory Mitigation Goal" means a broad statement(s) that describes the intent or purpose of the compensatory mitigation proposal. An example of a mitigation goal is "to establish a 10-acre diverse wetland habitat with four Cowardin wetland classes."

(32) "Compensatory Mitigation Objective" means the specific direct actions necessary to achieve the compensatory mitigation goals. Mitigation objectives are performance based and measurable; they describe water regimes, vegetation structure, soil morphology, and/or habitat features that will be restored, enhanced, or created as a part of the compensatory mitigation plan. An example of an objective is "the vegetated areas will have 3 (three) acres each of emergent, scrub-shrub and forested wetland."

(33) "Compensatory Wetland Mitigation (CWM) Plan" means a document that describes in detail a proposed compensatory wetland mitigation project.

(34) "Compensatory Wetland Mitigation (CWM) Project" means a project to replace authorized wetland losses by the creation, restoration, or enhancement of a wetland according to a compensatory mitigation plan.

(35) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs and as further defined under ORS 197.015(5).

(36) "Completed Application" means a signed application form that contains all necessary information as described in OAR 141-085-0025 and as determined to be complete under OAR 141-085-0027.

(37) "Concentrator" means a device used to physically or mechanically separate and enrich the valuable mineral content of aggregate. Pans, sluice boxes and mini-rocker boxes are examples of concentrators.

(38) "Consent Agreement" means an informal agreement between the Agency and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.



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(39) "Consent Order" means a formal, legally binding agreement between the Agency and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(40) "Converted Wetland" means, for the purposes of OAR 141-085-0020(4),

(a) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetland, so long as agricultural management of the land has not been abandoned for five or more years.

(41) "Cowardin Classification" means the comprehensive classification system of wetlands and deepwater habitats that was developed by the U.S. Fish and Wildlife Service (Cowardin et al. 1979).

(42) "Creation" means to convert an area that has never been a wetland to a jurisdictional wetland.

(43) "Creation of an Estuarine Area" means to convert an upland area into a shallow subtidal or an intertidal or tidal marsh area by land surface alteration. The area to be converted must be an upland area lying above the line of nonaquatic vegetation when alteration work begins.

(44) "Culvert" means a conduit designed and functioning to convey stream flows under an obstacle, such as, a corrugated metal pipe used to pass stream flow under a road.

(45) "Dam" means a structure or barrier constructed across a waterway to control the flow of the water.

(46) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the removal-fill law, these rules (OAR 141-085), any rule adopted pursuant to these rules (OAR 141-085), any order adopted in accordance with these rules (OAR 141-085) or any authorization issued in accordance with these rules (OAR 141-085).

(47) "Deep Ripping, Tiling and Moling" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(48) "Degraded Wetland" refers to a wetland with diminished functional attributes resulting from hydrologic manipulation (such as diking, draining and filling) or other human caused actions or events that demonstrably interfere with the normal functioning of wetland processes.

(49) "Dewatering" is the removal of water from a defined area (e.g., from within a cofferdam) using gravity or mechanical means (e.g. pumping).

(50) "Dike" means any embankment, usually earthen, constructed to control or confine water.

(51) "Directly Connected" as used in connection with exempt forest management practices means conducted as part of a commercial activity relating to the establishment, management or harvest of forest tree species. These activities include reforestation; road construction and maintenance; harvesting of forest tree species; application of chemicals; disposal of slash; site preparation; pre-commercial thinning; pruning; development of rock pits for forest road use; collecting cones and seeds; tree protection such as bud capping; and harvesting of minor forest products. These activities also include riparian and aquatic habitat restoration done as part of a forest management practice. Directly connected does not include fill and removal activities conducted as part of a land use change, even though commercial harvesting of forest tree species may be part of the land use change process.

(52) "Direct Compensatory Wetland Mitigation" means compensatory wetland mitigation constructed by the applicant including restoration, creation and/or enhancement.

(53) "Drainage Ditch" means channels excavated from the surface of the ground designed to remove surface or shallow ground waters.

(54) "Dolphin" is a cluster of piles or piling which is bound together.

(55) "Drained" means a condition in which ground or surface water has been reduced or eliminated by artificial means.

(56) "Dredge Material Disposal Sites" or "DMD" means geographic locations identified as pre-approved by local government for the stockpiling or disposal of materials dredged from a waterway.

(57) "Dredging" means removal of bed material using other than hand held tools.

(58) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(59) "Emergency Authorization" is an expedited authorization that the Agency may issue for the removal of material from the beds or banks or filling of any waters of the state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property (ORS 196.810(4)).

(60) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.

(61) "Enhancement" refers to a human activity that increases the function of an existing degraded wetland.

(62) "Enhancement of an Estuarine Area" means a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

(63) "Environmentally Preferable" means having a higher likelihood of replacing wetland functional attributes or of improving water resources of the state.

(64) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to preserve existing structures, facilities and land from flood and high stream flows.

(65) "Estuarine Resource Replacement" means the creation, the restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality.

(66) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, for the purposes of these rules, the Columbia River Estuary extends to the western edge of Puget Island.

(67) "Expiration Date" means the date the authorization to conduct the removal-fill activity specified in the authorization has ended. The authorization holder's obligation to comply with the Agency's rules and authorization conditions continues indefinitely. For example, compensatory wetland mitigation requirements, including monitoring, extend until such requirements are fully satisfied according to the general and specific conditions attached to the authorization.

(68) "Extreme Low Tide" means the lowest estimated tide that can occur. The elevation of Extreme Low Tide under these rules is established at -3.5 feet Mean Lower Low Water.

(69) "Farm or Stock Pond" means a confined water body located on a working farm or ranch, created by human activity and used predominately for agricultural purposes.

(70) "Farm Road" means a road on a working farm and that is used predominantly for agricultural purposes.

(71) "Farm Use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the Oregon Fish and Wildlife Commission. "Farm Use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm Use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

(72) "Farmed Wetland" means land that the Natural Resources Conservation Service of the United States Department of Agriculture certifies as farmed wetland.

(73) "Federal Endangered Species Act" or "ESA" means 16 U.S.C. 1531 et seq., administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

(74) "Fen" means a type of wetland that accumulates peat, receives some drainage from surrounding mineral soil and supports a wide range of vegetation types including sedge and moss-dominated communities and coniferous forests.

(75) "Fill" means the total of deposits of material, including pilings, by artificial means equal to or greater than 50 cubic yards at one location in

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any waters of this state. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102-0000 to 141-102-0045) and in designated Scenic Waterways (OAR 141-100-0000 to 141-100-0090) "fill" means any deposit by artificial means.

(76) "Financial Assurance(s)" means the money or other form of financial instrument (for example, surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsor to ensure that the functions of the subject bank are achieved and maintained over the long-term pursuant to the terms and conditions of the Mitigation Bank Instrument.

(77) "Financial Security Instrument" means a Surety Bond, Certificate of Deposit, irrevocable letter of credit or other instrument to guarantee performance.

(78) "Fish Habitat Enhancement" means a project with the sole purpose of improving habitat conditions for fish.

(79) "Fish Passage/Fish Screening Structures" mean devices specifically designed to manage/direct the movement of fish.

(80) "Fishway" means any structure, facility or device that is designed to enable fish to effectively pass around or through an obstruction.

(81) "Floodplain" is that portion of a river valley, adjacent to the channel, which is built of sediments, deposited during the present regimen of the stream and is covered with water when the waterway overflows its banks at flood stage.

(82) "Food and Game Fish" means those species listed under either ORS 506.011 or 496.009.

(83) "Food-Producing Areas for Food and Game Fish" (as used in ORS 196.800 and these rules) include all stream reaches that flow during a portion of every year, up to one tributary above (i.e., upstream) any food and game fish bearing stream.

(84) "Forest Management Practices" means commercial activity conducted on forestlands connected with growing and harvesting forest tree species, including but not limited to:

- (a) Reforestation;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals; and
- (e) Disposal of slash.

(85) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992 and OAR 629-024-0101(26)) as land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(86) "Free and Open Connection" as used in OAR 141-085-0015(2) means a connection by any means, including, but not limited to, culverts, to or between natural waterways and other bodies of water that allows the interchange of surface flow at bankful stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(87) "Functional Attributes" are those ecological characteristics or processes associated with a wetland and the societal benefits derived from those characteristics. These ecological characteristics are widely known as "functions," whereas the associated societal benefits are widely known as "values." For example, wetland functions include, but are not limited to the following: providing habitat areas for fish and wildlife; nutrient breakdown, retention and/or assimilation; stormwater retention and controlled release. Values associated with those functions, respectively, might include: protecting listed species; water quality improvement; and flood attenuation and floodwater storage.

(88) "General Authorization" means a rule adopted by the Agency authorizing, without an individual removal-fill permit, a category of activities involving removal or fill, or both, on a statewide or other geographic basis. (OAR 141-085-0070).

(89) "Geographic Region" for the purposes of the payment to provide option of a compensatory wetland mitigation plan, means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department (WRD) as shown on maps published by WRD.

(90) "Governmental Body" includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(91) "Gravel" is loose rounded rock, particle size between 2 and 64 mm in diameter.

(92) "Groins" is a general category of structures that are designed to directly influence stream hydraulics, and may include barbs and vanes. The primary function of a groin is to provide roughness, dissipate energy, and reduce velocities near the bank. They may be oriented downstream, perpendicular, or upstream to the flow.

(93) "Habitat Enhancement" means to improve habitat areas through habitat manipulation and management.

(94) "Harvesting" means, for the purposes of OAR 141-085-0020(4), physically removing farm or ranch crops.

(95) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

(96) "Hearing Officer Panel" means the group established within the Employment Department, pursuant to the provisions of Sections 2 to 21, Chapter 849, Oregon Laws, 1999 (later codified within ORS 183.310 to 183.550), to provide hearing officers to conduct contested case proceedings.

(97) "Herbaceous Plants" are non-woody vegetation including forbs, grasses, rushes and sedges.

(98) "Highbanker" means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consisting of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.

(99) "Highbanking" means the use of a highbanker for the recovery of minerals.

(100) "Highest Measured Tide" means the highest tide projected from actual observations of a tide staff within an estuary or tidal bay.

(101) "Hydraulicizing" means the use of water spray or water under pressure to dislodge minerals and other material from placer deposits.

(102) "Hydric Soil" is a soil that is formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(103) "Hydrophytic Vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

(104) "Hydrogeomorphic Method" or "HGM" is a method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and duration of water flow. The HGM approach identifies the wetland classes present in each region, defines the functions that each class of wetlands performs, and establishes reference sites to define the range of functioning of each wetland class.

(105) "Impact" or "Effect" means the actual, expected or predictable results of an activity upon waters of the state including water resources, navigation, fishing and public recreation uses.

(106) "Impounded Waters," means waters behind dams, weirs or other structures as measured to the maximum pool or top of the spillway, whichever is lower.

(107) "Indirect Wetland Mitigation" means wetland mitigation not constructed by the permit holder (e.g., Payment-to-provide, mitigation banking and/or conservation in lieu).

(108) "Individual Removal-Fill Permit" is a permit issued to a person for a specific removal and/or fill activity that is not subject to a General Authorization or Emergency Authorization as defined in these rules.

(109) "Intergovernmental Agreement" means a memorandum of agreement (MOA), memorandum of understanding (MOU), intergovernmental agreement (IGA), or other forms of agreement between government entities.

(110) "Intermittent Stream" means any stream that flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(111) "Intertidal or Tidal Marsh Area of an Estuary" means those lands lying between extreme low tide and the line of nonaquatic vegetation (Figure 1, Estuarine Mitigation The Oregon Process, Division of State Lands, April 1984, p 8).

(112) "Invasive Plants" mean non-native plants that aggressively compete with native species. For example, invasive plants include English ivy, reed canary grass and Himalayan blackberry.

(113) "Irrigation Ditches" are channels excavated on the surface of the ground designed to convey water for the purpose of irrigating crops or pasture.

(114) "Jetty or Jetties" means a pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

(115) "Land and Water Conservation Fund Act" means the federal legislation adopted as Public Law 88-578, as amended. (16 U.S.C. Section 460-L et seq.)

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(116) "Large Woody Material" means trees or tree parts larger than ten inches in diameter at the smallest end and longer than six feet, including rootwads.

(117) "Legally Protected Interest" means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(118) "Letter of Authorization" is issued to a person confirming that the activity described in an application meets the requirements of a specific General Authorization adopted in accordance with these rules.

(119) "Levee" means a human-made feature that restricts movement of water into or through an area.

(120) "Line of Nonaquatic Vegetation" means the upper limit of wetland vegetation, or, the point at which characteristic upland species become established in the vegetation, or, if not discernible, the line of Highest Measured Tide which is a projection from the highest tide actually observed on a tide staff within the estuary.

(121) "Linear Project" means a corridor type project, such as a transportation or utility transmission project.

(122) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered, threatened or sensitive under the Oregon Endangered Species Act (OESA).

(123) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original function. Maintenance does not include any modification that changes the character or scope, or increases the adverse impact over the original fill or removal design, except as specifically stated in OAR 141-085-0020. Maintenance does not include reconstruction.

(124) "Maintenance Dredging" means dredging to maintain the serviceability of an existing dredged channel to the previously authorized depths and areas for a previously defined project.

(125) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of the state and any materials, organic or inorganic, used to fill waters of the state.

(126) "Maximum Pool Elevation" means the highest operating level of a reservoir.

(127) "Mining Access Road" means a road constructed for the sole purpose of serving a commercial gravel, placer or lode operation.

(128) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

(129) "Mitigation Bank" or "Bank" means wetland(s) and any associated buffer(s) restored, enhanced, created, or protected, whose credits may be sold or exchanged to compensate for unavoidable future wetland losses due to removal, fill, or alteration activities. ORS 196.600(2) further defines this term.

(130) "Mitigation Bank Credit" or "Credit" is a unit of measure of the increase in wetland functional value achieved at a mitigation site. Wetland credits are the unit of exchange for compensatory wetland mitigation. ORS 196.600(1) further defines this term.

(131) "Mitigation Bank Instrument" or "Instrument" is the final document approved by the Agency that formally establishes the wetland mitigation bank and stipulates the terms and conditions of its construction, operation, and long-term management. The

Instrument is usually in the form of a memorandum of agreement signed by members of the Mitigation Bank Review Team (MBRT), but an order from the Agency makes the Instrument legally binding and enforceable if a removal-fill permit is not required to construct the bank.

(132) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary document prepared by a mitigation bank sponsor describing a proposed bank in detail sufficient to enable initial review by the Agency. The Agency uses the Prospectus to initially determine whether the proposed bank would be technically feasible, whether the bank is likely to be needed, and whether the bank can meet the policies stated in these rules.

(133) "Mitigation Bank Review Team" or "MBRT" is an advisory committee to the Agency and the Corps on wetland mitigation bank projects.

(134) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the Instrument unless specified otherwise explicitly in the Instrument.

(135) "Movement by Artificial Means," means to excavate, alter or otherwise displace material such as, but not limited to: mechanically moving gravel within a streambed, suction dredging for recreational or placer mining, blasting, plowing, and land clearing activities such as grading, scraping and displacing of inorganic material associated with stump removal (except as otherwise allowed by OAR 141-085-0020 for normal farming and ranching activities and other exempted actions).

(136) "Native Vegetation" means plant species that occurred or are documented to have occurred within the State of Oregon prior to Euro-American settlement.

(137) "Natural Biological Productivity" means the sum of all biomass production in an estuary including biological production at all trophic levels under, on, and above the land surface.

(138) "Natural Resources In and Under the Waters of this State" means aquatic life and habitats and includes resources such as shellfish beds, spawning and rearing areas for anadromous fish, gravel and minerals, and other sites and avenues for public recreation, navigation and public commerce within the waters of this state.

(139) "Natural Waterways," as used in ORS 196.800(14), means waterways created naturally by geological and hydrological processes, waterways that would be natural but for human-caused disturbances (e.g., channelized or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands) and that otherwise meet the definition of waters of the state, and certain artificially created waterways as described in "Other Bodies of Water" (OAR 141-085-0015(2)(e)).

(140) "Navigational Servitude" means activities of the Federal Government that directly result in the construction or maintenance of Congressionally authorized navigation channels.

(141) "Normal Farming and Ranching Activities" for the purpose of the exemption on converted wetlands (OAR 141-085-0020) are activities that directly adapt or use the land for the growing of crops or the raising of livestock and are unique to agriculture.

(142) "Non-Motorized Methods" are those removal-fill activities within Essential Indigenous Anadromous Salmonid Habitat that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and cable winches are examples of common non-motorized methods.

(143) "Non-Navigable" means a waterway that is not navigable for title purposes or where title navigability has not been determined by the State Land Board in accordance with ORS 274. Contact the Agency for the latest listing of navigable waterways.

(144) "Non-Water Dependent Uses" means uses which do not require location on or near a waterway to fulfill their basic purpose.

(145) "Non-Wetland" means an area that does not meet the wetland definition and criteria.

(146) "Ocean Shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800. The "Ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(147) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;

(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

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(f) Other appropriate means that consider the characteristics of the surrounding areas.

(148) "Oregon Endangered Species Act" or "OESA" means ORS 496.171 to 496.192, administered by ODFW, and ORS 564.010 to 564.994 administered by the Oregon Department of Agriculture (ODA).

(149) "Oregon Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with ORS 390.805 to 390.925.

(150) "Oregon Wetlands Priority Plan" or "Plan" means a plan developed pursuant to these rules and approved by the State Land Board that establishes a procedure for setting priorities and creates a list of wetlands and interests therein for possible acquisition in accordance with the federal Emergency Wetlands Resources Act of 1986 (Public Law 99-645).

(151) "Other Waters" means waters of the state other than wetlands.

(152) "Passive Revegetation" means a strategy allowing the re-establishment of non-invasive vegetation without planting or seeding.

(153) "Payment to Provide Mitigation" means compensatory wetland mitigation performed using cash paid to the Agency or by agreement of the Agency to an approved third party.

(154) "Perennial Stream" means a stream with flow that lasts throughout the year.

(155) "Person" is an individual, a political subdivision or government agency, or any corporation, association, firm, partnership, joint stock company, limited liability company, limited liability partnership, or quasi-public corporation registered to do business in the State of Oregon.

(156) "Piles/Piling" is a wood, steel or concrete beam placed, driven or jettied into the beds or banks of a water of the state.

(157) "Placer" includes a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals, eroded hard rock vein material (residual placer) and clay.

(158) "Plan View" means a drawing of the project site drawn as if the viewer were seeing the area from overhead.

(159) "Plant Community" is an assemblage of plants that repeat across the landscape in a similar environment. Plant communities are named according to the dominant plant in each of the layers that are present, either shrub, tree or forb.

(160) "Plowing" means, for the purposes of OAR 141-085-0020(4), all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surface materials in a manner that changes any areas of the water of the state to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetlands areas is not plowing. Plowing, as described above, will never involve filling.

(161) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(162) "Practicable" means available and capable of being done after taking into account cost, existing technology, and logistics in light of overall project purposes (this definition is the same as the one found in the U.S. Environmental Protection Agency Section 404 (b)(1) Guidelines, 40 CFR Part 230, Section 230.3(q), as amended).

(163) "Prior Converted Cropland" means land that the Natural Resource Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland.

(164) "Private Operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(165) "Project" means any removal and/or fill in waters of this state.

(166) "Project Area" means the physical space in which the removal-fill activity takes place including any direct mitigation site. "Project Area" includes the entire area of ground disturbance, including all staging areas and access ways, both temporary and permanent.

(167) "Project Purpose" means the primary purpose of the proposed project, and not any ancillary activities that may be associated with it or any secondary purpose (e.g., if a retail shopping mall or planned unit residential development includes a habitat restoration component, then habitat restoration is a secondary and ancillary activity to the primary purpose of the project).

(168) "Proposed Enforcement Order" means a notice of civil penalty, proposed restoration order or any other proposed order issued by the Agency to enforce the requirements of the Removal-Fill Law. The proposed order contains provisions allowing the alleged violator to request a contest case hearing. If the alleged violator does not elect this option, then a final order is issued.

(169) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods from among small quantities of aggregate.

(170) "Protection" means to prevent human activities from destroying or degrading functions of waters of state.

(171) "Public Body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services (ORS 196.815(3)(d)(B));

(172) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(173) "Push-up Dam" is a berm of streambed material that is excavated or bulldozed (i.e. pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream (i.e. a 'removal'). The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

(174) "Rare Plant Communities" means plant community types ranked by the Oregon Natural Heritage program as either S1 or S2. Rare plant communities are threatened by either natural or human-made causes.

(175) "Reasonably Expected Adverse Impacts" means the direct or indirect damaging or injurious impacts or effects of an activity that is likely to occur to waters of the state including water resources and navigation, fishing and public recreation uses.

(176) "Recreational and Small Scale Placer Mining" includes, but is not limited to, the use of non-motorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four (4) inches, and a muffler meeting or exceeding factory-installed noise reduction standards. This phrase does not include "prospecting" as defined by OAR 141-085-0010 above, which does not require a permit or letter authorization from the Agency.

(177) "Reconstruction" means to rebuild; to construct again.

(178) "Reference Site" means a site or sites that have similar characteristics as those proposed for direct compensatory wetland mitigation. A reference site represents the desired future successful condition of a particular direct compensatory wetland mitigation plan.

(179) "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(180) "Removal-Fill Law" means the Oregon Revised Statutes (ORS) 196.800 to 196.990 and 196.600 to 196.692 relating to the filling and/or the removal of material in the waters of this state including wetlands.

(181) "Restoration" means to reestablish wetland hydrology to a former wetland sufficient to support wetland characteristics.

(182) "Restoration of an Estuarine Area" means to revitalize or re-establish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work begins.

NOTE: Mitigation credit may be given for enhancement of areas that are already a functioning part of the estuarine system.

(183) "Restoration Order" means a legally binding order requiring a violator to restore waters of the state and may require remittance of a civil penalty to the Common School Fund.

(184) "Revetment" is a blanket of hard material placed to form a structure designed to protect a bank from erosion. It is normally composed of rock riprap, but can be constructed of poured concrete or preformed concrete blocks.

(185) "Riparian" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, as defined in ORS 541.351(10).

(186) "Riprap" means facing a streambank with rock or similar substance to control erosion in accordance with these regulations.

(187) "Road Prism" means the excavation and embankment areas of roadbed.

(188) "Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law ORS 390.805 to 390.925.

(189) "Sediment" is material that originated from the weathering of rocks and decomposition of organic material that is transported by, sus-

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pended in, and eventually deposited by water, air or is accumulated in beds by other natural phenomena (e.g. sand, silt).

(190) "Seeding" means, for the purpose of OAR 141-085-0020(4), the sowing of seed and placement of seedlings to produce farm or ranch crops.

(191) "Serviceable" means capable of being used for its intended purpose. For example, a serviceable road is one upon which vehicles can be safely driven.

(192) "Service Area" is that area in which credits from a mitigation bank can be used to compensate for unavoidable wetland losses due to removal, fill, or alteration activities.

(193) "Shellfish" are saltwater and freshwater invertebrates with a shell, including but not limited to clams, crabs, mussels, oysters, piddocks, scallops and shrimp.

(194) "Showing Before the Agency" means to prove, make apparent, or make clear by presenting evidence to the Director of the Division of State Lands or designee.

(195) "Siltation/Deposition" means the settlement or accumulation of material out of the water column and into the streambed of the waterway. It occurs when the energy of flowing water is unable to support the load of the suspended sediment.

(196) "Sluice Box" means a trough equipped with riffles across its bottom, used to recover gold and other minerals with the use of water.

(197) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.

(198) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(199) "Streambank Stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting; including, but not limited to bank re-sloping, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), or erosion control.

(200) "Structure" means an object, device (e.g., piling, culvert), excavation or alteration (e.g., irrigation ditch or push-up dam) that is constructed, installed or erected, and is designed to accomplish a specific purpose. Structures require a location in waters of the state (e.g., push-up dams), or are attached to and/or interconnected with waters of the state (e.g., irrigation or drainage ditch).

(201) "Subbasin" is a drainage area described by the United States Geologic Survey fifth field hydrologic unit.

(202) "Substrate" means the mineral and/or organic material that forms the bed of a waterway.

(203) "Success Criteria" means the measurable threshold that establishes when compensatory mitigation objectives have been met (e.g. The cover of native emergent species will be at least 80% as measured by belt transects).

(204) "Suction Dredge" means a machine equipped with an internal combustion engine or electric motor powering a water pump that is used to move submerged bed materials by means of hydraulic suction. These bed materials are processed through an attached sluice box for the recovery of gold and other minerals.

(205) "Suction Dredging" means the use of a suction dredge for the recovery of gold and other minerals.

(206) "Surety Bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Oregon.

(207) "Temporary Impacts" means those impacts that do not result in the permanent loss of function and/or area and are rectified within twelve (12) months of project completion.

(208) "Tidal Bay" means estuaries, ocean coves, inlets and similar semi-enclosed bodies containing water influenced by the tide.

(209) "Tidegate" means a structure placed in an estuarine channel designed to regulate water levels.

(210) "Tile Drain System" means a subsurface conveyance system used to drain soils for agricultural production or other purposes.

(211) "Toe of the Bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the streambed or marine beach or bed.

(212) "Uplands" are any land form that does not qualify as waters of the state.

(213) "Unique Features" means those physical, biological, chemical, and esthetic characteristics and attributes of an estuary that are uncommon, extraordinary, rare, threatened, or endangered.

(214) "U.S. Army Corps of Engineers" or "Corps" means the United States Army Corps of Engineers.

(215) "Vernal Pools" are types of wet meadow habitat areas with specific, diagnostic plant assemblages that are intermittently flooded with shallow water for extended periods during the cool season, but dry for most of the summer.

(216) "Violation" means removing material from or placing fill in any waters of this state without a permit (authorization) or in a manner contrary to the conditions set out in a permit issued under the Removal-Fill law or these rules.

(217) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(218) "Water Resources" includes not only water itself but also aquatic life and habitats and all other natural resources in and under the waters of this state.

(219) "Waters of this State" means natural waterways including all tidal and nontidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and non-navigable, including that portion of the Pacific Ocean, which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605.

(220) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

(221) "Weir" means a levee, dam or embankment or other barrier placed across or bordering a waterway to:

- (a) Measure or regulate the flow of water;
- (b) Divert fish into a trap; or
- (c) Raise the level of the waterway or divert stream flow into a water distribution system.

(222) "Wet Perimeter", as used in OAR 141-089-0245 thru 0275, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(223) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytic vegetation.

(224) "Wetland Maintenance" means the process of supporting or preserving the condition or functions of a wetland as a management component of a compensatory wetland mitigation plan.

(225) "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.

(226) "Woody Plants" means trees and shrubs.

Stat. Auth.: ORS 196.600- 196.692; ORS 196.800- 196.990

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0100; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0015

### Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Agency's determination as to whether a removal-fill authorization is required depends primarily upon a project's location and the volume of the fill and/or removal and the activity type and purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

(2) To be subject to the requirements of the removal-fill law, a project must be located within "waters of the state." The types of waters of the state and the physical limits of removal-fill jurisdiction are as follows:

- (a) Estuaries and tidal bays, to the elevation of highest measured tide;
- (b) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea,
- (c) Rivers, intermittent and perennial streams, lakes, ponds and all other bodies of water (except wetlands) subject to these rules, to the ordi-

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nary high water line, or absent readily identifiable field indicators, the bankfull stage;

(d) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.

(e) "Other Bodies of Water," as used in ORS 196.800(14) are the following artificially created waters which are considered "waters of the state":

(A) Wetlands and ponds artificially created from uplands, unless specified in OAR 141-085-0015(4) or (5) that are:

(i) Equal to or greater than (1) one acre in size; or

(ii) Identified in a removal-fill authorization as a compensatory mitigation site.

(B) Channels or ditches that are artificially created from upland that:

(i) Contain spawning, rearing or food producing areas for food and game fish; and

(ii) Have free and open connection to waters of the state.

(3) "Other Bodies of Water" do not include existing irrigation canals and ditches that meet the following requirements:

(a) Are operated and maintained for the primary purpose of conveying water for irrigation; and

(b) Are dewatered during the non-irrigation season except for water incidentally retained in isolated low areas of the canal/ditch or for stock water runs, provision of water for fire services or storm water runoff.

(4) "Other Bodies of Water" do not include wetlands artificially created from uplands of up to one acre in size for the purpose of controlling, storing or maintaining stormwater (ORS 196.687).

(5) "Other Bodies of Water" do not include channels, wetlands or ponds of any size artificially created from uplands for the purpose of:

(a) Wastewater treatment;

(b) Farm or stock watering;

(c) Settling of sediment;

(d) Fire suppression;

(e) Cooling water;

(f) Surface mining, where the site is managed for interim wetlands use or not protected as a significant wetland in the comprehensive plan (pursuant to ORS 196.672(10));

(g) Log storage; or

(h) Aesthetic purposes, including golf course features.

(6) "Other Bodies of Water" do not include drainage ditches alongside roads and railroads where the ditch is ten (10) feet wide or less at the ordinary high water line, artificially created from upland or from wetlands (e.g. in mapped hydric soils), not contiguous with other wetlands and does not contain food or game fish.

(7) Even if located within an area described in OAR 141-085-0015(2), to be subject to the removal-fill law and these rules the project must also be of a volume that meets one of the following thresholds:

(a) Oregon Scenic Waterways, the threshold volume is any amount greater than (0) zero, except for recreational prospecting, as defined in ORS 390.835(18)(c) and OAR 141-0100, and any non-motorized activities;

(b) Streams designated as Essential Indigenous Salmonid Habitat (ESH) (see OAR 141-102, the threshold volume is one cubic yard at any one site (for prospecting and non-motorized activities), and cumulatively no more than five cubic yards (for prospecting and non-motorized activities), or an authorization is required (unless exempted under OAR 141-085-0020);

(c) All other waters of the state subject to these rules, the threshold amount is no more than 50 cubic yards (or the equivalent weight in tons) of material removed or filled, or an authorization is required (unless exempted under OAR 141-085-0020).

(8) Fill volume is measured to the elevation of jurisdiction for all waters of the state; removal volume for all waters includes the full extent of the excavation within the jurisdictional area. For wetlands, fill volume is measured to the height of the fill excluding buildings.

(9) When calculating the volume for channel relocation the threshold is met if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(10) Removal-fill activities that are exempt under state law may nonetheless be regulated under applicable federal laws, including the federal Endangered Species Act (16 U.S.C. 1531 et seq.), section 404 of the federal Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), as amended.

Stat. Auth.: ORS 196.800; ORS 196.810; ORS 390.835

Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0105; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0020

### Activities Exempt From Removal-Fill Authorization Requirements

The following activities, uses or structures are exempt and not subject to the removal-fill law or these rules. These exemptions do not apply to removal-fill activities in Oregon Scenic Waterways. The Agency shall determine if a project is exempt from the requirements of OAR 141-085-0018 by applying the standards described in this section.

(1) Exempt forest management practices. These rules do not apply to removal-fill activities directly connected (as defined in OAR 141-085-0010) with a forest management practice when conducted within the beds and banks of non-navigable waterways on forestlands and in accordance with the Oregon Forest Practices Act (ORS Chapter 527). Contact the Agency for the latest list of state-owned navigable waterways.

(2) Exempt fills for certain dams and water diversion structures. These rules do not apply to fills within waters of the state for the construction, operation and maintenance of dams or other water diversions for which authorizations or certificates have been or shall be issued by the Oregon Water Resources Department (WRD) under ORS Chapters 537 or 539 (water appropriation) and for which preliminary authorizations or licenses have been or shall be issued under ORS 543 or 543A (hydropower). These rules also do not apply to annual work required to activate, operate and maintain flashboard type dams within waters of the state as specifically permitted by WRD. These exemptions apply only when the dam or diversion is referenced in the water permit or certificate. A removal-fill authorization is required for construction of certain structures associated with a dam or water diversion facility (such as but not limited to: fishways, streambank enhancement, fish habitat enhancement, access roads and erosion protection) and for removal activities for projects authorized by ORS 537, 539, or 543.010 to 543.620.

(3) Navigational Servitude. These rules do not apply to activities within waters of the state conducted by any agency of the Federal Government acting in the capacity of navigational servitude in connection with a federally authorized navigation channel (i.e., channel dredging).

(4) These rules do not apply to "normal farming and ranching activities" on converted wetlands, as defined in OAR 141-085-010. Such activities include the following:

(a) Plowing,

(b) Grazing,

(c) Seeding,

(d) Cultivating,

(e) Conventional crop rotation,

(f) Harvesting for the production of food and fiber; and

(g) Upland soil and water conservation practices or reestablishment of crops under federal conservation reserve program provisions.

(5) These rules do not apply to the following activities conducted on exclusive farm use zoned land as designated in the city or county comprehensive plan and zoning ordinance.

(a) Drainage or maintenance of farm or stock ponds;

(b) Maintenance of farm roads where such roads are maintained in accordance with construction practices that avoid significant adverse affect to wetlands. Up to fifty (50) cubic yards of borrowed material for exempt road maintenance annually may come from waters of the state. Maintenance activities shall be confined to the same limits of the originally approved structure(s).

(c) Subsurface drainage, by deep ripping, tiling or moling on converted wetlands;

(d) Any activity described as a farm use in OAR 141-085-0010, including farm road construction and maintenance, that is conducted on prior converted cropland as defined in OAR 141-085-0010, so long as agricultural management of the land has not been abandoned for five or more years.

(6) Exemptions do not apply to non-farm uses. The exemptions in subsections (4) and (5) of this section (OAR 141-085-0020) shall not apply to any fill or removal which involves changing any wetlands to a non-farm use.

(7) Exempt "activities customarily associated with agriculture". Fill or removal activities involving less than 50 cubic yards of material as defined in OAR 141-102 and 141-085-0010 for activities customarily associated with agriculture within Essential Indigenous Anadromous Salmonid Habitat streams (as designated under OAR 141-102-0030) are exempt from these rules.

(8) Exempt maintenance or reconstruction of certain structures. Maintenance, or reconstruction of certain structures within waters of the state such as dikes, dams, levees, groins, riprap, tidegates, drainage ditch

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es, irrigation ditches, irrigation structures and tile drain systems are exempt from the requirements of these rules, provided that:

(a) The structure was serviceable within the past five (5) years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(9) Exempt maintenance, repair, replacement or removal of culverts. These rules do not apply to removal-fill activities within waters of the state for the maintenance, reconstruction or removal of culverts as defined in OAR 141-085-0010. This exemption includes culvert replacement (without regard to the size of the replacement culvert) when all of the following apply:

(a) The activity is limited to the extent of the existing road prism (as defined in OAR 141-085-0010) unless the fish passage design requires removal or fill activity outside the road prism in order to successfully pass fish, and removal/fill volume and area of impact is limited to the minimum necessary to restore the function of the structure and provide fish passage;

(b) The culvert was serviceable within the past five (5) years;

(c) The activity does not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction and placement of the culvert.

(d) The culvert is replaced in a manner that assures fish passage and complies with the design guidelines of the Oregon Department of Fish and Wildlife (e.g. counter sinking the new culvert to accommodate the natural bank full width and replicating the stream's natural streambed configuration).

(10) Exempt push-up dams. A push-up dam, as defined in OAR 141-085-0010, within waters of the state, that was first built prior to the effective date of the Removal-Fill Law in 1967 (September 13, 1967) is exempt from the authorization requirements under these rules if:

(a) It has been reconstructed and used within the past five (5) years; and

(b) It has the same impact as when it was first constructed (i.e., size, extent and location); and

(c) It is operated in a manner consistent with the water right certificate and ORS 540.510(5).

(11) On-going maintenance of push-up dams allowed. Once authorized by the Agency, a post-1967 push-up dam within waters of the state may be maintained during the irrigation season and reconstructed each successive season provided the work is done in compliance with all original permit conditions and the push-up dam's impact to the stream is no more than when it was first authorized (i.e., it still has to allow for fish passage). A push-up dam involving less than fifty (50) cubic yards, located within a stream designated as Essential Indigenous Anadromous Salmonid Habitat (see OAR 141-102) and used for "activities customarily associated with agriculture" as defined in OAR 141-102 and 141-085 is exempt from authorization requirements.

(12) Exempt maintenance including emergency reconstruction of roads and transportation structures. These rules do not apply to removal-fill activities for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches. Volumes and area of impact should be limited to the minimum necessary to restore the serviceability and function of the structure.

(13) Exempt small-scale prospecting and non-motorized activities within Essential Indigenous Anadromous Salmonid Habitat. Prospecting or other non-motorized activities within waters of the state resulting in the removal, fill or alteration of less than one (1) cubic yard of material at any one site and, cumulatively not more than five (5) cubic yards of material, from within an Essential Indigenous Anadromous Salmonid Habitat stream segment (as designated in OAR 141-102) in a single calendar year do not require authorization under these rules. Such exempt prospecting or non-motorized activity must remain within the bed or wet perimeter of the waterway. This exemption does not allow removal or fill within waters of the state at any site where fish eggs are present.

(14) Exempt fish passage and fish screening in Essential Indigenous Anadromous Salmonid Habitat only. The construction and maintenance, involving less than fifty (50) cubic yards of fill or removal, of fish passage and fish screening structures built, operated and maintained in Essential Indigenous Anadromous Salmonid Habitat under ORS 498.311, 498.316, 498.326, or 509.580 to 509.645 do not require authorization under these rules. This exemption includes removal of material or gravel bars that inhibit passage or prevent screens from functioning properly.

(15) Any removal-fill activity not exempt under this section (OAR 141-085-0020) is subject to authorization requirements.

Stat. Auth.: ORS 196.810; ORS 196.805

Stats. Implemented: ORS 196.800-196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0022

### Removal-Fill Permits Authorized in Site Selection or Site Certificate Proceedings

(1) Upon submission by the applicant of proper applications and payment of the proper fees, the Agency shall issue the permits authorized by the authorized siting entity, subject to the conditions set forth by the siting entity (including conditions supplied to the siting authority by the Agency). The Agency will continue to exercise enforcement authority over a permit issued pursuant to this section. This section applies to:

(a) The decisions of the Corrections Facility Siting Authority, pursuant to ORS 421.628, relating to siting corrections facilities;

(b) The decisions of the Environmental Quality Commission, pursuant to ORS 459.047, relating to siting solid waste land fills; and

(c) The decisions of the Energy Facility Siting Council, pursuant to ORS 469.300 et seq. related to siting energy facilities.

(2) The standards contained in these removal-fill program rules do not govern complete applications received by any of the agencies listed above before the effective date of these removal-fill program rules. For all such applications, the standards in effect as of the date of receipt apply to consideration of whether the applicable agency shall approve or deny the application.

(3) Under ORS 465.315, no removal-fill authorization is required for the portion of any removal or remedial action conducted on-site where such removal or remedial action has been selected or approved by the Department of Environmental Quality. The responsible party must notify the Agency of its intended action, pay applicable fees in accordance with OAR 141-085-0064, and must comply with protective measures that the Agency would otherwise apply.

Stat. Auth.: ORS 421.628; ORS 459.047; ORS 469.300

Stats. Implemented: ORS 421.628; ORS 459.047; ORS 469.300

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0025

### Application for Individual Removal-Fill Permits

(1) Any person planning an activity subject to the Removal-Fill Law or these rules must obtain an individual permit or other authorization from the Agency before conducting the activity. Persons may submit an application in order for the Agency to determine if an activity is subject to these rules and requires an authorization.

(2) To obtain an individual permit, a complete application is required in order for the Agency to process the application and issue the permit. The applicant is responsible for providing sufficient detail in the application to enable the Agency to render the determinations and decisions required by these rules. The same level of documentation and analysis will not be required for all types of projects. The intensity of the analysis and therefore the amount and quality of information needed, will vary depending upon the size of the project and related severity of the expected adverse impacts. For example, projects with minimal impacts on small areas of waters of the state and not involving any listed species will require less documentation than will projects with major impacts on large areas of waters of the state that involve listed species.

(3) A completed and signed application on forms provided by the Agency along with any maps, photos and drawings, as required, that includes the following information:

(a) Applicant and property owner information including name, address and phone number;

(b) Project site location information including Township, Range, Quarter/Quarter Section and Tax Lot(s); latitude and longitude, street location if any; and location map with site location indicated;

(c) Location of any off-site disposal or borrow sites if these sites contain waters of the state;

(d) Project information including proposed activity, specific project description, project plan and section views, fill and/or removal volumes expressed in cubic yards (total in waters of the state), and, for wetlands, also the size in acres (to the nearest 0.01 acre);

(e) Description of the purpose and need for the project;

(f) Identification of the limits (area) of the waters of the state (e.g. wetland delineation or determination) and the proposed impact to waters of the state associated with the project;

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(g) A written description of any changes that the project may make to the hydraulic and hydrologic characteristics (e.g., general direction of stream and surface water flow, estimated winter and summer stream flow volumes.) of the waters of the state, and an explanation of measures taken to avoid or minimize any adverse effects of those changes. Adverse effects to be considered include but are not limited to:

(A) Impeding or restricting the passage of normal or expected high flows (unless the project purpose is for fill to impound water);

(B) Increasing water flows from the project;

(C) Relocating water or redirecting water flow;

(D) Causing flooding or erosion downstream of the project.

(h) A description of the existing biological and physical characteristics and condition of the water resource and identification of the adverse effects of project development;

(i) A description of the navigation, fishing and public recreation uses, if any, at the project site;

(j) A written analysis of alternatives that were evaluated to determine the practicable alternative to avoid and minimize impacts to waters of this state, including water resources and navigation, fishing and public recreation uses. A practicable alternative is one that is capable of being done (i.e., feasible) and proposed on a site that is available to the applicant for the project purpose. Sites that are not presently owned or controlled by the applicant, but could be reasonably obtained, utilized, expanded, or managed to fulfill the basic purpose may be considered if otherwise feasible. The analysis must explain why the applicant chose the option identified in the application. Unless specified otherwise by the Agency, an alternatives analysis is not required for projects involving up to 250 (two hundred fifty) cubic yards in non-essential salmon habitat areas (as designated in OAR 141-102) or for projects involving wetland impacts equal to or of less than 0.2 (two-tenths) acre. Circumstances when an alternatives analysis may be required in the application include but are not limited to projects involving conversion to upland of rare wetland types (such as forested bogs and vernal pools). An application for a removal-fill activity that meets the following criteria need not include an elaborate explanation of the applicant's process to determine the practicable alternative:

(A) Those located in waters of the state with limited aquatic life and habitats and limited navigation, fishing and public recreation uses.

(B) Small in size; in relationship to the affected waters of the state.

(C) Those that cause only temporary impacts.

(k) Names and addresses of adjoining property owners;

(l) Local government land use information (as shown on the application form);

(m) Coastal zone certification statement, if project is in the coastal zone (as shown on the application form);

(n) Any information, known by the applicant, concerning the presence of any listed species. Information may include but is not limited to:

(A) A site survey;

(B) A database query completed by the Oregon Natural Heritage Program; or

(C) A project-specific or programmatic Biological Assessment and/or approved Biological Opinion and/or a letter from the pertinent state or federal agency;

(o) Any information, known by the applicant, concerning historical, cultural and/or archeological resources. Information may include but is not limited to a statement on the results of consultation with affected Tribal governments and/or the Oregon State Historic Preservation Office.

(4) If reasonably expected adverse impacts to the water resources cannot be avoided, minimized, rectified or reduced, a complete application must also include a compensatory wetland mitigation plan as defined in OAR 141-085-0010 that will meet the requirements in OAR 141-085-0121 - 0176, or a compensatory mitigation plan, as required in 141-085-0115, or a rehabilitation plan for temporary impacts to waters of the state, as required in OAR 141-085-0171.

(5) If the proposed activity involves a wetland, a wetland determination or delineation report that meets the requirements in OAR 141-090-005 - 0055 shall be submitted by the applicant or required by the Agency:

(a) A wetland delineation is generally needed to determine precise wetland boundaries and to accurately identify proposed impacts (fill and/or excavation) and determine Compensatory Wetland Mitigation ratio requirements. In some circumstances, the Agency may conclude that a wetland determination is sufficient to identify wetland impacts or to establish the extent, if any, of wetland impacts.

(b) Whenever possible, wetland determination or delineation reports should be submitted to the Agency for a jurisdictional determination well in advance of a permit application to ensure that the project design is based

upon approved wetland boundaries and to ensure that the application will not need to be revised and resubmitted if, during the evaluation process, the wetland delineation report is found to be inaccurate.

(6) If the proposed activity involves a wetland, the application shall include a functional attribute assessment of the wetland as described in OAR 141-085-0121.

(7) If the proposed activity will directly affect an estuary as defined in OAR 141-085-0010, a complete application must include:

(a) An estuarine resource replacement plan that meets the requirements in OAR 141-085-0240 to 0266 (rather than the compensatory mitigation plan requirements cited in (4)); and

(b) For any project involving the placement of fill for a non-water dependent use as defined in OAR 141-085-0010, a written statement that analyzes the following criteria:

(A) The public use of the proposed project;

(B) The public need for the proposed project;

(C) The availability of alternative, non-estuarine sites for the proposed use; and

(D) The proposed project's identified adverse effects on public navigation, fishery and recreation.

(8) A single application may be required by the Agency when integrally-related activities are proposed at more than one location within a single waterway, wetland or subbasin, by the same person. For non-linear projects, fill or removal of material at locations not more than one mile apart may be combined into one application. Linear transportation or utility corridor projects may exceed the one-mile limit if they:

(a) Consist of integrally-related activities; and

(b) Are planned, phased, designed and budgeted as a discrete construction unit.

(9) The Agency may require additional information necessary to make an informed decision on whether or not the application and project complies with these rules and ORS 196.800 to 196.990.

(10) The application may include the fee as described in OAR 141-085-0064.

Stat. Auth.: ORS 196.815; ORS 196.825; ORS 196.830

Stats. Implemented: ORS 196.800-196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0205; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0028

### Individual Removal-Fill Permit Review Process including the Public Review and Notice Process

(1) General Description. The Agency shall make a permit decision within ninety (90) calendar days after determining that the application is complete and the fee has been received. Within the ninety (90) day time period, the Agency will do one of the following:

(a) Approve the application and issue an individual removal-fill permit with conditions; or

(b) Approve the application with modifications and issue an individual removal-fill permit with special conditions; or

(c) Request of the applicant an extension of the permit decision deadline to a time certain. No extension shall be made without the applicant's written approval; or

(d) If the project is inconsistent with these rules (e.g. OAR 141-085-0029), deny the application; or

(e) Determine the project is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or 141-085-0020; or

(f) Determine that the project is eligible for approval under a general authorization as described in OAR 141-089 and process the application in accordance with the applicable general authorization, if requested to do so by the applicant.

(2) If the Agency determines that the project is not subject to these rules, it shall notify the applicant, in writing, and state the reasons for the determination.

(3) In the event that the applicant and the Agency agree to postpone and extend the removal-fill permit issuance decision, the applicant and the Agency shall agree on a new permit decision deadline. The new schedule must be in writing and agreed upon before the expiration of the ninety (90) day period described in OR 141-085-0028(1). If no agreement is reached, the Agency shall take any action described in OAR 141-085-0028(1)(a), (b) or (d) deemed appropriate.

(4) Modifications to permit applications may be accepted by the Agency at any time prior to the permit decision. If the modification is determined by the Agency to be substantially different in nature or effect from



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the original application (e.g. large increase in area of development, or large increase of volume of fill/removal), the Agency shall treat the modified application as a new application and process it in accordance with these rules. The Agency shall make a decision on the treatment of the modified application based on the information provided by the applicant, within the ninety (90) day time requirement established in OAR 141-085-0028(1). It is a normal and acceptable practice to modify an application in order to address concerns and comments offered during the public review process or at the applicant's own initiative. The Agency will give consideration to this fact as it determines whether or not to treat the modified application as a new application.

(5) An applicant may withdraw an application at any time prior to the permit decision. The notice of withdrawal must be in writing to the Agency.

(6) Public Review Notice Process. Once the application has been deemed complete in accordance with OAR 141-085-0027 and the fee has been received, the Agency shall provide notification of the availability of the application for review to:

(a) Adjacent property owners;

(b) Watershed Councils and public interest groups who have indicated a desire to receive such notices;

(c) Affected local government land use planning and zoning departments;

(d) Local and State agencies, including but not limited to: irrigation, diking and drainage districts, Soil and Water Conservation Districts, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Agriculture, Oregon Water Resources Department, Oregon Department of Economic Development, Oregon State Parks and Recreation Department, Oregon State Historic Preservation Office, Oregon Natural Heritage Program and the Oregon Department of Geology and Mineral Industries;

(e) Federal agencies, including but not limited to: U.S. Army Corps of Engineers (Portland District), Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, NOAA-Fisheries, any affected unit of the U.S. Forest Service or Bureau of Land Management; and

(f) Affected Tribal governments.

(7) The notification of the availability of the application for review may be provided by U.S. mail or electronically (e.g. facsimile, e-mail, posting on the Internet).

(8) The Agency shall furnish to any member of the public (persons not listed in OAR 141-085-0028(8)) upon written request and at the expense of the member of the public a printed copy of any application. The application will also be available for review at the Agency office nearest the project location.

(9) The Agency will review and consider substantive comments of local, state, and federal agencies, adjacent property owners, public interest groups, Tribal governments and individuals as well as conduct any necessary investigations to develop a factual basis for a permit decision. The Agency may schedule a permit review coordination meeting with interested agencies/groups and the applicant to: clarify the review standards and process requirements; provide the applicant an opportunity to explain the project; and to identify issues. At the Agency's discretion, the Agency may hold a public hearing when necessary to gather information necessary to make a decision.

(10) All recommendations and comments regarding the application shall be submitted in writing to the Agency within the period established by the Agency, but not more than forty-five (45) calendar days from the date of the notice. However, consistent with ORS 196.825(9)(b), the Department of Environmental Quality shall comment within seventy-five (75) calendar days from the date of notice to comment unless the Agency, based on a written request from the Director of the Department of Environmental Quality, grants an extension of time or as otherwise agreed to in an intergovernmental agreement between Department of Environmental Quality and the Agency. In no case shall the extension granted be in excess of one year. If an agency or unit of government fails to comment on the application within the comment period, the Agency shall assume the agency or other unit of government has no objection to the project.

(11) Applicant Response to Comments

(a) Comments resulting from the public review process shall be forwarded to the applicant within seven (7) calendar days of the conclusion of the comment period.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of:

(A) Additional information to support the application; and/or

(B) Revisions to the project that address the comments and become part of the application.

(c) If no response is received from the applicant the Agency will presume that the applicant intends to provide no additional supporting information or revisions to the application.

(d) The applicant may make a request, either orally or in writing, for additional time to respond to comments, and the Agency shall agree to any extension of the time allowed to make a permit decision as described in OAR 141-085-0028(1).

(12) Supplemental Information. The Agency may, as a result of the public review process and/or the Agency's investigations, request that the applicant voluntarily submit supplemental information prior to the Agency making the permit decision. The Agency shall state the reason for requesting the additional information and why it is relevant to the permit decision.

(13) All documents in the applicant's permit file kept by the Agency, unless otherwise restricted by law, shall be available for review by the applicant upon request and at reasonable times and location.

Stat. Auth.: ORS 196.815; ORS 196.825; ORS 196.845

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0029

### Review Standards and Permit Conditions for Individual Removal-Fill Authorizations

(1) In order to meet the requirements of OAR 141-085-0006(1), ORS 196.805 and 196.825 the Agency shall evaluate the information provided in the application; conduct its own investigation; and review and consider the comments submitted during the public review process in order to apply the following standards to determine whether or not to issue an individual removal-fill authorization.

(2) Effective Date of Review Standards. The Agency may consider only standards and criteria in effect on the date the Agency receives the complete application or renewal request (OAR 141-085-0036).

(3) Considerations for Approval. To issue an individual removal-fill permit the Agency must determine that the proposed removal-fill activity will not be inconsistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the paramount public policy of this state to preserve the use of its waters for navigation, fishing and public recreation, by:

(a) Considering the public need for the project including the social, economic or other public benefits likely to result from the project. If the applicant is a public body, the Agency may rely on the public body's findings as to local public need and benefit;

(b) Considering the economic cost to the public if the project is not accomplished;

(c) Considering whether the project would interfere with public health and safety;

(d) Considering whether the project is compatible with the local comprehensive land use plan. The Agency will not issue an individual removal-fill permit for an activity at a location that is not consistent or compatible with the local comprehensive land use plan and/or zoning ordinance. The Agency may issue an individual removal-fill permit requiring the applicant to obtain local land use approval prior to beginning the authorized activity;

(e) Determining the degree to which, if at all, the project, will unreasonably interfere with navigation, fishing and public recreation uses of the waters of the state;

(f) Considering the degree to which, if at all, the project will increase erosion or flooding upstream and downstream of the project or redirect water from the project site onto adjacent nearby lands.

(g) Considering the practicable alternatives for the project in accordance with (4) as presented in the application; and

(h) Considering mitigation (including compensatory mitigation) for all reasonably expected adverse impacts of project development, as required by subsection (5).

(4) Alternatives Analysis. The Agency will issue an individual removal-fill permit only upon the Agency's determination that a fill or removal project represents the practicable alternative that would have the least adverse effects on the water resources and navigation, fishing and public recreation uses. Unless otherwise specified by the Agency, and except in essential salmon habitat, no alternative analysis will be required for projects involving less than 250 (two hundred fifty) cubic yards of fill or removal and/or converting to upland less than 0.2 (two-tenths) acre of wetland. In determining whether or not an alternative might be the practicable alternative with the least adverse effects, the Agency will consider the type, size and relative cost of the project, the condition of the water

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resources, and navigation, fishing and public recreation uses as depicted in the application. The financial capabilities of the applicant are not the primary consideration. The basic project purpose, logistics, use of available technology and what constitutes a reasonable project expense are the most relevant factors in determining the most practicable alternative. The applicant bears the burden of providing the Agency with all information necessary to make this determination. No authorizations may be issued for a substantial fill in an estuary for a non-water dependent use unless the following apply:

- (a) The fill is for a public use;
- (b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fishery and recreation; and
- (c) The project meets all other review standards of these rules.

(5) Mitigation. The Agency will only issue an individual removal-fill permit for the practicable alternative with the least adverse effects to the water resources upon the Agency's determination that the project includes appropriate and practicable steps to reduce (mitigate) reasonably expected adverse impacts of the project to the water resources and navigation, fishing and public recreation uses. Mitigation shall be considered in the following sequence:

(a) Avoidance. The Agency shall first consider whether the project can be accomplished by avoiding removing material or placing fill material in or on waters of the state altogether (e.g., by moving the location of a proposed structure, either on-site or off-site, to avoid filling wetlands);

(b) Minimization. If the Agency determines that the project cannot be accomplished without adverse impacts to water resources and/or navigation, fishing and public recreation uses, the Agency shall then consider whether limiting the degree or magnitude of the activity and its implementation can minimize adverse impacts (e.g., bio-engineered and non-structural streambank stabilization techniques, such as bank sloping and revegetation, shall be installed instead of solutions relying primarily on concrete and riprap, whenever technically feasible, suitable and environmentally preferable);

(c) Rectification. If the Agency determines that impacts cannot be further minimized, the Agency shall then consider whether repairing, rehabilitating or restoring (e.g., restoring site conditions along a pipeline corridor after installation is complete) the project area can rectify the impact;

(d) Reduction or elimination. When project impacts have been minimized and rectified to the maximum extent practicable, the Agency will consider whether the impacts can be further reduced or eliminated over time by monitoring and taking appropriate corrective measures (e.g., assure that site restoration methods have effectively revegetated the site); and

(e) Compensation. The Agency shall then consider how the applicant's proposal would compensate for reasonably expected adverse impacts by replacing or providing comparable substitute wetland or water resources and/or navigation, fishing and public recreation uses. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of practicable alternatives.

(6) Direct and Indirect Effects. The Agency shall impose conditions that mitigate the direct effects of project development and conditions that mitigate the indirect effects that reach beyond the immediate project area (e.g., a condition requiring that equipment must be washed down away from any wetland) when necessary to mitigate the reasonably expected adverse impacts of project development.

(7) Permit Conditions. If the project meets the requirements of this section, the Agency shall impose applicable general conditions in order to reduce or eliminate the reasonably expected adverse impacts of project development. The Agency may also require additional, site-specific and/or project-specific conditions, or may modify these general conditions, as listed below, as appropriate:

(a) Conditions to assure compliance with state water quality and toxic effluent standards may be required in order to mitigate for the reasonably expected adverse impacts of project development. Such conditions will be based on standards and/or comments of the Department of Environmental Quality.

(b) The project shall be carried out in compliance with ORS 509.580 to 509.645 and related rules of the Oregon Department of Fish and Wildlife, concerning upstream and downstream passage at all artificial obstructions in which migratory native fish are currently or have historically been present.

(c) All in-water work, (i.e. project work conducted within the beds and banks of a water of the state) including temporary fills or structures, shall be conducted to avoid or minimize impacts to fish and wildlife resources. Such work will be authorized to occur within the Oregon Department of Fish and Wildlife recommended periods for in-water work

as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife. Exceptions to recommended in-water work periods may be authorized by the Agency based on the applicant's request and documentation of consultation with the Oregon Department of Fish and Wildlife that the reasonably expected adverse impacts to fish and wildlife resources will be avoided or minimized.

(d) When previously unknown occurrences of listed species are discovered during construction, the permit holder shall immediately cease work and contact the Agency.

(e) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the permit holder shall immediately cease work at the discovery site and contact the Agency and the State Historic Preservation Office.

(f) Equipment shall be fitted with fish screens if water is pumped from a fish-bearing stream during project work. Contact ODFW Screening and Passage staff for screen specifications. The Agency, based on ODFW advice, may require gravity flow bypasses to provide fish passage if active migration is occurring. Sediment control shall be provided during dewatering, and culverts shall be installed only at dewatered sites. If endangered fish are likely to be present, fish salvage operation shall be conducted by qualified personnel prior to construction. The Agency may require an ODFW District biologist or designee to be present during salvage operations.

(g) The project shall not use as fill material any substances defined as solid waste in ORS 459.005(24) unless the Department of Environmental Quality has authorized prior approval to do so. This includes tires, concrete rubble, and asphalt.

(h) The project shall not use as fill material any chassis, body or shell of a motor vehicle as defined by ORS 801.590.

(i) Vegetated buffers may be required at compensatory mitigation sites in order to protect the mitigation from loss.

(j) The restoration or replacement of destroyed or damaged riparian or wetland vegetation may be required at compensatory mitigation and/or project sites in order to mitigate for the reasonably expected adverse impacts of project development. Priority will be given to the replacement of damaged or destroyed vegetation with native plants that will form a wetland or riparian community dominated by native plants within the project area. Conditions may include planting survival success standards (e.g. eighty percent (80%) of each plant species planted, after five (5) years). Protection (e.g. fencing) for replanted areas and control of invasive plants may also be required. Grass seed mixes or exotics certified weed seed free that will hold soil and not persist will be allowed.

(k) The project shall minimize: erosion upstream and downstream of the site; redirecting or relocating water flow beyond pre-project conditions; impoundment of water upstream of the project (unless approved by affected property owners); or additional water flow from the project site beyond pre-project conditions (unless part of the project purpose).

### (8) Long Term Protection of Mitigation Sites

(a) The individual removal-fill permit along with site access control (e.g. fencing, signing) is usually sufficient legal means to achieve maintenance and long-term protection of mitigation sites. However, in some instances compensatory mitigation sites and indirect compensatory wetland mitigation sites will need to be permanently protected from destruction with appropriate real estate instruments or agreements (e.g. conservation easements, deed restrictions, long-term management agreements with land trusts or public ownership). Situations where such protection will be required include but are not limited to:

(A) When the permit holder is likely to sell the mitigation site within five (5) years of project completion;

(B) When the permit holder is an absentee owner of the mitigation site;

(C) When the permit holder is not likely to actively participate in managing and maintaining the mitigation site; or

(D) When the permit holder is not the owner of the mitigation site.

(b) The applicant shall offer a preferred method and justification.

(c) The Agency will make the final determination for the need and type of long-term protection based upon the risk of loss of the compensatory mitigation site taking into account 8(a),(A),(B),(C) and (D) above.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

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## 141-085-0031

### Documentation of Individual Removal-Fill Permit Decision; Term of Certain Individual Removal-Fill Permits

(1) The Agency shall prepare written findings documenting and supporting any decision to deny an individual removal-fill permit. In addition, the Agency shall prepare written findings to support any decision to issue an individual removal-fill permit for the following:

- (a) Projects involving fill of two acres or more in freshwater wetlands.
- (b) Projects involving fill in estuaries (except cable crossings, pipelines, or bridge construction).
- (c) Projects involving the removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging).
- (d) Projects involving placement of greater than 2,500 cubic yards riprap in coastal streams and estuaries.
- (e) Projects in the Oregon territorial sea in accordance with Statewide Planning Goal 19-Ocean Resources.

(2) The Agency shall prepare written findings documenting and supporting a permit decision that is contrary to the recommendation of a state agency.

#### (3) Terms of Permits

(a) The Agency may issue an individual removal-fill authorization for up to five (5) years for activities that occur on a continuing basis or will take more than one year to complete as follows:

(A) For commercial aggregate removal including dredging and bar scalping when the Agency determines that:

- (i) There is sufficient aggregate resource or annual recharge to allow the proposed volumes to be removed; and
- (ii) The applicant has conducted removal activities in compliance with any individual removal-fill authorization conditions for the same site/location for at least one year preceding the pending application.

(B) For projects associated with flood event recovery (e.g. stream-bank stabilization) when the Agency determines that the project(s) are part of a comprehensive multidisciplinary flood recovery plan that specifically addresses and supports the type of treatment that is proposed in the removal-fill authorization application.

(C) For projects that are for the purpose of watershed restoration that are developed from a watershed assessment and identified as a priority in a watershed action plan.

(D) For other types of projects, when the Agency determines that:

- (i) The project is expected to require more than one year to complete;

or

(ii) The project purpose requires annual activity or reconstruction (e.g. irrigation diversions); and

(iii) The project purpose, location or methods of construction or operation described in the application are not expected to change during the course of the project.

(E) Fees for a multi-year period permit, in accordance with ORS 196.9159(5), shall be paid annually on the anniversary date of the permit.

(F) The Agency may modify conditions of a multi-year authorization based upon new information or project monitoring that indicate a need for different operating conditions.

(G) Before modifying any condition that significantly affects the scope and extent of the activity (e.g. amount of material to be filled/removed) of any individual removal-fill authorization authorized for more than one year, the Agency shall give notice as described in OAR 141-085-0028(4) and treat the proposed notification in the same manner as described in OAR 141-085-0028(6)-(12).

(H) If a person fails to comply with reporting requirements or any other condition of a multi-year authorization the Agency may revoke the multi-year status and require annual renewal, suspend the permit pending correction, or take any other enforcement action available to the Agency under the Removal-Fill Law and these rules.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0036

### Renewal and Extension of Individual Removal-Fill Permits

Permits may be renewed or extended by the Agency under the following conditions:

(1) At least ninety (90) calendar days prior to the expiration of a valid removal or fill permit, the Agency shall notify the permit holder of the expiration date and request that the applicant report to the Agency in writing the status of project completion and the permit holder's desire to renew the permit.

(2) If the applicant submits a request in writing for renewal with the appropriate fee at least forty-five (45) calendar days prior to the permit expiration date, the Agency may:

(a) Renew the permit, with or without modified conditions (consistent with OAR 141-085-0029); or

(b) Extend the permit for up to an additional one-hundred and twenty (120) calendar days, one time only, without modified conditions; or

(c) Extend the term of the permit with new or modified conditions for up to an additional one-hundred and twenty (120) calendar days, one time only; or

(d) Deny the request for permit renewal.

(3) In the event a permit holder does not respond forty-five (45) days prior to the date of permit expiration, the Agency may extend the expiration date of the permit for not more than 120 days, one time only, if:

(a) The permit holder makes a written request to the Agency prior to the expiration date of the permit;

(b) There is a reasonable likelihood that the project can be completed prior to the new expiration date; and

(c) All other conditions of the original permit are met or can be fulfilled.

(4) The Agency may require a new permit application or additional information if:

(a) There is a proposed change in the project that may increase the reasonably expected adverse impacts of the project on the water resources;

(b) There is a change in the method of operation of the project that may increase the reasonably expected adverse impacts of the activity on the water resources of the state;

(c) There is a change in natural conditions at the project site that may increase the reasonably expected adverse impacts than previously identified in the application review process;

(d) New information becomes available indicating that additional adverse impacts may accrue as a result of the project; or

(e) Substantial adverse comments or comments requesting a change in substantive conditions are received.

(5) Requests for renewals shall be reviewed pursuant to the standards contained in the applicable rules in effect at the time of the request.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.825

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0064

### Removal-Fill Authorization Fees; Disposition of Fees

(1) Any application for an individual removal-fill authorization submitted as described in OAR 141-085-0025 of these rules must be accompanied by a base fee in accordance with the following schedule:

(a) For a removal by a private operator, or a person contracting to perform services for a private operator, \$50.

(b) For a removal by a public body: \$150.

(c) For a removal by a commercial operator: \$150.

(d) For a fill by a private operator, or a person contracting to perform services for a private operator: \$150.

(e) For a fill by a public body: \$375.

(f) For a fill by a commercial operator: \$375.

(g) For erosion-flood repair, including riprap, by a private landowner or public body, or a person contracting to perform services for such persons: no fee.

(2) In addition to the base fee for removal established under OAR 141-085-0064(1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of removal material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities involving 500 to 4,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 5,000 to 50,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities over 50,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(3) In addition to the base fee for fill established under OAR 141-085-0064(1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of fill material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities of 500 to 2,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 3,000 to 10,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities of over 10,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

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(4) For each application that involves both removal and filling, the application fee assessed shall be either for removal or filling, whichever is higher, per ORS 196.815(4), according to the fee schedule described in section (1) to (3) of this rule.

(5) The annual fee for an individual removal-fill authorization is equivalent to the base fee according to the schedule set forth in section (1) of this rule. Fees for a multi-year period permit, in accordance with ORS 196.815(5), shall be paid annually on the anniversary date of the permit. Any authorization may be suspended during any period of delinquency of payment and shall be treated as though no authorization had been issued.

(6) There shall be no application fee for the issuance of an Emergency Authorization (OAR 141-085-0010(59)) or Letter of Authorization (OAR 141-085-0010(118)).

(7) Fees received under this section shall be credited to the Common School Fund for use by the Agency in administration of these rules and ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

Stat. Auth.: ORS 196.815

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0070

### General Authorizations

Standards and Criteria; Process for Establishing General Authorizations (see OAR 141-089)

(1) A person may be exempt from the requirement to obtain an individual removal-fill permit through the use of an applicable general authorization. Any person proposing to conduct a removal-fill activity under a general authorization shall first notify the Agency in writing in accordance with the requirements of the specific general authorizations being sought.

(2) General authorizations, are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 to 183.550).

(3) The Agency may propose to adopt a general authorization upon a finding that the category of removal-fill activities, as described in the proposed general authorization (including the applicable conditions):

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative environmental impact;

(c) Will not result in long-term harm to the water resources of the state; and

(d) Are consistent with the policies of these rules as described in OAR 141-085-0006.

(4) The Agency may amend or rescind any general authorization, through rulemaking, upon a determination that the removal-fill activity conducted under the general authorization has resulted in or would result in more than minimal environmental impact or long-term harm to the water resources of this state. Any person may request the Agency invoke this provision. Such a request must include the specific general authorization to be rescinded or amended and clearly and convincingly state the reasons for the request. The Agency may process the request in the same manner as described in OAR 141-085-0070(2).

(5) No general authorization is valid where the removal-fill activity is prohibited by the local comprehensive land use plan or implementing regulations or other applicable ordinance.

(6) The rule promulgating the general authorization shall be effective for up to a five-year term and shall be reviewed, every five years. Upon review, the general authorization shall be reissued in a similar or amended form or repealed.

(7) Failure of a person to adhere to the terms of any general authorization adopted under this section will be considered a violation of the removal-fill law and subject to appropriate enforcement in accordance with these rules.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0075

### Appeals/Contested Case Hearings Regarding Issuance or Denial of an Individual Removal-Fill Permit

(1) Alternative Dispute Resolution Process. An applicant or any other person aggrieved or adversely affected by an individual removal-fill permit decision by the Agency may request the Agency enter into an alternative dispute resolution process. The Agency and all involved parties shall select a trained facilitator/mediator from a list of pre-qualified individuals and

share the costs of the facilitator/mediator. The appellant may retain the right of formal appeal as described in these rules.

(2) Appeal by Applicant. Any applicant whose application for an individual removal-fill permit has been denied, or who objects to any of the conditions imposed by the Agency under OAR 141-085-0029(6), may, within ten (10) calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Agency.

(3) Appeals by Others. Any person who is aggrieved or adversely affected by the grant of an individual removal-fill permit by the Agency may file a written request for a hearing with the Agency within sixty (60) calendar days after the date the authorization was granted.

(4) Standing in Contested Case Hearings. For a person, other than the applicant/ permit holder to have standing to request a contested case as described in OAR 141-085-0075(2), the person must be either "adversely affected" or "aggrieved" as described as follows:

(a) To be "adversely affected" by the individual removal-fill permit the person must have a legally protected interest as defined in OAR 141-085-0010 that would be harmed, degraded or destroyed by the authorized removal-fill activity. This may include, but is not limited to, adjacent property owners.

(b) To be "aggrieved" by the individual removal-fill permit the person must have participated in the Agency's review of the removal-fill activity application by submitting written or oral comments stating a position on the merits of the proposed removal-fill activity to the Agency.

(5) Setting a Contested Case Hearing.

(a) If the written request for hearing is timely (in accordance with OAR 141-085-0075(2) or (3)), and made by a person who has a legally protected interest which is adversely affected by the grant of the permit, the matter shall be referred to the Hearing Officer Panel for hearing within thirty (30) calendar days after receipt of the request.

(b) The hearing shall be conducted as a contested case.

(c) The permit holder and any persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding.

(d) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party under OAR 137-003-0535.

(6) Referral to the Hearing Officer Panel (Panel).

(a) The referral of a request for hearing to the Hearing Officer Panel by the Agency shall include the individual removal-fill permit, or denial, and the request for hearing. The Hearing Officer Panel shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Agency.

(b) Jurisdictional determinations of the existence, or boundaries, of the waters of the state on a parcel of property, as defined in OAR 141-090-0020, issued more than sixty (60) calendar days before a request for hearing are final.

(c) Jurisdictional determinations are judicially cognizable facts of which the Agency may take official notice under ORS 183.450(3) in removal/fill contested cases. Challenges to jurisdictional determinations are only permitted under the process set out in OAR 141-090-0050.

(7) Discovery in Contested Cases. In contested cases conducted on matters relating to these rules, the Agency delegates to the hearing officer the authority to rule on any issues relating to discovery (i.e. production of information), except that depositions will not be awarded unless it is likely that a witness will not be available at a hearing.

(8) The Proposed Order. The hearing officer who conducts the hearing shall issue a proposed order containing findings of fact and conclusions of law within twenty (20) calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Agency.

(9) The Final Order. Within forty-five (45) calendar days after the hearing the Agency shall consider the record, any exceptions, and enter an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(10) Pre-Hearing Suspension of Permits. A permit to fill granted by the Agency may be suspended by the Agency during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Agency and will be either granted or denied by the Agency. The permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Agency by clear and convincing evidence that commencement or continuation of the fill would cause

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irremediable damage and would be inconsistent with ORS 196.000 to 196.905.

(11) Issuance or Denial of a Permit. Interested persons who request notification in writing of the Agency's decision on a permit will be notified at the time of issuance or denial. The Agency's failure to notify an interested person will not extend the statutory sixty (60) calendar days timeframe for hearing requests. Contested case hearings concerning the issuance or denial of a permit will normally be held at the Agency offices in Salem, Oregon, unless extraordinary circumstances require the hearing to be held in the vicinity of the project.

Stat. Auth.: ORS 196.835

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0505; LB 3-1986, f. & ef. 3-31-86; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0085

### Enforcement Actions and Procedures

(1) The Agency is authorized to take such civil, criminal or administrative actions as are necessary to enforce the removal-fill law and these rules (OAR 141-085) including, but not limited to the following (ORS 196.870 and 196.890):

- (a) Consent orders;
- (b) Consent agreements;
- (c) Cease and desist orders;
- (d) Restoration orders;
- (e) Civil penalties; and
- (f) Liens;

(2) The Agency shall give notice of any proposed order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or governmental body affected. Any person aggrieved by a proposed order of the Agency may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS 183.310 to 183.550 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(3) Any notice of violation shall describe the nature and extent of the violation.

(4) The Agency may take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 196.600 to 196.905 or of any rule or final order of the Agency under ORS 196.600 to 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the Agency may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the Agency shall set forth if applicable the dates of notice and hearing and the specific rule or order of the Agency, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

(5) In addition to the actions described in OAR 141-085-0085(4) and 141-085-0090 the Agency may enter an order requiring any person to cease and desist from any violation if the Agency determines that such violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(a) An order under this subsection:

(A) May be entered without prior notice or hearing.

(B) Shall be served upon the person by personal service or by registered or certified mail.

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.

(D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection.

(b) If a person subject to an order under this subsection files a timely demand for hearing, the Agency shall hold a contested case hearing before a hearings officer according to the applicable provisions of ORS 183.310 to 183.550. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency.

(c) Neither the Agency nor any duly authorized representative of the Agency shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

(d) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the Agency's order in the same manner as with an order of that court.

(6) Proposed Order to Restore, Cease and Desist Order and/or Civil Penalties. Any written request for a hearing concerning a proposed enforcement order shall admit or deny all factual matters stated in the proposed enforcement order and shall state any and all claims or defenses regarding the alleged violation. Any factual matters not denied shall be presumed admitted, and failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense. Evidence shall not be taken at the hearing on any issue not raised in the written request for hearing.

Stat. Auth.: ORS 196.860; ORS 196.870; ORS 196.875

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0435; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0090

### Civil Penalties

(1) In addition to any other remedy allowed by law or these rules (OAR 141-085), the Agency may assess a civil penalty for any violation of the removal-fill law or these rules (OAR 141-085).

(2) More than one civil penalty may be assessed for an unauthorized removal or fill activity.

Example: A civil penalty assessed on an initial violation may be followed by a separate civil penalty for failure to comply with a restoration order issued on the same violation.

(3) Required notice; contents of notice. The Agency shall give written notice of Intent to Assess a civil penalty by personal service or by registered or certified mail to the permitholder or person (hereinafter referred to as "party") incurring the civil penalty. The notice shall include, but not be limited to, the following:

(a) The particular section of the statute, rule, order or authorization involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within twenty (20) calendar days of receiving the notice; and

(d) A statement of the amount of civil penalty assessed and terms and conditions of payment.

(e) The party may request a contested case hearing in accordance with procedures described in OAR 141-085-0075.

(4) Calculating the civil penalty.

(a) The amount of civil penalty (F), as expressed in U.S. currency dollars, shall be determined by the Agency using the following formula:  $F = BPCI$ .

(A) B is the base fine factor of \$600;

(B) "P" is the prior knowledge factor to be determined as follows:

(i) A value of 1 shall be applied if the alleged violator was unaware of the removal-fill law at the time of the alleged violation; or

(ii) A value of 2 shall be applied if the alleged violator was aware of the removal-fill law at the time of the alleged violation (e.g., permit non-compliance, prior penalties or other exposure to the Removal-Fill Law);

(iii) A value of 5 shall be applied if the alleged violator had a previous violation. A previous violation exists, for example, if there was an adjudication (either in court or administrative hearing), or the violator failed to appeal an enforcement order (and a final order was issued), or the violator signed a consent order or consent agreement. This value shall not be imposed if the previous violation occurred more than (5) five years prior to the current incident.

(C) The cooperation value (C) shall be determined by the Agency after reviewing the past history of the person in taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assessed as follows:

(i) A value of 1 shall be applied where the person complies with restoration as requested by the Agency without the need for an enforcement order or court action by the Agency, or where the Agency determines that restoration efforts would be unlikely to benefit the resource;

(ii) A value of 3 shall be applied where the person is not cooperative in complying with restoration as requested by the Agency and the Agency must issue an enforcement order or obtain a court order to restore.

(D) "I" is water resource impact factor to be determined as follows:

(i) A value of 1 shall be applied if the damaged resource is expected to naturally self-restore within one year; or

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(ii) A value of 3 shall be applied if the adverse effects are not expected to naturally self-restore within one year.

(b) In cases where the prior knowledge (P) factor is greater than one (1) and the cooperation (C) factor is greater than one (1), the total amount of the civil penalty (F), in dollars U.S. currency, as determined by applying the calculation methods described in OAR 141-085-0090(4) shall be doubled, not to exceed \$10,000 per day.

(5) Failure to pay civil penalty. Once the final adjudication of any civil penalty calculated in the manner described in OAR 141-085-0090(4) has been completed in accordance with OAR 141-085-0090(3), the amount of the civil penalty shall increase by the amount of the original civil penalty for every twenty (20) calendar days that pass without the alleged violator remitting payment to the Agency for the full amount of the civil penalty and the Agency taking receipt of the payment. In no case shall the amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid as required by OAR 141-085-0090(5), interest shall accrue at the rate of nine percent per annum pursuant to ORS 82.010 on the unpaid balance.

(6) Civil penalty relief. The Agency may, upon written request of the alleged violator assess a civil penalty as described in OAR 141-085-0090 and including evidence of financial hardship, remit or mitigate the amount of any civil penalty. The request shall be received within twenty (20) calendar days from the date of personal service or mailing of the notice of civil penalty as described in OAR 141-085-0090(3). Evidence provided as to the alleged violator's economic and financial condition may be presented without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation.

Stat. Auth.: ORS 196.890

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 4-1986, f. & ef. 4-8-86; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0115

### Compensatory Mitigation

(1) The Agency may require compensatory mitigation as a condition of an authorization to compensate for reasonably expected adverse impacts to water resources of the state and navigation, fishing and public recreation uses on waters of the state other than freshwater wetlands or estuarine areas.

(2) Such compensatory mitigation may include, but is not limited to:

(a) Off-project site or on-project site enhancement (e.g., planting or seeding riparian vegetation or exposing enclosed culverted systems) of water resources of the state;

(b) Off-project site or on-project site improvements to enhance navigation, fishing or public recreation uses of waters of the state; or

(c) Compensation to a third party, as approved by the Agency, for the purpose of watershed health or to improve the navigation, fishing or public recreation uses of waters of the state. A permit holder, with the approval of the Agency, may contract with a third party to construct, monitor or maintain the compensatory mitigation site.

(3) The Agency may approve of compensatory mitigation for impacts to waters of the state other than freshwater wetlands or estuarine areas, when the applicant demonstrates in writing that the compensatory mitigation plan will replace or provide comparable substitute for water resources of the state and/or navigation, fishing and public recreation uses lost by project development.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0121

### Freshwater Compensatory Wetland Mitigation (CWM) Applicability, General Requirements; Functional Assessments

(1) The following rule sections, OAR 141-085-0121 to 141-085-0151, apply to removal-fill activities that occur within freshwater wetlands and do not apply to removal-fill activities:

(a) Within estuarine wetlands covered by ORS 196.830 and OAR 141-085-0240 thru 141-085-0266, except as specifically noted in the estuarine mitigation rules or where estuarine wetland restoration or enhancement is proposed to compensate for impacts to freshwater wetlands; or

(b) Within areas covered by an approved Wetland Conservation Plan (WCP) authorized under ORS 196.668 to 196.692.

(2) For projects where reasonably expected adverse impacts to the water resources including wetland functions cannot otherwise be avoided, or minimized, a CWM plan will be required to compensate for the reason-

ably expected adverse impacts of the project by replacing the functional attributes of the wetland impacted by project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland.

(3) For projects described in (2) requiring CWM and involving project development on 0.2 (two-tenths) of an acre or less of wetlands, the applicant may propose to fulfill CWM requirements through indirect CWM methods without first considering direct CWM methods.

(4) For projects described in (2) requiring CWM involving project development impacts greater than 0.2 (two-tenths) of an acre, the applicant shall first consider direct CWM prior to relying on indirect CWM to provide the replacement of the functional attributes of the lost wetland. The applicant shall adhere to the following in developing a CWM plan:

(a) The applicant shall provide for direct CWM within 1 (one) mile of the project development site and within the same subbasin or demonstrate, in writing, that there is no suitable CWM site available that would meet the requirements of OAR 141-085-0126(1) within the one-mile limit.

(b) If the direct CWM siting requirements of (a) cannot be met, the applicant shall provide for direct CWM outside the one-mile area but within the same sub-basin.

(c) If the direct CWM siting requirements of (a) and (b) cannot be met as demonstrated in writing, the applicant shall provide for indirect CWM as described in OAR 141-085-0131 or direct mitigation outside the one-mile area and the subbasin. If the project development occurs within the service area of an established wetland mitigation bank, the applicant shall purchase credits, if available, from the bank to fulfill indirect CWM requirements so long as the functional attributes of the lost wetland are replaced.

(5) The Agency will review the CWM plan for sufficiency and compliance with these rules. The Agency may make recommendations for improvements to CWM plans, at any time prior to the permit decision, based on the demonstrated success of existing CWM projects. The Agency will approve the final CWM plan as a part of the individual removal-fill permit. In approving the final CWM plan, the Agency may, after consulting with the applicant, require conditions necessary to ensure success of the CWM plan and to ensure the requirements in these rules are met.

(6) To the extent possible, the Agency shall develop and make available to the public a listing of known compensatory wetland mitigation sites (e.g., wetland mitigation banks).

(7) The applicant shall complete and include in the application an assessment of wetland functional attributes; the assessment shall assess:

(a) Existing functional attributes at the proposed project impact site;

(b) Functional attributes reasonably expected to be adversely impacted, including those functional attributes decreased or lost due to the proposed project;

(c) Existing functional attributes at the proposed direct CWM site, if the site is currently wetland; and

(d) The net gain or loss of specific functional attributes at the direct CWM site as a result of the proposed direct CWM project.

(8) Wetland functional attributes to be assessed include, but are not limited to:

(a) Water quality and quantity functions;

(b) Fish and wildlife habitat functions;

(c) Native plant communities and species diversity functions; and

(d) Recreational and educational values.

(9) The Oregon Freshwater Wetland Assessment Method shall not be used to satisfy the requirements of OAR 141-085-0121(7).

(10) HGM is the preferred, but not required, functional assessment method. When HGM is used, the Willamette Valley HGM guidebook should be used for appropriate HGM classes in the Willamette Valley; until additional guidebooks are developed by the Agency, the "Judgmental Method" in the Willamette Valley Guidebook may be used to assess wetland functions in other regions. The judgmental method provides a consistent framework to consider the basic functional attributes of wetlands as described in OAR 141-085-0121(8)(a) thru (c). It also offers a list of observable field indicators of the conditions and processes that contribute to these functional attributes and guidance on making qualitative rating of these functional attributes without reference to the data set or numeric scoring models.

(11) If best professional judgment is used to evaluate any or all wetland functional attributes, a discussion of the basis of the conclusions is required. For example, if the water quality function is determined to be "low," a detailed rationale based upon direct measurement or observation of indicators of water quality function must be discussed.

(12) Additional assessments or data may be required by the Agency if the functional assessment results, public/agency review comments, or the

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Agency's review indicate that there may be reasonably expected adverse impacts to rare or listed plant or animal species, adjoining property owners, or if the project's effects are not readily apparent.

Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0126

### Requirements for All CWM using Direct Mitigation Methods

- (1) Direct CWM projects shall replace:
  - (a) Wetland habitat type(s) impacted by the project, as classified per Cowardin system (e.g., palustrine forested); and
  - (b) HGM class/subclass(es) impacted by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Division of State Lands 2001); and
  - (c) The functional attributes of the lost wetland (impact wetland).
- (2) The Agency may approve exceptions to the requirements of OAR 141-085-0126(1) if the applicant demonstrates, in writing, that the alternative CWM:
  - (a) Is environmentally preferable;
  - (b) Replaces wetland functions that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan approved by a watershed council or public agency;
  - (c) Replaces wetland types (Cowardin/HGM) and functions historically lost in the region; or
  - (d) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent ONHP plant community classification.
- (3) A permit holder, with the approval of the Agency, may at any time contract with a third party to construct, monitor or maintain the direct CWM site. The permit holder cannot delegate responsibility for compliance with the CWM requirements unless the authorization has been transferred in accordance with OAR 141-085-0034.
- (4) For linear projects (e.g., roads or utility lines with wetland impacts in several watersheds), the applicant may compensate for all wetland impacts at a single CWM site.
  - (5) Direct CWM projects:
    - (a) Shall be completed prior to or concurrent with the authorized removal-fill project. The Agency may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so. The ratio of CWM required for delayed projects may be increased according to the provisions of OAR-141-085-0136.
    - (b) Shall include native vegetation plantings aimed at re-establishment of a dominance of native plants.
    - (c) Shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide hydrology is not.
    - (6) Direct CWM sites may fulfill multiple purposes including stormwater retention or detention provided:
      - (a) The requirements of OAR 141-085-0126(1) and (2) are met;
      - (b) No alteration is required to maintain the stormwater functions that would degrade the functional attributes; and
      - (c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area.
    - (7) Direct CWM using wetland enhancement must conform to the following additional requirements. The CWM project shall:
      - (a) Be conducted only on degraded wetlands as defined in OAR 141-085-0010;
      - (b) Result in a demonstrable net gain in wetland functions at the CWM site as compared to those functions lost or diminished at the wetland conversion site and those functional attributes previously existing at the CWM site;
      - (c) Not replace existing wetland functional attributes with different wetland functional attributes unless the applicant justifies, in writing, that it is environmentally preferable to do so;
      - (d) Not convert one HGM or Cowardin class of wetland to another unless the applicant can demonstrate that it is environmentally preferable to do so;
      - (e) Identify the causes of wetland degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success; and
      - (f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(8) A conservation easement, deed restriction or similar legally binding instrument shall be part of a direct CWM plan, as specified in OAR 141-085-0029(8).

Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0136

### Ratio Requirements for CWM

- (1) The purpose of CWM ratios is to:
  - (a) Ensure that the state's wetland resource base is maintained as required in ORS 196.672;
  - (b) Offset the temporal loss of wetland functions as compensatory mitigation sites mature (i.e., become fully functional replacement of the lost, impacted wetland);
  - (c) Replace wetland functions that may be size dependent; and
  - (d) Compensate for the likelihood of success in the different CWM methods (creation, restoration, enhancement). The methods are techniques used to achieve the replacement of functional attributes lost from the impacted wetland.
- (2) Except as provided in Sections (3) through (6) of this section, the following minimum ratios shall be used in the development of CWM plans:
  - (a) Restoration: One (1) acre of restored wetland for one (1) acre of impacted wetland.
  - (b) Creation: One and one-half (1.5) acres of created wetland for one (1) acre of impacted wetland.
  - (c) Enhancement: Three (3) acres of enhanced wetland for one (1) acre of impacted wetland.
  - (d) Enhancement of cropped wetland: Two (2) acres of enhanced wetland for one (1) acre of impacted wetland.
  - (e) Conservation in Lieu: Variable: See OAR 141-085-0131(4).
- (3) The Agency shall double the minimum ratio requirements for project development impacting existing CWM sites; for example, using enhancement to compensate for impacts to an existing CWM site will require a ratio of six (6) acres enhanced for every one (1) acre impacted.
  - (4) The Agency may increase the ratios when:
    - (a) Mitigation is proposed to compensate for an unauthorized removal or fill activity; and/or
    - (b) Mitigation is not proposed for implementation concurrently with the authorized impact.
  - (5) At the option of the applicant, CWM may consist of any one or a combination of the following CWM ratios for commercial aggregate mining operations where both the mining operation and the CWM are conducted on converted wetlands (not including pasture):
    - (a) One (1) acre of wetland and open water habitat, with depths less than thirty-five (35) feet, for one (1) acre of wetland impacted;
    - (b) Three (3) acres of wetland and open water habitat, with depths greater than thirty-five (35) feet, for one (1) acre of wetland impacted;
    - (c) One (1) acre of a combination of restored, created or enhanced wetland and upland, comprising at least fifty percent (50%) wetland, for one (1) acre of wetland impacted.
  - (6) The Agency may also apply the following CWM measures for commercial aggregate mining operations on converted wetland (not including pasture):
    - (a) Allow for staged CWM or mined land reclamation required under ORS 517.700; or
    - (b) Based on the value the Agency determines under OAR 141-085-0131(3), allow the applicant, upon approval by the Agency, to pay the entire cost of CWM:
      - (A) On an annual basis for a period not to exceed twenty (20) years over the life expectancy of the operation, whichever is less; or
      - (B) On an annual basis over time at a monetary rate per cubic yard or ton of aggregate material removed annually from the site.

Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0141

### Requirements for All CWM Plans/Application Requirements

- (1) Direct Mitigation. A CWM plan for direct methods shall, at a minimum, include:
  - (a) CWM site information including:
    - (A) Area (size) of the CWM wetland proposed for impact relative to the total area of the wetland.
    - (B) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permis-

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sion to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(C) Location (Township, Range, Quarter Quarter Section and tax lot(s)) and a USGS or similar map showing the CWM site location relative to the impact site.

(b) Existing physical and biological baseline information of CWM site including:

(A) A wetland determination/delineation report (OAR 141-090).

(B) A functional assessment of any existing wetlands at the CWM site, proposed for enhancement or other alteration, including a description of the factors leading to the degraded condition of the site (OAR 141-085-0121).

(C) A description of the major plant communities and their relative distribution, including the abundance of exotic species.

(D) A general description of water source, duration, frequency of inundation or saturation, depth of surface or subsurface water and approximate location of all water features (wetlands, streams, lakes) within 500 feet of the CWM site.

(E) HGM and Cowardin classification of any wetlands present within the CWM site.

(c) CWM plan description including:

(A) CWM plan goals, objectives and success criteria.

(B) The CWM concept in general terms including a description of how the plan, when implemented, will restore, reverse, minimize or control the causes of wetland degradation and ensure that the wetland functions of the impacted wetland are replaced.

(C) A description of the rationale for the CWM site selection.

(D) Proposed water source, duration, frequency of inundation or saturation of the CWM project.

(E) Any known CWM site constraints or limitations.

(F) Proposed HGM and Cowardin classification.

(G) Proposed net losses and gains of wetland functions.

(H) A description of how the applicant will maintain and protect the direct CWM site beyond the monitoring period.

(I) CWM construction plans including:

(i) Scaled site plan showing CWM project boundaries, existing wetlands, restoration, creation and enhancement areas.

(ii) Scaled grading plan with existing and proposed contours and cross section locations.

(iii) Description of construction methods (access, equipment).

(iv) Schematic of any proposed hydrological structures.

(v) Scaled cross sections showing elevations, distance.

(vi) Planting plan (with species, size, number, spacing and installation methods).

(vii) Monitoring plan (schedule, timetable, methods).

(viii) Contingency plan for CWM failures.

(ix) Implementation schedule and construction sequence.

(J) A reference site, combination of reference sites, or reference data of the same HGM class or subclass (e.g. from the Willamette Valley HGM Guidebook) and representing a less functionally-altered condition than the CWM site. Compare and relate the sites and/or data to the CWM goal.

(K) Provisions for a financial security instrument (OAR-141-085-0176), if the impact is greater than .two-tenths of an acre. The financial security instrument is not required for the application but will be required prior to permit issuance.

(L) Plans for restoration projects shall include data substantiating that the site was formerly, but is not currently, a wetland (e.g. a wetland delineation report).

(2) Indirect mitigation. A CWM plan using conservation in lieu must include:

(a) Written documentation that the requirements in OAR141-085-0131(4) are met.

(b) A conservation plan that shall include:

(A) Maps showing the wetland conservation area including all delineated wetlands to be conserved;

(B) The surrounding land uses and an analysis of the probable effects of those land uses and activities on the conserved wetlands;

(C) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the conserved wetlands;

(D) Identification of the party(ies) responsible for long term protection of the conserved wetlands;

(E) A draft legally binding long term protection instrument (e.g. conservation easement);

(F) A draft long-term management plan that addresses the specific requirements of the wetlands to be conserved.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0166

### Advance Mitigation

(1) As part of an existing, active individual removal-fill permit application process, an applicant may request that the Agency consider the possibility that the applicant's proposed CWM project, if successful, could result in producing potential mitigation credits in excess of those needed to satisfy the requirements of OAR 141-085-0029(5).

(2) If the applicant desires to preserve the option of possibly receiving additional mitigation credit for future projects from the excess credits identified under subsection (1) above, then the following additional information shall be submitted as a part of the applicant's Compensatory Wetland Mitigation Plan:

(a) Identify the specific area(s) of the CWM site that compensates for the specific permitted impact, and identify the specific areas of the CWM site that are proposed for credit in future projects;

(b) Include separate protection instruments for each area of the CWM site (existing and proposed);

(c) Provide a separate monitoring program for each section of the CWM site (existing and proposed);

(d) Provide a table showing how much credit, in acres under suitable mitigation ratios, is being claimed at the CWM site.

(3) If the applicant elects to pursue this option, he/she does so completely at his/her own risk. CWM in advance does not create the presumption that the proposed future wetland impact is a permissible action, or that the CWM will be authorized as suitable CWM for any application. A separate alternatives analysis conducted under OAR 141-085-0029(4) shall be required for each and every separate individual removal-fill permit application.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0176

### Security Bonding and Instruments

(1) Financial Security Instruments are required for direct CWM projects for impacts greater than (two-tenths) of an acre. To ensure compliance with CWM requirements, the Agency may allow for any of the following types of financial security instruments:

(a) Surety bond;

(b) Certificate of Deposit;

(c) Irrevocable letter of Credit; or

(d) such other financial instrument as the Agency deems appropriate to secure the financial commitment of the applicant to fulfill the success of the CWM.

(2) No financial security instrument is required for projects conducted by government agencies.

(3) Financial Security Form: The applicant shall file the financial security instrument(s) on a form prescribed and furnished by the Agency. The financial security instrument(s) shall be made payable to the Oregon Division of State Lands.

(4) Commencement of the liability period. The period of liability shall begin at the time of authorization issuance. The liability period shall be established by the Agency and be clearly stated in the removal-fill authorization.

(5) Determining the financial security instrument amount. The Agency shall set the amount of the financial security instrument based on the estimated cost of implementing, maintaining and monitoring the CWM if the Agency were to carry out the CWM plan as authorized by the removal-fill authorization. The applicant may submit cost estimates for the construction, maintenance and monitoring of the proposed CWM for consideration by the Agency.

(6) General terms and conditions of financial security instruments.

(a) The shall be in an amount determined by the Agency as provided in OAR 141-085-0176(5) of these rules and be made payable to the "Oregon Division of State Lands".

(b) The financial security instrument shall be conditioned upon faithful performance of all of the requirements of these rules as well as the conditions of the removal-fill authorization.

(c) Liability period. The permit holder's liability under the financial security instrument shall be for the duration of responsibility for the CWM as set out in the approved removal-fill authorization and these rules. Except as approved by the Agency, a financial security instrument shall be posted to guarantee specific phases of the required CWM provided the sum of the bonds authorized for the phases equals or exceeds the total amount required



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to complete the CWM. The scope of work to be guaranteed and the liability assumed under each phase of the instrument shall be specified in detail in the authorization and financial security instrument form.

(7) Surety bonds: Surety bonds shall be executed by the permit holder and a corporate surety licensed to do business in Oregon. Such surety bonds shall be not be cancelable during their term.

(8) Certificates of Deposit; certificates of deposit shall be assigned to the Agency, in writing, and upon the books of the bank issuing such certificates.

(9) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the state of Oregon.

(b) The letter must be irrevocable prior to release by the Agency.

(c) The letter must be payable to the "Division of State Lands" in part or in full upon demand by and receipt from the Agency of a notice of forfeiture issued in accordance with OAR 141-085-0176 of this rule.

(10) Financial Security Instrument Replacement. The Agency may allow a permit holder to replace an existing financial security instrument with another if the total liability is transferred to the replacement. The Agency shall not release an existing financial security instrument until the permit holder has submitted and the Agency has approved the replacement. Replacement of a financial security instrument shall not constitute a release under OAR 141-085-0176 of these rules.

(11) Financial Security Instrument Release. The Agency shall authorize release of the financial security instrument when the CWM meets the requirements of the CWM plan and conditions of the removal-fill authorization. The permit holder shall file a request with the Agency for the release of all or part of a financial security instrument. The request shall include:

(a) The precise location of the CWM area.

(b) The permit holder's name.

(c) The removal-fill authorization number and the date it was approved.

(d) The amount of the financial security instrument filed and the portion sought to be released.

(e) The type and appropriate dates of CWM work performed.

(f) A description of the results achieved relative to the permit holder's approved CWM plan.

(12) Forfeiture of financial security instruments. The Agency shall declare forfeiture of all or part of a financial security instrument for any removal-fill authorization project area or an increment of a project area if CWM activities are not conducted in accordance with the approved CWM plan or the permit holder defaults on the conditions under which the financial security instrument was posted. The Agency shall identify, in writing, the reasons for the declaration.

(13) Determination of Forfeiture Amount and Utilization of Funds. The permit holder shall forfeit the amount of the financial security instrument for which liability is outstanding and either utilize funds collected from bond forfeiture to complete the CWM on which bond coverage applies or deposit the proceeds thereof in the Oregon Wetlands Mitigation Revolving Fund Account for use in the payment of costs associated with wetland mitigation activities.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0244

### Application and Review Procedure

(1) Whenever any person submits an application for permit for filling or removal of material from an intertidal or tidal marsh area, the Agency shall advise the applicant that mitigation will be required as a condition of any permit for such activity as may be issued.

(2) The Agency shall notify the applicant that the application for permit is not complete until a written proposal for mitigation has been received.

(3) The Agency shall review any application for intertidal removal or fill permit in conjunction with a written mitigation proposal. The Agency's review shall consider the statutory criteria set out in ORS 196.830 to determine whether a permit shall be issued. When a permit is to be issued, the Agency shall consider the mitigation proposal and determine its adequacy in accordance with these rules.

(4) The Agency shall review and process the application in the same manner as described in OAR 141-085-0027, 0028, and 0029.

(5) Each application for a removal or fill permit involving mitigation shall provide the following information relating to mitigation in addition to such other information as may be required:

(a) A location map and site plan of the area that will be affected by intertidal removal and fill. The development site plan must show water depths and land surface elevations relative to Mean Lower Low Water datum. The development site plan shall also show the boundaries and area of each estuarine habitat type present at the site. (OAR 141-085-0246 thru 141-085-0254 for a description of estuarine habitats found in Oregon estuaries);

(b) A written mitigation proposal for the intertidal removal or fill activity described in the application. The mitigation proposal shall comply with and supply information as required under OAR 141-085-0136, 0141 and 0146. The mitigation site plan must show water depths and land surface elevations relative to Mean Lower Low Water datum. The mitigation site plan shall also show the boundaries and area of each estuarine habitat type present at the site;

(c) Any provisions of the comprehensive land use plan for the area as those provisions relate to the proposed intertidal removal-fill site and the proposed mitigation site.

(6) In reviewing an application for a removal-fill permit involving mitigation, the Agency shall determine:

(a) The adverse effects of the proposed activity, i.e., the type and areas extent of habitats destroyed or adversely affected; the nature and magnitude of associated water quality degradation; unique features destroyed or adversely affected;

(b) The extent of compensating activity inherent in the proposed activity, e.g., uplands converted to intertidal or shallow subtidal areas; water quality enhancement caused by improved circulation or flushing. Creation of a subtidal area by removing material from an intertidal area is not a compensating activity under these rules;

(c) The availability of areas in which mitigation activities could be performed. The Agency may rely on local comprehensive land use plans and local, state, and federal planning and resource agency staff to develop this information;

(d) How and to what extent an estuarine area will be created, restored or enhanced;

(e) How the proposed mitigation will maintain the functional characteristics and processes of an estuary such as its natural biological productivity, habitats and diversity of native species, unique features and water quality.

Stat. Auth.: ORS 196.825; ORS 196.830

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-085-0400

### Purpose

These rules describe when, and under what conditions, the Agency will allow mitigation banking as a means of wetland compensation when fill or removal of material is proposed in wetlands regulated by the State of Oregon. Mitigation banking is used to provide larger scale compensatory wetland mitigation in advance of anticipated smaller wetland losses. These rules also specify the requirements to obtain authorization to develop a wetland mitigation bank.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0100

### Purpose and Applicability

(1) This rule sets forth conditions under which a person may, without an individual removal-fill permit from the Agency, place or remove material within waters of the state (including Essential Salmon Habitat as designated in OAR 141-102) for the purposes of fish habitat enhancement as defined by OAR 141-085-0010.

(2) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

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(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Unless specified, the terms used in this general authorization (GA) are defined in OAR 141-085-0010.

(6) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085 except a single application, for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0105

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the sole purpose of improving habitat conditions for fish;

(b) Consist of fill or removal of material as:

(A) Randomly placed rock

(B) Deflectors

(C) Rock and log weirs

(D) Gravel placement

(E) Pool and pond construction

(F) Back/side channel construction

(G) Channel reconstruction

(H) Barrier removal and placement of fishways

(I) Woody material

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements;

(b) The project is not for the sole purpose of improving habitat conditions for fish or other aquatic habitat restoration in wetlands; or

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085; except as provided for in OAR 141-089-0205 Wetland Restoration and Enhancement.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0110

### Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory requirements:

(1) Be consistent with the Oregon Aquatic Habitat Restoration and Enhancement Guide.

(2) Demonstrate consistency with the Oregon Department of Fish and Wildlife's requirements under ORS 509.580 to 509.645 for upstream and downstream fish passage.

(3) Fills shall be of a size appropriate to the stream, and not exceed 150 cubic yards per site unless otherwise recommended by the Oregon Department of Fish and Wildlife for purposes of providing or improving fish passage (e.g., a simulated stream bottom or reconstructed channel). For purposes of this general authorization, a site can be a single location of the entire project or a component of a project with multiple elements and geographic locations.

(4) Channel reconstruction projects shall restore pre-channelized morphology to channelized streams by providing for sinuosity and width/depth ratios that emulate the natural stream channel.

(5) In order to stabilize deflectors, log weirs and other similar structures, the bed and the bank may be stabilized with nonstructural methods or

riprap not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site.

(6) Rock and log weirs and full-spanning boulder weirs may be placed within the bed and banks only if they promote fish passage, prevent streambed degradation and/or recruit spawning gravel and do not require annual reconstruction. Weirs must incorporate a keystone rock or rocks that allow for juvenile fish passage at all flows.

(7) Deflectors may be placed only if they add stream structure and increase habitat complexity.

(8) Clean, river-run gravel used for enhancing or improving spawning areas must come from within the same river system as the placement site and not exceed 100 cubic yards per site.

(9) Pools and ponds shall be designed to allow fish to escape during low water periods. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds, so long as pool depth does not exceed natural maximum scour depth.

(10) Gravel and bed materials may be removed to create or clear side or back channels.

(11) Artificial barriers to fish passage including but not limited to culverts, tidegates and road crossings (not exempt from the removal-fill law under OAR 141-085-0020) may be removed and fish passage structures may be placed within the bed and banks of waters of the state.

(12) The project may convert wetlands to other waters if the project approximates or restores fish habitat lost by past land use activities. The project shall have only minimal adverse impacts to wetlands.

(13) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency (unless exempt) in accordance with OAR 141-100.

(14) When necessary to protect and conserve the water resources of the state, the Agency may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0115

### Application Requirements; Public Notice Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) The Agency shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Agency shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Agency shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Agency shall assume the party has no objection to the application.

(5) The Agency may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

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(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Agency may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0130

### Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0150

### Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) The Agency shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(3) The Agency shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Agency shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Agency shall assume the party has no objection to the application.

(5) The Agency may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for pro-

cessing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Agency may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0165

### Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0175

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable Mandatory Requirements as described in this rule. To be eligible a project must:

(a) Be for the following purposes:

(A) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;

(B) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;

(C) Widening, realigning or removing existing railroad beds;

(D) Widening, realigning or removing existing roads;

(E) Widening, realigning, removing or replacing existing bridges or similar structures;

(F) Widening, realigning or removing existing bicycle, pedestrian or other lanes or trails;

(G) Constructing new bicycle, pedestrian or other lanes or trails;

(H) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

(I) Construction of new culverts;

(J) Extension of existing culverts beyond the existing road prism;

(K) Streambank stabilization associated with projects listed in (A) through (J); and

(L) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation.

(b) Be for no more than a total of five thousand (5000) cubic yards of material filled, removed, or altered in waters of the state for a single and complete project.

(c) Be for streambank stabilization associated with a transportation-related project as listed above, with no more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of the state for a single project or two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(d) Involve fill in wetlands of 0.5 acres or less for projects as described above in (a).

(e) Be for test holes, borings and similar activities associated with planning and design of transportation structures.

(f) Be for an activity that is incidental to the project necessary to provide fish passage or needed for the structural integrity of the project.

(2) A project is not eligible for this general authorization if:

(a) The project is not a transportation-related structure as described above;

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(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project is located within an estuary or the Pacific Ocean.

(d) The project involves stream channel relocation, other than temporary diversions approved by the Agency.

(e) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide fish passage or for the structural integrity of the project.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0185

### Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) The Agency shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Agency shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Agency shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Agency shall assume the party has no objection to the application.

(5) The Agency may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Agency will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Agency may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0200

### Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0205

### Purpose and Applicability

(1) This rule sets forth conditions under which a person may, without an individual permit from the Agency, place or remove material within waters of the state for the purposes of wetland restoration or enhancement as defined in OAR 141-085-0010.

(2) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085, except a single application for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0210

### Eligibility Requirements; Ineligible Projects

OAR 141-089-0210 Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the specific purpose of restoring or enhancing a wetland such as a project developed and funded by the Wetland Reserve Program, the Oregon Conservation Reserve Enhancement Program, Coastal Wetlands Protection and Enhancement Program or the North American Waterfowl Conservation Act; and

(b) Restore wetland types historically found in the region; and

(c) Restore or enhance wetland functional attributes such as fish and wildlife habitat, water quality and quantity; or

(d) Support the purposes of waterfowl or wetland management within a state or federally designated management area as identified in a management plan for the area.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements.

(b) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085 except as provided for in OAR 141-089-0100(6) Fish Habitat Enhancement.

(c) The project is proposed primarily for the purpose of storm or waste water management, stock ponds, or aquaculture; or

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(d) The project is proposed for the purpose of complying with the requirements of compensatory wetland mitigation under OAR 141-085 unless the project is included in a Wetland Conservation Plan approved by the Agency under ORS 196.678; or

(e) The project is for restoring a wetland previously constructed, restored or enhanced for the purpose of complying with the requirements for compensatory wetland mitigation under OAR 141-085; or

(f) The project is proposed within a Wetland Conservation Plan area and is not in conformance with the approved plan; or

(g) The project is designed to restore or enhance wetlands used as amenities in golf courses, subdivisions or similar settings where their purpose is primarily aesthetic.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0215

### Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The project shall have only minimal adverse impact to existing wetlands and result in a measurable increase in wetland functional attributes;

(2) The project may not include clearing or removal of trees from forested wetlands to convert the forested wetland to emergent or open water wetlands, unless the resultant wetland type was historically abundant but currently scarce within the basin;

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency in accordance with OAR 141-100.

(4) When necessary to protect and conserve the water resources of the state, the Agency may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0225

### Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) The Agency shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Agency shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Agency shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Agency shall assume the party has no objection to the application.

(5) The Agency may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Agency may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0240

### Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0275

### Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2006, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0295

### Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) The Agency shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Agency shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Agency shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Agency shall assume the party has no objection to the application.

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(5) The Agency may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Agency may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0310

### Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2006, at which time this general authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0400

### Purpose and Applicability

(1) These rules set forth conditions under which a person may, without an individual removal-fill permit from the Agency, place or remove piling in waters of the state including areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for such purposes as over-water structure support or navigational aid.

(2) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0016 and 0021.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0011.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0405

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be placement of no more than five (5) piles or one (1) dolphin consisting of three (3) to five (5) piles;

(b) Be individual piles and piles placed for over-water structure support (e.g., pile associated with docks, piers), mooring and turning dolphins, or navigational aids not otherwise exempt from the removal-fill law as described in OAR 141-085-0015 and 0020;

(c) Be untreated wood, steel, fiberglass or plastic piles;

(d) Be piles fitted with devices to effectively prevent perching by piscivorous bird species;

(e) Be placed from a barge-mounted or above top-of-bank position. If barge-mounted, barge shall not at any time be grounded on the bed or banks.

(f) Be placed by means of impact or vibratory methods or removed (to the extent regulated as material pursuant to OAR 141-085-0010(125)) by means of vibratory method only.

(2) A project is not eligible for this general authorization if:

(a) Piling is placed to construct headwalls or other bank treatment structure;

(b) Piling is placed to create new uplands;

(c) Piling is sheetpile;

(d) Piling is placed or removed by excavation (including hydraulic jet method) of streambed or banks;

(e) Piling is placed in wetlands;

(f) Piling is placed so as to impede normal water flow into or within wetlands or deflect water in a manner that causes erosion;

(g) Piling is placed so as to interfere with, or create hazard to, recreational or commercial navigation;

(h) Piling is placed as poured-in-place concrete;

(i) The project includes placement of footings or other support structure for piling;

(j) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085; or

(k) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0410

### Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency (unless otherwise exempt) in accordance with OAR 141-100.

(2) No pile shall be placed in excess of the minimum necessary to fulfill its essential purpose or function.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0415

### Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) The Agency shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the applica-

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tion is deemed incomplete, the Agency shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Agency shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Agency shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Agency shall assume the party has no objection to the application.

(5) The Agency may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Agency may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0420

### Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Agency for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Agency as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeolog-

ical sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Agency.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall not disturb or destroy woody vegetation to complete the project.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(10) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(11) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(12) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(13) Employees of the Agency and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(14) The Agency makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(15) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(16) The Agency may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(17) The Agency may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(18) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0425

### Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action, which may result in revo-

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cation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0430

### Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0077. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0500

### Purpose and Applicability

(1) These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Director, place or remove very small quantities of material within designated essential indigenous anadromous salmonid habitat areas for projects that have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects. For purposes of this General Authorization "project" means the same as defined in OAR 141-085-0010(165).

(2) An authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. A person is authorized to commence an activity under this general authorization by submitting a complete application on a form provided by the Agency and by agreeing to the eligibility requirements (OAR 141-089-0505), mandatory requirements (141-089-0510) and the conditions for issuance (131-089-0520). The term and conditions of issuance shall be stated in the authorization. The term shall not exceed the expiration date of this general authorization. The authorization is not transferable to another person.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(6) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0505

### Eligibility Requirements; Ineligible Projects

(1) In order to authorize an activity under this general authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects;

(b) Place or remove not more than two cubic yards of material at any individual site and, cumulatively, not more than ten cubic yards of material within a designated essential indigenous anadromous salmonid habitat stream in a single project year;

(c) Have no effect on any listed species; and

(d) Have no effect on known archeological sites.

(2) Examples of eligible projects include, but are not limited to, the following:

(a) Investigative drilling to gather necessary technical data for design-building and/or road foundations;

(b) Installation of scientific measurement devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures;

(c) Limited surveys for historic resources.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0510

### Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory requirements:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0515

### Application Requirements; Review and Approval Process

(1) Any person proposing to conduct an activity covered by this general authorization shall submit an application to do so on a form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) The Agency will review the application for eligibility and compliance with the mandatory requirements.

(3) If the application is deemed incomplete or ineligible, the Agency shall notify the applicant and identify the missing, inaccurate or insufficient information.

(4) If the Agency determines that the application does not meet all the requirements for this general authorization, it shall deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The Agency may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0520

### Conditions for Issuance of General Authorization

All persons conducting activities under this general authorization shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Agency for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown listed species are encountered during the project, the authorization holder shall immediately cease work and contact the Agency as soon as possible.



# ADMINISTRATIVE RULES

(6) When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Agency.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Agency, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(13) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(14) Employees of the Agency and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(15) The Agency makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(16) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(17) The Agency may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(18) The Agency may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(19) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0525

### Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## 141-089-0530

### Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) No activity will be authorized by this general authorization beyond January 1, 2007, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5).

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800- 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

## Insurance Pool Governing Board Chapter 442

**Adm. Order No.:** IPGB 1-2003

**Filed with Sec. of State:** 6-16-2003

**Certified to be Effective:** 6-16-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 442-004-0010

**Subject:** To retain membership of current legal non-citizens.

**Rules Coordinator:** Karla Messer-Holt—(503) 373-1692

## 442-004-0010

### Definitions

(1) "Appeal" means the opportunity for an applicant or member to request and receive administrative review by Board staff of a decision made or action taken by the TPA or state agency regarding program eligibility, subsidy level, disenrollment, re-enrollment, overpayments, fraudulent misrepresentation, or any other decision adverse to the applicant or member.

(2) "Applicant" means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined or redetermined to be eligible to receive such subsidy or continued subsidy.

(3) "Benchmark" means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Board in consultation with the Health Insurance Reform Advisory Committee and is submitted to and approved by the federal government.

(4) "Board" means the Insurance Pool Governing Board established under ORS 735.704.

(5) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(6) "Certified carrier" means a carrier that has been certified by the Board to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) "Dependent" for the purposes of FHIAP means:

(a) An applicant's or member's spouse.

(b) All of the applicant's or member's and applicant's or member's spouse's unmarried children and step children (dependent children, unless otherwise stipulated in this section, must be under the age of 19 and reside with the applicant at least 50 percent of the time as stipulated in an official

## ADMINISTRATIVE RULES

court document; or, who are full-time college students under the age of 23 who may or may not reside with the applicant while attending college. The term "full-time" will be as defined by the institution in which the dependent is enrolled; the burden of proving full-time college student status will be on the applicant).

(c) An applicant's or member's and applicant's or member's spouse's unmarried legally adopted children or children placed under the legal guardianship of the applicant or member or their spouse. All of the children described in this subsection (c) must also meet the criteria in subsection (b) directly above.

(d) An applicant's or member's and applicant's or member's spouse's unmarried child over the age of 18 with a severe disability as documented by the Social Security Administration.

(e) An unborn child of any applicant or member or their dependent as verified by written correspondence from a licensed medical practitioner.

(8) "Disenrollment" means termination of participation in FHIAP.

(9) "Family" is defined in ORS 735.720 (2).

(10) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. These guidelines will be adopted by FHIAP no later than May 1 each year.

(11) "FHIAP" means the Family Health Insurance Assistance Program established by ORS 735.720 to 735.740.

(12) "Fraudulent misrepresentation" means the intentional making of an untrue statement of fact, either by word, action, or omission of material fact.

(13) "Health Benefit Plan" is defined in ORS 735.720(3)(a) & (b).

(14) "Health insurance agent" means a person who holds a current, valid license from the Insurance Division of the Department of Consumer and Business Services to act as an agent.

(15) "Hearing" means a time when the applicant or member and the state agency present a hearing officer with evidence and arguments on the issues. Hearings may be on the following issues, including but not limited to:

- (a) Untimely responses;
- (b) Eligibility;
- (c) Disenrollment;
- (d) Overpayments;
- (e) Fraudulent misrepresentation.

(16) "Incarcerated" means a person living in a correctional facility. The following individuals are considered to be living in correctional facilities:

- (a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center;
- (b) Individuals temporarily released from a correctional facility to perform court-imposed community service work;
- (c) Individuals on short-term leave, fewer than 30 days, from a correctional facility;
- (d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(17) "Income" includes, but is not limited to, earned or unearned income received by adults and unearned income of children received. Income includes bartering, or working in exchange for goods/services or discounts on goods/services, or working in exchange for rent.

(a) For purposes of determining average income, FHIAP allows a deduction from average gross monthly income in the amount of child support or spousal support payments made by the applicant or member to an obligee.

(b) No deduction is allowed for support that is owed but not paid or that is collected through a tax offset.

(c) In order for FHIAP to take this deduction in income, the applicant must provide proof of the support payments by sending FHIAP either a printout from the Support Enforcement Division, or by sending copies of cancelled checks showing the payments made to the obligee.

(18) "Investments and savings" include, but are not limited to: cash, checking accounts, savings accounts, time certificates, stocks, bonds, annuities and other securities easily converted to cash, the tax-assessed value, as indicated by the county assessor, of any residential property owned by the applicant or their dependent that is not owner-occupied. It also includes assets of a business owned by an applicant, member, or their spouse. Investments and savings do not include qualified retirement accounts such as IRAs and 401(k) plans.

(19) "Liable adult" means a person or persons who applied for and/or receives a subsidy for themselves and/or others. Children are not considered liable adults if their parent or guardian applied for or received a subsidy on the child's behalf.

(20) "Material misrepresentation" has the same meaning as in ORS 742.013.

(21) "Medicaid," see OHP.

(22) "Medicare" is a federal health insurance program for those who are 65 or older, disabled, or have permanent kidney failure. May include both Parts A and B, or may only include Part A or Part B.

(23) "Member" means a person enrolled in FHIAP and eligible for and/or receiving a subsidy from the program.

(24) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(25) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or on behalf of, that member.

(26) "Overpayment amount" means:

(a) The total amount of subsidy payments the Board has paid to, or on behalf of, an ineligible member; or

(b) The total amount of subsidy payments in excess of the correct subsidy amount paid to, or on behalf of, an eligible member; or

(c) Both (a) and (b).

(27) "Postmark" means the postmark date affixed by the United States Postal Service.

(28) "Public institution" means state-funded residential facilities such as Eastern Psychiatric Center, Oregon State Hospital, or Eastern Oregon Training Center.

(29) "Qualified non-citizen" for the purposes of FHIAP means a person who is not a United States citizen but is any of the following:

(a) Was a qualified non-citizen on or before August 22, 1996; or

(b) Was a resident of the United States before August 22, 1996; became a qualified non-citizen after August 22, 1996; and has lawfully and continuously resided in the United States for five years; or is any of the following:

(A) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(B) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(C) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(D) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(E) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(F) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(G) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(H) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(I) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply.

(J) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(K) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(L) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(M) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(N) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(O) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

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(Q) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(R) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(S) A person granted immigration status according to the Amerasian Homecoming Act, section 584(a) of the INA.

(T) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. § 5303A(d).

(U) A member of the U.S. Armed Forces on active duty (other than active duty for training).

(V) The spouse or dependent child of a person described above.

(c) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2002.

(d) Except as provided in subsections (a), (b) and (c) of this rule, non-citizens who were given qualified non-citizen status on or after August 22, 1996 are ineligible for FHIAP for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(30) "Redetermination" means the periodic review and determination of a member's continued eligibility and/or subsidy level.

(31) "Reservation list" means a list of potential applicants for FHIAP, entered onto a register maintained by the TPA or state agency as authorized by ORS 735.724.

(32) "Resident" means an individual who demonstrates to the Board that the individual is lawfully residing in Oregon and intends to reside in Oregon permanently.

(a) There is no minimum amount of time a person must have lived in Oregon to be a resident;

(b) Applicants and members and applicant's and member's dependents must intend to remain in Oregon, except for full-time students attending school in another state who are eligible for coverage under the terms of the health benefit plan selected by the member and are dependents of an Oregon resident.

(33) "Self-employment" criteria include, but are not limited to, applicants who submit with their FHIAP application an Internal Revenue Service (IRS) Schedule C tax form and/or a federal form 1099, and for adult foster care givers proof that the recipient of the care resides in the applicant's home. Self-employment does not include partnerships, S-corporations, C-corporations, limited liability corporations, and adult foster caregivers whose care recipient does not reside in the applicant's home. Any income reported on the IRS Schedule E is also not considered self-employment and will not be subject to any deductions.

(34) "Support" means any court-ordered monetary payment for a child(ren) or former spouse or domestic partner.

(35) "Voluntary payroll deduction" means an amount the employee has authorized the employer to deduct from the employee's income to pay expenses not required by law.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 735.724, ORS 735.734 & ORS 735.720 - ORS 735.740  
Stats. Implemented: ORS 735.720 - ORS 735.740  
Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 4-2002(Temp), f. & cert. ef. 12-6-02 thru 6-4-03; IPGB 1-2003, f. & cert. ef. 6-16-03

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## Lane County Local Government Boundary Commission Chapter 191

**Adm. Order No.:** LCBC 1-2003

**Filed with Sec. of State:** 7-7-2003

**Certified to be Effective:** 8-1-03

**Notice Publication Date:** 7-1-03

**Rules Amended:** 191-010-0000

**Subject:** Amendment of filing fee rule.

**Rules Coordinator:** Paula L. Taylor—(541) 682-4425

### 191-010-0000

#### Filing Fee Rule/Schedule

(1) Pursuant to Chapter 12, Oregon Laws 1980, the Lane County Local Government Boundary Commission hereby establishes the following charges for services necessary to defray the costs of operating the Commission and to carry out the purposes of ORS 199.410 to 199.512.

(2) No proposal for a boundary change, as defined in ORS 199.415, and no water or wastewater line extension proposal or any other action set

forth in ORS 199.464 requiring Boundary Commission consideration and approval shall be considered filed with the Commission unless accompanied by a filing fee in the amount indicated in section (8) of this rule.

(3) It shall be the responsibility of the chief petitioner to transmit the filing fee to the Commission at the time the petition is filed with the Commission. As used in this rule, "chief petitioner" means the person or unit of government filing the petition with the Boundary Commission in the case of minor boundary changes and actions provided by ORS 199.464 and, in the case of major boundary changes, the person or unit of government filing the petition with the filing agency according to the principal act, provided that a city council or district board shall be the chief petitioner for boundary change proposals initiated pursuant to ORS 199.490(2) and (5) and water and wastewater line extensions and connections as set forth in ORS 199.464(3). The chief petitioner may collect the filing fee from property owners and/or voters in the territory described in the petition.

(4) The Commission shall use the County Assessor's records to determine the acreage of the proposal for the purpose of computing the filing fee. For the purpose of determining the acreage for the filing fee, land within a public way or ownership shall not be included in the acreage computation unless the proposal, as initiated, includes only territory within a public way or ownership. In such case, the filing fee shall be the minimum fee in section (8) of this rule under the applicable section.

(5) As used in this rule, "urban growth boundary" means the boundary that a city and county have adopted or proposed as part of the comprehensive land use plan to meet the requirements of statewide planning Goal 14.

(6) Annexations initiated in accordance with ORS 222.750 and 199.490(5), "islands," shall be subject to the minimum fee for city annexations in section (8) of this rule.

(7) Effective July 1, 1991, dissolution of inactive districts initiated pursuant to ORS 198.335 to 198.365 shall require the applicable fee consistent with section (8) of this rule. Reimbursement of all or any portion of the required filing fee will be made on a case-by-case basis and shall require a majority vote of a quorum of the Commission. In determining the amount of possible reimbursement, the Commission shall consider the remaining debts and assets of the district, the actual processing costs to the Commission, and the Commission's financial situation.

#### (8) Type of Action/Unit or Jurisdiction

(a)(A) Minor boundary changes (annexations/withdrawals/transfers) for the following, except when the entirety of a city is the affected territory: (\* exist in Lane County)

- (i) Park and recreation district\*;
- (ii) Metropolitan service district;
- (iii) Highway lighting;
- (iv) County service district\* (except wastewater/water);
- (v) Vector control district;
- (vi) Rural fire protection district\*;
- (vii) Geothermal heating district.

#### (B) Fees:

- (i) Up to 25 acres: \$300;
- (ii) 26 to 50 acres: \$420;
- (iii) 51 to 150 acres: \$545;
- (iv) 151 to 640 acres: \$660;
- (v) Over 640 acres: \$765.

(b) Minor boundary changes (annexations/withdrawals/transfers), including governments listed in section (8)(a) when the entirety of a city is the affected territory:

- (A) Consisting of less than 1 acre: \$710;
- (B) Consisting of 1 acre or more but less than 5 acres: \$910;
- (C) Consisting of 5 acres or more but less than 10 acres: \$1,160;
- (D) Consisting of 10 acres or more but less than 25 acres: \$1,460;
- (E) Consisting of 25 acres or more but less than 50 acres: \$1,820;
- (F) Consisting of 50 acres or more but less than 100 acres: \$2,090;
- (G) Consisting of 100 acres or more: \$2,875.

(c) Major boundary changes (formations, dissolutions, mergers\* and consolidations\*):

- (A) Cities:
  - (i) Under 2,500 population: \$3,045;
  - (ii) 2,500 to 10,000 population: \$4,265;
  - (iii) 10,001 to 20,000 population: \$6,093;
  - (iv) Over 20,000 population: \$8,425.
- (B) Districts:

- (i) Under \$10 million assessed valuation: \$3,045;
- (ii) \$10,000,000 to 100,000,000 assessed valuation: \$4,265;
- (iii) \$100,000,001 to 250,000,000 assessed valuation: \$6,093;

# ADMINISTRATIVE RULES

(iv) Over \$250,000,000 assessed valuation: \$8,425.

**NOTE:** \*For mergers and consolidations, the highest fee is used based on the highest assessed value or population of the affected city and/or district.

(d) Extraterritorial wastewater or water line extensions (public and private): \$300.

(e) Formation of privately owned wastewater and water systems: \$900.

(f) Initial allocation of territory to privately owned water system: \$1,250;

(A) Allocation of additional territory to privately owned water systems (up to 10 acres): \$655;

(B) Allocation of additional territory to privately owned water systems (more than 10 acres): \$890.

(g) "Contractual Annexations":

(A) Review of proposed contract between city and applicant by boundary commission (public hearing): \$710;

(B) Hearing on creation of "ring" (island)/extraterritorial service extensions by boundary commission:

(i) Based on total area (ring + island) see section (8) of this rule \$710-2,875;

(ii) For each service extension: \$710;

(C) Hearing on final annexation of territory: \$710.

**NOTE:** Annexations to Lane County Metropolitan Wastewater Service District concurrent with Eugene or Springfield annexations are automatic—no fee. Annexations to Willamalane Park and Recreation District concurrent with Springfield annexations are automatic—no fee.

**NOTE:** An annexation with a delayed effective date may be considered a single filing with one application and filing fee (consistent with #8(b) above)—without separate water and wastewater extension requests—when the annexing area is contiguous to existing city limits and water and wastewater lines to serve the annexing area lie wholly within the city limits and the area to be annexed.

Stat. Auth.: ORS 199.452, ORS 199.457 & ORS 199.458

Stats. Implemented: ORS 199.457

Hist.: LCBC 2-1980(Temp), f. & ef. 10-31-80; LCBC 1-1981 (Temp), f. & ef. 1-13-81; LCBC 2-1981, f. & ef. 4-6-81; LCBC 3-1981, f. 10-7-81, ef. 11-1-81; LCBC 2-1984, f. 4-9-84, ef. 5-4-84; LCBC 3-1989, f. 6-16-89, cert. ef. 7-1-89; LCBC 2-1990, f. 3-8-90, cert. ef. 7-1-90; LCBC 1-1992, f. 4-16-92, cert. ef. 7-1-92; LCBC 2-1993, f. 4-16-93, cert. ef. 7-1-93; LCBC 1-1994, f. 3-28-94, cert. ef. 7-1-94; LCBC 1-1995, f. & cert. ef. 5-12-95; LCBC 1-1996, f. & cert. ef. 4-19-96; LCBC 1-1997, f. & cert. ef. 5-8-97; LCBC 1-1998, f. & cert. ef. 4-27-98; LCBC 1-1999, f. & cert. ef. 6-18-99; LCBC 1-2000, f. & cert. ef. 5-17-00; LCBC 1-2001, f. 6-12-01, cert. ef. 6-29-01; LCBC 1-2002, f. 9-3-02, cert. ef. 9-9-02; LCBC 1-2003, f. 7-7-03, cert. ef. 8-1-03

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## Oregon Board of Dentistry Chapter 818

**Adm. Order No.:** OBD 2-2003

**Filed with Sec. of State:** 7-14-2003

**Certified to be Effective:** 7-18-03

**Notice Publication Date:** 3-1-03

**Rules Amended:** 818-042-0050, 818-042-0060, 818-042-0120, 818-042-0130

**Subject:** The rules are amended to conform the Board of Dentistry's rules with those of the Department of Human Services, which has the statutory authority for regulating the training of x-ray machine operators.

**Rules Coordinator:** Sharon Ingram—(503) 229-5520

### 818-042-0050

#### Taking of X-Rays — Exposing of Radiographs

(1) A dentist may authorize the following persons to place films, adjust equipment preparatory to exposing films, and expose the films under general supervision:

(a) A dental assistant certified by the Board in radiologic proficiency;

(b) A radiologic technologist licensed by the Oregon Board of Dentistry Radiologic Technology and certified by the Oregon Board of Dentistry (OBD) who has completed ten (10) clock hours in a Board approved dental radiology course and submitted a satisfactory full mouth series of radiographs to the OBD.

(2) A dentist may authorize students in approved instructional programs to take dental x-rays under the conditions established by the Department of Human Services, Health Services, in OAR 333 division 106.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025(2)(j) & ORS 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03

### 818-042-0060

#### Certification — Radiologic Proficiency

(1) The Board may certify a dental assistant in radiologic proficiency by credential in accordance with OAR 818-042-0120, or if the assistant:

(2) Submits an application on a form approved by the Board, pays the application fee and:

(a) Completes a course of instruction in a program approved by the Department of Human Services, Health Services, Radiation Protection Services Section (RPS), in accordance with OAR 333-106-0055 or submits evidence that RPS recognizes that the equivalent training has been successfully completed;

(b) Passes a clinical examination approved by the Board and graded by the Dental Assisting National Board, Inc. (DANB), or any other testing entity authorized by the Board, consisting of exposing, developing and mounting a full mouth series of radiographs (14 to 18 periapical and 4 bitewing radiographs) within one hour and under the supervision of a person permitted to take radiographs in Oregon. No portion of the clinical examination may be completed in advance; a maximum of three retakes is permitted; only the applicant may determine the necessity of retakes. The radiographs should be taken on an adult patient with at least 24 fully erupted teeth. The radiographs must be submitted for grading within six months after they are taken; and

(c) Passes the written Dental Radiation Health and Safety Examination administered by the Dental Assisting National Board, Inc. (DANB), or comparable exam administered by any other testing entity authorized by the Board.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03

### 818-042-0120

#### Certification by Credential

(1) Dental Assistants who wish to be certified by the Board in Radiologic Proficiency or as Expanded Function Dental Assistants, or as Expanded Function Orthodontic Dental Assistants shall:

(a) Be certified by another state in the functions for which application is made. The training and certification requirements of the state in which the dental assistant is certified must be substantially similar to Oregon's requirements;

(b) Have worked for at least 1,000 hours in the past two years in a dental office where such employment involved to a significant extent the functions for which certification is sought; and

(c) Shall be evaluated by a licensed dentist, using a Board approved checklist, to assure that the assistant is competent in the expanded functions.

(2) Applicants applying for certification by credential in Radiologic Proficiency must obtain certification from the Department of Human Services, Health Services, Radiation Protection Services Section, of having successfully completed training equivalent to that required by OAR 333-106-0055.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025(2)(j) & ORS 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03

### 818-042-0130

#### Application for Certification by Credential

An applicant for certification by credential shall submit to the Board:

(1) An application form approved by the Board, with the appropriate fee;

(2) Proof of certification by another state and any other recognized certifications (such as CDA or COA certification);

(3) A description of the examination and training required by the state in which the assistant is certified submitted by the state directly to the Board;

(4) Certification that the assistant has been employed for at least 1,000 hours in the past two years as a dental assistant performing the functions for which certification is being sought;

(5) If applying for certification by credential as an EFDA or EFODA, certification by a licensed dentist that the applicant is competent to perform the functions for which certification is sought; and

(6) If applying for certification by credential in Radiologic Proficiency, certification from the Department of Human Services, Health Services, Radiation Protection Services Section, that the applicant has met that agency's training requirements for x-ray machine operators.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025(2)(j) & ORS 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03

# ADMINISTRATIVE RULES

## Oregon Criminal Justice Commission Chapter 213

**Adm. Order No.:** CJC 1-2003

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 4-1-03

**Rules Adopted:** 213-050-0045, 213-050-0050, 213-050-0055, 213-050-0060, 213-050-0065, 213-050-0070, 213-050-0075, 213-050-0080

**Subject:** • The Oregon Criminal Justice Commission is responsible for the standards and approval of Extended Detention programs for juveniles under amendments to ORS 419c.453 and 169.090(2) by the 2001 Oregon Laws, Chapter 904 (SB 384) and Chapter 905 (SB 659).

• The rules provide standards for the review and approval of program plans for counties for the operation of extended detention programs in juvenile detention facilities. The rules allow courts with jurisdictions over cases under ORS 419A, 419B, and 419C to commit juveniles to an approved program for a maximum of 30 days.

• The decision to operate an Extended Detention program is voluntary, and the rules require counties to prepare application materials that include specified information, submit annual reports, and go through periodic review and re-authorization procedures.

**Rules Coordinator:** Phillip Lemman—(503) 986-6495

### 213-050-0045

#### Authority

These rules are promulgated pursuant to ORS 169.090(2), 137.656(4), and 419C.453.

Stat. Auth.: ORS 169.090(2), ORS 137.656(4) & ORS 419C.453

Stats. Implemented: ORS 169.090(2), ORS 419C.453

Hist.: CJC 1-2003, f. 6-30-03, cert. ef. 7-1-03

### 213-050-0050

#### Purpose

These rules are the minimum standards for the establishment, operation and review of extended detention programs serving juveniles pursuant to ORS 419C.453.

Stat. Auth.: ORS 169.090(2), ORS 137.656(4) & ORS 419C.453

Stats. Implemented: ORS 169.090(2), ORS 419C.453

Hist.: CJC 1-2003, f. 6-30-03, cert. ef. 7-1-03

### 13-050-0055

#### Definitions

As used in OAR 213-050-0045 to 213-050-0080, unless the context indicates otherwise:

(1) "Committing Authority": The juvenile court of the county where the juvenile was adjudicated.

(2) "Extended Detention Period": As promulgated in ORS 419C.453, a period of detention exceeding eight days, but not more than 30 days.

(3) "Facility" means a detention facility as defined in ORS 419A.004.

(4) "Juvenile" means a person over whom the juvenile court has jurisdiction under ORS 419C.005 and who is eligible to be detained pursuant to ORS 419C.453.

(5) "Juvenile court" means the court having jurisdiction over cases under ORS 419A, 419B and 419C.

(6) "JCPAC" means the Juvenile Crime Prevention Advisory Committee established by ORS 417.845.

(7) "Program" means a specified array of services and activities that support a therapeutic goal for juveniles in need of a secure setting.

(8) "Program Plan" means the written rationale for an extended detention program along with the explanation of how the county will deliver the program in conformance with the minimum standards set forth in OAR 213-050-0060.

(9) "Qualified Professional" means a clinician certified in the service field by the state or federal government or approved through an insurance company.

(10) "Supervising Authority": The agency or department in the original county where the juvenile was adjudicated, or the department to which the case was transferred.

(11) "Therapeutic" means rehabilitative and calculated to enhance well-being through treatment and training.

Stat. Auth.: ORS 169.090(2), ORS 137.656(4) & ORS 419C.453

Stats. Implemented: ORS 169.090(2), ORS 419C.453

Hist.: CJC 1-2003, f. 6-30-03, cert. ef. 7-1-03

### 213-050-0060

#### Minimum Standards for Extended Detention Programs

(1) A supervising authority ordered by the court to detain juveniles for an extended detention period pursuant to ORS 419C.453 must detain juveniles only in a detention facility which has an extended detention program plan approved by the JCPAC.

(2) The Juvenile Court, after hearing, must make written findings of fact as to the reasons a juvenile is committed to an extended detention program.

(3) The county governing body that operates the detention facility may designate the capacity available to be utilized for an extended detention program.

(4) The facility used for an extended detention program must meet the standards set by the Oregon Department of Corrections for the physical plant and general operation of juvenile detention programs pursuant to ORS Chapter 169.

(5) The program must be initiated for all juveniles ordered into extended detention immediately upon completion of orientation to the facility.

(6) The supervising authority of the juvenile in the extended detention program and the detention education provider must work with the local school before the juvenile's release to share relevant education information to appropriately place the juvenile in an education setting.

(7) The extended detention programs must provide the following minimum services and activities to all juveniles placed in extended detention:

(a) Communication: Staff must be trained and available to speak with juveniles and provide a timely, responsive and respectful system for juveniles and staff to communicate;

(b) Community integration: The program staff must work with the Juvenile Department to plan for the transition of the juveniles back to the community;

(c) Cultural competency: The program must respect the ethnic diversity of the juveniles detained and provide equitable services;

(d) Data collection: The program must comply with the Juvenile Justice Information System (JJIS) requirements.

(e) Education: The detention facility must insure that educational programs are available to all juveniles placed in extended detention in conformance with Oregon Department of Education standards in OAR chapter 581. Participation by juveniles in educational programming must not be unnecessarily interrupted;

(f) Family outreach and involvement: The program staff must work with the Juvenile Department to involve the juveniles' families in the program and in planning for the juveniles' transition back to the community;

(g) Gender-specific services: The program must be responsive to the unique developmental issues and needs of the female and male juveniles receiving services;

(h) Program self-evaluation: The program must have a process for evaluating its philosophy, goals, methods, materials and outcomes in order to guide program improvement;

(i) Reading: Juveniles must be encouraged to read and must be afforded opportunities daily to read materials from the facility library. The library must contain materials for all reading levels;

(j) Recreation and Exercise: The program must provide for recreation and exercise that includes,

(A) At least one hour daily of structured recreation and exercise activities, not including the time spent watching television;

(B) A staff member or trained volunteer who coordinates and supervises the recreation activities and

(C) Recreation equipment provided for a variety of indoor and outdoor recreation and exercise;

(k) Religious services: The program must allow reasonable access within the detention facility to religious services requested by juveniles;

(l) Social services: The facility must allow access to social service providers to meet the needs of juveniles. These services must be provided by qualified professionals and may include, but not be limited to, individual and family counseling, health, mental health, drug and alcohol counseling, sex abuse and sex offender treatment, assessment and counseling, and crisis intervention services.

Stat. Auth.: ORS 169.090(2), ORS 137.656(4) & ORS 419C.453

Stats. Implemented: ORS 169.090(2), ORS 419C.453

Hist.: CJC 1-2003, f. 6-30-03, cert. ef. 7-1-03

# ADMINISTRATIVE RULES

## 213-050-0065

### Approval Process

(1) Extended Detention program plans submitted to the JCPAC must have prior approval from the Board of Commissioners and by the juvenile court judge of the county in which the facility operates.

(2) Program plans submitted to the JCPAC for approval must include:

(a) A statement of the rationale for the program, including:

(A) The juveniles intended for admission;

(B) The therapeutic goal(s);

(C) The need for the program to be delivered in a secure setting; and

(D) The screening criteria and screening process for admission;

(b) A description of the services and activities to be provided;

(c) A description of the staff positions, including number, responsibilities, and the required credentials, experience and training;

(d) A detailed explanation of how the county will deliver and review the program in conformance with the minimum standards set forth in OAR 213-050-0060;

(e) The written policies and procedures of the program;

(f) The daily schedule planned for the juveniles; and

(g) Documentation of:

(A) Prior approval by the Board of Commissioners and by the juvenile court judge of the county in which the facility operates;

(B) Compliance with the education standards set by the Oregon Department of Education;

(C) Compliance with the Oregon Department of Corrections standards for juvenile detention facilities.

(3) Program plans previously approved under rules adopted by the Oregon Commission on Children and Families or by the Oregon Criminal Justice Commission must be subject to review by the JCPAC under these permanent rules.

(4) The JCPAC or its designee must conduct an on-site visit of the facility prior to acting upon the application for approval.

(5) The JCPAC or its designee must approve or deny the application within 120 days of receipt and provide the county a decision in writing.

(6) The JCPAC may authorize the county to operate an extended detention program for a maximum of five years, subject to renewal of approval by JCPAC in the future.

Stat. Auth.: ORS 169.090(2), ORS 137.656(4) & ORS 419C.453

Stats. Implemented: ORS 169.090(2), ORS 419C.453

Hist.: CJC 1-2003, f. 6-30-03, cert. ef. 7-1-03

## 213-050-0070

### Modification, Review and Renewal

(1) A county operating an approved extended detention program must report to the JCPAC annually on forms provided by the JCPAC. The report must include a county statement as to whether the program continues to operate in conformance with the minimum standards set forth in OAR 213-050-0060.

(2) If a county operating an approved extended detention program wishes to make a substantial modification in its program, it must notify the JCPAC and obtain the JCPAC's prior approval for the modification.

(3) The county's request for approval of a modification must include a description of the modification, explanation of how with the modification the program will continue to operate in conformance with the minimum standards set forth in OAR 213-050-0060, and documentation of prior approval of the modification by the Board of Commissioners and juvenile court judge of the county in which the facility operates. Examples of substantial modifications include but are not limited to: change in the therapeutic goal, change in the intended population served or change from single sex to coed population.

(4) Prior to expiration of the approval period, a county may request the JCPAC to renew its approval of the extended detention program. The provisions of OAR 213-050-0065 apply to the renewal process.

Stat. Auth.: ORS 169.090(2), ORS 137.656(4) & ORS 419C.453

Stats. Implemented: ORS 169.090(2), ORS 419C.453

Hist.: CJC 1-2003, f. 6-30-03, cert. ef. 7-1-03

## 213-050-0075

### Suspension, Revocation or Refusal to Renew Approval

At any time the JCPAC may suspend, revoke or refuse to renew its approval of an extended detention program if the county fails to maintain the minimum standards in OAR 213-050-0060 or does not report annually as required by OAR 213-050-0070(1). The JCPAC must notify the county, in writing, of any decision to suspend, revoke, or refuse to renew approval.

Stat. Auth.: ORS 169.090(2), ORS 137.656(4) & ORS 419C.453

Stats. Implemented: ORS 169.090(2), ORS 419C.453

Hist.: CJC 1-2003, f. 6-30-03, cert. ef. 7-1-03

## 213-050-0080

### Grievance Process

(1) Counties denied approval to operate an extended detention program, or whose approval has been suspended, revoked or not renewed, may grieve the decision to the JCPAC at its next available committee meeting.

(2) The county must submit a written explanation of the grievance at least seven days prior to the next available JCPAC meeting.

(3) A county representative must address the JCPAC regarding the grievance.

(4) The JCPAC must provide the county with a decision, in writing, of its decision on the grievance.

Stat. Auth.: ORS 169.090(2), ORS 137.656(4) & ORS 419C.453

Stats. Implemented: ORS 169.090(2), ORS 419C.453

Hist.: CJC 1-2003, f. 6-30-03, cert. ef. 7-1-03

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## Oregon Department of Education Chapter 581

**Adm. Order No.:** ODE 12-2003(Temp)

**Filed with Sec. of State:** 6-20-2003

**Certified to be Effective:** 6-20-03 thru 11-1-03

**Notice Publication Date:**

**Rules Amended:** 581-021-0021

**Rules Suspended:** 581-021-0021(T)

**Subject:** Senate Bill 594 was enacted during the 2001 Legislative Session. This bill requires the State Board to adopt administrative rules to eliminate the use and purchase of mercury, mercury compounds and mercury added instructional materials by public elementary and secondary schools. The administrative rule proposed here would implement that statutory requirement and set timelines for school districts to eliminate mercury, mercury compounds and mercury added instructional materials.

For questions regarding this rule, please contact Randy Harnish at (503) 378-3600, ext. 2350 or e-mail [randy.harnish@state.or.us](mailto:randy.harnish@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 378-3600 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

**Rules Coordinator:** Debby Ryan—(503) 378-3600, ext. 2348

## 581-021-0021

### Mercury Elimination Policy

(1) Definitions:

(a) "Mercury-added instructional material" means an item or product containing intentionally added elemental mercury or mercury compound(s) used for educational purposes.

(b) "Mercury compound" means a substance consisting mercury chemically combined with another element or combination of elements, e.g. mercury oxide (HgO).

(c) "Elemental mercury" means the silvery-white liquid metal with atomic number of 80 and an atomic mass of 200.57 represented by chemical symbol Hg.

(2) All Oregon school districts must:

(a) Prohibit the purchase of elemental mercury, mercury compounds and mercury-added instructional materials;

(b) Eliminate all elemental mercury and mercury compounds that are maintained for educational purposes, for example, vials of liquid mercury and samples of mercury compounds contained in chemistry class;

(c) Eliminate the use of mercury-added instructional materials; and

(d) Eliminate the use of items and products containing elemental mercury or mercury compounds, as those items and products are replaced at the end of their normal useful lives with cost-effective mercury-free alternatives.

(3) As instructional materials, items and products containing elemental mercury and mercury compounds are replaced, school districts should work with the Oregon Department of Environmental Quality in the proper disposal of the materials, items and products.

Stat. Auth.: ORS 326.051(b)

Stats. Implemented: ORS 326.051(g)

Hist.: ODE 7-2003(Temp), f. & cert. ef. 5-15-03 thru 11-1-03; ODE 12-2003(Temp), f. 6-20-03 thru 11-1-03

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**Adm. Order No.:** ODE 13-2003(Temp)

**Filed with Sec. of State:** 7-1-2003

**Certified to be Effective:** 7-1-03 thru 12-15-03

**Notice Publication Date:**

# ADMINISTRATIVE RULES

**Rules Amended:** 581-022-1730, 581-022-1732

**Subject:** Oregon Revised Statute 326.603 and 326.607 authorizes the Department of Education to conduct on behalf of a school district or a private school criminal records checks of potential school employees, other than teachers, who will have direct, unsupervised contact with children. Districts are prohibited from hiring individuals who have been convicted of offenses listed in ORS 342.143 or who lie about any conviction. The amendments will clarify the definition of "conviction" allowing a consistent and thorough interpretation and application of the results of a criminal records check.

For questions regarding this rule, please contact Randy Harnish at (503) 378-3600, ext. 2350 or e-mail [randy.harnish@state.or.us](mailto:randy.harnish@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 378-3600 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

**Rules Coordinator:** Debby Ryan—(503) 378-3600, ext. 2348

## 581-022-1730

### Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows:

(a) "Subject individual" means:

(A) Any person newly hired after December 31, 1993 by a school district or an education service district into a position having direct, unsupervised contact with students and not requiring licensure under either ORS 342.120 to 342.200 or 342.455;

(B) Any person newly hired after December 31, 1993 as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under either ORS 342.120 to 342.200 or 342.455;

(C) Any person included above unless the current employer has on file evidence from a previous employer documenting a successfully completed Oregon and FBI criminal records check. The Oregon Department of Education or the Teacher Standards and Practices Commission verification of a previous check shall be acceptable only in the event the employer can demonstrate records are not otherwise available. Additional evidence that the employee has not resided outside the state between the two periods of time working in the district shall be maintained;

(D) An individual currently employed by a school district either part time or full time, which, has direct, unsupervised contact with children.

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:

(A) Oregon State Police (OSP) — \$12;

(B) Federal Bureau of Investigation (FBI) — \$24;

(C) Oregon Department of Education — \$ 6;

(D) TOTAL — \$42.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) Two properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283.

(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not effect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(H) This rule is expressly made retroactive to June 1, 2002.

(f) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(g) "Newly hired" means the employment of a person after application or request for a position having direct, unsupervised contact with students without regard to that person's current or previous employer; and

(h) "School district" means a taxing district providing public elementary or secondary education, or any combination thereof, within the state; an education service district; the Oregon School for the Blind; the Oregon School for the Deaf; and an educational program under the Juvenile Corrections Education Program.

(2) School districts and education service districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:

(a) Specify the criteria for determining which staff positions will warrant consideration for subject individuals as defined in this rule. The local districts shall publish a list of those positions affected;

(b) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;

(c) Provide a clear statement of district response to notification by the Superintendent of Public Instruction or the State Board of Education regarding persons who have either been convicted, or have made a false statement as to the conviction of any of the crimes prohibiting employment that are listed in section (9) of this rule;

(d) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;

(e) Identify that employment shall be offered prior to collecting fingerprint cards for submission to the Department of Education and that fees may be collected from the applicant. The applicant may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and

(f) Identify a procedure which ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.

(3) Fingerprints may be collected by one of the following:

(a) Employing school district staff;

(b) Contracted agent of employing school district;

(c) Local or state law enforcement agency.

(4) School districts and education service districts shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule:

(a) Immediately following offer and acceptance of employment or contract;

(b) Subject individuals described in section (1)(a)(D) of this rule whose birth month is January, February, or March shall submit by January 1, 1997;

(c) Subject individuals described in section (1)(a)(D) of this rule whose birth month is April, May, or June shall submit by January 1, 1998;

(d) Subject individuals described in section (1)(a)(D) of this rule whose birth month is July, August, or September shall submit by January 1, 1999; and

(e) Subject individuals described in section (1)(a)(D) of this rule whose birth month is October, November, or December shall submit by January 1, 2000.

(5) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and

# ADMINISTRATIVE RULES

may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.

(6) The Oregon Department of Education shall review the criminal records of subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has made a false statement as to conviction of a crime.

(7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.

(9) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, or have made a false statement as to the conviction of a crime, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction. The crimes listed in ORS 342.143 (1995 Replacement Part) are:

- (a) ORS 163.095 — Aggravated Murder;
- (b) ORS 163.115 — Murder;
- (c) ORS 163.185 — Assault in the First Degree
- (d) ORS 163.235 — Kidnapping in the First Degree;
- (e) ORS 163.355 — Rape in the Third Degree;
- (f) ORS 163.365 — Rape in the Second Degree;
- (g) ORS 163.375 — Rape in the First Degree;
- (h) ORS 163.385 — Sodomy in the Third Degree;
- (i) ORS 163.395 — Sodomy in the Second Degree;
- (j) ORS 163.405 — Sodomy in the First Degree;
- (k) ORS 163.408 — Unlawful Sexual Penetration in the Second

Degree;

- (l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;
- (m) ORS 163.415 — Sexual Abuse in the Third Degree;
- (n) ORS 163.425 — Sexual Abuse in the Second Degree;
- (o) ORS 163.427 — Sexual Abuse in the First Degree;
- (p) ORS 163.435 — Contributing to the Sexual Delinquency of a

Minor;

- (q) ORS 163.445 — Sexual Misconduct;
- (r) ORS 163.465 — Public Indecency;
- (s) ORS 163.515 — Bigamy;
- (t) ORS 163.525 — Incest;
- (u) ORS 163.547 — Child Neglect in the First Degree;
- (v) ORS 163.575 — Endangering the Welfare of a Minor;
- (w) ORS 163.670 — Using Child in Display of Sexually Explicit

Conduct;

- (x) ORS 163.675 — Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;

Sexual Conduct by Child;

- (y) ORS 163.680 — Paying for Viewing Sexual Conduct Involving a Child;

Child;

- (z) ORS 163.684 — Encouraging Child Sex Abuse in the First

Degree;

- (aa) ORS 163.686 — Encouraging Child Sex Abuse in the Second

Degree;

- (bb) ORS 163.687 — Encouraging Child Sex Abuse in the Third

Degree;

- (cc) ORS 163.688 — Possession of Materials Depicting Sexually

Explicit Conduct of a Child in the First Degree

- (dd) ORS 163.689 — Possession of Materials Depicting Sexually

Explicit Conduct of a Child in the Second Degree

- (ee) ORS 164.325 — Arson in the First Degree;

- (ff) ORS 164.415 — Robbery in the First Degree;

- (gg) ORS 166.005 — Treason

- (hh) ORS 166.087 — Abuse of Corpse in the First Degree;

- (ii) ORS 167.007 — Prostitution;

- (jj) ORS 167.012 — Promoting Prostitution;

- (kk) ORS 167.017 — Compelling Prostitution;

- (ll) ORS 167.062 — Sadoomasochistic Abuse or Sexual Conduct in

Live Show;

- (mm) ORS 167.065 — Furnishing Obscene Materials to Minors;

(nn) ORS 167.070 — Sending Obscene Materials to Minors;

(oo) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;

(pp) ORS 167.080 — Displaying Obscene Materials to Minors;

(qq) ORS 167.087 — Disseminating Obscene Materials;

(rr) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;

(ss) ORS 475.995 — Distribution of Controlled Substance to Minors;

(tt) ORS 475.999 — Manufacture or Delivery of controlled Substance to Minor or Student Within 1,000 Feet of School.

(10) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 of an attempt to commit any of the crimes listed in section (9) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(11) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(12) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(13) Applicants may appeal a determination which prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(14) Contested case appeals may be informally resolved through procedures specified in ORS 183.415(5) or in any manner lawfully permitted.

(15) The Oregon Department of Education shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced within 90 days of the return of the card used by the FBI unless required for evidence in a contested case. Cards used in contested cases will be destroyed at the direction of adjudication or within 90 days following case resolution, whichever is appropriate.

(16) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.

(17) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

- (a) Card sequence number;
- (b) District submitting the cards;
- (c) Date cards and Department form received;
- (d) Date completed cards (2) sent to Oregon State Police;
- (e) Date denial or probationary approval sent to district;
- (f) Date FBI card returned to Department; and
- (g) Date denial or final approval sent to district.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 12-1998(Temp), f. & cert. ef. 6-23-98 thru 12-19-98; ODE 4-1999, f. & cert. ef. 1-12-99; ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03

## 581-022-1732

### Fingerprinting of Subject Individuals Employed by Private Schools in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows:

(a) "Subject individual" means: A person employed by a Private School in a position having direct, unsupervised contact with students and not requiring licensure under either ORS 342.120 to 342.200 or 342.455;

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed. Fees shall be paid to the Oregon Department of Education with submission of fingerprint cards and associated form. The fee amount and distribution shall be as follows:

- (A) Oregon State Police (OSP) — \$12;
- (B) Federal Bureau of Investigation (FBI) — \$24;
- (C) Oregon Department of Education — \$ 6;
- (D) TOTAL — \$42.



# ADMINISTRATIVE RULES

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) Two properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283-C.

(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not effect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(H) This rule is expressly made retroactive to June 1, 2002.

(f) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(g) "Private School" means a school that is registered with the Oregon Department of Education under ORS 345.515.

(2) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the private school a fee not to exceed the actual cost of acquiring and furnishing the information.

(3) The Oregon Department of Education shall review the criminal records of subject individual upon the private school's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status. The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has made a false statement as to conviction of a crime.

(4) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(5) The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has been convicted of a crime listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number. The crimes listed in ORS 342.143 (1995 Replacement Part) are:

- (a) ORS 163.095 — Aggravated Murder;
- (b) ORS 163.115 — Murder;
- (c) ORS 163.185 — Assault in the First Degree;
- (d) ORS 163.235 — Kidnapping in the First Degree;
- (e) ORS 163.355 — Rape in the Third Degree;
- (f) ORS 163.365 — Rape in the Second Degree;
- (g) ORS 163.375 — Rape in the First Degree;
- (h) ORS 163.385 — Sodomy in the Third Degree;

- (i) ORS 163.395 — Sodomy in the Second Degree;
- (j) ORS 163.405 — Sodomy in the First Degree;
- (k) ORS 163.408 — Unlawful Sexual Penetration in the Second Degree;

- (l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;
- (m) ORS 163.415 — Sexual Abuse in the Third Degree;
- (n) ORS 163.425 — Sexual Abuse in the Second Degree;
- (o) ORS 163.427 — Sexual Abuse in the First Degree;
- (p) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;

- (q) ORS 163.445 — Sexual Misconduct;
- (r) ORS 163.465 — Public Indecency;
- (s) ORS 163.515 — Bigamy;
- (t) ORS 163.525 — Incest;
- (u) ORS 163.547 — Child Neglect in the First Degree;
- (v) ORS 163.575 — Endangering the Welfare of a Minor;
- (w) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;

- (x) ORS 163.675 — Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;

- (y) ORS 163.680 — Paying for Viewing Sexual Conduct Involving a Child;

- (z) ORS 163.684 — Encouraging Child Sex Abuse in the First Degree;

- (aa) ORS 163.686 — Encouraging Child Sex Abuse in the Second Degree;

- (bb) ORS 163.687 — Encouraging Child Sex Abuse in the Third Degree;

- (cc) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;

- (dd) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a child in the Second Degree;

- (ee) ORS 164.325 — Arson in the First Degree;
- (ff) ORS 164.415 Robbery in the First Degree;

- (gg) ORS 166.005 Treason;
- (hh) ORS 166.087 Abuse of Corpse in the first Degree;

- (ii) ORS 167.007 — Prostitution;
- (jj) ORS 167.012 — Promoting Prostitution;

- (kk) ORS 167.017 — Compelling Prostitution;
- (ll) ORS 167.062 — Sadoomasochistic Abuse or Sexual Conduct in Live Show;

- (mm) ORS 167.065 — Furnishing Obscene Materials to Minors;
- (nn) ORS 167.070 — Sending Obscene Materials to Minors;

- (oo) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;
- (pp) ORS 167.080 — Displaying Obscene Materials to Minors;

- (qq) ORS 167.087 — Disseminating Obscene Materials;
- (rr) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;

- (ss) ORS 475.995 — Distribution of Controlled Substance to Minors;
- (tt) ORS 475.999 — Manufacture or Delivery of controlled Substance to Minor or Student Within 1,000 Feet of School.

(6) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 of an attempt to commit any of the crimes listed in section (5) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(7) The Oregon Department of Education shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced within 90 days of the return of the card used by the Oregon State Police or FBI.

(8) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action. The Department of Education will return fingerprint cards and associated forms without appropriate fees without taking any other action.

(9) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

- (a) Card sequence number;
- (b) Name of Private School submitting the cards;
- (c) Date cards and Department form received;
- (d) Date incomplete card returned to the school (only if applicable);
- (e) Date completed cards (2) sent to Oregon State Police;

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- (f) Date private school was notified of state police record or lack of record;
- (g) Date FBI card returned to Department;
- (h) Date private school was notified of FBI record or lack of record;  
Stat. Auth.: ORS 326.603  
Stats. Implemented: ORS 326.603 & SB 956 (1997)  
Hist.: EB 16-1997, f. & cert. ef. 12-29-97; ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03

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

**Adm. Order No.:** OLCC 9-2003  
**Filed with Sec. of State:** 6-27-2003  
**Certified to be Effective:** 7-1-03  
**Notice Publication Date:** 5-1-03

**Rules Amended:** 845-003-0270, 845-003-0670, 845-007-0015, 845-007-0020, 845-009-0005, 845-009-0010, 845-009-0015, 845-009-0085, 845-009-0105, 845-013-0070, 845-013-0075

**Subject:** These eleven rules require minor amendments to correct errors and clarify requirements. No substantive change was made to any rule.

**Rules Coordinator:** Katie Hilton—(503) 872-5004

## 845-003-0270

### Request for a Contested Case Hearing and Response to Charging Document

(1) Any party who wants to contest a charging document shall file a response (“answer”) to the charging document and request a contested case hearing. The answer and request for hearing must be in writing and filed with the Administrative Process Division within the time limit established in the charging document. Unless the intended action of the Commission is a suspension or nonrenewal of a license on an emergency basis under ORS 183.430(2), the time limit for response to violation matters is 30 days after mailing of the charging document, for licensing or certification application denials, 60 days, 20 days for neighborhood livability cases, and for service permit refusals, 15 days. In agency cases, if the retail sales agent agreement between the Commission and the agent provides for a hearing, the agent must file the request within the time period provided in the agreement.

(2) The answer must specify what statements in the charging document the party denies and what defense or defenses the party will rely upon. The answer must include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations. A general denial is not sufficient to constitute an answer. Except in service permit denial cases, where the answer does not include the information required by this rule, or where no answer is filed, the presiding officer shall convene a prehearing conference to obtain the required information.

(3) Evidence shall not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or answer (or in a prehearing conference convened to supplement the answer), except for good cause shown to the hearing officer, or pursuant to amendment of the charging document.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)  
Stats. Implemented: ORS 183.090, 183.341(2), 183.430(2), 183.435, 471.312(1) & 471.380(2)  
Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 8-1999, f. 6-9-99, cert. ef. 7-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-003-0670

### Retained Authority of Commissioners

(1) The Commissioners retain all authority not specifically delegated.

(2) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order by Default when the default is the result of a party’s failure to request a hearing and file an answer or when a party, after requesting a hearing, withdraws the request or fails to appear at the hearing.

(3) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon an informal disposition by settlement.

(4) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon a proposed order where exceptions are not filed timely and the order is not otherwise subject to review by the Commissioners.

(5) The Commissioners delegate to the Administrator the authority to summarily deny requests for reconsideration or rehearing when exceptions

or a request to reopen the record has been made by the same participant in the same case.

(6) The Commissioners delegate to the Administrator the authority to grant or deny requests for extension of time within which to file exceptions or comments to a proposed order, in conformity with the requirements of OAR 845-003-0590(3).

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)  
Stats. Implemented: ORS 183.341(2), ORS 471.730(5) & (6), 472.060(1) & (2)(d)  
Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-007-0015

### Advertising Media

(1) The Commission prohibits advertising through:

(a) Handbills that are posted or passed out in public areas such as parking lots and publicly owned property;

(b) Discount coupons, except those permitted under OAR 845-015-0165;

(c) Point of sale items on premises where the advertised product is not sold.

(2) The Commission may prohibit advertising through additional media consistent with the objectives in OAR 845-007-0005.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1) & (5), ORS 472.030 & ORS 472.060(1) & (2)(d)  
Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; LCC 7-1979, f. 4-2-79, ef. 4-5-79; Renumbered from 845-010-0091; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 6-1998, f. 5-21-98, cert. ef. 6-1-98; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-007-0020

### Restrictions

(1) The Commission prohibits advertising if it contains:

(a) False or misleading information;

(b) Claims that the alcoholic beverage has curative or therapeutic effects;

(c) Claims that any government agency endorses or supports the alcoholic beverage;

(d) The requirement of purchasing an alcoholic beverage in order to receive a prize or merchandise unless the manufacturer or wholesaler donates the prize or merchandise to a charitable cause or community non-profit entity;

(e) Material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages;

(f) A person displayed drinking an alcoholic beverage;

(g) Material that encourages the use of an alcoholic beverage because of its intoxicating effect;

(h) Statements or illustrations that an alcoholic beverage causes athletic or artistic success;

(i) Material that encourages excessive or rapid consumption.

(2) The Commission prohibits references to temporary price reductions for alcoholic beverages to be consumed on the licensed premises. These references include “happy hour,” “dimers,” “two-for-one,” “social adjustment hour,” “free,” or similar terms. The licensee may make references to temporary price reductions inside the licensed premises if the reference is not visible from the outside.

(3) The Commission prohibits advertising that violates OAR 845-015-0130 (Advertising a retail liquor store).

(4) The Commission prohibits manufacturers and wholesalers from giving retailers point-of-sale items and advertising that the financial assistance laws prohibit (ORS 471.398 and 471.400 and OAR 845-013-0050).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0096; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-009-0005

### Return of Applications

The Commission may return an application and any accompanying fee if:

(1) Any of the following information is missing or illegible:

(a) Applicant’s name;

(b) Applicant’s mailing address;

(c) Applicant’s Social Security Number;

(d) Applicant’s date of birth;

(e) Applicant’s signature;

(f) Applicant’s response to conviction history questions;

(g) Authorized Person’s business name;

(h) Authorized Person’s business address; or

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- (i) Authorized Person's signature.
- (2) The applicant has not included at least the appropriate fee(s) with the application.
- (3) The applicant used an outdated application form.
- (4) The applicant is under 18 years of age.
- (5) The applicant is under 21 years of age, but applying for a service permit at licensed premises where service permittees must be at least 21 years of age.
- (6) The applicant has not provided valid identification. Valid identification for the purpose of obtaining a service permit is limited to a state issued driver's license, state issued identification card or a passport. For purposes of this rule, "state issued" is defined as one of the fifty states in the United States of America.

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

Stats. Implemented: ORS 471.375

Hist.: OLCC 2-1989, f. 3-1-89, cert. ef. 4-1-89; OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-009-0010

### Service Permit Requirements

(1) Who Needs a Service Permit. ORS 471.360 requires the following persons to have service permits:

- (a) Any person who mixes, sells or serves alcoholic beverages for consumption on licensed premises;
- (b) Any person who directly supervises persons who mix, sell or serve alcoholic beverages for consumption on licensed premises;
- (c) The individual principals of a licensed corporation or partnership who sell or serve alcoholic beverages for consumption on licensed premises or who directly supervise those who do;
- (d) Any licensee's employee who delivers wine or malt beverages as OAR 845-005-0420, 845-005-0422, 845-006-0396, and 845-006-0398 (Retail Delivery of Wine and Malt Beverages within Oregon) allows.

(2) Exceptions. The following are exceptions to the service permit requirement:

- (a) An individual named on the license as a licensee does not need a service permit;
- (b) ORS 471.360 allows the Commission to waive the service permit requirement if the licensee's primary business is not the sale or service of alcoholic beverages or food. Under this authority, the Commission waives the service permit requirement for Public Passenger Carriers whose primary business is transportation (for example airlines, and most trains), and does not waive the requirement for Public Passenger Carriers whose primary business is touring (for example tour boats in Oregon waters more than 30 days per calendar year, and small excursion-type railroads). The Commission waives the service permit requirement for some temporary licenses (See OAR 845-005-0440(9), Temporary Sales Licenses). Employees must, however, be at least 21 years old to sell or serve alcoholic beverages on these licensed premises.
- (3) Authority to Sell and Serve Based on an Application:

(a) ORS 471.375 allows some service permit applicants to begin selling or serving alcoholic beverages after the applicant completes an official service permit application and an authorized person as defined by ORS 471.375 indorses and sends the application to the Commission;

(b) The authority to sell or serve alcoholic beverages based on an application does not apply to any applicant:

(A) Who has had a service permit denied or cancelled within the three years before the current application;

(B) Who has had a service permit denied because they failed to complete the required alcohol server education program. When the applicant completes an alcohol server education course and passes the exam, the applicant may then sell and serve alcoholic beverages;

(C) Whose service permit application meets the criteria in OAR 845-009-0005, Return of Applications;

(D) Whose service permit is currently suspended.

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

Stats. Implemented: ORS 471.360

Hist.: OLCC 2-1989, f. 3-1-89, cert. ef. 4-1-89; OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-009-0015

### Licensee and Authorized Person's Responsibility for Verifying Identification

(1) Before allowing anyone, whom OAR 845-009-0010 requires to have a service permit, to mix, sell or serve alcoholic beverages for on-premises consumption, a licensee must:

- (a) Make sure the person has a valid service permit; and
- (b) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description).

(2) If the person does not have a service permit but has filed an application with the Commission, the licensee must, before allowing the person to mix, sell or serve alcoholic beverages for on-premises consumption:

(a) Verify that the person has a pending application (for example, see a copy of the service permit application the person filed or call the person's former employer);

(b) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description); and

(c) Verify the person's age.

(3) If the person does not have a service permit or a pending application, the licensee must:

(a) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description);

(b) Verify the person's age; and

(c) Mail or personally deliver a completed service permit application, with the appropriate fee, to the Commission by the end of the first work day following the person's first work shift.

(4) All other persons authorized to indorse applications under ORS 471.375 must:

(a) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description);

(b) Verify the person's age; and

(c) Mail or personally deliver a completed service permit application, with the appropriate fee, to the Commission within 36 hours of indorsement. Holidays and weekends are not included in counting the 36 hours.

(5) If a company authorized by ORS 471.375(2)(b) fails to follow the standards of OAR 845-009-0015(4), OLCC will rescind the company's approval to indorse service permit applications.

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

Stats. Implemented: ORS 471.375

Hist.: OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-009-0085

### The Examination (Licensees and License Applicants)

(1) A passing grade on the exam is 70 percent.

(2) After the license applicant or licensee takes the course and exam, the Commission will give him/her the examination results in writing.

(3) A license applicant or licensee who does not pass this exam may retake the exam at a Commission field office up to two times within 90 days of the date the license applicant or licensee took the course. If he/she does not take and pass the exam as this section requires, he/she must complete a course again and pass the exam before the Commission will issue or renew his/her license.

(4) The license applicant or licensee must pay a \$5 fee to retake the exam. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

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

Stats. Implemented: ORS 471.542

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-009-0105

### The Examination (Service Permittees and Service Permit Applicants)

(1) A passing grade on the exam is 70 percent.

(2) After the service permit applicant or permittee takes the course and exam, the Commission will give him/her the examination results in writing.

(3) A service permit applicant, who does not pass this exam, may retake the exam at a Commission field office up to two times within 90 days of the date the applicant took the course. If the applicant fails to pass both retake exams, he/she must retake the server education course and exam.

(4) If the applicant does not take and pass the exam within 45 days of the date their application was received, the Commission will deny the application. When the applicant receives the denial letter, the applicant must stop selling and serving alcoholic beverages immediately. If the applicant still wants a service permit, he/she must:

(a) Retake the server education course and pass the exam, if it has been 90 or more days since the date the person took the course or if the person has failed both exam retakes at a Commission field office; or

# ADMINISTRATIVE RULES

(b) Retake the exam at a Commission field office, if it is within 90 days of the date the person took the course and the person has not taken or failed the two exam retakes; and

(c) First, pass the server education course, and then complete and file a new application along with the appropriate fee.

(5) The applicant, or permittee must pay a \$5 fee to retake the exam. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

Stat. Auth.: ORS 471 & 472, including ORS 471.030, 471.730(1) & (5), 472.030, ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0120; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-013-0070

### Services of Nominal Value; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except those described in ORS 471.398(5) and the two categories of services of nominal value described in this rule.

(2) A manufacturer or wholesaler may give basic services that support products on draft such as:

(a) Inspecting draft equipment, coolers and cooling equipment for sanitation and quality control;

(b) Performing emergency repairs on draft equipment;

(c) Instructing retail licensees in the proper use, maintenance and care of draft and cooling equipment;

(d) Tapping kegs during regular delivery calls.

(3) A manufacturer or wholesaler may give basic marketing support services for the manufacturer's or wholesaler's alcoholic beverage products such as:

(a) Delivering to the designated place on the retailers premises. If a retailer closes a store, the wholesaler or manufacturer may move product to another of the retailer's stores in the wholesaler's territory. The manufacturer or wholesaler may move only his/her brands;

(b) Rearranging or replenishing bottles or cans of the manufacturer or wholesaler's brands;

(c) Pricing packages and containers of the manufacturer's or wholesaler's brands but not repricing packages and containers. Repricing includes entering the Uniform Price Code (UPC) or pricing information in the retailer's system but does not include changing shelf tags;

(d) Promptly exchanging alcoholic beverages delivered in error for the proper product, provided both businesses reflect the exchange in their records;

(e) Exchanging products that are leaking, deteriorating, near or past their shelf date, have damaged or missing labels, or have damaged containers for an equal quantity of identical product (See also OAR 845-013-0020(1)(b)). If the amount exchanged is one case or less of malt beverages, the manufacturer or wholesaler may substitute another malt beverage product of similar value. A manufacturer or wholesaler may not exchange product that the retailer or retailer's customer damaged;

(f) Installing, cleaning and repairing point of sale materials allowed in OAR 845-013-0050;

(g) Providing an employee to assist in educational seminars and wine or malt beverage tastings that a retailer conducts for the public as long as each licensee complies with OAR 845-006-0353, 845-006-0427, and 845-006-0450.

**NOTE:** ORS 471.186(4) prohibits a manufacturer or wholesaler from providing or paying for a person to serve samples at package stores except as provided in ORS 471.402.

(h) Providing celebrities or performers to promote the manufacturer's or wholesaler's product on a retailer's premises as long as:

(A) Neither the manufacturer/wholesaler nor retailer advertise or promote the celebrity or performer's visit;

(B) The celebrity or performer does only a brief performance, if any;

(C) The manufacturer or wholesaler provides no alcoholic beverages to the retailer's customers;

(D) The manufacturer or wholesaler provides the celebrities no more than once per year per retail premises.

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

Stats. Implemented: ORS 471.398(5)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; OLCC 8-1996, f. 5-6-96, cert. ef. 7-1-96; OLCC 8-1997, f. 2-28-97, cert. ef. 3-15-97; OLCC 17-2000, f. 11-9-00, cert. ef. 12-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

## 845-013-0075

### Schematics; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except services of nominal value.

(2) OAR 845-013-0070 limits services of nominal value to those which fall into one of two categories.

(3) The category described in OAR 845-013-0070(3) allows a manufacturer or wholesaler to give basic marketing support services for the manufacturer or wholesaler's alcoholic beverage products. When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the Commission considers that to be a basic marketing support service.

(4) When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the retailer remains responsible for deciding what products are actually sold.

(5) The Commission holds licensees accountable for the acts of their agents and employees. (See OAR 845-006-0362). Accordingly, any licensee who provides schematics through another person or business is responsible for the actions of the party. If a person or business that provides schematics on behalf of a licensee violates any liquor law or rule, the Commission takes the appropriate compliance action against the licensee.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471.398(5)

Hist.: OLCC 3-1994, f. 8-3-94, cert. ef. 10-1-94; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

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## Oregon Public Employees Retirement System Chapter 459

**Adm. Order No.:** PERS 7-2003(Temp)

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 7-1-03 thru 12-26-03

**Notice Publication Date:**

**Rules Suspended:** 459-013-0300

**Subject:** This new rule implements and clarifies section 10 of HB 2003 (2003) which requires the PERS Board to perform retirement allowance recalculations for certain retirees. It specifies to whom the rule applies, describes the calculations of the "revised service retirement allowance" and the "fixed service retirement allowance," indicates that the member will receive the higher of the two calculations, and specifies that the provisions of the rule are effective July 1, 2003. However, the Board reconsidered its previous motion to adopt this temporary rule because the temporary rule contains the same problematic provisions of HB 2003 that future legislation may fix or clarify and suspending this rule will give the Board and staff greater flexibility in the implementation of HB 3020 if it passes and is effective on or after July 1, 2003.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-013-0300

### HB 2003 Retirement Allowance Recalculations

(1) The provisions of this section apply to Tier One members who receive a service retirement allowance calculated under ORS 238.300(2)(b)(A) and who have an effective retirement date that is on or after April 1, 2000, and before April 1, 2004.

(2) **Revised service retirement allowance.** The "revised service retirement allowance" provided for in section 10 of chapter 67, Oregon Laws 2003 (Enrolled HB 2003) shall be calculated as follows:

(a) An account balance for the member as of the member's effective date of retirement shall be determined as though the balance in member's regular account as of December 31, 1999, had been credited with 11.33 percent earnings for that year.

(b) A service retirement allowance shall then be calculated under ORS 238.300 for that member as of his or her effective date of retirement using the account balance established in subsection (a) of this section and converted to form of benefit selected by the member under ORS 238.305, if any.

(c) The allowance calculated under subsection (b) of this section will then be adjusted as if the cost of living adjustment provided for in ORS 238.360 had applied to that benefit from the member's effective date of retirement forward.

(3) **Fixed service retirement allowance.** The "fixed service retirement allowance" provided for in section 10 of chapter 67, Oregon Laws 2003 (Enrolled HB 2003) shall be the amount payable to or on account of the member on July 1, 2003. The fixed service retirement allowance includes any benefit increases such as those provided by ORS 238.375,

# ADMINISTRATIVE RULES

238.385, or 238.387, and cost of living adjustments that have been made to the member's actual retirement allowance prior to July 1, 2003.

(4) As of the first day of the month following the date when the revised service retirement allowance determined under section (3) above would exceed the fixed service retirement allowance determined under section (4) above, the member shall be entitled to the revised service retirement allowance.

(5) The provisions of this rule are effective July 1, 2003.

Stat. Auth: ORS 238.650

Stats. Implemented: OL 2003 Ch. 67

Hist.: PERS 6-2003(Temp), f. 6-13-03 cert. ef. 7-1-03 thru 12-26-03; Suspended by PERS 7-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-26-03

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**Adm. Order No.:** PERS 8-2003

**Filed with Sec. of State:** 7-2-2003

**Certified to be Effective:** 7-2-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 459-005-0180

**Subject:** This new rule states the agency's presumption that actions taken by members, beneficiaries, or alternate payees are valid. If a person wants to challenge such actions based on an allegation that a member, beneficiary, or alternate payee was incapacitated, the proposed rule provides direction on how such a question will be resolved.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-005-0180

### Incapacity of Members, Beneficiaries, and Alternate Payees

(1) **Definitions.** For purposes of this rule, "incapacitated" and "financially incapable" have the meanings given those terms in ORS 125.005.

(2) **Presumption of capacity.** Unless demonstrated otherwise in accordance with the requirements of section (3) of this rule, PERS staff shall base its determinations on the presumption that all members, beneficiaries, and alternate payees are not incapacitated or financially incapable of making benefit decisions and executing any documents related to those decisions.

(3) **Process for overcoming presumption.** If any party in interest challenges a staff determination in accordance with OAR 459-001-0030 through 459-001-0040 based on a claim of incapacity of a member, beneficiary, or alternate payee, PERS will reverse its previous determination only if the party presents an order or determination by a court with appropriate jurisdiction specifically directing PERS to do so, or such other relief as that court may direct.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.005 - ORS 238.715

Hist.: PERS 8-2003, f. & cert. ef. 7-2-03

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## Oregon State Lottery Chapter 177

**Adm. Order No.:** LOTT 8-2003

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 6-30-03

**Notice Publication Date:** 4-1-03

**Rules Amended:** 177-040-0070

**Subject:** The amendments revive language authorizing the use of alternative methods of providing access to Lottery services at Lottery retailers and add a new provision authorizing the Lottery to inspect a retailer's premises for compliance at any time, including an inspection as part of a random audit. These provisions strengthen the Lottery's ability to enforce the wheelchair accessibility program. The remaining amendments are grammar and housekeeping.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-040-0070

### Retailer Wheelchair Accessibility Program

(1) **Purpose:** The purpose of this rule is to require that all new and existing Lottery retailers provide and maintain access to Oregon lottery games and related services to persons who use wheelchairs. Access to video lottery games may be achieved by providing access to at least one video lottery game terminal, regardless of slight variations in game theme or play between the different types of video lottery terminals.

(2) **General Requirements:** All Lottery retailers shall provide and maintain access to all persons who use wheelchairs to enable their full and

equal enjoyment of Lottery games and related services. Retailers shall comply with the Retailer Wheelchair Accessibility Program by installing required accessibility features, by removing identified barriers through structural modifications, or by creating alternative methods of providing access to Lottery games and related services.

(a) **Barrier Removal and Accessibility Features:** All barriers must be removed that impede wheelchair access to Lottery games and related services. Examples of barrier removal or accessibility features include, but are not limited to:

(A) Installing ramps;

(B) Making curb cuts in sidewalks and entrances;

(C) Creating designated accessible parking spaces;

(D) Widening doors;

(E) Rearranging tables, chairs, vending machines, display racks, and other furniture;

(F) Installing offset hinges to widen doorways;

(G) Installing accessible door hardware;

(H) Installing elevators; and

(I) Relocating Lottery games and related services within the retailer's premises to accommodate persons who use wheelchairs.

(b) **Alternative Methods:** Alternative methods of providing access to Lottery games and related services must be appropriate or reasonable for the person using a wheelchair, and will apply only when accessibility to the Lottery game or related service does not require physical access by the person using a wheelchair to a specific area of the premises. (For example, playing Keno does not require physical access to a Lottery terminal if the retailer provides table service to persons who use wheelchairs. Conversely, playing video lottery games does require physical access to the video lottery terminal.) All alternative methods of providing access must be approved by the Director and will only be permitted when the retailer demonstrates to the satisfaction of the Director the necessity of offering alternative methods of access instead of removing barriers or installing accessibility features. The Director's decision is final.

(c) **Costs of Modifications:** The retailer is responsible for all costs related to removing barriers, installing accessibility features, or offering alternative methods of access for the purpose of making a retailer's premises wheelchair accessible.

(3) **Retailer Wheelchair Accessibility Affidavit:** All applicants shall submit with the application, a signed Wheelchair Accessibility affidavit stating that the retail location is wheelchair accessible. The affidavit form shall be provided by the Lottery and shall contain the Lottery's wheelchair accessibility standards. The affidavit must be completed, signed by the applicant, and notarized.

(4) **Permitted Exemptions:**

(a) The Director may grant the following exemptions to the requirements of this rule. The Director shall review the circumstances and supporting documentation provided by a retailer to determine if a retailer's request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the Director are final. A retailer or applicant whose request for an exemption is denied by the Director is required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

(A) **Historic Properties:** To the extent a historic building or facility is exempt under federal law, this rule does not apply to a qualified historic building or facility that is listed in or eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under state or local law. Qualified means exempt from accessibility requirements under the federal historic preservation laws.

(B) **Legal Impediment to Barrier Removal:** Any law, act, ordinance, state regulation, ruling or decision which prohibits a Lottery retailer from removing a structural impediment or for making a required improvement may be the basis for an exemption to this rule. A Lottery retailer requesting an exemption under this subsection will not be required to seek a zoning variance to establish the legal basis for the impediment, but is required to document and attest to the legal impediment.

(C) **Landlord Refusal:** An exemption granted to an existing Lottery retailer based on the refusal of a landlord to grant permission to a Lottery retailer to make the structural improvements required by the Lottery under this rule shall only apply to the retailer's current lease term. No new landlord refusal exemptions are authorized after August 1, 2000. All existing exemptions granted before August 1, 2000 may be continued until the retailer's contract expires.

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(D) Undue Financial Hardship: Undue financial hardship exemptions are not authorized. Any existing exemptions granted before August 1, 2000 may be continued until the retailer's contract expires.

(5) Complaints Relating to Non-Accessibility: The Director will receive and process all accessibility complaints concerning a Lottery retailer as follows:

(a) Initial Complaint and Investigation: When possible, complaints must be in writing and submitted to the Lottery on a Lottery retailer wheelchair accessibility complaint form. The Lottery will investigate the complaint. If the retailer is found to be in compliance with this rule, a letter will be mailed to the retailer and complainant.

(b) Letter of Impending Rule Violation: If the Lottery determines that there are any violations of this rule, the Lottery shall issue a letter of impending rule violation to the retailer. The retailer shall submit a response no later than 30 days after mailing of the letter of impending rule violation. The Director shall determine if the retailer's response is acceptable under this rule. If the retailer is found to be in compliance with this rule, a letter will be mailed to the retailer and the complainant.

(c) Letter of Rule Violation: If the retailer's response to the Lottery's letter of impending rule violation is unacceptable under this rule, or if the retailer does not provide an explanation in the 30 day response period, the Lottery shall issue a letter of rule violation. The letter of rule violation shall describe the violations found at the retailer's location under the terms of this rule.

(d) Corrective Action Plan: The Lottery retailer shall submit a corrective action plan to the Lottery within 30 days of the issuance of the letter of rule violation. The Director may extend the response time for reasons beyond the reasonable control of the retailer. The plan shall describe in detail how the retailer will comply with this rule. The Lottery shall notify the retailer of the Lottery's acceptance or rejection of the plan. If the plan is rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Lottery. If the retailer agrees to make the required corrections, the Lottery shall accept the plan as modified. If a retailer fails to submit a plan within 30 days of issuance of the letter of rule violation and has not requested an extension of time to submit a plan, or if a retailer has requested an extension but the request is denied by the Lottery, the Lottery may initiate termination proceedings.

(e) Time Line for Implementation of Corrective Actions: The retailer must complete corrective actions within 90 days of the date the Lottery accepts the retailer's corrective action plan. If the retailer has not eliminated the violations cited in the letter of rule violation within 90 days of mailing, but has requested an extension of time, the Lottery may grant an extension of no more than 90 days. The Lottery will send a notice of the extension to the retailer and the complainant. Any extension commences immediately upon expiration of the original 90 day period. In no event shall the total amount of time exceed 180 days from the date the Lottery accepts the retailer's corrective action plan.

(f) Notice of Rule Compliance: If the retailer corrects the violations specified in the letter of rule violation, and the retailer has provided an updated wheelchair affidavit showing full compliance, the Lottery will issue a notice of rule compliance. Until this notice is issued, a complaint is considered pending.

(g) Termination: Failure of the retailer to make timely corrections in agreement with this rule and the retailer's corrective action plan may result in proceedings to terminate the retailer's Lottery contract.

(6) Inspections and Audits: The Director may inspect and audit any Lottery retailer's premises for compliance with this rule at any time including random compliance audits. The Lottery will conduct the audit and inspection during the retailer's regular business hours or at such other time as agreed upon by the retailer and the Lottery. The burden of proof to establish that a retailer's premises are in compliance with this rule is on the Lottery retailer.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LC 5-1997, f. 6-13-97, cert. ef. 7-1-97; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 8-2003, f. & cert. ef. 6-30-03

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**Adm. Order No.:** LOTT 9-2003  
**Filed with Sec. of State:** 6-30-2003  
**Certified to be Effective:** 6-30-03  
**Notice Publication Date:** 4-1-03  
**Rules Amended:** 177-040-0030, 177-040-0051, 177-040-0110, 177-040-0115, 177-040-0120, 177-040-0125, 177-040-0130, 177-040-0160, 177-040-0180, 177-040-0190

**Subject:** The amendments to OAR 177-040-0051 (Designated Employees and Payment of Prizes) allows Lottery retailers to designate hours of redemption of winning tickets and shares. It further requires video lottery retailers to redeem cash slips during all of the retailer's business hours of operations with a 24-hour delay in payment permitted for exceptional circumstances. It further prohibits retailers from charging a fee for paying a prize or issuing payment. The amendments to OAR 177-040-0160 (Suspension of OLCC License) strengthens the ability of the Lottery to suspend a retailer's authorization to sell non-video Lottery tickets and shares. This is in addition to the deactivation of the retailer's video lottery terminals when a retailer's OLCC liquor license is suspended. It also sets forth the Lottery's process for investigating a retailer whose OLCC license has been suspended. The remaining amendments are grammar and housekeeping.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-040-0030 Retailer Bond or Letter of Credit

The Director may require a Lottery retailer to post a \$5,000 bond or an irrevocable letter of credit issued by a commercial bank satisfactory to the Director.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LC 9-1992, f. & cert. ef. 8-26-92; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

## 177-040-0051 Designated Employees and Payment of Prizes

(1) Designated Employees: A traditional retailer must designate employees authorized to redeem winning Lottery tickets and shares. A video lottery retailer must designate employees authorized to redeem video lottery cash slips as defined in OAR 177-200-0005(1).

(2) Traditional Lottery Retailers: A traditional lottery retailer must redeem winning Lottery tickets and shares during all of the retailer's designated hours of redemption.

(3) Video Lottery Retailers: A video lottery retailer must redeem video lottery cash slips during all of the retailer's business hours of operations, except as follows:

(a) In the event of exceptional circumstances, a retailer may delay payment of a cash slip for a period of time not to exceed 24 hours from the time the player initially submits the cash slip to the retailer for payment. "Exceptional circumstances" means rare and unforeseen circumstances beyond the reasonable control of the retailer.

(b) Within 48 hours from the time the player initially submitted the cash slip to the retailer for payment, the retailer must submit to the Lottery a written report of the delay of payment and the exceptional circumstances that required the delay.

(c) The Director may review claims of exceptional circumstances and whether delayed payment was appropriate under the circumstances. Upon the Director's request, the retailer must provide the Director with evidence supporting a claim of exceptional circumstances. If a retailer fails to comply with a request or fails to adequately support a claim of exceptional circumstances, the Director shall find that the delay was not appropriate.

(d) If the Director finds that the delay was not appropriate, the retailer's delay of payment shall be considered a failure to perform contract duties or requirements, and the Lottery may take appropriate action including termination of the retailer contract. The Director's decision is final.

(4) Payment: Except as provided in sections (2) and (3) of this rule, a retailer must immediately pay prizes in cash or by check when a player presents a winning Lottery ticket or share, including a video lottery cash slip, for payment meeting the requirements of these rules. A retailer must not pay prizes in tokens, chips, or merchandise or charge a fee for paying a prize or for issuing payment.

(5) Validation: Notwithstanding sections (2) and (3) of this rule, once a Lottery retailer validates a winning ticket or share, including a video lottery cash slip, the retailer must immediately pay it.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

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## 177-040-0110

### Contract Non-Transferable

A Lottery retailer contract does not have value, and cannot be sold, transferred, or assigned.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

## 177-040-0115

### Underage Seller

No one under the age of 18 may sell Lottery tickets or shares.  
Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

## 177-040-0120

### Subsequent Application

When a retailer contract is terminated for any reason, the retailer, or an applicant that is similar to the retailer whose contract was terminated, will be required to wait one year to reapply for a retailer contract. In the Director's sole discretion, the Director may waive all or a portion of the one-year requirement based upon a showing of good cause by the applicant.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

## 177-040-0125

### Termination of Retailer Contract When An Applicant Does Not Qualify As A Key Person

When the Director determines that an applicant does not qualify as a key person, that is grounds for termination of the retailer contract associated with the applicant.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

## 177-040-0130

### Adding a Location

An existing traditional retailer may apply for and may receive approval for a contract for an additional location prior to that site being open to the public.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

## 177-040-0160

### Suspension of OLCC License

(1) Any video Lottery retailer whose liquor license has been suspended by the Oregon Liquor Control Commission (OLCC) must immediately notify the Lottery of the suspension.

(2) The Director shall deactivate all video lottery terminals in a retailer's establishment during the period that the OLCC has suspended the retailer's liquor license. Notwithstanding the term of the OLCC suspension, the video lottery terminals shall remain deactivated until the investigation required by section (3) of this rule is completed and acted upon by the Director. The Director may also suspend the sale of all non-video Lottery tickets and shares to the retailer as well. The Director may also deactivate the retailer's computer link to the Lottery and disable the retailer's ability to validate tickets and shares.

(3) The Director shall initiate an investigation by Lottery Security of the suspension of the retailer's liquor license. Lottery Security will report the results of the investigation to the Director. The Director will review the findings of that investigation and the reasons for the suspension by the OLCC. The Director will make an independent determination whether the findings of the investigation and the behavior underlying such suspension constitute grounds for termination of the retailer contract under the Lottery's statutes, rules, and the retailer contract. If they do, the Director may immediately terminate the retailer's contract with the Lottery notwithstanding any reinstatement of the retailer's liquor license by the OLCC.

(4) Upon the reinstatement of the retailer's liquor license by the OLCC, and the review by the Director of the investigation by Lottery Security, the Director may reactivate the retailer's video Lottery terminals (as well as the sale of non-video Lottery tickets and shares to the retailer and the retailer's computer link to the Lottery if they were also suspended) if the findings of the investigation and the behavior underlying the suspen-

sion do not constitute grounds for termination of the retailer contract under the Lottery's statutes, rules, and the retailer contract. The Director may also reactivate pending the outcome of the Lottery's own review and investigation.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LC 6-1993, f. & cert. ef. 7-2-93; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00, Renumbered from 177-100-0103; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

## 177-040-0180

### Notice Requirement

Lottery retailers who offer video Lottery games must post in a conspicuous place on the retailer's premises at least one copy of a notice containing information concerning compulsive gambling.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00, Renumbered from 177-100-0125; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

## 177-040-0190

### 100% Interest Transfer

Any retailer who is other than a sole proprietor must receive prior approval from the Director before selling or otherwise transferring 100 percent of the retailer's interest in the retailer's business entity. If a retailer transfers 100 percent of the retailer's interest in the business entity without submitting written notification to the Director and receiving approval from the Director, the retailer contract shall be terminated and the person who received the interest must apply for a retailer contract. The Director may give prior approval for the transfer if the person receiving the interest qualifies for a temporary retailer contract or a retailer contract.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03

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**Adm. Order No.:** LOTT 10-2003

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 6-30-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 177-085-0005, 177-085-0035

**Subject:** OAR 177-085-0005 (Definitions) and OAR 177-085-0035 (Prize Payment) are being amended to conform the Powerball rules to the model rules of the Multi State Lottery Association (MUSL). The amendments consist of removing provisions that initiated the bonus prize only when the jackpot was projected by MUSL to reach a new high.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-085-0005

### Definitions

The following definitions apply unless the context requires a different meaning.

(1) "Drawing" means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

(2) "Game Board" or "Boards" means that area of the play slip which contains two sets of numbered squares to be marked by the player, the first set containing fifty-three squares, numbered 1 through 53, and the second set containing forty-two squares, numbered 1 through 42.

(3) "Game Ticket" or "Ticket" means a ticket produced by a terminal which contains the caption Powerball, one or more lettered game plays followed by the drawing date, the price of the ticket, a six digit retailer number and a serial number that is compatible with the Lottery's on-line operating system.

(4) "Lottery" means the Oregon State Lottery.

(5) "Match 5 Bonus Prize" means the bonus money won when a Grand Prize has reached a new high level and bonus prize monies have been declared by the Product Group under these rules. The Match 5 Bonus Prize does not include the original amount declared for the Match 5 Prize. For the purposes of the Match 5 Bonus Prize, Match 5 means matching five of the numbers drawn from the first set containing fifty-three numbers.

(6) "MUSL" means the Multi-State Lottery Association

(7) "MUSL Board" means the governing body of the MUSL which is comprised of the chief executive officer of each Party Lottery.

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(8) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that participates in the Multi-State Lottery (MUSL) and, in the context of these Powerball Product Group rules, which has joined in selling the Powerball game.

(9) "Play" means the six numbers, the first five from a field of fifty-three numbers and the last one from a field of forty-two numbers which appear on a ticket as a single lettered selection and are to be played by a player in the game.

(10) "Play Slip" or "Game Slip" means the paper used in marking a player's game plays and containing one or more boards.

(11) "Product Group" means a group of lotteries which has joined together to offer a product pursuant to the terms of the Multi-State Lottery Agreement and the Group's own rules.

(12) "Quick Pick" means the random selection by the computer system of two-digit numbers that appear on a ticket and are played by a player in the game.

(13) "Retailer" means a person or entity authorized by the Lottery to sell lottery tickets.

(14) "Set Prize" means all prizes except the Grand Prize that are advertised to be paid by a single lump sum payment and, except in instances outlined in these rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(15) "Winning Numbers" means the six numbers, the first five from a field of fifty-three numbers and the last one from a field of forty-two numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461  
Stats. Implemented: ORS 461.200  
Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LC 9-1997(Temp), f. & cert. ef. 11-7-97; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03

### 177-085-0035 Prize Payment

(1) Grand prizes shall be paid, at the election of the player made no later than 60 days after validation of the prize, with either a per winner annuity or single lump sum payment. If the payment election is not made by the player within 60 days after validation, then the prize shall be paid as an annuity prize. The election to take the single lump sum payment may be made at the time of validation of the prize claim or within 60 days thereafter. An election made after validation is final and cannot be revoked, withdrawn or otherwise changed. Shares of the Grand Prize shall be determined by dividing the amount available in the Grand Prize pool equally among all winners of the Grand Prize. Winner(s) who elect a lump sum payment shall be paid their share(s) in a single lump sum payment. The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize pool by the MUSL annuity factor. (Application of the MUSL annuity factor generally is anticipated to result in the Grand Prize winner who elects a single lump sum payment receiving an amount that roughly approximates one-half of the advertised jackpot amount. The actual single lump sum payment amount will vary as a function of the MUSL annuity factor determined as described in subsection (5) of this rule.) The MUSL annuity factor is determined by the best total securities price obtained through a competitive bid of qualified, pre-approved brokers made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the winner becomes entitled to the prize. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to subsection (5) of this rule. If individual shares of the cash held to fund an annuity are less than \$250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the amount held in the Grand Prize pool. All annuitized prizes shall be paid annually in thirty equal payments with the initial payment being made directly with available funds, to be followed by twenty-nine payments funded by the annuity. Annual payments after the initial payment shall be made by the lottery on the anniversary date of the first payment or if such date falls on a non-business day, then the first business day following the anniversary date of the selection of the jackpot winning numbers. Funds for the initial payment of an annuitized prize or the lump sum payment prize shall be made available by MUSL for payment by the Party Lottery which sold the winning ticket by the 15th calendar day (or the next banking day if the fifteenth day is a holiday) following the

drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of sufficient funds in the prize pool trust to pay the prize, then the transfer of funds for the payment of the full lump sum payment amount may be delayed pending receipt of funds from the party lotteries. A state may elect to make the initial payment from its own funds after validation, with notice to MUSL. In the event of the death of a lottery winner during the annuity payment period, the Product Group, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") or the persons identified on the winner's Beneficiary Designation form (BDF), whichever is applicable, to the state lottery of the state in which the deceased lottery winner purchased the winning ticket, and subject to applicable federal, state, or district laws, may make payment to the Estate or the designated beneficiary of the discounted present value of the annuitized prize payments. If the Product Group makes such a determination, then securities and/or amounts held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate or the persons on the BDF. The identification of the securities, if any, to fund the annuitized prize shall be at the sole discretion of the Product Group.

(2) All low-tier cash prizes (all prizes except the Grand Prize) shall be paid directly through the Lottery that sold the winning ticket. The Lottery may begin paying low-tier prizes after receiving authorization to pay from the MUSL central office.

(3) Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first payment to the winner or winners. Prizes other than the Grand Prize which, under these rules, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

(4) If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize pool for the following drawing. If a new high Grand Prize is not won in a drawing, the prize money allocated for the Match 5 Bonus Prizes shall roll over and be added to the Match 5 Bonus Prize pool for the following drawing.

(5) The Product Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the Product Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand prize amount between drawings is offered by the Product Group, then the Grand Prize amount shall be determined as follows. If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners. If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize. If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of the cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes. In no case shall quotes be used which are more than two weeks old, and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in these rules. Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in OAR 177-085-0025(3)(b) or (c) becomes necessary.

(6) The holder of a winning ticket may win only one prize per board in connection with the winning numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(7) Claims for all prize categories, including the Grand Prize, shall be submitted within one year after the date of the drawing in accordance with these rules.

(8) When the Grand Prize reaches a new high annuitized amount, through a procedure as determined by the Group, the maximum amount to be allocated to the Grand Prize pool from the Grand Prize percentage shall be the previous high amount plus \$25 million (annuitized) or as otherwise set by the Group. Any amount of the Grand Prize percentage which exceeds the \$25 million (annuitized) increase shall be added to the Match 5 Bonus Prize Pool. The Match 5 Bonus prize pool is hereby created, and shall accu-



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mulate until the Grand Prize is won, at which time the Match 5 Bonus prize pool shall be divided equally by the number of game boards winning the Match 5 prize. If there are no Match 5 winners on the draw when the new high Grand Prize is won, then the Match 5 Bonus prize pool shall be divided equally by the number of game plays winning the Match 4+1 prize.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4); ORS 461

Stats. Implemented: ORS 461.20

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 8-1992, f. & cert. ef. 7-23-92; LC 4-1993, f. & cert. ef. 4-2-93; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03

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**Adm. Order No.:** LOTT 11-2003

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 6-30-03

**Notice Publication Date:** 5-1-03

**Rules Adopted:** 177-099-0095

**Rules Amended:** 177-099-0000, 177-099-0020, 177-099-0030, 177-099-0040, 177-099-0050, 177-099-0080, 177-099-0090, 177-099-0100

**Subject:** Keno is being modified to include a "Keno Multiplier" as an optional game feature. It multiplies certain prizes won. The annualized prize payment option is being amended to change the annuity period from 20 years to 25 years, and redefine the lump sum payment option. The other proposed amendments are housekeeping and grammar.

No changes are being made to OAR 177-099-0010 (Game Description) or OAR 177-099-0060 (Ticket Validations).

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-099-0000

### Definitions

For the purposes of Keno, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in multiple drawings and was validated before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing dates appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(2) "Game play" means the number or group of numbers appearing on a ticket for a particular spot which is compared to the winning numbers, selected at the drawings appearing on the ticket, to determine the prize payment for which the ticket may be redeemed.

(3) "Game slip" or "play slip" means a paper form used by a player to select a game play, that indicates the amount the player will play on the ticket containing the game play, the number of drawings in which the ticket will be played, the choice to play the Special Keno option, and the choice to select the Keno Multiplier option. Only one game play may be marked on each game slip.

(4) "Game ticket" or "ticket" means a computer-generated, printed paper issued by a terminal as a receipt for the game play selected by a player and which contains the following: the caption "Keno", one game play, the dates of the drawings in which the ticket may be played, the number of consecutive drawings in which the ticket may be played, the identifying number for each such drawing, the price of the ticket, a six-digit retailer number, a serial number, a bar code, the phrase "Special Keno" if that option has been selected, and the phrase "Keno Multiplier" if that option has been selected.

(5) "Keno Multiplier" means the Keno and Special Keno play option whereby a player, by paying an additional one dollar for each dollar wagered on a Keno or Special Keno game play, may be entitled to receive a larger prize for correctly selecting winning numbers. Keno Multiplier multiplies the amount of certain prizes won in a game play. Keno Multiplier is an optional, limited extension of the Keno and Special Keno game and is effective beginning at 6:00 A.M., April 7, 2003.

(6) "Quick Pick" means the random selection of numbers by a terminal that appear as the game play on a ticket.

(7) "Special Keno" means an optional variation of the Keno prize payment and odds structure as defined in OAR 177-099-0090 which may be selected by the player.

(8) "Spot" means the amount of numbers a player may play for a game play. A player may play from one spot, i.e., one number, to ten spots, i.e., ten different numbers.

(9) "Winning numbers" means the twenty numbers, from one to eighty, that are selected at each drawing that are used to determine winning game plays contained on the game tickets.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 7-1998(Temp), f. & cert. ef. 11-13-98 thru 5-7-99; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## 177-099-0020

### Price

(1) The price of a ticket is determined by the amount of money a player chooses to play on the game plays selected, multiplied by the number of drawings in which the ticket will be played. A player may also choose the Keno Multiplier option that will increase the cost of the ticket by \$1.00 for every \$1.00 wagered.

(2) A ticket may be purchased for one drawing or for multiple, consecutive drawings.

(a) A player may purchase a ticket for a single drawing for \$1.00 to \$5.00, in whole dollar amounts, \$10.00, or \$20.00.

(b) The price of a ticket for play in multiple, consecutive drawings is the price of a ticket for a single drawing, ranging from \$1.00 to \$5.00, \$10.00 or \$20.00 as selected by the player, multiplied by the number of consecutive drawings in which the ticket will be played.

(3) The minimum ticket price for multiple, consecutive drawings is \$2.00 (\$1 x 2 consecutive drawings = \$2).

(4) The maximum ticket price for any Keno ticket is \$100.00.

(5) A ticket purchased for multiple, consecutive drawings is limited solely to the following options: 1, 2, 3, 4, 5, 10, 20, 50, or 100 consecutive drawings so long as the price of a ticket does not exceed \$100.00.

(6) If a player adds the Keno Multiplier option to a Keno or Special Keno game play, the player may only play a maximum of 50 consecutive draws at \$2, for a total of \$100.

(7) A game slip indicating a price greater than \$100 is automatically rejected by the terminal.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## 177-099-0030

### Ticket Purchase, Characteristics, and Restrictions

(1)(a) General: Keno tickets may be purchased every day of the year during the hours of operation of the Lottery's On-Line game system and a Lottery retailer's business hours.

(b) Default: A player may purchase a ticket for play under either the Keno prize structure set forth in OAR 177-099-0080, or the Special Keno prize structure set forth in OAR 177-099-0090. If a player does not select the Special Keno option when purchasing a ticket, the ticket is played under the Keno prize structure.

(c) Multiplier Option: A player may purchase the Keno Multiplier option on any Keno or Special Keno game play as set forth in OAR 177-099-0020(6). If a player does not select the Keno Multiplier option when purchasing a ticket, the ticket is played under the Keno or Special Keno prize structure.

(2)(a) Ticket purchase: Tickets may be purchased either from a terminal operated by a retailer, i.e., a clerk-operated terminal, or from a terminal operated by the player, i.e., a player-operated terminal. To play Keno, a player must complete a game slip for input into a terminal, request a Quick Pick from a clerk, or request a Quick Pick using a player-operated terminal.

(b) Completing a game slip: A player must choose a game play by one of two methods. A player may select from one to ten numbers from the eighty number choices contained on the game slip. Alternatively, the player may select the Quick Pick option. A player must also complete the selections on the game slip regarding the amount of money to be played on the ticket per drawing, the number of multiple, consecutive drawings in which to play the ticket and the price of the ticket. The player may select the Special Keno option or the Keno Multiplier option.

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(c) Purchasing a ticket from a clerk-operated terminal: After the player completes a game slip and submits it along with the price of the ticket to the clerk, the clerk shall use the terminal to issue a ticket to the player. The player may also request that a clerk, without using a game slip, electronically submit a request for a Quick Pick through the terminal with the player informing the clerk of the number of spots to be played, the amount of money to be played on the ticket per drawing, the number of multiple, consecutive drawings in which to play the ticket, and whether the player wants the Special Keno option or the Keno Multiplier option.

(d) Purchasing a ticket from a player-operated terminal: A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal. Once the player has completed the game slip and inserted it and paid the price of the ticket into the terminal, the terminal will issue a ticket to the player. The player may also request a Quick Pick without using a game slip by using the player-operated terminal. A player requesting a Quick Pick from a player-operated terminal without using a game slip must select either the Keno or Special Keno option, the number of spots to be played, the amount of money to be played on the ticket per drawing, the number of multiple, consecutive drawings to be played, and whether the player wants the Keno Multiplier option.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461  
Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## 177-099-0040

### Cancellation of Tickets

A player may cancel a Keno ticket. To cancel a ticket, a player must follow the procedure in OAR 177-046-0060.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461  
Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## 177-099-0050

### Drawings

(1) General: Drawings shall take place at such times and upon such intervals as determined by the Director. Drawings shall normally take place at five-minute intervals. The first drawing each day shall take place five minutes after the On-Line game system is activated. The last drawing shall take place at the end of the On-Line game system activation for the day.

(2) Objective: Each drawing randomly selects twenty numbers from a possible eighty numbers that are the winning numbers. The winning numbers selected at each drawing are generated through the use of a computer-driven random number generator.

(3) Selection of the Keno Multiplier Number: The Lottery will conduct a separate random Keno Multiplier drawing and announce the result prior to each of the regular Keno drawings by displaying the Keno Multiplier number on the Keno monitor immediately prior to each new Keno game drawn and after the previous game pool closes. During each random Keno Multiplier drawing, one number will be selected. The Keno Multiplier numbers available for selection are 1, 2, 3, 5, and 10. The Keno Multiplier number selected at each drawing is generated through the use of a computer-driven random number generator in accordance with the provisions of OAR 177-046-0080.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461  
Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 7-1998(Temp), f. & cert. ef. 11-13-98 thru 5-7-99; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## 177-099-0080

### Keno Prizes

Section (1) of this rule specifies prizes for Keno drawings.

(1) Prizes for each drawing are determined and awarded based on how many numbers contained in a game play on a ticket match the winning numbers selected at that drawing. Prizes are determined separately for each spot category. Prizes per one dollar wagered, based upon potential sales of \$8,911,711.18 per drawing, are as follows: [Table not included. See ED. NOTE.]

(2) The total prize amount for a winning ticket multiplies according to the amount wagered on that ticket. Except as provided in OAR 177-099-0100, the highest potential prize for any Keno ticket is \$1,000,000 per drawing. If a ticket shows a wager of 2, 3, 4, 5, 10, or 20 dollars per draw-

ing on a winning game play, the prize shown above for a \$1 wager shall multiply, up to \$1,000,000, according to the wager amount shown on the winning ticket. For example, if a ticket shows a \$5 wager on the 8 spot category and the game play on the ticket matches 8 out of 8 of the winning numbers, the prize associated with that ticket is \$15,000 x \$5 = \$75,000. All Keno prizes are capped at \$1,000,000. However, Jackpot Bonus prizes awarded are in addition to the \$1,000,000 prize.

(3) A prize-winning player is paid in one lump sum for all prizes under \$1,000,000.

(4) Upon the Lottery's determination that a ticket is a winning ticket, the winner of a \$1,000,000 annuitized prize has the option to receive a lump sum payment of \$500,000 instead of the annuitized prize payments in accordance with the provisions of OAR 177-0099-0090(6)(a) through (e).

(5) For each drawing, a player may receive (subject to the validation requirements set forth in OAR 177-099-0060) only the highest single prize for which a ticket containing a winning game play is eligible.

(6) Prize payments must be claimed, and are made, in accordance with the provisions of OAR 177-070-0025.

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

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200,

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 30-2002(Temp), f. & cert. ef. 2-4-02 thru 8-2-02; LOTT 7-2002, f. & cert. ef. 4-29-02; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## 177-099-0090

### Special Keno Prizes

(1) Special Keno increases the size of the prizes at the upper tier levels, and eliminates some prizes at the lower tiers of the prize structure when compared to the Keno prize structure.

(2) As described in OAR 177-099-0030, a player must indicate the player's choice to play under the Special Keno prize structure. When the Special Keno prize option is designated on a ticket, the Keno prizes described in OAR 177-099-0080 are no longer applicable.

(3) Prizes for each drawing are determined and awarded based on how many numbers contained in a game play on a ticket match the winning numbers selected at that drawing. Prizes are determined separately for each spot category. Prizes per one dollar wagered, based upon potential sales of \$8,911,711.18 per drawing, are as follows: [Table not included. See ED. NOTE.]

(4) Except as provided in OAR 177-099-0100, the highest potential prize for a Special Keno ticket per drawing is \$1,000,000. A prize-winning player is paid in one lump sum for all prizes under \$1,000,000. A \$1,000,000 Special Keno prize is paid either as a \$1,000,000 annuity payable in twenty-five equal annual payments, or as a lump sum of \$500,000. All Special Keno prizes are capped at \$1,000,000. However, Jackpot Bonus prizes awarded are in addition to the \$1,000,000 prize.

(5) Special Keno prizes multiply according to the amount played per drawing. If a ticket shows a wager of 2, 3, 4, 5, 10, or 20 dollars per drawing on a winning game play, the prize shown above for a \$1 wager shall multiply, up to \$1,000,000, according to the wager amount shown on the winning ticket. If a prize is multiplied by the amount played and the aggregate prize amount exceeds the amount authorized in section (4) of this rule as the highest potential prize for Special Keno, the winner will receive the \$1,000,000 annuitized prize.

(6) Upon the Lottery's determination that the ticket is a winning ticket, the winner of a \$1,000,000 annuitized prize has the option to receive a lump sum payment of \$500,000 instead of the annuitized prize payments.

(a) Within 60 days of the date of validation of the \$1,000,000 ticket, the winner, prior to receiving any prize payment from the Lottery, may acknowledge in writing the winner's election to receive either the lump sum payment or the annuitized prize payments. Subject to the limited exception provided in section (b) below, a winner's election is irrevocable once the winner's written election is received by the Lottery.

(b) A prize winner who has elected the annuitized prize payments or who has failed to make an election and is placed on the annuitized prize payments, may be permitted, at the Lottery's sole discretion, to convert to the lump sum payment provided the Lottery has not yet made any payments to the prize winner. Once the Lottery makes any payment, the choice of payment is irrevocably fixed.

(c) Multiple \$1,000,000 annuitized prize winners, jointly claiming ownership of a ticket in accordance with OAR 177-046-0100(2), shall make individual determinations whether to exercise the option to receive their portion of the prize in the form of a lump sum payment.

# ADMINISTRATIVE RULES

(d) In the event a \$1,000,000 annuitized prize winner does not exercise the option to receive a lump sum payment within 60 days of the date of the validation of the ticket, the winner shall receive the annuitized prize.

(e) A \$1,000,000 annuitized prize winner is under no obligation to exercise the option made available by this rule to receive a lump sum payment in lieu of receiving annuitized prize payments.

(7) For each drawing, a player may receive (subject to the validation requirements set forth in OAR 177-099-0060) only the highest single prize for which a ticket containing a winning game play is eligible.

(8) Prize payments must be claimed, and are made, in accordance with the provisions of OAR 177-070-0025.

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

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200,

Hist.: LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 3-2002(Temp) f. & cert. ef. 2-4-02 thru 8-2-02; LOTT 7-2002, f. & cert. ef. 4-29-02; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## 177-099-0095

### Keno Multiplier Option

(1) When the Keno Multiplier option is selected on a winning Keno or Special Keno game ticket, the prize amount is multiplied by the Keno Multiplier number. The Keno Multiplier number (1, 2, 3, 5, or 10) is randomly selected prior to each drawing.

(2) The following table sets forth the probability of the various Keno Multiplier numbers being selected during a single Keno Multiplier drawing: [Table not included. See ED. NOTE.]

(3) A prize multiplied by the Keno Multiplier is subject to all Keno or Special Keno rules applicable to the particular prize won.

(4) The Director, in the Director's sole discretion, is authorized to initiate and terminate the Keno Multiplier option.

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

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200,

Hist.: LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## 177-099-0100

### Keno Jackpot Bonus

(1) In addition to the prizes described in OAR 177-099-0080 and 177-099-0090, 2.10% of gross Keno sales (excluding sales of the Keno Multiplier option) for each drawing is allocated between three prize pools held in reserve as an additional prize for winners of the top prize in the 6, 7, and 8 spot categories, i.e., 6 out of 6, 7 out of 7, and 8 out of 8. A Jackpot Bonus prize is awarded when a ticket wins the top prize for either the 6, 7, or 8 spot under OAR 177-099-0080 or 177-099-0090. If the Jackpot Bonus prize pool for a specific spot is not won, the Jackpot Bonus prize pool for that spot continues to grow.

(2) If a game play on a ticket is for a 6, 7, or 8 spot, the ticket is automatically playing for the Jackpot Bonus prize, as well as a prize under either OAR 177-099-0080 or 177-099-0090. For example, if a Keno ticket with a 6 spot game play is the only Keno or Special Keno ticket to match 6 out of 6 of the winning numbers, that ticket, subject to ticket validation requirements, would win the top prize for the 6 spot under OAR 177-099-0080 (\$1,600) and the accumulated Jackpot Bonus prize for the 6 spot.

(3) The prize money in the Jackpot Bonus prize pool for a specific spot for any given drawing is divided by the number of tickets winning the top prize for that spot under either OAR 177-099-0080 or 177-099-0090. The Jackpot Bonus prize pool is divided among those winning tickets on a pro-rata basis determined by the amount that each winning ticket played in the drawing in which the Jackpot Bonus prize was won. For example, if one Keno ticket wins the top prize for the 8 spot (\$15,000) in a drawing, and was purchased for ten drawings at \$3 per drawing, and one Special Keno ticket wins the top prize for the 8 spot (\$25,000) in the same drawing, and was purchased for one drawing at \$1, the holder of the Keno ticket would receive 75% of the prize in the Jackpot Bonus prize pool for the 8 spot and the holder of the Special Keno ticket would receive the remaining 25% of the prize in that Jackpot Bonus prize pool.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200

Hist.: LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 3-2002(Temp) f. & cert. ef. 2-4-02 thru 8-2-02; LOTT 7-2002, f. & cert. ef. 4-29-02; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03

## Oregon State Marine Board Chapter 250

**Adm. Order No.:** OSMB 6-2003(Temp)

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 7-7-03 thru 8-31-03

**Notice Publication Date:**

**Rules Amended:** 250-020-0171

**Subject:** Amend Rules to temporarily restrict boating activity, for safety reasons, on a portion of the Rogue River adjacent to construction of a new outfall diffuser associated with the City of Grants Pass' wastewater treatment plant.

**Rules Coordinator:** Jill E. Andrick—(503) 373-1405, ext. 243

## 250-020-0171

### Boat Operations in Josephine County

(1) No person shall operate a motorboat at a speed in excess of 10 MPH on Lake Selmac.

(2) The following areas are designated racing motorboat testing areas:

(A) On the Rogue River near Grants Pass:

(A) The primary testing area shall be one-half mile upstream from Findley Bend to a point approximately one mile above the mouth of the Applegate River;

(B) An alternate testing area shall be between Flannegan's Slough and Findley Bend.

(b) The primary testing area shall be used at all times except when low water creates a hazardous condition, at which time the alternate area will be used;

(c) Testing in the alternate area will be limited to Wednesdays between the hours of 6 p.m. and 8 p.m. and on Saturdays between the hours of 9 a.m. and 11 a.m.;

(d) When the water level measures 2.5 feet on the gauge at the City of Grants Pass Water Filtration Plant, use of the primary testing area will be considered hazardous and closed for testing high speed boats at which time the alternate testing area will be used.

(3) Due to temporary boating hazards related to the construction of the new outfall diffuser associated with the City of Grants Pass' wastewater treatment plant, located approximately at River Mile 100.9, it is illegal to operate a boat on the Rogue River in excess of a slow, no-wake speed - maximum five miles per hour - within 300 feet of the construction site, as marked. This rule is effective beginning on July 7 and extends no later than August 31, and is coincident with the presence of a coffer dam and in-water construction activity at the described location, including activities associated with the installation and removal of the coffer dam. Pursuant to ORS 830.015(3)(a) this speed limit also applies to small passenger vessels of less than 100 gross ton.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & ORS 830.175

Hist.: MB 10, f. 11-14-61; MB 43, f. 7-18-69; Renumbered from 250-020-0060; OSMB 6-2003(Temp), f. 6-30-03, cert. ef. 7-7-03 thru 8-31-03

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## Oregon University System, Oregon State University Chapter 576

**Adm. Order No.:** OSU 1-2003

**Filed with Sec. of State:** 6-19-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 576-010-0000

**Subject:** The amendment will set fees and charges for designated services at Oregon State University for fiscal year 2003-2004. The rule states: "The University hereby adopts by reference a list of fees and charges for fiscal year 2003-2004. The List of Fees and Charges is available at the Oregon State University Business Office and the Oregon State University Library, and is hereby incorporated by reference in the rule."

**Rules Coordinator:** Bonnie Dasenko—(503) 737-2474

## 576-010-0000

### Fees and Charges

The University hereby adopts by reference a list of fees and charges for fiscal year 2003-2004. This List of Fees and Charges is available at the

# ADMINISTRATIVE RULES

Oregon State University Business Office and the Oregon State University Library, and is hereby incorporated by reference in the rule.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03

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**Adm. Order No.:** OSU 2-2003  
**Filed with Sec. of State:** 6-19-2003  
**Certified to be Effective:** 6-19-03  
**Notice Publication Date:** 5-1-03  
**Rules Amended:** 576-020-0010

**Subject:** The changes amend the University student records rule to add date(s) of degree(s) to the definition of directory information.  
**Rules Coordinator:** Bonnie Dasenko—(503) 737-2474

## 576-020-0010

### Definition of Terms

(1) "Student" - A person who is or has been enrolled at Oregon State University.

(2) "Educational Record" — Records directly related to a student which are maintained by Oregon State University or by a person acting for the University.

(3) "Directory Information" — Student's name, current mailing address and telephone number, current e-mail address, campus office address, class standing, month and day of birth, major field of study, full-time or part-time enrollment status, status as a graduate teaching assistant or graduate research assistant, participation in officially recognized activities and sports, dates of attendance, degrees and awards received, date(s) of degree(s), and most recent previous educational institution attended by student.

(4) "Institutional Official" — 6-19-03 A person employed by the University in an administrative, supervisory, academic, research or support staff position (including health staff); a person, company or entity with whom the University has contracted (such as an attorney, auditor or collection agent); a person serving on the board of trustees; or a student serving on an official committee such as a disciplinary or grievance committee or assisting another school official in performing his or her tasks.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: OSU 3, f. & ef. 6-20-77; OSU 8-1996, f. & cert. ef. 8-23-96; OSU 10-2001, f. & cert. ef. 11-16-01; OSU 5-2002, f. & cert. ef. 5-8-02; OSU 2-2003, f. & cert. ef. 6-19-03

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**Adm. Order No.:** OSU 3-2003  
**Filed with Sec. of State:** 6-19-2003  
**Certified to be Effective:** 9-18-03  
**Notice Publication Date:** 5-1-03  
**Rules Amended:** 576-025-0020

**Subject:** The rule provides that non-immigrant international students will be enrolled automatically in and billed for a health insurance plan made available through Oregon State University. Affected students may apply for a waiver if they can demonstrate they have comparable insurance.

**Rules Coordinator:** Bonnie Dasenko—(541) 737-2474

## 576-025-0020

### Health Insurance Requirements for Non-Immigrant International Students and Their Dependents.

(1) In order to assist the University in complying with federal regulations, and to ensure the quality of the educational and cultural experience of non-immigrant international students at Oregon State University, such students must demonstrate their ability to meet their financial responsibilities in full. These responsibilities include the provision by non-immigrant international students of medical care for themselves and dependent family members in the United States.

(2) As used in this rule, "OSU Plan" means the insurance plan available through Oregon State University for non-immigrant international students.

(3) All non-immigrant international students enrolled part- or full-time at Oregon State University shall provide health insurance coverage for themselves and their dependent family members in the United States. Non-immigrant international students may fulfill this requirement by enrolling themselves and their dependent family members in the OSU Plan, or by securing a comparable insurance waiver under section (5) of this rule, within 21 days of enrollment at OSU.

(4) Charges for enrollment of international students and their dependents in the OSU plan will automatically be billed to such students' OSU accounts unless they have secured a comparable insurance waiver under section (5) of this rule. Students who are enrolled for spring term will automatically be billed and enrolled for both spring and summer term.

(5) A non-immigrant international student who does not wish to participate in the OSU Plan may apply to the Director of Student Health Services for a comparable insurance waiver. Such application shall be submitted to the Student Health Insurance Office on a form provided by that office, which will require documentation of coverage. A comparable insurance waiver may be granted only when the student is covered by an alternative policy, plan or contract that provides comparable coverage:

(a) "Comparable coverage" means that the alternative policy, plan or contract meets or exceeds all levels of coverage provided by the OSU Plan, including any exclusions, the maximum amount of coverage per accident and illness, and the maximum amount of cumulative benefit; and that the alternative policy, plan or contract is either backed by the full faith and credit of the government of the international student's home country; is part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor; or is an alternative plan lawfully sold in Oregon.

(b) Documentation of such coverage must indicate in English the insurance company's name and address for billing purposes, policy number, the coverage terms of the policy, the effective dates of the policy, and any exclusions, the names of the individuals covered by the policy, and the maximum amount of coverage per accident and illness and/or in terms of cumulative benefits.

(c) In all cases proof of continuous coverage is required during the student's program of study.

(d) Notwithstanding section (5)(a) of this rule, the Vice Provost for Student Affairs may designate as comparable coverage any plan for which non-immigrant international students are eligible that is offered through a University-recognized collective bargaining agreement.

(6) Non-immigrant international students may contest the factual premise underlying any decision to deny a comparable insurance waiver by presenting their documentation and arguments before the Vice Provost for Student Affairs.

(7) A non-immigrant international student whose request for a comparable insurance waiver is denied shall be enrolled in the OSU Plan and premiums will be billed to the student's OSU account.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: OSU 6-1980, f. & ef. 12-3-80; OSU 5-1994, f. & cert. ef. 6-30-94; OSU 3-2003, f. 6-19-03, cert. ef. 9-18-03

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## Oregon University System, Portland State University Chapter 577

**Adm. Order No.:** PSU 1-2003  
**Filed with Sec. of State:** 6-25-2003  
**Certified to be Effective:** 7-1-03  
**Notice Publication Date:** 6-1-03  
**Rules Amended:** 577-070-0005, 577-070-0010, 577-070-0015, 577-070-0020, 577-070-0025, 577-070-0030, 577-070-0035, 577-070-0040, 577-070-0045, 577-070-0050

**Subject:** To conform rules to changes in PSU regulation in compliance with ORS 352.360: to facilitate the administration and operation of its parking lots, and to adjust fees and fines to assure recovery of costs of providing various administrative services.

**Rules Coordinator:** Tyrene Bada—(503) 725-3443

## 577-070-0005

### Declaration of Purpose

(1) In order to facilitate the operation of parking structures, parking lots and controlled street access areas of the University, the following rules and regulations are hereby established and are enforceable under authority provided by ORS 352.360.

# ADMINISTRATIVE RULES

(2) All motor vehicle laws of the State of Oregon including specifically, but not limited by, ORS Chapters 481, 482, 483, 484, and 486, together with amendments hereafter adopted, are applicable to the campus of Portland State University to the same extent as if this campus and its streets were public highways, and all provisions of said motor vehicle laws are applicable and enforceable. State motor vehicle laws shall apply should any of these parking rules and regulations be found inconsistent and incompatible.

(3) Portland State University, through the President and other administrative officers designated by him, is hereby authorized to place these rules and regulations into effect and to provide for the enforcement thereof through the appointment of security and student patrol officers.

Stat. Auth.: ORS 351 & ORS 352

Stats. Implemented:

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0010

### Use Restrictions

The parking structures and parking lots are for the use of faculty, staff, student, guests and visitors of the State System of Higher Education; parking by other persons is subject to availability of parking spaces and the policies as established by the administration of Portland State University. All persons — faculty, staff, students, visitors, and commercial representatives — who park in University-owned parking lots, structures, University controlled street access areas, campus grounds or other no parking zones, must obtain and display a permanent, temporary, contractor, or service permit. Vehicles cited for failure to display such permits are subject to penalty as assessed by the University. The PSU Parking office reserves the right to enforce all parking areas, from 8am to 7pm Monday through Thursday and 8am to 5pm on Fridays and Saturdays, including breaks between terms. Restricted parking areas, including drive lanes and fire lanes, disabled spaces, loading zones and lots marked as reserved 24 hours per day and all campus grounds may be enforced at all times.

Stat. Auth.: ORS 351 & ORS 352

Stats. Implemented:

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0015

### Permits and Fees

(1) Permits: Parking permits are required to park in any University parking facility except on Sundays and legal holidays when the University is closed. To be eligible for a permit, applicants must provide the University Transportation and Parking Office with their vehicle license number (or VIN# in lieu), make and year of the vehicle(s) on which the permits will be displayed. Applicants registering vehicles with the Transportation and Parking Office may be required to provide proof of registration that said vehicles are registered in DMV to them or members of their immediate family, and/or leased by applicant. Faculty/Staff permit applicants must provide proof of current employment at the University. Emeritus will receive, upon written confirmation from the Office of Academic Affairs, a complimentary parking permit, renewable yearly. Alumni may purchase an afternoon or evening permit by presenting proof of their status via a current alumni card. Student applicants desiring full time permits must show registration at the University, for at least twelve (12) credit hours. Masters and Doctorate students desiring full time permits, must show registration for at least nine (9) credit hours. On campus student housing residents must show registration for at least six (6) credit hours, and be identified on a housing list or have a current lease agreement or current rent receipt, to be eligible for a "West Hall Housing" permit or an "Ondine Housing" permit. Student applicants desiring afternoon or evening permits must show registration at the University, for at least one (1) credit hour. Student applicants desiring Tues./Thurs. or Mon./Wed. permits must show registration at the University, for at least six (6) credit hours. All permit holders must maintain their eligibility requirements throughout the term or surrender their permit for applicable permit exchange and/or monetary adjustment. All students will be required to pay for all outstanding fines, prior to purchasing a current term permit. The University may require that before a quarterly or yearly parking privilege for any vehicle is granted to any full-time or part-time student to use university property, students must show that the vehicle is operated by a student holding a valid driver's license, that the vehicle is currently registered and that the student driving the vehicle is insured under a motor vehicle liability insurance policy that meets the requirements

described under ORS 806.080 or that the student or owner of the vehicle has provided the Motor Vehicles Division with other satisfactory proof of compliance with the financial responsibility requirements of this state. Transportation and Parking Services reserves the right to waive any of these requirements.

(2) University parking permits are valid only when purchased from the Portland State Transportation and Parking Office. Permits not purchased through the Parking Office are subject to forfeiture and may be considered stolen. Permits are to be displayed in a manner prescribed by the University. Permits which are static cling or stickers are to be adhered inside of vehicle, on the lower left rear window, left rear side window, or if vehicle has a canopy, or a convertible top, driver's front side window. Motorcycle permits are to be displayed in a conspicuous place. Movable permits are to be hung on rear view mirror facing toward front windshield, and clearly visible through the windshield. Permanent permits are not transferable except as provided in rule 577-070-0020 and must be displayed on vehicle registered to permit holder.

(3) The following types of permits are available at the Parking Office to faculty, staff, students, alumni, guests and visitors of the State System of Higher Education. A customer may only receive one physical permit.

(a) Faculty/Staff permits allow the applicant to park one vehicle at any time, during the day or evening, in any space designated as a permit parking area, except spaces marked reserved or restricted. Institutional accounts are not to be charged for parking space furnished to employees for personally owned automobiles. A charge may be made against a department, however, where parking space is furnished to a person with a privately owned vehicle when that person is rendering service for the benefit of the department with no compensation. (see OAR 580-040-0025)

(b) Day and Evening permits allow only one vehicle at any time to be parked in any space designated as a permit parking area, except spaces marked as reserved or otherwise restricted.

(c) University Reserved permits allow an assigned vehicle to be parked from 6:00 a.m. to 7:00 p.m., Monday through Friday in their assigned reserved space, unless otherwise posted.

(d) Carpool permits allow one vehicle at any time from a carpool registered with the Parking Office to park in one of the preferred carpool parking spaces on campus. Preferred carpool parking spaces are non-assigned and reserved for carpool members until the time designated at each parking space or lot. If the carpool spaces are full, carpool permit holders may park in general permit parking spaces. A carpool shall be defined as two (2) or more University staff, faculty, or full-time students, who have compatible schedules, allowing the car-poolers to ride in together, and have agreed to occupy a single preferred carpool space. Individuals in carpools must ride together a minimum of three days per week. Individuals who carpool must come into the parking office together to sign a carpool agreement and carpool contract to receive their carpool permit. A copy of PSU's carpool policies can be obtained at the Transportation and Parking Services office in Neuberger Hall.

(e) A Disabled vehicle which displays a State Disabled plate or placard may park in any non-assigned disabled space, providing the appropriate PSU parking permit is also displayed or the parking meter is fed. A disabled person is one who meets at least one of the following criteria as stated in ORS 801.235 and in Oregon Administrative Rule (OAR) 735-080-0010:

(A) A person who has severely limited mobility because of paralysis or the loss of use of some or all of the person's legs or arms;

(B) A person who is affected by loss of vision or substantial loss of visual acuity or visual field beyond correction; or

(C) A person who has any other disability that prevents the person from walking without the use of an assisted device or that causes the person to be unable to walk more than 200 feet, including but not necessarily limited to:

(i) Chronic heart condition.

(ii) Emphysema;

(iii) Arthritis;

(iv) Rheumatism; or

(v) Ulcerative colitis or related chronic bowel disorder.

(D) A licensed physician must certify that you are disabled, as defined above, and whether your disability is temporary. If the disability is temporary, the physician also must give the date you are no longer expected to need the disabled person parking placard or disabled parking space.

(E) Temporary disabilities such as fractured limbs that impair mobility can be accommodated on a temporary basis, with approval from parking administration.

## ADMINISTRATIVE RULES

(F) Afternoon permits allow a vehicle to be parked beginning at 12:30 noon to 8:00am the next day in any space designated as a permit parking area, except spaces marked reserved or otherwise restricted. Students must carry a minimum of one (1) credit hour.

(G) Evening permits allow a vehicle to be parked beginning at 3:30 p.m. to 8:00am the next day in any space designated as a permit parking area, except spaces marked reserved or otherwise restricted.

(h) Tuesday/Thursday permits allow the vehicle to be parked any time during the day or evening Tuesdays, Thursdays, Fridays, Saturdays and Sundays in any space designated as a permit parking area, except spaces marked reserved or otherwise restricted. Students must carry a minimum of six (6) credit hours.

(i) Motorcycle permits allow motorcycles and power scooters, including mopeds, to be parked at any time but only in areas designated as "Motorcycle Parking". This excludes spaces identified as bicycle parking.

(j) A complimentary temporary permit may be issued by the Transportation and Parking Office to a University student, faculty or staff member who has driven a vehicle other than the vehicle for which the permit was issued, provided that both the registered vehicle and the additional vehicle are not parked in University permit parking areas at the same time. A temporary permit may be issued for a fee to a University student, faculty, staff member, or alumni, only if the issuance of the temporary permit does not displace a University permit holder who has purchased permits under OAR 577-070-0015.

(k) Special Event Parking permits may be made available to visitors attending on-campus events such as athletic contests, concerts, meetings, and workshops, only if the issuance of the Special Event Parking permit does not displace a University permit holder who has purchased permits under OAR 577-070-0015. Special event parking requires a PSU parking permit designed and/or approved by Parking administration. Parking availability and charges for special event parking will be the decision of the Manager of Transportation and Parking, or designated staff. Some events will require contractual agreements that will be drafted by parking administration and negotiated with event sponsors. On campus special events that impact parking space require at least a two-week notice in writing to PSU Parking.

(l) The use of the University parking meters is restricted to University students, faculty and staff members, alumni and visitors having business with the University. Metered parking requires payment from 8 am to 7 pm Monday through Thursday and from 8 am to 5 pm Friday and Saturday, including breaks between holidays. PSU meters are operational all days PSU is open, including holidays PSU does not observe.

(m) Restricted Extended Studies Parking permits allow University employees, whose University responsibilities necessitate daily travel to and from locations in the Portland Metropolitan area, access to the restricted Extended Studies permit parking lot, or any general permit facility, to include, but not be limited to the hours of 7:30 a.m. to 7:00 p.m. Monday — Thursday and on Friday until 5:00 p.m. The Vice President for Finance and Administration shall determine which University employees meet the minimum criteria for eligibility for a Restricted Parking permit.

(n) Student Housing permits allow a vehicle to be parked in any space designated as a Student Housing permit parking area, except for spaces marked reserved or otherwise restricted. Student Housing permits are available to those individuals with proof of on campus student residency, and proof of registration at the University for at least six (6) credit hours. Permits have lot and eligibility restrictions.

(o) Tenant Parking permits are provided at the discretion of the Manager of Transportation and Parking Services or designated employee, and managed through contractual agreements with the tenants and PSU administration. Parking access cards, if necessary, will be distributed through the PSU Parking Office and tenants will be charged a non-refundable fee for the card.

(p) Emeritus and VIP permits allow the vehicle to be parked any time during the day or evening in any space designated as a permit parking area, except spaces marked as reserved or otherwise restricted. No other persons may use the Emeritus or VIP permit, including members of the individuals household who are employed or attending classes at the university. An exception will be made for the spouse of an Emeritus permit holder if the Emeritus faculty is deceased.

(q) Monday, Wednesday, permits are good all day on Monday, Wednesday, Friday, Saturday and Sunday. Students must hold a minimum of six (6) credit hours to get this permit.

(r) Commercial Representatives, Delivery Vehicles, Contractors and Departmental Service permits:

(A) Commercial representatives (vendors i.e., business, company or individual), engaged in providing service under contract to the University, may purchase a service permit, and are entitled to park in any general permit parking area. Vendors will be required to pay all outstanding parking fines. Failure to comply may result in the vendors parking permit being revoked.

(B) Departmental Service permits may be requested by departments to be issued by the Parking Office, to be used by faculty and staff permit holders for loading and unloading in no parking zones for up to 30 minutes.

(C) Contractor permits shall be made available to a company or individual engaged in providing service, under contract, to the University, in any general permit parking areas; only if the issuance of the Contractor permit does not displace a University permit holder who has purchased a permit under OAR 577-070-0015. Arrangements for contractors, construction employees and construction maintenance personnel must be made prior to beginning work on campus. Permits arranged through PSU Facilities Management require a completed signed contractor agreement with project accounting codes identified on the agreement at the time the permit is issued.

(D) Contractors requiring parking next to the job site must arrange parking and staging through the City of Portland. Any exception to this policy, due to extenuating circumstances, must be authorized and permitted by the University Transportation and Parking Office.

(E) Commercial Delivery vehicles may use any designated loading zone for up to 30 minutes, while conducting business with the University without a vendor permit.

(s) Oversized permits allow oversized vehicle access to spaces and areas designated by Transportation & Parking personnel based on availability.

(t) Academic Year permits allow the vehicle to be parked in any space designated as a permit parking area during fall, winter and spring term, except spaces marked reserved or otherwise restricted.

(u) University Center Building Permits will be provided on a first-come first-serve basis to PSU faculty and staff occupying UCB building space and to tenants through contractual agreements at the discretion of the Manager of Transportation and Parking Services.

(v) Fourth Ave. Term Permits — 4th Ave only permits authorize parking on the P1 level of the Fourth Avenue garage only. The student will be required to have an access card for entry.

(w) Weekly Permits are valid in any general permit space unless otherwise noted and are valid for seven consecutive days.

(x) Loading zone permits — Valid in areas or parking spaces designated by Transportation & Parking Personnel.

(4) Fees: The fees to be collected for parking permits described in this rule are as follows beginning Spring, 2003 through Spring, 2006:

(a) Day/Evening permit June 2003 \$74/month\* or \$222/term; June 2004 \$77/month\* or \$231/term; June 2005 \$80/month\* or \$240/term \*(Monthly rates are only for faculty/staff).

(b) Reserved spaces are intended for faculty or staff of PSU; June 2003 \$136/month; June 2004 \$141; and June 2005 \$146/month.

(c) Faculty/staff, or students requesting disabled reserve spaces will be charged the regular reserved space fee.

(d) Day and Evening (4wk & 8wk) Summer Term: \$80, for four weeks in 2003, \$84, for four weeks in 2004, and \$87 for four weeks in 2005; \$161 for eight weeks in 2003, \$168 for eight weeks in 2004, and \$175 for eight weeks in 2005.

(e) Monday, Wednesday, & Friday permits and Tuesday, Thursday, & Friday permits: \$133 per term in 2003, \$139 per term in 2004, \$144 per term in 2005.

(f) Carpool: June 2003 \$63/month\* or \$189/term; June 2004 \$65/month\* or \$196/term; June 2005 \$68/month\* or \$204/term \*(monthly rates are intended for faculty/staff only)

(g) Afternoon permits: \$111 per term in 2003, \$116 in 2004, \$120 in 2005.

(h) Evening permits: \$46 per term in 2003, \$48 in 2004, \$50 in 2005.

(i) Fourth Avenue Daily Parking: Rates are charged an hourly or daily rate upon exit. Vehicles exiting after attendant has left will be issued a parking owed envelope. Payment is required within 10 days, after which time a 'Non-payment of Daily Fees' ticket may be issued. Rates are \$2 per hour with a 24 hour maximum of \$10.

(j) Motorcycle permits: \$46 per term in 2003, \$48 in 2004, \$50 in 2005. (No charge to full-time permit holders with proof of vehicle (motorcycle) registration).

(k) Full-day Temporary permits: \$8 per day Good only for date(s) marked on permit. Permits valid in general spaces as designated on permit.

# ADMINISTRATIVE RULES

(l) Special Event permits: The cost for special event parking sponsored by a PSU department will be based on current department rates. The cost for special event parking not sponsored by a PSU department will be negotiated with the event sponsor and parking administration.

(m) ID Card Fees: Any PSU faculty/staff or student, who receive a NEW PSU ID card will be charged a \$10.00 fee. Lost/stolen or Replacement ID cards will cost \$20.

(n) Restricted Lot Permits: \$82 per month in 2003, \$82 in 2004, \$85 in 2005.

(o) Contractor Parking permits: Eligible for PSU faculty/staff daily, weekly and monthly rates.

(p) Vendor Parking permits: \$10 weekly or \$30 monthly. Permits may be purchased by vendor if they are the sole user or by a university department if permit is to be used by multiple vendors.

(q) Alumni permits: Alumni, who have received one or more academic degrees from the University, may purchase an evening permit at the approved rates, with valid Alumni card.

(r) Student Housing permits: costs are the same as the full time day evening permits.

(s) Meter and pay station Parking: \$1 per hour.

(t) Daily temporary PM permits, sold only from the Kiosk booths in Parking structures, on a space availability basis only with the exception of the Fourth Avenue Garage, Monday through Friday:

(A) 1:30 p.m. to 5:00 p.m. \$4.

(B) 5:00 p.m. to 7:00 p.m. \$2.

(u) Tenant Parking permits: Contractual Fee Amount.

(v) Academic Year permit: Academic year permits are available only in the beginning of fall term of each academic year and are the same price per term as the Day/Evening permit:

(w) Department guest permits: \$5 for daily permits, \$1/hr. for hourly permits, \$10 for a reserved space.

(x) Replacement permits: \$20 for any Transportation and Parking issued parking permit.

(y) Loading zone permits: \$2 per hour, \$8 per day.

(z) Weekly permits: \$28 per week up to 6 weeks.

(5) Lost and Stolen permits:

(a) Permits, which are lost or stolen, must be reported immediately to the Transportation and Parking Office. They will be replaced (see rule 577-070-0020) only if the person to whom the permit was originally issued signs an affidavit of loss. A report must be filed with the Campus Public Safety Office if the permit has been stolen.

(b) Any car appearing on campus with a permit listed in the Transportation and Parking Office as lost or stolen will be booted or towed immediately on discovery, and will be subject to fines listed in rule 577-070-0045. Possession of a lost or stolen permit could be grounds for criminal charges and/or University disciplinary action. Note: Permits not purchased through the Parking office are subject to forfeiture and may be considered stolen.

(6) Forged or Altered permits: Drivers of cars bearing forged or altered permits are subject to fines listed in 577-070-0045. The car will be booted, impounded and/or towed immediately on discovery, and the remaining permit value may be forfeited. Drivers of cars bearing a forged permit will also be charged for the entire value of the permit from the date that it was originally issued.

(7) Application for Refund of Fees: Unused portions of term parking permits may be submitted to the Transportation and Parking Office. Permits must be removed from the vehicle and returned to the Transportation and Parking Office. Refunds are computed from the date the permit is returned. Refunds will not be issued during the last two weeks of the academic term.

(8) Faculty/Staff permits must be returned to the Transportation and Parking Office to stop payroll deduction or upon termination from the University. To terminate current month's payroll deduction, permits must be turned in on or before the fifteenth of the month, and a payroll cancellation form signed to stop the parking deduction. A daily-prorated amount for faculty and staff will be charged through the day the permit(s) are surrendered. Permits not returned within 30 days after termination may be considered to be lost/stolen and the possessor of the permit will be billed the one month value of the parking permit.

Stat. Auth.: ORS 351.070 & ORS 352.360

Stats. Implemented: ORS 352.360

Hist.: PSU 69(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 3-1983, f. 6-22-83, ef. 7-1-83; PSU 2-1984, f. 6-8-84, ef. 7-1-84; PSU 2-1985, f. 6-26-85, ef. 7-1-85; PSU 2-1986, f. 7-28-86, ef. 9-1-86; PSU 2-1987, f. 6-19-87, ef. 9-1-87; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 4-1989(Temp), f. & cert. ef. 10-10-89; PSU 1-1990, f. & cert. ef. 1-22-90; PSU 6-1990(Temp), f. 8-17-90, cert. ef. 9-1-90; PSU 7-1990(Temp), f. 11-14-90, cert. ef. 12-26-90; PSU 8-1990, f. 12-11-90, cert. ef. 12-26-90; PSU 3-1992, f. & cert. ef. 6-16-92; PSU 2-1994, f. 10-14-94,

cert. ef. 1-1-95; PSU 2-1996, f. & cert. ef. 5-1-96; PSU 4-1996, f. & cert. ef. 10-8-96; PSU 1-1998, f. & cert. ef. 7-16-98; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0020

### Replacement Permits

A replacement permit may be obtained when the permit is lost or damaged. A charge of \$20 per permit will be made for the replacement permit. In the event a permit is stolen, an affidavit of stolen permit must be completed in the Transportation and Parking Office, and a stolen permit report filed with the Campus Public Safety Office, before a replacement permit may be issued.

Stat. Auth.: ORS 351.070 & ORS 352.360

Stats. Implemented: ORS 352.360

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 4-1989(Temp), f. & cert. ef. 10-10-89; PSU 1-1990, f. & cert. ef. 1-22-90; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0025

### Miscellaneous Regulations

(1) No driver of a vehicle shall stop or park such vehicle at a time or in a place not authorized by a permit issued under these regulations.

(2) Other vehicles: motorcycles, scooters, mopeds and bicycles may be parked only in those areas specifically designated for their use. Bicycles may be parked without charge in areas where the University has placed suitable racks. Bicycles may not be parked in any area designated for vehicle parking or chained to parking meters or signposts. Bicycles are not allowed in campus buildings, stairwells, or chained to any trees, shrubbery or vegetation. Bicycles found in violation will be removed at the owner's expense. No motorized vehicles are allowed to park in bicycle areas.

(3) No permit holder is allowed to use his/her vehicle, while on PSU property, for the purpose of temporary or permanent residence.

(4) Loading Zones are for the specific use of loading and unloading only, and are limited to 30 minutes or less as posted.

(5) State Vehicles (E-Plates) owned or assigned to the University may park in any general permit parking space at the current faculty/staff rates; other State Vehicles wishing to park long term, including all other government vehicles i.e., cities, municipalities, counties, or federal government, will be required to obtain a permit in accordance with established fees under 577-070-0015 and notify the PSU parking administration.

(6) Police vehicles may use metered spaces or the guest spaces in the Shattuck lot (without charge) when firearms or computers are physically secured inside the vehicle. All police vehicles using the guest spaces or metered spaces must report with the Campus Public Safety Office. Any police vehicle whose operator is at Portland State University to attend classes or continuing education courses will be required to obtain a permit in accordance with established fees under 577-070-0015.

(7) Fire Bureau vehicles parked in spaces OTHER than the general spaces on campus may do so only after notifying the Transportation and Parking Office and/or Campus Public Safety of their intent and reason for doing so.

(8) No permit holder is allowed to use PSU property for the purpose of storing any vehicle.

Stat. Auth.: ORS 351.070 & ORS 352.360

Stats. Implemented: ORS 352.360

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 2-1994, f. 10-14-94, cert. ef. 1-1-95; PSU 4-1996, f. & cert. ef. 10-8-96; PSU 1-1998, f. & cert. ef. 7-16-98; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0030

### Vehicular Traffic Within the Structures and Lots

(1) Unless otherwise posted, the speed limit within the parking structures and lots shall be 10 miles per hour. In the University-controlled street areas, the speed limit is 15 miles per hour, and 10 miles per hour in all pedestrian crossings.

(2) Traffic within the parking structures or lots is limited to movement into and out of parking spaces and from parking spaces to an exit. All vehicles will follow the indicated direction of traffic flow, including traffic on the University-controlled street access areas. Vehicles in violation are subject to the fines listed under OAR 577-070-0045. Repeated violations (witnessed by parking enforcement personnel, campus officials, or members of the PSU community) of the Basic Rule may be cause for forfeiture of a parking permit. Failure to forfeit a parking permit or to comply with the instructions against driving a vehicle within the boundaries of the

# ADMINISTRATIVE RULES

University Campus may result in the violator's vehicle being towed and/or elimination of all parking privileges.

Stat. Auth.: ORS 351.070 & ORS 352.360

Stats. Implemented:

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 2-1985, f. 6-26-85, ef. 7-1-85; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 3-1992, f. & cert. ef. 6-15-92; PSU 2-1994, f. 10-14-94, cert. ef. 1-1-95; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0035

### Vehicle Immobilization and Towing

(1) Booting, Towing and Impoundment. A vehicle with three outstanding citations and an expired tow notice can be booted and/or towed. In the case of a restricted/reserved area situation the parking office has the right to boot or tow without warning. Vehicles bearing altered, forged, or stolen permits and/or vehicles in violation of parking or payment regulations are, in addition to other penalties provided herein, subject to being booted, towed away or impounded. Release of a towed or impounded vehicle will be made upon payment (cash, credit card or check with the exception of after hours transactions limited to cash or checks at the discretion of Campus Public Safety) of all outstanding fines with the parking office, after proof of ownership is substantiated.

(2) Tow Notice Violation. A vehicle having three or more outstanding parking citations is subject to a Tow Notice Violation. If payments of all outstanding citations are made with the Parking Office within (7) seven calendar days of receiving a Tow Notice Violation, the penalty for the Tow Notice Violation will be waived.

(3) Vehicles parked anywhere on University property may also be booted or towed at the owner's expense without notice, under the following conditions:

(a) Parking in an area designated as a fire-lane (yellow or red curbing and/or signed) or tow-a-way zone.

(b) Blocking traffic or obstructing the normal flow of traffic.

(c) For fire or safety reasons.

(d) Abandoned vehicles — Abandoned or junked vehicles remaining on University property more than 24 hours will be removed. Unlicensed vehicles (to include those with obscured VIN numbers) parked on University property will be considered as abandoned and subject to removal upon discovery or booted until ownership and information is verified.

(e) Vehicles bearing forged altered or stolen permits.

(f) Parking in an Reserved space, Disabled Reserved space, or restricted area without an appropriate permit.

(g) Vehicles equipped with alarms that do not cease emitting intermittent or constant sound after an aggregate time of 3 minutes within any 15-minute period.

Stat. Auth.: ORS 351.070 & ORS 352.360

Stats. Implemented: ORS 352.360

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 2-1984, f. 6-8-84, ef. 7-1-84; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 4-1989(Temp), f. & cert. ef. 10-10-89; PSU 1-1990, f. & cert. ef. 1-22-90; PSU 6-1990(Temp), f. 8-17-90, cert. ef. 9-1-90; PSU 7-1990(Temp), f. 11-14-90, cert. ef. 12-26-90; PSU 8-1990, f. 12-11-90, cert. ef. 12-26-90; PSU 3-1992, f. & cert. ef. 6-16-92; PSU 2-1995, f. & cert. ef. 12-12-95; PSU 4-1996, f. & cert. ef. 10-8-96; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0040

### Pedestrian Traffic

(1) Right of Way. Pedestrian traffic shall have the right of way over vehicular traffic in any place in the parking structures, parking lots, or in any of the University-controlled street areas, including the Park Blocks.

(2) Trespassing. Trespassing in the parking structures or any of the University-controlled parking lots or street areas may be subject to arrest for criminal trespass under ORS 164.243 and 164.245.

(3) Skateboard and Skate Regulations: Skateboards, roller blades, roller skates, in line skates, skateskis or similar devices are prohibited in the parking structures and parking lots under the control of the University. Exception to this rule may be made by the Vice President of Finance and Administration, for University-sponsored and supervised classes, programs and events.

Stat. Auth.: ORS 351.070 & ORS 352.360

Stats. Implemented: ORS 352.360

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 1-1998, f. & cert. ef. 7-16-98; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0045

### Violations and Penalties

(1) The following subsections (2)(a)-(p) are considered to be violations and are prohibited. All fines are payable to the Parking Office, Portland State University.

(2) Fines. Fines for violation of regulations set forth in rules OAR 577-070-0005 through 577-070-0040 are as follows:

(a) Overtime at Meter (4 hours past expired meter citation) — \$15

(b) No permit — \$25

(c) Straddling Parking Space Lines — \$15

(d) Parking in a Restricted/Reserved Area \$35

(e) Parking in a Reserved Space — \$50

(f) Misuse/Altered permit — \$50

(g) Traffic Hazard /Blocking/Firelane — \$50

(h) Expired Meter — \$15

(i) Stolen/forged permit — \$150

(j) Stolen/forged Access Card — \$150

(k) Tow Notice Violation — \$35

(l) Towing — all charges incurred are the responsibility of the individual.

(m) Parking in a "No Parking" Zone — \$35

(n) Vehicle Impound Charge — Actual Contractual Fee

(o) Other — \$15 (definitions to be determined in written policies of the Parking Office)

(p) Parking vehicle in disabled space — \$200

(q) Overtime at Loading Zone — \$15

(r) Boot removal fee— \$25

(u) Vehicle Alarm — \$15

(v) Relocation Tow fee — actual contractual fee.

(w) Stolen/Damaged Boot — \$150 plus cost of repair or replacement.

(x) Non-Payment of Daily Fees in 4th Ave Garage — \$25

(y) Late fee — up to \$5 (charged after 30 days of citation issuance and monthly thereafter)

(3) Enforcement of Penalties:

(a) All disputed violations may be appealed within fourteen (14) calendar days of the date of the ticket by completion of the Parking Waiver Form at the Parking Office. Any disputed decisions on waivers or violations will be reviewed by the Traffic Appeals Board at Portland State University. Disputes to the Traffic Appeals Board may be conducted in writing or in person at scheduled Traffic Appeals Board meetings. Any further dispute of decisions on waivers may be appealed in writing to the Director of Auxiliary Services at Portland State University within fourteen (14) calendar days of the postmark of notification.

(b) The Director of Auxiliary Services will also provide an opportunity for a hearing if requested by the appealing party. Such hearing will be conducted without formal rules of evidence, and will provide an opportunity for presentation of circumstances surrounding the issuance of the citation(s). Decisions by the Director of Auxiliary Services, after the hearing will be in writing, but need not contain specific findings of fact and conclusions of law.

(c) The ruling on the appeal to the Director of Auxiliary Services shall be final.

(d) Failure to adhere to the timelines laid out above may result in loss of ability to petition.

(4) Nonpayment of Fines:

(a) A student who fails to tender payment to the University for any traffic violations received, or fails to request a waiver as specified in rule 577-070-0045 on or before the date specified in the traffic citation may have their transcripts withheld or may have their registrations canceled or may be denied graduation if any fines or fees under these regulations are owing or unpaid.

(b) Unpaid parking citations may be sent to the responsible party's university Accounts Receivable account or an outside collection agency.

(5) Forfeiture of Parking Privileges:

(a) Drivers of vehicles bearing forged, altered or stolen permits, drivers who are verbally or physically abusive to Transportation and Parking personnel, persons who cause damage to Transportation and Parking property, or drivers with repeated "Basic Rule Violations" may be denied parking privileges for a period of up to one year, or a time determined by Parking Administration Drivers will be booted and/or towed for not adhering to their revocation of parking privileges.

(b) Six or more violations resulting in non-payment of citations in a fiscal year may be cause for forfeiture of a parking permit. Failure to forfeit a parking permit or to comply with the instructions against driving a



# ADMINISTRATIVE RULES

vehicle within the boundaries of the University campus, may result in the violator's vehicle being towed or booted.

Stat. Auth.: ORS 351.070 & ORS 352.360  
Stats. Implemented: ORS 352.360  
Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 2-1984, f. 6-8-84, ef. 7-1-84; PSU 2-1986, f. 7-28-86, ef. 9-1-86; PSU 2-1987, f. 6-19-87, ef. 9-1-87; PSU 4-1989(Temp), f. & cert. ef. 10-10-89; PSU 1-1990, f. & cert. ef. 1-22-90; PSU 6-1990(Temp), f. 8-17-90, cert. ef. 9-1-90; PSU 7-1990(Temp), f. 11-14-90, cert. ef. 12-26-90; PSU 8-1990, f. 12-11-90, cert. ef. 12-26-90; PSU 3-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1998, f. & cert. ef. 7-16-98; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

## 577-070-0050

### Abandoned or Inoperable Vehicles

(1) Abandoned vehicles. Abandoned or junked vehicles remaining on University property more than 24 hours, will be removed at the owner's expense, in accordance with ORS Chapter 819. Unlicensed (to include those with obscured VIN numbers) vehicles parked on University property will be considered as abandoned and subject to removal upon discovery.

(2) Inoperable vehicles. Vehicles which have broken down on University property and which cannot be removed must be reported at once to the Campus Security Office. Inoperable vehicles must be removed from the campus within 24 hours, or will be subject to removal at the owner's expense. Mechanical repairs to disabled private vehicles on University property is prohibited.

Stat. Auth.: ORS 351 & ORS 352  
Stats. Implemented:  
Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03

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**Adm. Order No.:** PSU 2-2003

**Filed with Sec. of State:** 6-27-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 6-1-03

**Rules Amended:** 577-060-0020

**Subject:** The amendment establishes additional fees, charges, fines, and deposits for General Services for the 2003-2004 fiscal year.

**Rules Coordinator:** Tyrene Bada—(503) 725-3443

## 577-060-0020

### Schedule of Fees for General Services and Other Charges

The Schedule of Fees for General Services and Other Charges for the 2003-2004 Fiscal Year are hereby adopted by reference by Portland State University.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 351.070 & ORS 352.360  
Stats. Implemented: ORS 351.070  
Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03

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## Oregon University System, University of Oregon Chapter 571

**Adm. Order No.:** UO 1-2003

**Filed with Sec. of State:** 6-23-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 2-1-03

**Rules Amended:** 571-060-0005

**Subject:** The University administration has determined the adoption of amendments to the fee list will be necessary in order to provide

the basis for funding to cover the expenses of the services rendered and to maintain a current schedule of fees, fines, and penalties.

**Rules Coordinator:** Deb Eldredge—(541) 346-3082

## 571-060-0005

### Special Fees, Fines, Penalties, Service Charges

The University of Oregon has adopted by reference a list of Special Fees, Fines, Penalties, Service Charges, etc., for the current fiscal year:

(1) The fees, fines, penalties and service charges listed by reference in this rule are updated annually and copies are on file in the listed departments by July 1.

(2) The amounts and conditions of these fees may change from time to time throughout the year due to administrative considerations, changing costs, changes in institutional budgets, etc. If the size and the amount of these fees are or could be of importance to users, they should verify the details prior to making a commitment, before entering into any planning activities or before actually incurring any charges.

(3) The master copy of the current list of fees is maintained in the Office of the Director of Business Affairs and is available upon request to any person during regular business hours. The Director of Business Affairs also maintains a bulletin board where fee changes made during each 30-day period are posted. Following that posted period, the changes are filed with the master copy.

(4) University departments charging fees shall maintain a copy of at least that department's section of the list of special fees, fines, penalties and service charges including any updates made during the course of the fiscal year. The list and all current changes shall be available upon request to any person during regular departmental business hours.

(5) No department may change fees between annual amendments to this rule without first obtaining an approved statement of justification signed by the appropriate Vice-President. Prior to granting approval of any fee charged to students, the Vice-President shall consult with the Office of Student Advocacy. Changes in fees approved by the Vice-President and the justification statement shall be posted for 15 days in a public area of the departmental office. The new fee, fine, penalty or charge becomes effective at the end of the 15-day posting period after it is filed with the Director of Business Affairs along with the justification statement.

(6) However, student loan service charges, charges levied as penalties for prohibited conduct, general tuition, building fees, incidental fees, health service fees, and residence hall and housing charges, shall be adopted in accordance with the provision of ORS 183.310 to 183.500.

(7) Certain charges, fees or fee schedules may, according to ORS 351.072(b), be adopted without compliance with rulemaking provisions of ORS 183.310 to 183.500. They are: charges relating to symposiums, conferences, short courses, food, books or other retail goods, prices of admission to athletic, entertainment or cultural events or advertising rates in student or institutional publications.

[ED. NOTE: Lists referenced in this rule are available from the agency.]

Stat. Auth.: ORS 351.070, ORS 351 & ORS 352  
Stats. Implemented: ORS 351.070  
Hist.: UOO 20, f. & cert. ef. 4-27-76; UOO 34(Temp), f. & cert. ef. 8-8-77; UOO 37, f. & cert. ef. 9-30-77; UOO 3-1978, f. & cert. ef. 7-1-78; UOO 1-1979(Temp), f. 6-26-79, ef. 7-1-79; UOO 4-1979, f. & cert. ef. 10-3-79; UOO 7-1980, f. 6-30-80, ef. 7-1-80; UOO 7-1981(Temp), f. 6-16-81, ef. 7-1-81; UOO 9-1981(Temp), f. & cert. ef. 6-29-81; UOO 2-1982, f. & cert. ef. 4-14-82; UOO 4-1982, f. & cert. ef. 6-10-82; UOO 4-1983, f. & cert. ef. 6-10-83; UOO 5-1983(Temp), f. & cert. ef. 6-15-83; UOO 2-1984, f. 6-11-84, ef. 7-1-84; UOO 3-1985, f. 6-19-85, ef. 7-1-85; UOO 1-1986, f. 6-4-86, ef. 7-1-86; UOO 4-1986(Temp), f. & cert. ef. 11-10-86; UOO 7-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 8-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 1-1987, f. & cert. ef. 1-29-87; UOO 3-1987, f. 6-17-87, ef. 7-1-87; UOO 6-1988, f. 6-29-88, cert. ef. 7-1-88; UOO 8-1988, f. & cert. ef. 8-17-88; UOO 5-1989, f. 6-20-89, cert. ef. 7-1-89; UOO 7-1990, f. 6-14-90, cert. ef. 7-1-90; UOO 9-1991, f. 6-12-91, cert. ef. 7-1-91; UOO 1-1992, f. 4-9-92, cert. ef. 7-1-92; UOO 2-1993, f. 4-19-93, cert. ef. 7-1-93; UOO 9-1993, f. & cert. ef. 6-15-93; UOO 11-1993, f. 8-29-93, cert. ef. 9-1-93; UOO 2-1994, f. 6-13-94, cert. ef. 7-1-94; UOO 3-1994, f. 6-14-94, cert. ef. 7-1-94; UOO 4-1995, f. 6-13-95, cert. ef. 7-1-95; UOO 5-1995, f. 7-31-95, cert. ef. 8-1-95; UOO 3-1996, f. 6-6-96, cert. ef. 7-1-96; UOO 6-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 7-1997, f. 6-18-97, cert. ef. 7-1-97; UO 1-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1999, f. 6-1-99, cert. ef. 7-1-99; UO 3-1999, f. 6-1-99, cert. ef. 7-1-99; UO 2-2000, f. 6-15-00, cert. ef. 7-1-00; UO 1-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2002, f. 6-19-02, cert. ef. 7-1-02; UO 3-2002, f. 6-19-02, cert. ef. 7-1-02; UO 1-2003, f. 6-23-03, cert. ef. 7-1-03

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**Adm. Order No.:** UO 2-2003

**Filed with Sec. of State:** 6-23-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 4-1-03

**Rules Amended:** 571-060-0005

# ADMINISTRATIVE RULES

**Subject:** Increase in family housing rental charge to cover project-operating costs for 2003-2004.

**Rules Coordinator:** Deb Eldredge—(541) 346-3082

**571-060-0005**

## Special Fees, Fines, Penalties, Service Charges

The University of Oregon has adopted by reference a list of Special Fees, Fines, Penalties, Service Charges, etc., for the current fiscal year:

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(2) The amounts and conditions of these fees may change from time to time throughout the year due to administrative considerations, changing costs, changes in institutional budgets, etc. If the size and the amount of these fees are or could be of importance to users, they should verify the details prior to making a commitment, before entering into any planning activities or before actually incurring any charges.

(3) The master copy of the current list of fees is maintained in the Office of the Director of Business Affairs and is available upon request to any person during regular business hours. The Director of Business Affairs also maintains a bulletin board where fee changes made during each 30-day period are posted. Following that posted period, the changes are filed within the master copy.

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(5) No department may change fees between annual amendments to this rule without first obtaining an approved statement of justification signed by the appropriate Vice-President. Prior to granting approval of any fee charged to students, the Vice-President shall consult with the Office of Student Advocacy. Changes in fees approved by the Vice-President and the justification statement shall be posted for 15 days in a public area of the departmental office. The new fee, fine, penalty or charge becomes effective at the end of the 15-day posting period after it is filed with the Director of Business Affairs along with the justification statement.

(6) However, student loan service charges, charges levied as penalties for prohibited conduct, general tuition, building fees, incidental fees, health service fees, and residence hall and housing charges, shall be adopted in accordance with the provision of ORS 183.310 to 183.500.

(7) Certain charges, fees or fee schedules may, according to ORS 351.072(b), be adopted without compliance with rulemaking provisions of ORS 183.310 to 183.500. They are: charges relating to symposiums, conferences, short courses, food, books or other retail goods, prices of admission to athletic, entertainment or cultural events or advertising rates in student or institutional publications.

[ED. NOTE: Lists referenced in this rule are available from the agency.]

Stat. Auth.: ORS 351.070, ORS 351 & ORS 352

Stats. Implemented: ORS 351.070

Hist.: UOO 20, f. & cert. ef. 4-27-76; UOO 34(Temp), f. & cert. ef. 8-8-77; UOO 37, f. & cert. ef. 9-30-77; UOO 3-1978, f. & cert. ef. 7-1-78; UOO 1-1979(Temp), f. 6-26-79, ef. 7-1-79; UOO 4-1979, f. & cert. ef. 10-3-79; UOO 7-1980, f. 6-30-80, ef. 7-1-80; UOO 7-1981(Temp), f. 6-16-81, ef. 7-1-81; UOO 9-1981(Temp), f. & cert. ef. 6-29-81; UOO 2-1982, f. & cert. ef. 4-14-82; UOO 4-1982, f. & cert. ef. 6-10-82; UOO 4-1983, f. & cert. ef. 6-10-83; UOO 5-1983(Temp), f. & cert. ef. 6-15-83; UOO 2-1984, f. 6-11-84, ef. 7-1-84; UOO 3-1985, f. 6-19-85, ef. 7-1-85; UOO 1-1986, f. 6-4-86, ef. 7-1-86; UOO 4-1986(Temp), f. & cert. ef. 11-10-86; UOO 7-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 8-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 1-1987, f. & cert. ef. 1-29-87; UOO 3-1987, f. 6-17-87, ef. 7-1-87; UOO 6-1988, f. 6-29-88, cert. ef. 7-1-88; UOO 8-1988, f. & cert. ef. 8-17-88; UOO 5-1989, f. 6-20-89, cert. ef. 7-1-89; UOO 7-1990, f. 6-14-90, cert. ef. 7-1-90; UOO 9-1991, f. 6-12-91, cert. ef. 7-1-91; UOO 1-1992, f. 4-9-92, cert. ef. 7-1-92; UOO 2-1993, f. 4-19-93, cert. ef. 7-1-93; UOO 9-1993, f. & cert. ef. 6-15-93; UOO 11-1993, f. 8-29-93, cert. ef. 9-1-93; UOO 2-1994, f. 6-13-94, cert. ef. 7-1-94; UOO 3-1994, f. 6-14-94, cert. ef. 7-1-94; UOO 4-1995, f. 6-13-95, cert. ef. 7-1-95; UOO 5-1995, f. 7-31-95, cert. ef. 8-1-95; UOO 3-1996, f. 6-6-96, cert. ef. 7-1-96; UOO 6-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 7-1997, f. 6-18-97, cert. ef. 7-1-97; UO 1-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1999, f. 6-1-99, cert. ef. 7-1-99; UO 3-1999, f. 6-1-99, cert. ef. 7-1-99; UO 2-2000, f. 6-15-00, cert. ef. 7-1-00; UO 1-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2002, f. 6-19-02, cert. ef. 7-1-02; UO 3-2002, f. 6-19-02, cert. ef. 7-1-02; UO 1-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2003, f. 6-23-03, cert. ef. 7-1-03

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## Parks and Recreation Department Chapter 736

**Adm. Order No.:** PRD 5-2003

**Filed with Sec. of State:** 7-8-2003

**Certified to be Effective:** 7-8-03

**Notice Publication Date:** 4-1-03

**Rules Amended:** 736-018-0045

**Subject:** ORS 390.180(1)(c) requires the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting a master plan for South Beach State Park. Master plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new master plan as a state rule.

The master 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 master planning process involving meetings with the general public, a steering committee, affected state and federal agencies and the City of Newport.

**Rules Coordinator:** Angie Springer—(503) 378-5516

**736-018-0045**

## Adoption of the South Beach State Park Master Plan

(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;
- (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 State Park;
- (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) Champeog State Park;
- (i) Willamette Mission State Park;
- (j) Cascadia State Park;
- (k) Elijah Bristow State Park;
- (l) Cove Palisades State Park Master Plan, as amended in 2002;
- (m) Silver Falls State Park Master Plan, as amended in 1999;
- (n) North 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; Humburg 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;

(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; 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; 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

# ADMINISTRATIVE RULES

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; and

(y) Illinois River Forks State Park.

(z) Wallowa County State Parks Master Plan, 2000.

(aa) Master Plan for a Proposed New State Park in Washington County, currently unnamed, 2001.

(bb) Master Plan for Clay Myers State Natural Area at Whalen Island, 2003.

(cc) South Beach State Park Master Plan, 2003.

(2) The master plan documents which have been incorporated by reference into this division are available from the State Parks and Recreation Department, 1115 Commercial Street NE Suite 1, Salem OR 97301-1002.

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

Stat. Auth.: ORS 390.180(1)(c) & ORS 390.124

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

## Physical Therapist Licensing Board Chapter 848

**Adm. Order No.:** PTLB 2-2003

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 848-010-0105

**Subject:** The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2003-005 Biennium Budget of \$740,765 covering the period from July 1, 2003 through June 30, 2005. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$740,765 for the effective operation of the Board. The Board will not exceed the approved 2003-2005 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office.

**Rules Coordinator:** James Heider—(503) 731-4047, ext. 222

**848-010-0105**

**Board Budget**

The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2003-2005 Biennium Budget of \$740,765 covering the period from July 1, 2003 through June 30, 2005. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$740,765 for the effective operation of the Board. The Board will not exceed the approved 2003-2005 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required, by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 688.210

Stats. Implemented: ORS 688.160(5)(c)

Hist.: PTLB 3-1999(Temp), f. & cert. ef. 9-7-99 thru 3-1-00; PTLB 5-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 5-2001(Temp) f. & cert. ef. 6-18-01 thru 9-30-01; PTLB 6-2001, f. & cert. ef. 10-1-01; PTLB 2-2003, f. 6-30-03, cert. ef. 7-1-03

## Public Utility Commission Chapter 860

**Adm. Order No.:** PUC 11-2003

**Filed with Sec. of State:** 7-3-2003

**Certified to be Effective:** 7-3-03

**Notice Publication Date:** 3-1-03

**Rules Amended:** 860-011-0010, 860-021-0015, 860-034-0060, 860-034-0310, 860-038-0420, 860-038-0445

**Subject:** The Commission's physical address, mailing address and toll free number have been removed from the rules to avoid future rulemakings to update that information. Interested persons are now advised to check the Commission's website to obtain the latest contact information.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

**860-011-0010**

**Address for Mailing or Filing; Status Inquiries**

(1) The Commission's address is available on the Commission's website or by calling the Commission.

(2) All documents of any kind related to docketed Commission proceedings shall be filed at the address in section (1) of this rule. Unless otherwise provided by Commission instructions to parties, documents and facsimiles should be directed to the Administrative Hearings Division and should bear the number, if determined, for the docket in which they are to be filed. Inquiries regarding docketed proceedings should be directed to the Administrative Hearings Division, Support Unit.

(3) The original document and all copies required by the Commission rules shall be filed in the same envelope or container. A party making simultaneous filings in more than one docket shall enclose the documents for each docket in a separate envelope or container.

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

Stats. Implemented: ORS 756.040 & ORS 756.500 - ORS 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-011-0005; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 11-2003, f. & cert. ef. 7-3-03

**860-021-0015**

**Dispute Resolution**

(1) When a dispute occurs between a customer or applicant and a utility about any bill, charge, or service, the utility shall thoroughly investigate the matter and promptly report the results of its investigation to the customer or applicant. Each utility shall prepare a written record showing the name and address of the customer or applicant involved, the date and character of the dispute, and the disposition of the matter. The utility shall retain records of the dispute pursuant to OAR 860-028-0010.

(2) The utility shall inform the customer or applicant of the right to supervisory review of any dispute, including but not limited to, establishment of credit and termination of service. If a dispute is not resolved, the utility shall notify the customer or applicant of the Commission's dispute resolution procedure and its toll-free telephone number.

(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Division. The Commission shall notify the utility upon receipt of such a request.

(4) The Commission's Consumer Services Division shall assist the complainant and the utility in an effort to reach an informal resolution of the dispute.

(5) If a registered dispute cannot be resolved informally, the Commission's Consumer Services Division shall advise the complainant of the right to file a formal written complaint with the Commission. The complaint shall state the facts of the dispute and the relief requested. The utility shall answer the complaint within 15 days of service of the complaint. The matter shall then be set for expedited hearing. A hearing may be held on less than ten days' notice when good cause is shown.

(6) Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

# ADMINISTRATIVE RULES

(7) A customer or applicant who has a registered dispute or formal complaint pending with the Commission shall be entitled to continued or restored service provided:

(a) Service was not terminated for theft of service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the customer or applicant entitle the customer or applicant to service;

(c) When termination is based on nonpayment, the customer or applicant makes adequate arrangement to avoid future loss to the utility, such as prepaying estimated monthly utility charges; and

(d) The customer or applicant diligently pursues conflict resolution under the Commission's rules.

(8) If the conditions in section (7) of this rule are not satisfied, the utility has no obligation to provide continued service. A utility discontinuing service because of a failure to meet the conditions of subsections (7)(c) or (7)(d) of this rule shall give the customer five-day notice served in the same manner as provided by OAR 860-021-0405 or 860-021-0505, whichever applies, except the notice need only describe the defect in performance, the date and time when utility service will terminate, and the toll-free number of the Commission's Consumer Services Division. In deciding whether the conditions are met, the utility shall consult with the Commission's Consumer Services Division. A customer or applicant who has filed a formal complaint, the utility, or the Commission's Consumer Services Division may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the utility, and the Commission's Consumer Services Division at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.

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

Stats. Implemented: ORS 756.040, ORS 756.500 & ORS 756.512

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 4-1985, f. & ef. 4-22-85 (Order No. 85-350); PUC 5-1987, f. & ef. 7-2-87 (Order No. 87-723); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 8-1999, f. & cert. ef. 10-18-99; PUC 19-2001, f. & cert. ef. 6-21-01; PUC 11-2003, f. & cert. ef. 7-3-03

## 860-034-0060

### Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a small telecommunications utility about any bill, charge, or service, the utility shall thoroughly investigate the matter and promptly report the results of its investigation to the customer or applicant. Each small telecommunications utility shall prepare a written record showing the name and address of the customer or applicant involved, the date and character of the dispute, and the disposition of the matter. The small telecommunications utility shall retain records of the dispute pursuant to OAR 860-034-0580.

(2) The small telecommunications utility shall inform the customer or applicant of the right to supervisory review of any dispute, including but not limited to, establishment of credit and termination of service. If a dispute is not resolved, the small telecommunications utility shall notify the customer or applicant of the Commission's dispute resolution procedure and its toll-free telephone number.

(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Division. The Commission shall notify the small telecommunications utility upon receipt of such a request.

(4) The Commission's Consumer Services Division shall assist the complainant and the small telecommunications utility in an effort to reach an informal resolution of the dispute.

(5) If a registered dispute cannot be resolved informally, the Commission's Consumer Services Division shall advise the complainant of the right to file a formal written complaint with the Commission. The complaint shall state the facts of the dispute and the relief requested. The small telecommunications utility shall answer the complaint within 15 days of service of the complaint. The matter shall then be set for expedited hearing. A hearing may be held on less than ten days' notice when good cause is shown.

(6) Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

(7) A customer or applicant who has a registered dispute or formal complaint pending with the Commission shall be entitled to continued or restored service provided:

(a) Service was not terminated for theft of service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the customer or applicant entitle the customer or applicant to service;

(c) When termination is based on nonpayment, the customer or applicant makes adequate arrangement to avoid future loss to the small telecommunications utility, such as prepaying estimated monthly utility charges; and

(d) The customer or applicant diligently pursues conflict resolution under the Commission's rules.

(8) If the conditions in section (7) of this rule are not satisfied, the small telecommunications utility has no obligation to provide continued service. A small telecommunications utility discontinuing service because of a failure to meet the conditions of subsections (7)(c) or (7)(d) of this rule shall give the customer five-day notice served in the same manner as provided by OAR 860-034-0260 except the notice need only describe the defect in performance, the date and time after which utility service will terminate, and the toll-free number of the Commission's Consumer Services Division. In deciding whether the conditions are met, the small telecommunications utility shall consult with the Commission's Consumer Services Division. A customer or applicant who has filed a formal complaint, the small telecommunications utility, or the Commission's Consumer Services Division may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the small telecommunications utility, and the Commission's Consumer Services Division at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.

Stat. Auth.: ORS 183, ORS 756 & ORS 759

Stats. Implemented: ORS 756.040, ORS 759.045 & ORS 759.500

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 7-9-98; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 11-2003, f. & cert. ef. 7-3-03

## 860-034-0310

### Announcement of Rate Increases by Small Telecommunications Utilities

(1) A small telecommunications utility which increases any rate for intrastate telecommunications services shall notify its affected customers at least 45 days before the proposed effective date of the increase. A copy of such notification shall at the same time be provided to the Commission.

(2) The small telecommunications utility shall notify its customers by:

(a) Inserting an announcement in the small telecommunications utility's regular billing to its customers; or

(b) Mailing an announcement to each customer.

(3) The announcement shall contain the following information:

(a) The list of services subject to increase, current and proposed rates, and amount and percentage of increase for each service;

(b) The reasons for the proposed rate increase;

(c) The effective date of the proposed rate increase;

(d) The Commission's toll-free telephone number and address; and

(e) The following statement: "Customers may petition the Public Utility Commission of Oregon to investigate the rate increase. The Commission will investigate the rate increase if it receives petitions signed by customers (10 percent of customers or 500, whichever is the lesser), on or before (ten days before the proposed effective date). If the Commission does not receive sufficient petitions by (ten days before the proposed effective date), the proposed rates will become effective on (the proposed effective date) without Commission review. Petitions should be sent to the Commission's Consumer Services Division. The Company will provide a current copy of the local exchange directory and its service territory map within ten days of a request from any customer."

Stat. Auth.: ORS 183, ORS 756 & ORS 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 7-9-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 11-2003, f. & cert. ef. 7-3-03

## 860-038-0420

### Electricity Service Supplier Consumer Protection

(1) All advertising and marketing activities by electricity service suppliers must be truthful, not misleading, and in compliance with Oregon's Unfair Trade Practices Act (ORS 646.605 through 646.656).

# ADMINISTRATIVE RULES

(2) No person or entity may offer to sell electricity services available pursuant to direct access unless it has been certified by the Commission as an ESS.

(3) Sections (3) through (6) of this rule do not apply when a consumer is changing suppliers. Sections (3) through (6) apply when an ESS is discontinuing service to a consumer. An ESS must give its customers at least 10 business days written notice, as prescribed in section (5) of this rule, before the ESS may discontinue service.

(4) The written notice of intent to discontinue service to the ESS customer must be printed in boldface type and must state in easy to understand language:

(a) The name and contact information of the ESS and the service location intended to be discontinued;

(b) The reasons for the proposed discontinuance;

(c) The earliest date for discontinuance; and

(d) The amount necessary to be paid to avoid discontinuance of services, if applicable.

(5) The ESS must serve the notice of discontinuance in person or send it by first class mail to the last known address of the ESS customer. Service is complete on the date of personal delivery or, if service is by U. S. mail, on the day after the U. S. Postal Service postmark or the day after the date of postage metering.

(6) Not less than 10 business days prior to discontinuance of service to an ESS customer, the ESS must notify the serving electric company, by mutually acceptable means, that the ESS will no longer be supplying energy to that ESS customer. If an ESS and a consumer waive the 10-day notice, pursuant to section (8) of this rule, the ESS must still notify the electric company of its intent to discontinue a consumer's service as soon as it notifies the consumer that service is to be discontinued. The written notice must contain the following:

(a) Name and contact information of the ESS that is discontinuing service, the consumer's name, account number, service location and, if applicable, the electric company's unique location identifier;

(b) Earliest date for discontinuance; and

(c) Necessary information applicable to the transfer of the consumer's service.

(7) This section of this rule applies to any alleged violation of the rules in Division 038 applicable to electricity service suppliers.

(a) When a dispute occurs between an ESS and its consumer about any bill, charge, or service, the electricity service supplier must acknowledge the dispute with a response to the consumer within five calendar days. The ESS must thoroughly investigate the matter and report the results of its investigation to the ESS consumer within 15 calendar days. If the ESS is unable to resolve the matter with its consumer within 15 calendar days, the ESS must advise the consumer of the option to request internal supervisory review of unregulated disputes and to request the Commission's assistance in resolving a dispute within the Commission's jurisdiction;

(b) An ESS customer may request the Commission's assistance in resolving a dispute within the Commission's jurisdiction by contacting the Commission's Consumer Services Division. The Commission must notify the electricity service supplier upon receipt of such a request;

(c) The Commission's Consumer Services Division will assist the complainant and the electricity service supplier in an effort to reach an informal resolution of the dispute. The ESS must provide the Commission with the necessary information to assist in resolving the dispute. The electricity service supplier must answer the registered ESS dispute within 15 calendar days of service of the complaint;

(d) If a registered ESS dispute cannot be resolved informally, the Commission's Consumer Services Division will advise the complainant of the right to file a formal written complaint with the Commission. The complaint must state the facts of the dispute and the relief requested. The electricity service supplier must answer the complaint within 15 calendar days of service of the complaint. The matter will then be set for expedited hearing. A hearing may be held on less than 10 calendar days' notice when good cause is shown.

(8) Within the terms of a written contract, a consumer and an ESS may agree to arrangements other than those specified in sections (3), (4), (5), and (6) of this rule, if the following requirements are met:

(a) The contract must include an exact copy of the paragraphs in subsection (8)(b) of this rule. The paragraphs must be in bold type of at least 12-font size. Immediately following the paragraphs, there must be a line for the consumer's signature and the date.

(b) The agreement must contain the following notice:

IF YOU SIGN THIS AGREEMENT, YOU MAY GIVE UP CERTAIN RIGHTS YOU HAVE UNDER OAR 860-038-0420(3) through (6). These rules state: The ESS must insert the complete text of OAR 860-038-0420(3) through (6). THIS MAY

AFFECT YOUR ABILITY TO ARRANGE FOR OTHER ENERGY SERVICE.

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

Stats. Implemented: ORS 756.040 & ORS 757.600 - ORS 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 11-2003, f. & cert. ef. 7-3-03

## 860-038-0445

### Coordination of Supplier Changes and Billing

(1) This rule applies to electricity service suppliers and to electric companies providing service options to nonresidential consumers. For purposes of this rule, "supplier" means an electricity service supplier or electric company.

(2) An ESS may not provide service to a consumer without a written contract or electronic authorization between the customer and the ESS and the submission by the ESS of a Direct Access Service Request (DASR) to the electric company to switch such customer from its then-current supplier to the ESS. The DASR must contain all information required by the electric company's direct access tariff to effect the switching of such customer's supplier.

(3) An ESS or electric company shall not submit a DASR unless it possesses written or electronic authorization from the consumer.

(4) The ESS must maintain records sufficient to demonstrate compliance with this rule including a copy of the contract authorizing the change in supplier for a period of one year from the date the customer authorized a change in electric service to such supplier. Upon request, the supplier must make such records available to the electric company or the Commission.

(5) An acceptable DASR must conform to industry electronic data interchange protocols.

(6) The written contract or electronic authorization must contain, at a minimum, the following information:

(a) The consumer's name, current account number, and an electric company's unique location identifier, if available;

(b) The service address and the consumer's mailing address;

(c) The type of service being purchased;

(d) The name of the new supplier that will be supplying the service;

(e) The effective date and time of change of supplier;

(f) The consumer's billing preference (electric company only, electricity service supplier only, or both);

(g) Identification and explanation of any nonrecurring charges associated with the change of supplier;

(h) A statement to the effect that the consumer is authorized to make the change and authorizes the change to the new supplier; and

(i) The consumer's signature or electronic authorization and title.

(7) Any change of supplier without an acceptable DASR conforming to the requirements of section (5) of this rule and a written contract or electronic authorization conforming to the requirements of section (6) of this rule shall constitute a violation of this rule.

(8) An ESS must obtain acceptance of its DASR at least 10 business days prior to the effective date of the change.

(9) An electric company must accept or reject a DASR and provide notification to the ESS, within three business days of submission. Upon acceptance of a DASR, the electric company must notify the current supplier of the change within three business days.

(10) If the change date of suppliers does not coincide with the serving electric company's established meter reading schedule, the new supplier will pay the applicable tariffed charges to the electric company necessary to accommodate an off-cycle meter reading.

(11) Each supplier must supply, upon request from a consumer, a copy of the service description and rates applicable to the type or types of service furnished to the consumer.

(12) A consumer will receive a consolidated bill from the electric company unless the consumer chooses one of the following:

(a) A separate bill from every individual supplier that provides products or services to the consumer; or

(b) A consolidated bill from an ESS.

(13) An electric company and the ESS must cooperate to ensure the exchange of information in a timely manner necessary for billing purposes. The electric company or the ESS may request the Commission's assistance in resolving a dispute within the Commission's jurisdiction by contacting the Commission's Consumer Services Division. The Commission will notify the appropriate company upon receipt of such a request. The appropriate company must answer the registered dispute within 15 calendar days of service of the complaint.

(14) If the consumer receives a consolidated billing from an electric company, the ESS must provide the information to the electric company required in OAR 860-038-0300, and the electric company must provide that information on the bill.

# ADMINISTRATIVE RULES

(15) If the consumer chooses a consolidated billing by the ESS, the electric company must provide the information to the ESS required in OAR 860-038-0300 and the ESS must provide that information on the bill.

(16) An electric company and ESS must cooperate to resolve any consumer complaint.

(17) An electric company and the ESS must exchange all necessary information to facilitate the billing of consumers and the exchange of funds using industry electronic data interchange protocols. If there is a dispute regarding the information exchange, the ESS or the electric company may appeal to the Commission for assistance in resolving the dispute.

(18) The party contracting with the electric company for the delivery of services shall be obligated to pay the electric company's transmission and distribution charges in accordance with the electric company's applicable tariffs. When the ESS is the contracting party, the direct access customer's failure to pay the ESS the full amount of ESS charges shall not relieve the ESS of its obligation to the electric company for delivery services in accordance with the electric company's direct access tariff. The electric company shall have access to the security posted by the ESS in accordance with the terms of the electric company's direct access tariff in the event the ESS defaults in the payment of electric company charges to the ESS.

(19) Absent a contract with the electric company described in section (18) of this rule, when payment, including amounts for regulated charges, is made directly to an electricity service supplier or electric company, the payment must be allocated as follows:

(a) As directed by the nonresidential consumer; or

(b) Absent specific direction from the nonresidential consumer, in the following sequence:

(A) Past due regulated;

(B) Current regulated;

(C) Past due unregulated charges in proportion to the outstanding balance; and

(D) Current unregulated charges in proportion to the outstanding balance; and

(c) If a contractual agreement between an ESS customer and an electricity service supplier dictates payment allocations other than those identified in section (b) of this rule, the electricity service supplier will provide notification with the bill that failure to pay the regulated charges can result in disconnection of service.

(20) Services subject to the jurisdiction of the Commission may not be discontinued, disconnected, or placed in jeopardy because of nonpayment of unregulated charges.

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

Stats. Implemented: ORS 756.040 & ORS 757.600 - ORS 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 11-2003, f. & cert. ef. 7-3-03

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**Adm. Order No.:** PUC 12-2003(Temp)

**Filed with Sec. of State:** 7-9-2003

**Certified to be Effective:** 7-9-03 thru 1-5-04

**Notice Publication Date:**

**Rules Adopted:** 860-017-0050, 860-017-0100

**Subject:** This rulemaking proceeding implements SB 205, which authorizes the Commission to approve written agreements for intervenor funding grants between electric and natural gas utilities and organizations representing broad customer interests. The grants would be used by the organizations when participating in Commission regulatory proceedings. The bill also requires the Commission to establish, by rule, the qualifications, "as the Commission deems appropriate for determining which organizations are eligible for financial assistance," under such an agreement.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

## 860-017-0050

### Grant Eligibility (Precertification and Case-Certification)

(1) Definitions:

(a) "Agreement" means a Commission approved agreement under Or Laws 2003, ch 234 (Senate Bill 205) between a utility providing electricity or natural gas and a not-for-profit organization that represents broad customer interests in Commission regulatory proceedings.

(b) "Grant" means financial assistance to an intervenor under the terms of an agreement.

(2) General. Upon Commission approval of an agreement, the Commission shall apply the qualifications set forth in this rule to determine eligibility for a grant. Only parties that are precertified, or parties that

become case-certified for a particular proceeding, will be eligible to receive grants under an agreement. The terms of an agreement will be binding on all organizations seeking a grant under that agreement and will be followed by the Commission in administering the grant.

(3) Precertification. The Commission will precertify organizations meeting the criteria of subsection (3)(a) or (3)(b) as eligible to receive grants. Once precertified, an organization will remain precertified unless the Commission decertifies the organization under OAR 860-017-0100.

(a) The Citizens Utility Board (CUB), as a representative of residential customers; or

(b) Not-for-profit organizations that meet all of the following criteria:

(A) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;

(B) The organization represents the interests of a broad group or class of customers and those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services;

(C) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(D) The organization's members who are customers of one or more of the utilities that are parties to the agreement contribute a significant portion of the overall support and funding of the organization's activities in the state; and

(E) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.

(4) Case-Certification. Organizations meeting the following criteria may be case-certified by the Commission to be eligible to receive a grant:

(a) The organization represents the interests of a broad group or class of customers and its participation in the proceeding will be primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the impact of the rates and terms and conditions of service to the customer group;

(b) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(c) The organization's members who are customers of one or more of the utilities affected by the proceeding that are parties to the agreement contribute a significant percentage of the overall support and funding of the organization;

(d) The organization demonstrates, or has demonstrated in past Commission proceedings, the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in any proceeding in which the organization was case-certified and received a grant;

(e) The organization demonstrates that:

(A) No precertified intervenor participating in the proceeding adequately represents the specific interests of the class of customers represented by the organization related to rates and terms and conditions of service; or

(B) The specific interests of a class of customers will benefit from the organization's participation; and

(f) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.

Stat. Auth.: OL 2003, ch 234 (SB 205)

Stats. Implemented: OL 2003, ch 234 (SB 205)

Hist.: PUC 12-2003(Temp), f. & cert. ef. 7-9-03 thru 1-5-03

## 860-017-0100

### Termination of Eligibility — Decertification

(1) Termination of Eligibility. Upon the filing of a complaint pursuant to ORS 756.500 or upon a Commission investigation or motion pursuant to ORS 756.515, the Commission may terminate the precertification or case-certification of an intervenor if it finds that:

(a) The organization has committed fraud, misrepresentation, or misappropriation related to any grant made available under the terms of a Commission-approved agreement;

(b) In a proceeding before the Commission for which grants were awarded to the organization, the organization has failed to represent the interests of the broad class of customers that the organization purported to represent in its application for precertification;

(c) The organization has failed to comply with Commission orders or rules in a material way;

# ADMINISTRATIVE RULES

(d) The intervenor who is signatory to an agreement has violated terms and conditions of the agreement pertaining to the use and disclosure of information required to be provided by utilities under the agreement;

(e) For the Citizens Utility Board (CUB), there has been a substantial change in or repeal of ORS 774.101 to 774.990; or

(f) A precertified organization other than CUB no longer meets the criteria of OAR 860-017-0050(2).

(2) An intervenor that is decertified will be ineligible for future precertification or case-certification under the agreement.

(3) Termination of the precertification or case-certification of an intervenor shall be prospective only.

Stat. Auth.: OL 2003, ch 234 (SB 205)

Stats. Implemented: OL 2003, ch 234 (SB 205)

Hist.: PUC 12-2003(Temp), f. & cert. ef. 7-9-03 thru 1-5-03

## Racing Commission Chapter 462

**Adm. Order No.:** RC 4-2003

**Filed with Sec. of State:** 6-20-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 462-220-0040

**Subject:** Amended to reflect addition of word "subsection in TP2 as was adopted by commission 5-15-03.

**Rules Coordinator:** Carol N. Morgan—(503) 731-4052

**462-220-0040**

### State of Oregon Share of the Pari-Mutuel Handle

The operator of a hub in addition to the licensing fee set forth in OAR 462-220-0030(5) shall pay to the Oregon Racing Commission each week the following percentages of the total receipts recorded by the hub's totalizer system the preceding week.

(1) For those wagers that are merged with the mutuel pools at the race track where the race is being run live .25%.

(2) Notwithstanding subsection (1) of this rule, the Oregon Racing Commission may authorize the operator of a hub to pay less than .25% of the total receipts of those wagers made by residents of a state where qualified out-of-state hubs are specifically authorized and accept wagers from residents of that state, and the percentage of the total receipt paid by the hubs located in that state is less than .25%. This provision shall sunset on June 30, 2004, unless re-adopted by the commission.

(3) For those wagers that are not merged with the mutuel pools at the race track that the race is being run live 1%.

Stat. Auth.: ORS 462.270(3) & ORS 462.725

Stats. Implemented: ORS 462.725

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 1-2001, f. & cert. ef. 3-19-01; RC 4-2002, f. & cert. ef. 6-28-02; RC 3-2003, f. 6-13-03, cert. ef. 7-1-03; RC 4-2003, f. 6-20-03, cert. ef. 7-1-03

## Real Estate Agency Chapter 863

**Adm. Order No.:** REA 2-2003

**Filed with Sec. of State:** 6-30-2003

**Certified to be Effective:** 7-1-03

**Notice Publication Date:** 5-1-03

**Rules Amended:** 863-030-0060, 863-030-0065, 863-030-0075, 863-030-0080, 863-040-0010, 863-040-0040

**Subject:** In accordance with the Governor's directive to eliminate unnecessary regulation and to streamline the regulatory process, these proposed administrative rules eliminate redundant and unnecessary regulations.

**Rules Coordinator:** Brian DeMarco—(503) 378-4170, ext. 237

**863-030-0060**

### Filing with Commissioner

In addition to and at the time of filing the information required by ORS 94.823, the developer of a timeshare plan or the developer's agent shall submit to the commissioner the following:

(1) For a timeshare plan having timeshare property comprising only part of the accommodations in a hotel, motel or similar commercial lodging business and where the accommodations that are not part of the timeshare plan are used for transient accommodations concurrently with the operation of the timeshare plan, a copy of any contract for the following:

(a) Arrangements for the temporary use for transient accommodations of timeshare property and the temporary use of accommodations regularly used for transient accommodations as timeshare property; and

(b) The apportionment of the operating costs of the commercial lodging business that jointly benefit transient accommodations and the timeshare plan, including the apportionment method.

(2) For timeshare plans where the use or occupancy of timeshare property is on a first reserved, first served basis rather than by preassignment of a specific timeshare period to a specific purchaser and where timeshare property not timely reserved for use or occupancy by purchasers may be rented to members of the public:

(a) A description of the criteria used to determine whether a timeshare property has been timely reserved;

(b) Any rules of the timeshare plan or managing entity for the rental of timeshare property to the public;

(c) The method of cost apportionment for purchaser and public use or occupancy of timeshare property; and

(d) The disposition of all revenues received from public use of timeshare property.

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.823

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

**863-030-0065**

### Presales of Timeshare Plans

In cases where timeshare sales agreements are executed before the timeshare property is ready and available for use by the purchaser for the timeshare period bargained for in accordance with the timeshare instrument, the developer shall comply with ORS 94.873 to 94.905 in making such sales.

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.823, ORS 94.873 & ORS 94.878

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-83; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

**863-030-0075**

### Exchange Programs

(1) A seller or developer who offers an exchange program to a purchaser in conjunction with a timeshare plan shall be responsible for the delivery of the exchange program information, if the offer is made in conjunction with and at the time of the purchase of a timeshare interest. An exchange company offering an exchange program directly to purchasers on its own behalf shall be responsible for the delivery of the exchange program information. The accuracy of the exchange program information is the responsibility of the exchange company and not the buyer or developer. The exchange program information provided to a purchaser shall include the written information required under subsection (2) of ORS 94.826, and the following: The names and addresses of all the officers and directors of the exchange company.

(a) Whether the purchaser's contract with the exchange program is separate and distinct from the purchaser's contract with the developer of the timeshare plan;

(b) A complete description of all limitations, restrictions or priorities employed in the operation of the exchange program, including but not limited to, limitations on exchanges based on season, unit size or levels of occupancy; and, if the limitations, restrictions, or priorities are not applied uniformly by the exchange program, a complete description of the manner of their application;

(c) Whether exchanges are arranged on a space available basis and whether the exchange company guarantees fulfillment of specific requests for exchanges;

(d) Whether the fees for participation in the exchange program may be altered and the method for alteration;

(e) The names and locations of all accommodations and facilities included in the timeshare plans participating in the exchange program;

(f) The number of timeshare accommodations in each timeshare plan which are available for occupancy and which qualify for participation in the exchange program.

(g) The number of currently enrolled purchasers and owners at each timeshare plan participating in the exchange program.

(h) The disposition made by the exchange company of timeshare periods deposited with the exchange program by purchasers and owners enrolled in the exchange program.

(2) The seller of a timeshare plan shall use and represent only the most current information on file with the commissioner under this rule when offering a timeshare plan, including an exchange program, to pur-

# ADMINISTRATIVE RULES

chasers. It is sufficient for the developer and the exchange company referred to in this rule to rely upon the most current directory or other publication prepared and distributed by the exchange company, which includes the information referred to in this rule.

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.826

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

## 863-030-0080

### Promotional Programs

In conjunction with the filing required by OAR 863-030-0060, the developer shall maintain and store an outline of any promotional program prepared by the developer for the sale of the timeshare plan, for a period of two years following the date of the initial use of the promotional program or a statement that no such program has been prepared. "Promotional program" includes, but is not limited to, the methods of marketing to be employed, including but not limited to sweepstakes, lodging certificates, gifts, awards, premiums, discounts, drawings or contests.

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.823, ORS 94.940 & ORS 94.945

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 5-1987, f. 12-3-87, ef. 1-1-88; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

## 863-040-0010

### Application for Membership Camping Contract Registration

In addition to and at the time of filing the information required by ORS 94.959, a membership camping operator shall file the following information and documentation with an application for the registration of a membership camping contract:

(1) The name, address and telephone number of each onsite manager of any campground located in Oregon.

(2) A current title report for the real property of any campground in Oregon along with a copy of all encumbrances listed on the report. If the

operator is not in fee title to the real property, a copy of any documentation on which a right to use the property is claimed by the operator.

(3) Full and complete disclosure of any local requirements for the creation, siting and operation of campgrounds and verification from the local jurisdiction that the membership camping operator has complied with the requirements.

Stat. Auth.: ORS 94 & ORS 696

Stats. Implemented: ORS 94.959

Hist.: REA 6-1987, f. 12-3-87, ef. 1-1-88; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

## 863-040-0040

### Membership Camping Contract Salesperson Registration and Renewal

(1) The renewed registration will be issued for one year from the date of renewal. If a renewal application is not filed with the commissioner within one year from the expiration of a registration, renewal of the registration will no longer be possible and the former registrant must meet the requirements of a new registration under ORS 94.980.

(2) As part of the application for registration as a MCC salesperson submitted under ORS 94.980, the applicant shall submit two completed fingerprint cards on a form prescribed by the Commissioner and an additional fee sufficient to recover the costs of the processing of the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(3) At the request of a prospective applicant for registration as a MCC salesperson under ORS 94.980, Agency staff designated by the Commissioner may perform the fingerprinting process for such applicant during regular office hours of the Agency at the office of the Agency upon payment to the Agency by such applicant of a separate and additional fee of \$10.

Stat. Auth.: ORS 94, ORS 181, ORS 183.335, ORS 293 & ORS 696.385

Stats. Implemented: ORS 94.980

Hist.: REA 6-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1992, f. 2-28-92, cert. ef. 4-1-92; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03



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123-135-0080	12-10-02	Amend	1-1-03	137-009-0000	12-12-02	Amend(T)	1-1-03
123-135-0087	12-10-02	Adopt	1-1-03	137-009-0000	6-11-03	Amend	7-1-03
123-135-0090	12-10-02	Amend	1-1-03	137-009-0005	12-12-02	Amend(T)	1-1-03
123-135-0100	12-10-02	Amend	1-1-03	137-009-0005	6-11-03	Amend	7-1-03
123-135-0110	12-10-02	Amend	1-1-03	137-009-0010	12-12-02	Amend(T)	1-1-03
123-155-0000	12-2-02	Adopt	1-1-03	137-009-0010	6-11-03	Amend	7-1-03
123-155-0100	12-2-02	Adopt	1-1-03	137-009-0015	12-12-02	Suspend	1-1-03
123-155-0150	12-2-02	Adopt	1-1-03	137-009-0015	6-11-03	Repeal	7-1-03
123-155-0200	12-2-02	Adopt	1-1-03	137-009-0020	12-12-02	Suspend	1-1-03
123-155-0250	12-2-02	Adopt	1-1-03	137-009-0020	6-11-03	Repeal	7-1-03
123-155-0270	12-2-02	Adopt	1-1-03	137-009-0025	12-12-02	Suspend	1-1-03
123-155-0300	12-2-02	Adopt	1-1-03	137-009-0025	6-11-03	Repeal	7-1-03
123-155-0400	12-2-02	Adopt	1-1-03	137-009-0030	12-12-02	Suspend	1-1-03
125-020-0610	2-24-03	Amend	4-1-03	137-009-0030	6-11-03	Repeal	7-1-03
125-045-0100	12-27-02	Amend	2-1-03	137-009-0035	12-12-02	Suspend	1-1-03
125-045-0105	12-27-02	Amend	2-1-03	137-009-0035	6-11-03	Repeal	7-1-03
125-045-0110	12-27-02	Amend	2-1-03	137-009-0040	12-12-02	Suspend	1-1-03
125-045-0120	12-27-02	Amend	2-1-03	137-009-0040	6-11-03	Repeal	7-1-03
125-045-0130	12-27-02	Amend	2-1-03	137-009-0045	12-12-02	Amend(T)	1-1-03
125-045-0140	12-27-02	Amend	2-1-03	137-009-0045	6-11-03	Amend	7-1-03
125-045-0150	12-27-02	Amend	2-1-03	137-009-0055	12-12-02	Suspend	1-1-03
125-045-0160	12-27-02	Amend	2-1-03	137-009-0055	6-11-03	Repeal	7-1-03
125-045-0160	4-7-03	Amend	5-1-03	137-009-0060	12-12-02	Adopt(T)	1-1-03
125-055-0100	12-31-02	Adopt(T)	2-1-03	137-009-0060	6-11-03	Adopt	7-1-03
125-055-0100	6-27-03	Adopt	8-1-03	137-009-0065	12-12-02	Adopt(T)	1-1-03
125-055-0105	12-31-02	Adopt(T)	2-1-03	137-009-0065	6-11-03	Adopt	7-1-03
125-055-0105	6-27-03	Adopt	8-1-03	137-009-0100	12-12-02	Adopt(T)	1-1-03
125-055-0110	12-31-02	Adopt(T)	2-1-03	137-009-0100	6-11-03	Adopt	7-1-03
125-055-0110	6-27-03	Adopt	8-1-03	137-009-0120	12-12-02	Adopt(T)	1-1-03
125-055-0115	12-31-02	Adopt(T)	2-1-03	137-009-0120	6-11-03	Adopt	7-1-03
125-055-0115	6-27-03	Adopt	8-1-03	137-050-0320	5-12-03	Amend	5-1-03
125-055-0120	12-31-02	Adopt(T)	2-1-03	137-050-0330	5-12-03	Amend	5-1-03
125-055-0120	6-27-03	Adopt	8-1-03	137-050-0333	5-12-03	Adopt	5-1-03
125-055-0125	12-31-02	Adopt(T)	2-1-03	137-050-0335	5-12-03	Amend	5-1-03
125-055-0125	6-27-03	Adopt	8-1-03	137-050-0335	6-5-03	Amend(T)	7-1-03
125-055-0130	12-31-02	Adopt(T)	2-1-03	137-050-0340	5-12-03	Amend	5-1-03
125-055-0130	6-27-03	Adopt	8-1-03	137-050-0350	5-12-03	Amend	5-1-03
125-500-0000	12-27-02	Amend	2-1-03	137-050-0360	5-12-03	Amend	5-1-03
125-500-0005	12-27-02	Amend	2-1-03	137-050-0365	5-12-03	Repeal	5-1-03
125-500-0010	12-27-02	Amend	2-1-03	137-050-0390	5-12-03	Amend	5-1-03
137-003-0036	4-1-03	Adopt	5-1-03	137-050-0400	5-12-03	Amend	5-1-03
137-003-0515	7-21-03	Amend	8-1-03	137-050-0405	5-12-03	Amend	5-1-03
137-003-0520	7-21-03	Amend	8-1-03	137-050-0410	5-12-03	Amend	5-1-03
137-003-0528	7-21-03	Amend	8-1-03	137-050-0420	5-12-03	Amend	5-1-03
137-003-0530	7-21-03	Amend	8-1-03	137-050-0430	5-12-03	Amend	5-1-03
137-003-0535	7-21-03	Amend	8-1-03	137-050-0450	5-12-03	Amend	5-1-03
137-003-0570	7-21-03	Amend	8-1-03	137-050-0455	5-12-03	Adopt	5-1-03
137-003-0572	7-21-03	Adopt	8-1-03	137-050-0460	5-12-03	Repeal	5-1-03
137-003-0573	4-1-03	Adopt	5-1-03	137-050-0465	5-12-03	Adopt	5-1-03
137-003-0575	7-21-03	Amend	8-1-03	137-050-0470	5-12-03	Repeal	5-1-03
137-003-0580	7-21-03	Amend	8-1-03	137-050-0475	5-12-03	Amend	5-1-03
137-003-0595	7-21-03	Amend	8-1-03	137-050-0490	5-12-03	Amend	5-1-03
137-003-0600	7-21-03	Amend	8-1-03	137-083-0000	3-1-03	Adopt	4-1-03
137-003-0650	7-21-03	Amend	8-1-03	137-083-0010	3-1-03	Adopt	4-1-03

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137-083-0030	3-1-03	Adopt	4-1-03	141-045-0121	1-1-03	Adopt	2-1-03
137-083-0040	3-1-03	Adopt	4-1-03	141-045-0122	1-1-03	Adopt	2-1-03
137-083-0050	3-1-03	Adopt	4-1-03	141-045-0123	1-1-03	Adopt	2-1-03
141-030-0010	1-1-03	Amend	2-1-03	141-045-0124	1-1-03	Adopt	2-1-03
141-030-0015	1-1-03	Amend	2-1-03	141-045-0125	1-1-03	Amend	2-1-03
141-030-0025	1-1-03	Amend	2-1-03	141-045-0126	1-1-03	Adopt	2-1-03
141-030-0034	1-1-03	Amend	2-1-03	141-045-0130	1-1-03	Amend	2-1-03
141-030-0035	1-1-03	Amend	2-1-03	141-045-0150	1-1-03	Amend	2-1-03
141-030-0036	1-1-03	Amend	2-1-03	141-045-0155	1-1-03	Amend	2-1-03
141-030-0037	1-1-03	Amend	2-1-03	141-045-0160	1-1-03	Amend	2-1-03
141-030-0038	1-1-03	Amend	2-1-03	141-045-0170	1-1-03	Amend	2-1-03
141-030-0039	1-1-03	Amend	2-1-03	141-045-0180	1-1-03	Amend	2-1-03
141-030-0040	1-1-03	Adopt	2-1-03	141-045-0185	1-1-03	Adopt	2-1-03
141-035-0005	1-1-03	Amend	2-1-03	141-085-0005	1-15-03	Amend	1-1-03
141-035-0010	1-1-03	Amend	2-1-03	141-085-0006	1-15-03	Adopt	1-1-03
141-035-0013	1-1-03	Adopt	2-1-03	141-085-0006	7-10-03	Amend	8-1-03
141-035-0015	1-1-03	Amend	2-1-03	141-085-0010	1-15-03	Amend	1-1-03
141-035-0020	1-1-03	Amend	2-1-03	141-085-0010	7-10-03	Amend	8-1-03
141-035-0025	1-1-03	Amend	2-1-03	141-085-0015	1-15-03	Amend	1-1-03
141-035-0030	1-1-03	Amend	2-1-03	141-085-0015	7-10-03	Amend	8-1-03
141-035-0035	1-1-03	Amend	2-1-03	141-085-0018	1-15-03	Adopt	1-1-03
141-035-0040	1-1-03	Amend	2-1-03	141-085-0020	1-15-03	Amend	1-1-03
141-035-0045	1-1-03	Amend	2-1-03	141-085-0020	7-10-03	Amend	8-1-03
141-035-0046	1-1-03	Repeal	2-1-03	141-085-0022	1-15-03	Adopt	1-1-03
141-035-0047	1-1-03	Amend	2-1-03	141-085-0022	7-10-03	Amend	8-1-03
141-035-0048	1-1-03	Adopt	2-1-03	141-085-0024	1-15-03	Adopt	1-1-03
141-035-0050	1-1-03	Amend	2-1-03	141-085-0025	1-15-03	Amend	1-1-03
141-035-0055	1-1-03	Amend	2-1-03	141-085-0025	7-10-03	Amend	8-1-03
141-035-0060	1-1-03	Amend	2-1-03	141-085-0027	1-15-03	Adopt	1-1-03
141-035-0065	1-1-03	Amend	2-1-03	141-085-0028	1-15-03	Adopt	1-1-03
141-035-0070	1-1-03	Amend	2-1-03	141-085-0028	7-10-03	Amend	8-1-03
141-040-0005	1-1-03	Amend	2-1-03	141-085-0029	1-15-03	Adopt	1-1-03
141-040-0010	1-1-03	Amend	2-1-03	141-085-0029	7-10-03	Amend	8-1-03
141-040-0020	1-1-03	Amend	2-1-03	141-085-0030	1-15-03	Repeal	1-1-03
141-040-0030	1-1-03	Amend	2-1-03	141-085-0031	1-15-03	Adopt	1-1-03
141-040-0035	1-1-03	Amend	2-1-03	141-085-0031	7-10-03	Amend	8-1-03
141-040-0040	1-1-03	Amend	2-1-03	141-085-0032	1-15-03	Repeal	1-1-03
141-040-0200	1-1-03	Amend	2-1-03	141-085-0034	1-15-03	Adopt	1-1-03
141-040-0210	1-1-03	Repeal	2-1-03	141-085-0035	1-15-03	Repeal	1-1-03
141-040-0211	1-1-03	Amend	2-1-03	141-085-0036	1-15-03	Adopt	1-1-03
141-040-0212	1-1-03	Amend	2-1-03	141-085-0036	7-10-03	Amend	8-1-03
141-040-0214	1-1-03	Amend	2-1-03	141-085-0040	1-15-03	Repeal	1-1-03
141-040-0220	1-1-03	Amend	2-1-03	141-085-0050	1-15-03	Repeal	1-1-03
141-045-0005	1-1-03	Amend	2-1-03	141-085-0055	1-15-03	Repeal	1-1-03
141-045-0010	1-1-03	Amend	2-1-03	141-085-0060	1-15-03	Repeal	1-1-03
141-045-0015	1-1-03	Adopt	2-1-03	141-085-0064	1-15-03	Adopt	1-1-03
141-045-0020	1-1-03	Repeal	2-1-03	141-085-0064	7-10-03	Amend	8-1-03
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141-045-0024	1-1-03	Repeal	2-1-03	141-085-0066	1-15-03	Adopt	1-1-03
141-045-0031	1-1-03	Amend	2-1-03	141-085-0070	1-15-03	Amend	1-1-03
141-045-0041	1-1-03	Amend	2-1-03	141-085-0070	7-10-03	Amend	8-1-03
141-045-0061	1-1-03	Amend	2-1-03	141-085-0075	1-15-03	Amend	1-1-03
141-045-0100	1-1-03	Amend	2-1-03	141-085-0075	7-10-03	Amend	8-1-03
141-045-0105	1-1-03	Amend	2-1-03	141-085-0079	1-15-03	Adopt	1-1-03
141-045-0115	1-1-03	Amend	2-1-03	141-085-0080	1-15-03	Amend	1-1-03

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141-085-0085	7-10-03	Amend	8-1-03	141-085-0266	1-15-03	Amend	1-1-03
141-085-0090	1-15-03	Amend	1-1-03	141-085-0300	1-15-03	Repeal	1-1-03
141-085-0090	7-10-03	Amend	8-1-03	141-085-0306	1-15-03	Repeal	1-1-03
141-085-0095	1-15-03	Adopt	1-1-03	141-085-0310	1-15-03	Repeal	1-1-03
141-085-0096	1-15-03	Adopt	1-1-03	141-085-0315	1-15-03	Repeal	1-1-03
141-085-0101	1-15-03	Repeal	1-1-03	141-085-0320	1-15-03	Repeal	1-1-03
141-085-0110	1-15-03	Repeal	1-1-03	141-085-0325	1-15-03	Repeal	1-1-03
141-085-0115	1-15-03	Amend	1-1-03	141-085-0330	1-15-03	Repeal	1-1-03
141-085-0115	7-10-03	Amend	8-1-03	141-085-0335	1-15-03	Repeal	1-1-03
141-085-0120	1-15-03	Repeal	1-1-03	141-085-0340	1-15-03	Repeal	1-1-03
141-085-0121	1-15-03	Adopt	1-1-03	141-085-0345	1-15-03	Repeal	1-1-03
141-085-0121	7-10-03	Amend	8-1-03	141-085-0350	1-15-03	Repeal	1-1-03
141-085-0125	1-15-03	Repeal	1-1-03	141-085-0355	1-15-03	Repeal	1-1-03
141-085-0126	1-15-03	Adopt	1-1-03	141-085-0360	1-15-03	Repeal	1-1-03
141-085-0126	7-10-03	Amend	8-1-03	141-085-0365	1-15-03	Repeal	1-1-03
141-085-0130	1-15-03	Repeal	1-1-03	141-085-0400	1-15-03	Amend	1-1-03
141-085-0131	1-15-03	Adopt	1-1-03	141-085-0400	7-10-03	Amend	8-1-03
141-085-0135	1-15-03	Repeal	1-1-03	141-085-0406	1-15-03	Amend	1-1-03
141-085-0136	1-15-03	Adopt	1-1-03	141-085-0410	1-15-03	Amend	1-1-03
141-085-0136	7-10-03	Amend	8-1-03	141-085-0415	1-15-03	Repeal	1-1-03
141-085-0140	1-15-03	Repeal	1-1-03	141-085-0421	1-15-03	Amend	1-1-03
141-085-0141	1-15-03	Adopt	1-1-03	141-085-0425	1-15-03	Amend	1-1-03
141-085-0141	7-10-03	Amend	8-1-03	141-085-0430	1-15-03	Amend	1-1-03
141-085-0145	1-15-03	Repeal	1-1-03	141-085-0436	1-15-03	Amend	1-1-03
141-085-0146	1-15-03	Adopt	1-1-03	141-085-0440	1-15-03	Amend	1-1-03
141-085-0150	1-15-03	Repeal	1-1-03	141-085-0445	1-15-03	Amend	1-1-03
141-085-0151	1-15-03	Adopt	1-1-03	141-085-0610	1-15-03	Amend	1-1-03
141-085-0155	1-15-03	Repeal	1-1-03	141-085-0620	1-15-03	Amend	1-1-03
141-085-0156	1-15-03	Adopt	1-1-03	141-085-0630	1-15-03	Amend	1-1-03
141-085-0160	1-15-03	Repeal	1-1-03	141-085-0640	1-15-03	Amend	1-1-03
141-085-0161	1-15-03	Adopt	1-1-03	141-085-0650	1-15-03	Amend	1-1-03
141-085-0165	1-15-03	Repeal	1-1-03	141-085-0660	1-15-03	Amend	1-1-03
141-085-0166	1-15-03	Adopt	1-1-03	141-089-0005	1-15-03	Repeal	1-1-03
141-085-0166	7-10-03	Amend	8-1-03	141-089-0010	1-15-03	Repeal	1-1-03
141-085-0170	1-15-03	Repeal	1-1-03	141-089-0015	1-15-03	Repeal	1-1-03
141-085-0171	1-15-03	Adopt	1-1-03	141-089-0020	1-15-03	Repeal	1-1-03
141-085-0175	1-15-03	Repeal	1-1-03	141-089-0030	1-15-03	Repeal	1-1-03
141-085-0176	1-15-03	Adopt	1-1-03	141-089-0040	1-15-03	Repeal	1-1-03
141-085-0176	7-10-03	Amend	8-1-03	141-089-0050	1-15-03	Repeal	1-1-03
141-085-0180	1-15-03	Repeal	1-1-03	141-089-0060	1-15-03	Repeal	1-1-03
141-085-0240	1-15-03	Amend	1-1-03	141-089-0065	1-15-03	Repeal	1-1-03
141-085-0242	1-15-03	Repeal	1-1-03	141-089-0070	1-15-03	Repeal	1-1-03
141-085-0244	1-15-03	Amend	1-1-03	141-089-0075	1-15-03	Repeal	1-1-03
141-085-0244	7-10-03	Amend	8-1-03	141-089-0081	1-15-03	Repeal	1-1-03
141-085-0246	1-15-03	Amend	1-1-03	141-089-0086	1-15-03	Repeal	1-1-03
141-085-0248	1-15-03	Amend	1-1-03	141-089-0091	1-15-03	Repeal	1-1-03
141-085-0250	1-15-03	Amend	1-1-03	141-089-0100	1-15-03	Adopt	1-1-03
141-085-0252	1-15-03	Amend	1-1-03	141-089-0100	7-10-03	Amend	8-1-03
141-085-0254	1-15-03	Amend	1-1-03	141-089-0105	1-15-03	Adopt	1-1-03
141-085-0256	1-15-03	Amend	1-1-03	141-089-0105	7-10-03	Amend	8-1-03
141-085-0257	1-15-03	Adopt	1-1-03	141-089-0110	1-15-03	Adopt	1-1-03
141-085-0258	1-15-03	Repeal	1-1-03	141-089-0110	7-10-03	Amend	8-1-03
141-085-0260	1-15-03	Repeal	1-1-03	141-089-0115	1-15-03	Adopt	1-1-03
141-085-0262	1-15-03	Amend	1-1-03	141-089-0115	7-10-03	Amend	8-1-03
141-085-0263	1-15-03	Adopt	1-1-03	141-089-0120	1-15-03	Adopt	1-1-03

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141-089-0130	1-15-03	Adopt	1-1-03	141-089-0425	7-10-03	Adopt	8-1-03
141-089-0130	7-10-03	Amend	8-1-03	141-089-0430	7-10-03	Adopt	8-1-03
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141-089-0165	1-15-03	Adopt	1-1-03	141-122-0010	1-1-03	Amend	2-1-03
141-089-0165	7-10-03	Amend	8-1-03	141-122-0020	1-1-03	Amend	2-1-03
141-089-0170	1-15-03	Adopt	1-1-03	141-122-0030	1-1-03	Amend	2-1-03
141-089-0175	1-15-03	Adopt	1-1-03	141-122-0040	1-1-03	Amend	2-1-03
141-089-0175	7-10-03	Amend	8-1-03	141-122-0050	1-1-03	Amend	2-1-03
141-089-0180	1-15-03	Adopt	1-1-03	141-122-0060	1-1-03	Amend	2-1-03
141-089-0185	1-15-03	Adopt	1-1-03	141-122-0070	1-1-03	Amend	2-1-03
141-089-0185	7-10-03	Amend	8-1-03	141-122-0080	1-1-03	Amend	2-1-03
141-089-0190	1-15-03	Adopt	1-1-03	141-122-0090	1-1-03	Amend	2-1-03
141-089-0195	1-15-03	Adopt	1-1-03	141-122-0100	1-1-03	Amend	2-1-03
141-089-0200	1-15-03	Adopt	1-1-03	141-122-0105	1-1-03	Adopt	2-1-03
141-089-0200	7-10-03	Amend	8-1-03	141-122-0110	1-1-03	Amend	2-1-03
141-089-0205	1-15-03	Adopt	1-1-03	141-122-0120	1-1-03	Amend	2-1-03
141-089-0205	7-10-03	Amend	8-1-03	150-18.902(5)	12-31-02	Adopt	2-1-03
141-089-0210	1-15-03	Adopt	1-1-03	150-23.185	12-31-02	Am. & Ren.	2-1-03
141-089-0210	7-10-03	Amend	8-1-03	150-23.185-(A)	12-31-02	Am. & Ren.	2-1-03
141-089-0215	1-15-03	Adopt	1-1-03	150-29.375	12-31-02	Repeal	2-1-03
141-089-0215	7-10-03	Amend	8-1-03	150-305.145(2)	12-31-02	Amend	2-1-03
141-089-0220	1-15-03	Adopt	1-1-03	150-305.220(1)	1-31-03	Amend	2-1-03
141-089-0225	1-15-03	Adopt	1-1-03	150-305.220(2)	1-31-03	Amend	2-1-03
141-089-0225	7-10-03	Amend	8-1-03	150-305.220(3)	1-31-03	Amend	2-1-03
141-089-0230	1-15-03	Adopt	1-1-03	150-305.222	12-31-02	Adopt	2-1-03
141-089-0235	1-15-03	Adopt	1-1-03	150-305.612	12-31-02	Adopt	2-1-03
141-089-0240	1-15-03	Adopt	1-1-03	150-305.612(T)	12-31-02	Repeal	2-1-03
141-089-0240	7-10-03	Amend	8-1-03	150-306.115(J)	12-31-02	Repeal	2-1-03
141-089-0245	1-15-03	Adopt	1-1-03	150-306.265	12-31-02	Adopt	2-1-03
141-089-0250	1-15-03	Adopt	1-1-03	150-307.175	12-31-02	Amend	2-1-03
141-089-0255	1-15-03	Adopt	1-1-03	150-307.220-(B)	12-31-02	Amend	2-1-03
141-089-0260	1-15-03	Adopt	1-1-03	150-307.230-(B)	12-31-02	Amend	2-1-03
141-089-0265	1-15-03	Adopt	1-1-03	150-307.240-(B)	12-31-02	Amend	2-1-03
141-089-0270	1-15-03	Adopt	1-1-03	150-308.290(4)(b)	12-31-02	Amend	2-1-03
141-089-0275	1-15-03	Adopt	1-1-03	150-308.290(7)-(B)	12-31-02	Amend	2-1-03
141-089-0275	7-10-03	Amend	8-1-03	150-308.560	12-31-02	Adopt	2-1-03
141-089-0280	1-15-03	Adopt	1-1-03	150-308.704	12-31-02	Amend	2-1-03
141-089-0285	1-15-03	Adopt	1-1-03	150-308.709	12-31-02	Amend	2-1-03
141-089-0290	1-15-03	Adopt	1-1-03	150-308.712	12-31-02	Amend	2-1-03
141-089-0295	1-15-03	Adopt	1-1-03	150-309.022(1)	12-31-02	Amend	2-1-03
141-089-0295	7-10-03	Amend	8-1-03	150-309.024-(B)	12-31-02	Repeal	2-1-03
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141-089-0305	1-15-03	Adopt	1-1-03	150-309.100(1)	12-31-02	Am. & Ren.	2-1-03
141-089-0310	1-15-03	Adopt	1-1-03	150-309.100(1)-(A)	12-31-02	Am. & Ren.	2-1-03
141-089-0310	7-10-03	Amend	8-1-03	150-309.100(2)-(C)	12-31-02	Am. & Ren.	2-1-03
141-089-0400	7-10-03	Adopt	8-1-03	150-309.100-(A)	12-31-02	Am. & Ren.	2-1-03
141-089-0405	7-10-03	Adopt	8-1-03	150-310.110	12-31-02	Amend	2-1-03
141-089-0410	7-10-03	Adopt	8-1-03	150-314.260	12-31-02	Amend	2-1-03
141-089-0415	7-10-03	Adopt	8-1-03	150-314.280(3)	12-31-02	Adopt	2-1-03

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150-314.525(1)-(A)	12-31-02	Amend	2-1-03	166-475-0050	2-14-03	Amend	3-1-03
150-314.610(4)-(A)	12-31-02	Repeal	2-1-03	166-475-0055	2-14-03	Amend	3-1-03
150-314.840	12-31-02	Amend	2-1-03	166-475-0060	2-14-03	Amend	3-1-03
150-314.840(T)	12-31-02	Repeal	2-1-03	166-475-0065	2-14-03	Amend	3-1-03
150-315.164	12-31-02	Amend	2-1-03	166-475-0070	2-14-03	Amend	3-1-03
150-321.207(1)	12-31-02	Adopt	2-1-03	166-475-0075	2-14-03	Amend	3-1-03
150-323.140	12-31-02	Adopt	2-1-03	166-475-0080	2-14-03	Amend	3-1-03
150-323.160(2)	12-31-02	Adopt	2-1-03	166-475-0085	2-14-03	Amend	3-1-03
150-465.517(3)	12-20-02	Renumber	2-1-03	166-475-0090	2-14-03	Amend	3-1-03
150-465.517(3)	12-31-02	Adopt	2-1-03	166-475-0095	2-14-03	Amend	3-1-03
160-100-0610	4-1-03	Amend	4-1-03	166-475-0100	2-14-03	Amend	3-1-03
161-001-0010	5-1-03	Amend	6-1-03	166-475-0105	2-14-03	Amend	3-1-03
161-002-0000	1-27-03	Amend	3-1-03	166-475-0110	2-14-03	Amend	3-1-03
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161-006-0025	5-1-03	Amend	6-1-03	177-010-0000	11-25-02	Amend	1-1-03
161-006-0025	7-1-03	Amend(T)	8-1-03	177-010-0003	11-25-02	Adopt	1-1-03
161-006-0175	5-1-03	Amend	6-1-03	177-010-0005	11-25-02	Repeal	1-1-03
161-010-0020	1-27-03	Amend	3-1-03	177-010-0007	11-25-02	Amend	1-1-03
161-010-0020	5-1-03	Amend	6-1-03	177-010-0009	11-25-02	Amend	1-1-03
161-010-0025	5-1-03	Amend	6-1-03	177-010-0020	11-25-02	Repeal	1-1-03
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161-015-0000	5-1-03	Amend	6-1-03	177-010-0055	11-25-02	Repeal	1-1-03
161-020-0015	1-27-03	Amend	3-1-03	177-010-0060	11-25-02	Repeal	1-1-03
161-020-0045	1-27-03	Amend	3-1-03	177-010-0065	11-25-02	Repeal	1-1-03
161-020-0045	5-1-03	Amend	6-1-03	177-010-0070	11-25-02	Repeal	1-1-03
161-020-0045	7-1-03	Amend(T)	8-1-03	177-010-0080	11-25-02	Amend	1-1-03
161-020-0055	1-27-03	Amend	3-1-03	177-010-0085	11-25-02	Amend	1-1-03
161-020-0055	5-1-03	Amend	6-1-03	177-010-0096	11-25-02	Repeal	1-1-03
161-020-0055	7-1-03	Amend(T)	8-1-03	177-010-0100	11-25-02	Amend	1-1-03
161-020-0080	1-27-03	Repeal	3-1-03	177-010-0110	11-25-02	Amend	1-1-03
161-020-0110	5-1-03	Amend	6-1-03	177-010-0120	11-25-02	Amend	1-1-03
161-020-0120	5-1-03	Amend	6-1-03	177-010-0300	11-25-02	Repeal	1-1-03
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161-020-0150	1-27-03	Amend	3-1-03	177-040-0001	11-25-02	Amend	1-1-03
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177-040-0115	6-30-03	Amend	8-1-03	177-051-0120	5-28-03	Adopt(T)	7-1-03
177-040-0120	3-14-03	Amend	4-1-03	177-051-0130	5-28-03	Adopt(T)	7-1-03
177-040-0120	6-30-03	Amend	8-1-03	177-065-0000	11-25-02	Repeal	1-1-03
177-040-0125	3-14-03	Amend	4-1-03	177-065-0005	11-25-02	Amend	1-1-03
177-040-0125	6-30-03	Amend	8-1-03	177-065-0015	11-25-02	Amend	1-1-03
177-040-0130	3-14-03	Amend	4-1-03	177-065-0020	11-25-02	Amend	1-1-03
177-040-0130	6-30-03	Amend	8-1-03	177-065-0025	11-25-02	Amend	1-1-03
177-040-0160	3-14-03	Amend	4-1-03	177-065-0030	11-25-02	Amend	1-1-03
177-040-0160	6-30-03	Amend	8-1-03	177-065-0035	11-25-02	Amend	1-1-03
177-040-0180	3-14-03	Amend	4-1-03	177-065-0040	11-25-02	Amend	1-1-03
177-040-0180	6-30-03	Amend	8-1-03	177-065-0045	11-25-02	Amend	1-1-03
177-040-0190	3-14-03	Amend	4-1-03	177-065-0055	11-25-02	Amend	1-1-03
177-040-0190	6-30-03	Amend	8-1-03	177-065-0065	11-25-02	Amend	1-1-03
177-046-0010	11-25-02	Adopt	1-1-03	177-065-0075	11-25-02	Amend	1-1-03
177-046-0020	11-25-02	Adopt	1-1-03	177-065-0080	11-25-02	Amend	1-1-03
177-046-0030	11-25-02	Adopt	1-1-03	177-065-0100	11-25-02	Repeal	1-1-03
177-046-0040	11-25-02	Adopt	1-1-03	177-070-0000	11-25-02	Repeal	1-1-03
177-046-0050	11-25-02	Adopt	1-1-03	177-070-0005	11-25-02	Amend	1-1-03
177-046-0060	11-25-02	Adopt	1-1-03	177-070-0010	11-25-02	Repeal	1-1-03
177-046-0070	11-25-02	Adopt	1-1-03	177-070-0015	11-25-02	Repeal	1-1-03
177-046-0080	11-25-02	Adopt	1-1-03	177-070-0025	11-25-02	Amend	1-1-03
177-046-0090	11-25-02	Adopt	1-1-03	177-070-0035	11-25-02	Amend	1-1-03
177-046-0100	11-25-02	Adopt	1-1-03	177-070-0055	11-25-02	Repeal	1-1-03
177-046-0110	11-25-02	Adopt	1-1-03	177-070-0060	11-25-02	Repeal	1-1-03
177-046-0120	11-25-02	Adopt	1-1-03	177-070-0065	11-25-02	Repeal	1-1-03
177-046-0130	11-25-02	Adopt	1-1-03	177-070-0070	11-25-02	Repeal	1-1-03
177-046-0140	11-25-02	Adopt	1-1-03	177-070-0075	11-25-02	Repeal	1-1-03
177-046-0150	11-25-02	Adopt	1-1-03	177-070-0080	11-25-02	Amend	1-1-03
177-046-0160	11-25-02	Adopt	1-1-03	177-075-0000	11-25-02	Amend	1-1-03
177-046-0170	11-25-02	Adopt	1-1-03	177-075-0005	11-25-02	Amend	1-1-03
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177-050-0065	11-25-02	Repeal	1-1-03	177-081-0035	11-25-02	Repeal	1-1-03
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177-051-0010	5-28-03	Adopt(T)	7-1-03	177-081-0060	11-25-02	Amend	1-1-03
177-051-0020	5-28-03	Adopt(T)	7-1-03	177-081-0080	11-25-02	Amend	1-1-03
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177-085-0045	2-3-03	Amend	3-1-03	177-200-0000	6-5-03	Amend(T)	7-1-03
177-085-0050	2-3-03	Amend	3-1-03	177-200-0005	6-5-03	Adopt(T)	7-1-03
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177-085-0065	2-3-03	Amend	3-1-03	177-200-0011	6-5-03	Adopt(T)	7-1-03
177-094-0000	11-25-02	Amend	1-1-03	177-200-0012	6-5-03	Adopt(T)	7-1-03
177-094-0010	11-25-02	Amend	1-1-03	177-200-0015	6-5-03	Amend(T)	7-1-03
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177-094-0085	11-25-02	Amend	1-1-03	177-200-0060	6-5-03	Amend(T)	7-1-03
177-094-0090	11-25-02	Repeal	1-1-03	177-200-0065	6-5-03	Adopt(T)	7-1-03
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177-099-0000	4-7-03	Amend(T)	5-1-03	177-200-0090	6-5-03	Adopt(T)	7-1-03
177-099-0000	6-30-03	Amend	8-1-03	191-010-0000	8-1-03	Amend	8-1-03
177-099-0010	11-25-02	Amend	1-1-03	213-050-0045	7-1-03	Adopt	8-1-03
177-099-0020	11-25-02	Amend	1-1-03	213-050-0050	7-1-03	Adopt	8-1-03
177-099-0020	4-7-03	Amend(T)	5-1-03	213-050-0055	7-1-03	Adopt	8-1-03
177-099-0020	6-30-03	Amend	8-1-03	213-050-0060	7-1-03	Adopt	8-1-03
177-099-0030	11-25-02	Amend	1-1-03	213-050-0065	7-1-03	Adopt	8-1-03
177-099-0030	4-7-03	Amend(T)	5-1-03	213-050-0070	7-1-03	Adopt	8-1-03
177-099-0030	6-30-03	Amend	8-1-03	213-050-0075	7-1-03	Adopt	8-1-03
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177-099-0040	4-7-03	Amend(T)	5-1-03	220-005-0010	1-1-03	Amend	1-1-03
177-099-0040	6-30-03	Amend	8-1-03	220-005-0010	7-1-03	Amend	7-1-03
177-099-0050	11-25-02	Amend	1-1-03	220-005-0015	7-1-03	Amend	7-1-03
177-099-0050	4-7-03	Amend(T)	5-1-03	220-005-0110	7-1-03	Amend	7-1-03
177-099-0050	6-30-03	Amend	8-1-03	220-005-0115	7-1-03	Amend	7-1-03
177-099-0060	11-25-02	Amend	1-1-03	220-005-0120	7-1-03	Amend	7-1-03
177-099-0080	11-25-02	Amend	1-1-03	220-005-0130	7-1-03	Amend	7-1-03
177-099-0080	4-7-03	Amend(T)	5-1-03	220-005-0135	7-1-03	Amend	7-1-03
177-099-0080	6-30-03	Amend	8-1-03	220-005-0140	7-1-03	Amend	7-1-03
177-099-0090	11-25-02	Amend	1-1-03	220-005-0150	7-1-03	Amend	7-1-03
177-099-0090	4-7-03	Amend(T)	5-1-03	220-005-0160	7-1-03	Amend	7-1-03
177-099-0090	6-30-03	Amend	8-1-03	220-005-0170	7-1-03	Amend	7-1-03
177-099-0095	4-7-03	Adopt(T)	5-1-03	220-005-0180	7-1-03	Amend	7-1-03
177-099-0095	6-30-03	Adopt	8-1-03	220-005-0210	7-1-03	Amend	7-1-03
177-099-0100	11-25-02	Amend	1-1-03	220-005-0220	7-1-03	Amend	7-1-03
177-099-0100	4-7-03	Amend(T)	5-1-03	220-005-0230	7-1-03	Amend	7-1-03
177-099-0100	6-30-03	Amend	8-1-03	220-005-0240	7-1-03	Amend	7-1-03
177-099-0110	11-25-02	Repeal	1-1-03	220-005-0250	7-1-03	Amend	7-1-03
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177-100-0010	6-5-03	Amend(T)	7-1-03	220-010-0020	7-1-03	Amend	7-1-03
177-100-0070	6-5-03	Suspend	7-1-03	220-010-0030	7-1-03	Amend	7-1-03
177-100-0080	6-5-03	Amend(T)	7-1-03	220-010-0050	7-1-03	Amend	7-1-03
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220-010-0300	7-1-03	Adopt	7-1-03	259-009-0010	11-18-02	Adopt	1-1-03
220-020-0010	7-1-03	Repeal	7-1-03	259-009-0020	11-18-02	Adopt	1-1-03
220-020-0020	7-1-03	Repeal	7-1-03	259-009-0025	11-18-02	Adopt	1-1-03
220-020-0030	7-1-03	Repeal	7-1-03	259-009-0030	11-18-02	Adopt	1-1-03
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220-040-0015	7-1-03	Amend	7-1-03	259-009-0063	11-18-02	Adopt	1-1-03
220-040-0025	7-1-03	Amend	7-1-03	259-009-0067	11-18-02	Adopt	1-1-03
220-040-0035	7-1-03	Amend	7-1-03	259-009-0070	11-18-02	Adopt	1-1-03
220-040-0045	7-1-03	Amend	7-1-03	259-009-0072	11-18-02	Adopt	1-1-03
220-040-0050	7-1-03	Amend	7-1-03	259-009-0080	11-18-02	Adopt	1-1-03
220-050-0100	7-1-03	Repeal	7-1-03	259-009-0085	11-18-02	Adopt	1-1-03
220-050-0105	7-1-03	Adopt	7-1-03	259-009-0087	11-18-02	Adopt	1-1-03
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220-050-0120	7-1-03	Repeal	7-1-03	259-009-0100	11-18-02	Adopt	1-1-03
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259-008-0065	11-18-02	Amend	1-1-03	291-024-0016	2-5-03	Amend	3-1-03
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291-062-0030	7-7-03	Amend	8-1-03	309-041-1800	7-1-03	Amend(T)	8-1-03
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291-109-0020	3-1-03	Repeal	3-1-03	309-041-2070	7-1-03	Adopt	8-1-03
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333-050-0140	12-13-02	Amend	1-1-03	333-102-0225	3-27-03	Repeal	5-1-03
333-054-0000	12-24-02	Amend	2-1-03	333-102-0235	3-27-03	Amend	5-1-03
333-054-0010	12-24-02	Amend	2-1-03	333-102-0240	3-27-03	Repeal	5-1-03
333-054-0020	12-24-02	Amend	2-1-03	333-102-0245	3-27-03	Amend	5-1-03
333-054-0030	12-24-02	Amend	2-1-03	333-102-0247	3-27-03	Adopt	5-1-03
333-054-0040	12-24-02	Amend	2-1-03	333-102-0250	3-27-03	Amend	5-1-03
333-054-0050	12-24-02	Amend	2-1-03	333-102-0255	3-27-03	Amend	5-1-03
333-054-0060	12-24-02	Amend	2-1-03	333-102-0260	3-27-03	Amend	5-1-03
333-054-0070	12-24-02	Amend	2-1-03	333-102-0265	3-27-03	Amend	5-1-03
333-054-0090	12-24-02	Repeal	2-1-03	333-102-0270	3-27-03	Amend	5-1-03
333-061-0250	3-28-03	Amend	5-1-03	333-102-0275	3-27-03	Amend	5-1-03
333-061-0260	3-28-03	Amend	5-1-03	333-102-0285	3-27-03	Amend	5-1-03
333-064-0025	7-1-03	Amend	6-1-03	333-102-0287	3-27-03	Repeal	5-1-03
333-069-0005	6-20-03	Amend	8-1-03	333-102-0290	3-27-03	Amend	5-1-03
333-069-0015	6-20-03	Amend	8-1-03	333-102-0293	3-27-03	Amend	5-1-03
333-069-0020	6-20-03	Amend	8-1-03	333-102-0295	3-27-03	Repeal	5-1-03
333-069-0030	6-20-03	Amend	8-1-03	333-102-0300	3-27-03	Amend	5-1-03
333-069-0040	6-20-03	Amend	8-1-03	333-102-0305	3-27-03	Amend	5-1-03
333-069-0050	6-20-03	Amend	8-1-03	333-102-0310	3-27-03	Amend	5-1-03
333-069-0060	6-20-03	Amend	8-1-03	333-102-0315	3-27-03	Amend	5-1-03
333-069-0070	6-20-03	Amend	8-1-03	333-102-0327	3-27-03	Amend	5-1-03
333-069-0075	6-20-03	Adopt	8-1-03	333-102-0330	3-27-03	Amend	5-1-03
333-069-0080	6-20-03	Amend	8-1-03	333-102-0335	3-27-03	Amend	5-1-03
333-069-0085	6-20-03	Adopt	8-1-03	333-102-0340	3-27-03	Amend	5-1-03
333-069-0090	6-20-03	Amend	8-1-03	333-102-0350	3-27-03	Adopt	5-1-03
333-100-0001	3-27-03	Amend	5-1-03	333-102-0355	3-27-03	Adopt	5-1-03
333-100-0005	3-27-03	Amend	5-1-03	333-102-0360	3-27-03	Adopt	5-1-03
333-100-0057	3-27-03	Adopt	5-1-03	333-102-0365	3-27-03	Adopt	5-1-03
333-100-0060	3-27-03	Amend	5-1-03	333-103-0015	3-27-03	Amend	5-1-03
333-100-0065	3-27-03	Amend	5-1-03	333-105-0001	3-27-03	Amend	5-1-03
333-100-0070	3-27-03	Amend	5-1-03	333-105-0003	3-27-03	Adopt	5-1-03
333-100-0080	3-27-03	Adopt	5-1-03	333-105-0005	3-27-03	Amend	5-1-03
333-101-0001	3-27-03	Amend	5-1-03	333-105-0050	3-27-03	Adopt	5-1-03
333-101-0003	3-27-03	Adopt	5-1-03	333-105-0075	3-27-03	Adopt	5-1-03
333-101-0010	3-27-03	Amend	5-1-03	333-105-0101	3-27-03	Repeal	5-1-03
333-102-0001	3-27-03	Amend	5-1-03	333-105-0105	3-27-03	Repeal	5-1-03

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333-105-0115	3-27-03	Repeal	5-1-03	333-106-0055	3-27-03	Amend	5-1-03
333-105-0120	3-27-03	Repeal	5-1-03	333-106-0101	3-27-03	Amend	5-1-03
333-105-0125	3-27-03	Repeal	5-1-03	333-106-0105	3-27-03	Amend	5-1-03
333-105-0130	3-27-03	Repeal	5-1-03	333-106-0210	3-27-03	Amend	5-1-03
333-105-0135	3-27-03	Repeal	5-1-03	333-106-0220	3-27-03	Amend	5-1-03
333-105-0140	3-27-03	Repeal	5-1-03	333-106-0325	3-27-03	Amend	5-1-03
333-105-0201	3-27-03	Repeal	5-1-03	333-106-0575	3-27-03	Amend	5-1-03
333-105-0202	3-27-03	Repeal	5-1-03	333-106-0700	3-27-03	Amend	5-1-03
333-105-0205	3-27-03	Repeal	5-1-03	333-106-0710	3-27-03	Amend	5-1-03
333-105-0210	3-27-03	Repeal	5-1-03	333-106-0720	3-27-03	Amend	5-1-03
333-105-0301	3-27-03	Repeal	5-1-03	333-106-0730	3-27-03	Amend	5-1-03
333-105-0305	3-27-03	Repeal	5-1-03	333-106-0750	3-27-03	Adopt	5-1-03
333-105-0310	3-27-03	Repeal	5-1-03	333-111-0010	3-27-03	Amend	5-1-03
333-105-0315	3-27-03	Repeal	5-1-03	333-116-0010	3-27-03	Amend	5-1-03
333-105-0320	3-27-03	Repeal	5-1-03	333-116-0020	3-27-03	Amend	5-1-03
333-105-0325	3-27-03	Repeal	5-1-03	333-116-0025	3-27-03	Adopt	5-1-03
333-105-0330	3-27-03	Repeal	5-1-03	333-116-0035	3-27-03	Adopt	5-1-03
333-105-0335	3-27-03	Repeal	5-1-03	333-116-0040	3-27-03	Amend	5-1-03
333-105-0420	3-27-03	Adopt	5-1-03	333-116-0050	3-27-03	Amend	5-1-03
333-105-0430	3-27-03	Adopt	5-1-03	333-116-0055	3-27-03	Adopt	5-1-03
333-105-0440	3-27-03	Adopt	5-1-03	333-116-0057	3-27-03	Adopt	5-1-03
333-105-0450	3-27-03	Adopt	5-1-03	333-116-0059	3-27-03	Adopt	5-1-03
333-105-0460	3-27-03	Adopt	5-1-03	333-116-0070	3-27-03	Amend	5-1-03
333-105-0470	3-27-03	Adopt	5-1-03	333-116-0080	3-27-03	Amend	5-1-03
333-105-0480	3-27-03	Adopt	5-1-03	333-116-0090	3-27-03	Amend	5-1-03
333-105-0490	3-27-03	Adopt	5-1-03	333-116-0100	3-27-03	Amend	5-1-03
333-105-0500	3-27-03	Adopt	5-1-03	333-116-0105	3-27-03	Adopt	5-1-03
333-105-0510	3-27-03	Adopt	5-1-03	333-116-0107	3-27-03	Adopt	5-1-03
333-105-0520	3-27-03	Adopt	5-1-03	333-116-0120	3-27-03	Amend	5-1-03
333-105-0530	3-27-03	Adopt	5-1-03	333-116-0125	3-27-03	Amend	5-1-03
333-105-0540	3-27-03	Adopt	5-1-03	333-116-0140	3-27-03	Amend	5-1-03
333-105-0550	3-27-03	Adopt	5-1-03	333-116-0150	3-27-03	Amend	5-1-03
333-105-0560	3-27-03	Adopt	5-1-03	333-116-0160	3-27-03	Amend	5-1-03
333-105-0570	3-27-03	Adopt	5-1-03	333-116-0165	3-27-03	Adopt	5-1-03
333-105-0580	3-27-03	Adopt	5-1-03	333-116-0170	3-27-03	Amend	5-1-03
333-105-0590	3-27-03	Adopt	5-1-03	333-116-0180	3-27-03	Amend	5-1-03
333-105-0600	3-27-03	Adopt	5-1-03	333-116-0190	3-27-03	Amend	5-1-03
333-105-0610	3-27-03	Adopt	5-1-03	333-116-0200	3-27-03	Amend	5-1-03
333-105-0620	3-27-03	Adopt	5-1-03	333-116-0250	3-27-03	Amend	5-1-03
333-105-0630	3-27-03	Adopt	5-1-03	333-116-0260	3-27-03	Amend	5-1-03
333-105-0640	3-27-03	Adopt	5-1-03	333-116-0265	3-27-03	Adopt	5-1-03
333-105-0650	3-27-03	Adopt	5-1-03	333-116-0290	3-27-03	Amend	5-1-03
333-105-0660	3-27-03	Adopt	5-1-03	333-116-0300	3-27-03	Amend	5-1-03
333-105-0670	3-27-03	Adopt	5-1-03	333-116-0310	3-27-03	Amend	5-1-03
333-105-0680	3-27-03	Adopt	5-1-03	333-116-0320	3-27-03	Amend	5-1-03
333-105-0690	3-27-03	Adopt	5-1-03	333-116-0330	3-27-03	Amend	5-1-03
333-105-0700	3-27-03	Adopt	5-1-03	333-116-0340	3-27-03	Amend	5-1-03
333-105-0710	3-27-03	Adopt	5-1-03	333-116-0350	3-27-03	Amend	5-1-03
333-105-0720	3-27-03	Adopt	5-1-03	333-116-0360	3-27-03	Amend	5-1-03
333-105-0730	3-27-03	Adopt	5-1-03	333-116-0370	3-27-03	Amend	5-1-03
333-105-0740	3-27-03	Adopt	5-1-03	333-116-0380	3-27-03	Amend	5-1-03
333-105-0750	3-27-03	Adopt	5-1-03	333-116-0390	3-27-03	Amend	5-1-03
333-105-0760	3-27-03	Adopt	5-1-03	333-116-0410	3-27-03	Amend	5-1-03
333-106-0005	3-27-03	Amend	5-1-03	333-116-0420	3-27-03	Amend	5-1-03
333-106-0035	3-27-03	Amend	5-1-03	333-116-0430	3-27-03	Amend	5-1-03

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333-116-0450	3-27-03	Amend	5-1-03	333-119-0100	3-27-03	Amend	5-1-03
333-116-0460	3-27-03	Amend	5-1-03	333-119-0120	3-27-03	Amend	5-1-03
333-116-0470	3-27-03	Amend	5-1-03	333-120-0015	3-27-03	Adopt	5-1-03
333-116-0480	3-27-03	Amend	5-1-03	333-120-0017	3-27-03	Adopt	5-1-03
333-116-0490	3-27-03	Amend	5-1-03	333-120-0100	3-27-03	Amend	5-1-03
333-116-0495	3-27-03	Adopt	5-1-03	333-120-0110	3-27-03	Amend	5-1-03
333-116-0510	3-27-03	Repeal	5-1-03	333-120-0130	3-27-03	Amend	5-1-03
333-116-0515	3-27-03	Adopt	5-1-03	333-120-0170	3-27-03	Amend	5-1-03
333-116-0525	3-27-03	Adopt	5-1-03	333-120-0180	3-27-03	Amend	5-1-03
333-116-0530	3-27-03	Amend	5-1-03	333-120-0190	3-27-03	Amend	5-1-03
333-116-0540	3-27-03	Amend	5-1-03	333-120-0200	3-27-03	Amend	5-1-03
333-116-0560	3-27-03	Amend	5-1-03	333-120-0210	3-27-03	Amend	5-1-03
333-116-0570	3-27-03	Amend	5-1-03	333-120-0215	3-27-03	Adopt	5-1-03
333-116-0573	3-27-03	Adopt	5-1-03	333-120-0220	3-27-03	Amend	5-1-03
333-116-0577	3-27-03	Adopt	5-1-03	333-120-0230	3-27-03	Amend	5-1-03
333-116-0580	3-27-03	Amend	5-1-03	333-120-0240	3-27-03	Amend	5-1-03
333-116-0583	3-27-03	Adopt	5-1-03	333-120-0250	3-27-03	Amend	5-1-03
333-116-0585	3-27-03	Adopt	5-1-03	333-120-0320	3-27-03	Amend	5-1-03
333-116-0587	3-27-03	Adopt	5-1-03	333-120-0400	3-27-03	Amend	5-1-03
333-116-0590	3-27-03	Amend	5-1-03	333-120-0420	3-27-03	Amend	5-1-03
333-116-0600	3-27-03	Amend	5-1-03	333-120-0430	3-27-03	Amend	5-1-03
333-116-0605	3-27-03	Adopt	5-1-03	333-120-0450	3-27-03	Amend	5-1-03
333-116-0610	3-27-03	Amend	5-1-03	333-120-0460	3-27-03	Amend	5-1-03
333-116-0640	3-27-03	Amend	5-1-03	333-120-0520	3-27-03	Amend	5-1-03
333-116-0660	3-27-03	Amend	5-1-03	333-120-0540	3-27-03	Amend	5-1-03
333-116-0670	3-27-03	Amend	5-1-03	333-120-0550	3-27-03	Amend	5-1-03
333-116-0680	3-27-03	Amend	5-1-03	333-120-0560	3-27-03	Amend	5-1-03
333-116-0720	3-27-03	Amend	5-1-03	333-120-0600	3-27-03	Amend	5-1-03
333-116-0730	3-27-03	Amend	5-1-03	333-120-0610	3-27-03	Amend	5-1-03
333-116-0830	3-27-03	Amend	5-1-03	333-120-0640	3-27-03	Amend	5-1-03
333-116-0905	3-27-03	Adopt	5-1-03	333-120-0650	3-27-03	Amend	5-1-03
333-116-0910	3-27-03	Adopt	5-1-03	333-120-0660	3-27-03	Amend	5-1-03
333-116-0915	3-27-03	Adopt	5-1-03	333-120-0670	3-27-03	Amend	5-1-03
333-118-0020	3-27-03	Amend	5-1-03	333-120-0680	3-27-03	Amend	5-1-03
333-118-0040	3-27-03	Amend	5-1-03	333-120-0700	3-27-03	Amend	5-1-03
333-118-0050	3-27-03	Amend	5-1-03	333-120-0710	3-27-03	Amend	5-1-03
333-118-0060	3-27-03	Amend	5-1-03	333-120-0720	3-27-03	Amend	5-1-03
333-118-0070	3-27-03	Amend	5-1-03	333-157-0045	1-1-03	Amend	1-1-03
333-118-0080	3-27-03	Amend	5-1-03	333-162-1005	1-1-03	Adopt	1-1-03
333-118-0090	3-27-03	Amend	5-1-03	333-500-0010	12-10-02	Amend	1-1-03
333-118-0100	3-27-03	Amend	5-1-03	333-500-0050	12-10-02	Amend	1-1-03
333-118-0110	3-27-03	Amend	5-1-03	333-500-0056	12-10-02	Adopt	1-1-03
333-118-0120	3-27-03	Amend	5-1-03	333-500-0057	12-10-02	Adopt	1-1-03
333-118-0130	3-27-03	Amend	5-1-03	333-505-0005	12-10-02	Amend	1-1-03
333-118-0140	3-27-03	Amend	5-1-03	333-510-0045	12-10-02	Amend	1-1-03
333-118-0150	3-27-03	Amend	5-1-03	333-515-0060	12-10-02	Amend	1-1-03
333-118-0160	3-27-03	Amend	5-1-03	333-535-0040	2-20-03	Repeal	4-1-03
333-118-0170	3-27-03	Amend	5-1-03	333-535-0041	2-20-03	Adopt	4-1-03
333-118-0180	3-27-03	Amend	5-1-03	333-536-0000	2-1-03	Adopt	1-1-03
333-118-0190	3-27-03	Amend	5-1-03	333-536-0005	2-1-03	Adopt	1-1-03
333-118-0200	3-27-03	Amend	5-1-03	333-536-0010	2-1-03	Adopt	1-1-03
333-118-0800	3-27-03	Adopt	5-1-03	333-536-0015	2-1-03	Adopt	1-1-03
333-119-0030	3-27-03	Amend	5-1-03	333-536-0020	2-1-03	Adopt	1-1-03
333-119-0040	3-27-03	Amend	5-1-03	333-536-0025	2-1-03	Adopt	1-1-03
333-119-0080	3-27-03	Amend	5-1-03	333-536-0030	2-1-03	Adopt	1-1-03

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333-536-0040	2-1-03	Adopt	1-1-03	335-070-0075	5-7-03	Adopt	6-1-03
333-536-0045	2-1-03	Adopt	1-1-03	335-095-0010	5-7-03	Adopt	6-1-03
333-536-0050	2-1-03	Adopt	1-1-03	335-095-0020	5-7-03	Adopt	6-1-03
333-536-0055	2-1-03	Adopt	1-1-03	335-095-0030	5-7-03	Adopt	6-1-03
333-536-0060	2-1-03	Adopt	1-1-03	335-095-0040	5-7-03	Adopt	6-1-03
333-536-0065	2-1-03	Adopt	1-1-03	335-095-0050	5-7-03	Adopt	6-1-03
333-536-0070	2-1-03	Adopt	1-1-03	335-095-0060	5-7-03	Adopt	6-1-03
333-536-0075	2-1-03	Adopt	1-1-03	335-095-0065	5-7-03	Adopt	6-1-03
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333-536-0085	2-1-03	Adopt	1-1-03	337-010-0060	11-18-02	Amend	1-1-03
333-536-0090	2-1-03	Adopt	1-1-03	337-021-0040	11-18-02	Amend	1-1-03
333-536-0095	2-1-03	Adopt	1-1-03	337-021-0070	11-18-02	Adopt	1-1-03
333-700-0000	6-6-03	Adopt	7-1-03	337-021-0080	11-18-02	Adopt	1-1-03
333-700-0005	6-6-03	Adopt	7-1-03	338-010-0030	4-25-03	Amend(T)	6-1-03
333-700-0010	6-6-03	Adopt	7-1-03	339-020-0020	3-4-03	Amend	4-1-03
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333-700-0020	6-6-03	Adopt	7-1-03	340-012-0049	1-31-03	Amend	3-1-03
333-700-0025	6-6-03	Adopt	7-1-03	340-012-0067	2-14-03	Amend	3-1-03
333-700-0030	6-6-03	Adopt	7-1-03	340-012-0069	1-31-03	Repeal	3-1-03
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333-700-0055	6-6-03	Adopt	7-1-03	340-012-0090	1-31-03	Amend	3-1-03
333-700-0060	6-6-03	Adopt	7-1-03	340-015-0005	5-27-03	Repeal	7-1-03
333-700-0065	6-6-03	Adopt	7-1-03	340-015-0010	5-27-03	Repeal	7-1-03
333-700-0070	6-6-03	Adopt	7-1-03	340-015-0015	5-27-03	Repeal	7-1-03
333-700-0075	6-6-03	Adopt	7-1-03	340-015-0020	5-27-03	Repeal	7-1-03
333-700-0080	6-6-03	Adopt	7-1-03	340-015-0025	5-27-03	Repeal	7-1-03
333-700-0085	6-6-03	Adopt	7-1-03	340-015-0030	5-27-03	Repeal	7-1-03
333-700-0090	6-6-03	Adopt	7-1-03	340-015-0035	5-27-03	Repeal	7-1-03
333-700-0095	6-6-03	Adopt	7-1-03	340-018-0020	5-27-03	Amend	7-1-03
333-700-0100	6-6-03	Adopt	7-1-03	340-018-0030	5-27-03	Amend	7-1-03
333-700-0105	6-6-03	Adopt	7-1-03	340-042-0025	12-20-02	Adopt	2-1-03
333-700-0110	6-6-03	Adopt	7-1-03	340-042-0030	12-20-02	Adopt	2-1-03
333-700-0115	6-6-03	Adopt	7-1-03	340-042-0040	12-20-02	Adopt	2-1-03
333-700-0120	6-6-03	Adopt	7-1-03	340-042-0050	12-20-02	Adopt	2-1-03
333-700-0125	6-6-03	Adopt	7-1-03	340-042-0060	12-20-02	Adopt	2-1-03
333-700-0130	6-6-03	Adopt	7-1-03	340-042-0070	12-20-02	Adopt	2-1-03
334-001-0012	6-17-03	Amend	8-1-03	340-042-0080	12-20-02	Adopt	2-1-03
334-001-0060	1-24-03	Amend	3-1-03	340-047-0005	1-31-03	Repeal	3-1-03
334-010-0005	1-24-03	Amend	3-1-03	340-047-0010	1-31-03	Repeal	3-1-03
334-010-0010	1-24-03	Amend	3-1-03	340-047-0015	1-31-03	Repeal	3-1-03
334-010-0015	1-24-03	Amend	3-1-03	340-047-0020	1-31-03	Repeal	3-1-03
334-010-0016	1-24-03	Amend	3-1-03	340-047-0025	1-31-03	Repeal	3-1-03
334-010-0017	1-24-03	Amend	3-1-03	340-047-0035	1-31-03	Repeal	3-1-03
334-010-0025	1-24-03	Amend	3-1-03	340-047-0040	1-31-03	Repeal	3-1-03
334-010-0033	1-24-03	Amend	3-1-03	340-047-0100	1-31-03	Repeal	3-1-03
334-010-0050	1-24-03	Amend	3-1-03	340-047-0110	1-31-03	Repeal	3-1-03
335-060-0005	5-7-03	Amend	6-1-03	340-047-0120	1-31-03	Repeal	3-1-03
335-060-0010	5-7-03	Amend	6-1-03	340-047-0130	1-31-03	Repeal	3-1-03
335-060-0030	5-7-03	Amend	6-1-03	340-047-0140	1-31-03	Repeal	3-1-03
335-070-0010	5-7-03	Amend	6-1-03	340-047-0150	1-31-03	Repeal	3-1-03
335-070-0020	5-7-03	Amend	6-1-03	340-047-0160	1-31-03	Repeal	3-1-03
335-070-0060	5-7-03	Amend	6-1-03	340-047-0170	1-31-03	Repeal	3-1-03

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OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
340-047-0180	1-31-03	Repeal	3-1-03	340-141-0200	1-31-03	Adopt	3-1-03
340-047-0190	1-31-03	Repeal	3-1-03	340-141-0210	1-31-03	Adopt	3-1-03
340-047-0200	1-31-03	Repeal	3-1-03	340-141-0220	1-31-03	Adopt	3-1-03
340-047-0210	1-31-03	Repeal	3-1-03	340-141-0230	1-31-03	Adopt	3-1-03
340-047-0220	1-31-03	Repeal	3-1-03	340-141-0240	1-31-03	Adopt	3-1-03
340-047-0230	1-31-03	Repeal	3-1-03	340-142-0001	1-31-03	Adopt	3-1-03
340-047-0240	1-31-03	Repeal	3-1-03	340-142-0005	1-31-03	Adopt	3-1-03
340-053-0005	5-27-03	Repeal	7-1-03	340-142-0030	1-31-03	Adopt	3-1-03
340-053-0010	5-27-03	Repeal	7-1-03	340-142-0040	1-31-03	Adopt	3-1-03
340-053-0015	5-27-03	Repeal	7-1-03	340-142-0050	1-31-03	Adopt	3-1-03
340-053-0020	5-27-03	Repeal	7-1-03	340-142-0060	1-31-03	Adopt	3-1-03
340-053-0025	5-27-03	Repeal	7-1-03	340-142-0070	1-31-03	Adopt	3-1-03
340-053-0027	5-27-03	Repeal	7-1-03	340-142-0080	1-31-03	Adopt	3-1-03
340-053-0030	5-27-03	Repeal	7-1-03	340-142-0090	1-31-03	Adopt	3-1-03
340-053-0035	5-27-03	Repeal	7-1-03	340-142-0100	1-31-03	Adopt	3-1-03
340-054-0005	5-27-03	Amend	7-1-03	340-142-0120	1-31-03	Adopt	3-1-03
340-054-0010	5-27-03	Amend	7-1-03	340-142-0130	1-31-03	Adopt	3-1-03
340-054-0015	5-27-03	Amend	7-1-03	340-150-0001	2-14-03	Amend	3-1-03
340-054-0020	5-27-03	Amend	7-1-03	340-150-0002	2-14-03	Repeal	3-1-03
340-054-0021	5-27-03	Adopt	7-1-03	340-150-0003	2-14-03	Repeal	3-1-03
340-054-0022	5-27-03	Adopt	7-1-03	340-150-0006	2-14-03	Adopt	3-1-03
340-054-0023	5-27-03	Adopt	7-1-03	340-150-0008	2-14-03	Adopt	3-1-03
340-054-0024	5-27-03	Adopt	7-1-03	340-150-0010	2-14-03	Amend	3-1-03
340-054-0025	5-27-03	Amend	7-1-03	340-150-0015	5-21-03	Amend(T)	7-1-03
340-054-0035	5-27-03	Amend	7-1-03	340-150-0016	2-14-03	Repeal	3-1-03
340-054-0055	5-27-03	Amend	7-1-03	340-150-0019	2-14-03	Repeal	3-1-03
340-054-0060	5-27-03	Amend	7-1-03	340-150-0020	2-14-03	Amend	3-1-03
340-054-0065	5-27-03	Amend	7-1-03	340-150-0021	2-14-03	Amend	3-1-03
340-054-0080	5-27-03	Repeal	7-1-03	340-150-0030	2-14-03	Repeal	3-1-03
340-054-0085	5-27-03	Amend	7-1-03	340-150-0040	2-14-03	Repeal	3-1-03
340-054-0087	5-27-03	Amend	7-1-03	340-150-0050	2-14-03	Repeal	3-1-03
340-054-0090	5-27-03	Amend	7-1-03	340-150-0052	2-14-03	Adopt	3-1-03
340-054-0093	5-27-03	Amend	7-1-03	340-150-0060	2-14-03	Repeal	3-1-03
340-054-0095	5-27-03	Amend	7-1-03	340-150-0070	2-14-03	Repeal	3-1-03
340-054-0097	5-27-03	Amend	7-1-03	340-150-0080	2-14-03	Amend	3-1-03
340-108-0001	1-31-03	Repeal	3-1-03	340-150-0090	2-14-03	Repeal	3-1-03
340-108-0002	1-31-03	Repeal	3-1-03	340-150-0100	2-14-03	Repeal	3-1-03
340-108-0010	1-31-03	Repeal	3-1-03	340-150-0102	2-14-03	Adopt	3-1-03
340-108-0020	1-31-03	Repeal	3-1-03	340-150-0110	2-14-03	Amend	3-1-03
340-108-0030	1-31-03	Repeal	3-1-03	340-150-0112	2-14-03	Repeal	3-1-03
340-108-0040	1-31-03	Repeal	3-1-03	340-150-0115	2-14-03	Am. & Ren.	3-1-03
340-108-0050	1-31-03	Repeal	3-1-03	340-150-0125	2-14-03	Am. & Ren.	3-1-03
340-108-0070	1-31-03	Repeal	3-1-03	340-150-0130	2-14-03	Repeal	3-1-03
340-108-0080	1-31-03	Repeal	3-1-03	340-150-0135	2-14-03	Adopt	3-1-03
340-122-0210	2-14-03	Amend	3-1-03	340-150-0140	2-14-03	Amend	3-1-03
340-141-0001	1-31-03	Adopt	3-1-03	340-150-0150	2-14-03	Amend	3-1-03
340-141-0005	1-31-03	Adopt	3-1-03	340-150-0152	2-14-03	Adopt	3-1-03
340-141-0010	1-31-03	Adopt	3-1-03	340-150-0156	2-14-03	Adopt	3-1-03
340-141-0100	1-31-03	Adopt	3-1-03	340-150-0160	2-14-03	Amend	3-1-03
340-141-0130	1-31-03	Adopt	3-1-03	340-150-0163	2-14-03	Amend	3-1-03
340-141-0140	1-31-03	Adopt	3-1-03	340-150-0166	2-14-03	Amend	3-1-03
340-141-0150	1-31-03	Adopt	3-1-03	340-150-0167	2-14-03	Adopt	3-1-03
340-141-0160	1-31-03	Adopt	3-1-03	340-150-0168	2-14-03	Adopt	3-1-03
340-141-0170	1-31-03	Adopt	3-1-03	340-150-0180	2-14-03	Adopt	3-1-03
340-141-0180	1-31-03	Adopt	3-1-03	340-150-0200	2-14-03	Adopt	3-1-03
340-141-0190	1-31-03	Adopt	3-1-03				



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<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
340-150-0250	2-14-03	Adopt	3-1-03	340-230-0370	2-6-03	Adopt	3-1-03
340-150-0300	2-14-03	Adopt	3-1-03	340-230-0373	2-6-03	Adopt	3-1-03
340-150-0302	2-14-03	Adopt	3-1-03	340-230-0375	2-6-03	Adopt	3-1-03
340-150-0310	2-14-03	Adopt	3-1-03	340-230-0377	2-6-03	Adopt	3-1-03
340-150-0320	2-14-03	Adopt	3-1-03	340-230-0380	2-6-03	Adopt	3-1-03
340-150-0325	2-14-03	Adopt	3-1-03	340-230-0383	2-6-03	Adopt	3-1-03
340-150-0350	2-14-03	Adopt	3-1-03	340-230-0385	2-6-03	Adopt	3-1-03
340-150-0352	2-14-03	Adopt	3-1-03	340-230-0387	2-6-03	Adopt	3-1-03
340-150-0354	2-14-03	Adopt	3-1-03	340-230-0390	2-6-03	Adopt	3-1-03
340-150-0360	2-14-03	Adopt	3-1-03	340-230-0395	2-6-03	Adopt	3-1-03
340-150-0400	2-14-03	Adopt	3-1-03	340-238-0040	2-6-03	Amend	3-1-03
340-150-0410	2-14-03	Adopt	3-1-03	340-238-0050	2-6-03	Amend	3-1-03
340-150-0420	2-14-03	Adopt	3-1-03	340-238-0060	2-6-03	Amend	3-1-03
340-150-0430	2-14-03	Adopt	3-1-03	340-244-0200	2-6-03	Amend	3-1-03
340-150-0435	2-14-03	Adopt	3-1-03	340-244-0210	2-6-03	Amend	3-1-03
340-150-0440	2-14-03	Adopt	3-1-03	340-244-0220	2-6-03	Amend	3-1-03
340-150-0445	2-14-03	Adopt	3-1-03	340-244-0230	2-6-03	Amend	3-1-03
340-150-0450	2-14-03	Adopt	3-1-03	340-248-0010	12-23-02	Amend	2-1-03
340-150-0455	2-14-03	Adopt	3-1-03	340-248-0010	6-21-03	Amend	7-1-03
340-150-0460	2-14-03	Adopt	3-1-03	340-248-0100	12-23-02	Amend	2-1-03
340-150-0465	2-14-03	Adopt	3-1-03	340-248-0100	6-21-03	Amend	7-1-03
340-150-0470	2-14-03	Adopt	3-1-03	340-248-0120	12-23-02	Amend	2-1-03
340-150-0500	2-14-03	Adopt	3-1-03	340-248-0120	6-21-03	Amend	7-1-03
340-150-0510	2-14-03	Adopt	3-1-03	340-248-0130	12-23-02	Amend	2-1-03
340-150-0520	2-14-03	Adopt	3-1-03	340-248-0130	6-21-03	Amend	7-1-03
340-150-0540	2-14-03	Adopt	3-1-03	340-248-0140	12-23-02	Amend	2-1-03
340-150-0550	2-14-03	Adopt	3-1-03	340-248-0140	6-21-03	Amend	7-1-03
340-150-0555	2-14-03	Adopt	3-1-03	340-248-0150	12-23-02	Amend	2-1-03
340-150-0560	2-14-03	Adopt	3-1-03	340-248-0150	6-21-03	Amend	7-1-03
340-151-0001	2-14-03	Adopt	3-1-03	340-248-0160	6-21-03	Amend	7-1-03
340-151-0010	2-14-03	Adopt	3-1-03	340-248-0180	12-23-02	Amend	2-1-03
340-151-0015	2-14-03	Adopt	3-1-03	340-248-0180	6-21-03	Amend	7-1-03
340-151-0020	2-14-03	Adopt	3-1-03	340-248-0205	12-23-02	Amend	2-1-03
340-151-0025	2-14-03	Adopt	3-1-03	340-248-0205	6-21-03	Amend	7-1-03
340-160-0005	2-14-03	Amend	3-1-03	340-248-0210	12-23-02	Amend	2-1-03
340-160-0010	2-14-03	Amend	3-1-03	340-248-0210	6-21-03	Amend	7-1-03
340-160-0020	2-14-03	Amend	3-1-03	340-248-0220	12-23-02	Amend	2-1-03
340-160-0025	2-14-03	Amend	3-1-03	340-248-0220	6-21-03	Amend	7-1-03
340-160-0030	2-14-03	Amend	3-1-03	340-248-0240	12-23-02	Amend	2-1-03
340-160-0035	2-14-03	Amend	3-1-03	340-248-0240	6-21-03	Amend	7-1-03
340-160-0040	2-14-03	Amend	3-1-03	340-248-0250	12-23-02	Amend	2-1-03
340-160-0054	2-14-03	Amend	3-1-03	340-248-0250	6-21-03	Amend	7-1-03
340-160-0150	2-14-03	Amend	3-1-03	340-248-0260	12-23-02	Amend	2-1-03
340-200-0040	2-6-03	Amend	3-1-03	340-248-0260	6-21-03	Amend	7-1-03
340-230-0010	2-6-03	Amend	3-1-03	340-248-0270	12-23-02	Amend	2-1-03
340-230-0020	2-6-03	Amend	3-1-03	340-248-0270	6-21-03	Amend	7-1-03
340-230-0030	2-6-03	Amend	3-1-03	340-248-0275	12-23-02	Amend	2-1-03
340-230-0120	2-6-03	Amend	3-1-03	340-248-0275	6-21-03	Amend	7-1-03
340-230-0300	2-6-03	Amend	3-1-03	340-248-0280	12-23-02	Amend	2-1-03
340-230-0310	2-6-03	Amend	3-1-03	340-248-0280	6-21-03	Amend	7-1-03
340-230-0320	2-6-03	Amend	3-1-03	340-248-0290	12-23-02	Amend	2-1-03
340-230-0330	2-6-03	Amend	3-1-03	340-248-0290	6-21-03	Amend	7-1-03
340-230-0340	2-6-03	Amend	3-1-03	345-026-0390	12-3-02	Amend	1-1-03
340-230-0350	2-6-03	Amend	3-1-03	350-060-0020	8-1-03	Amend	8-1-03
340-230-0360	2-6-03	Repeal	3-1-03	350-060-0040	8-1-03	Amend	8-1-03
340-230-0365	2-6-03	Adopt	3-1-03	350-060-0042	8-1-03	Adopt	8-1-03

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350-060-0050	8-1-03	Amend	8-1-03	410-001-0160	3-21-03	Adopt(T)	5-1-03
350-060-0055	8-1-03	Adopt	8-1-03	410-001-0170	3-21-03	Adopt(T)	5-1-03
350-060-0060	8-1-03	Amend	8-1-03	410-001-0180	3-21-03	Adopt(T)	5-1-03
350-060-0070	8-1-03	Amend	8-1-03	410-001-0190	3-21-03	Adopt(T)	5-1-03
350-060-0075	8-1-03	Adopt	8-1-03	410-001-0200	3-21-03	Adopt(T)	5-1-03
350-060-0080	8-1-03	Amend	8-1-03	410-014-0000	4-1-03	Adopt	5-1-03
350-060-0090	8-1-03	Amend	8-1-03	410-014-0010	4-1-03	Adopt	5-1-03
350-060-0100	8-1-03	Amend	8-1-03	410-014-0020	4-1-03	Adopt	5-1-03
350-060-0120	8-1-03	Amend	8-1-03	410-014-0030	4-1-03	Adopt	5-1-03
350-060-0130	8-1-03	Amend	8-1-03	410-014-0040	4-1-03	Adopt	5-1-03
350-060-0140	8-1-03	Repeal	8-1-03	410-014-0050	4-1-03	Adopt	5-1-03
350-060-0150	8-1-03	Amend	8-1-03	410-014-0060	4-1-03	Adopt	5-1-03
350-060-0160	8-1-03	Amend	8-1-03	410-014-0070	4-1-03	Adopt	5-1-03
350-060-0170	8-1-03	Amend	8-1-03	410-120-0000	2-1-03	Amend	3-1-03
350-060-0180	8-1-03	Amend	8-1-03	410-120-1190	2-1-03	Adopt	3-1-03
350-060-0190	8-1-03	Amend	8-1-03	410-120-1195	4-1-03	Adopt(T)	5-1-03
350-060-0200	8-1-03	Amend	8-1-03	410-120-1195	6-30-03	Adopt	8-1-03
350-060-0205	8-1-03	Adopt	8-1-03	410-120-1195	7-1-03	Amend(T)	8-1-03
350-060-0210	8-1-03	Amend	8-1-03	410-120-1200	2-1-03	Amend	3-1-03
350-060-0220	8-1-03	Amend	8-1-03	410-120-1200	3-1-03	Amend	4-1-03
350-060-0240	8-1-03	Adopt	8-1-03	410-120-1200	3-14-03	Amend(T)	4-1-03
350-070-0000	8-1-03	Amend	8-1-03	410-120-1200	7-1-03	Amend(T)	8-1-03
350-070-0020	8-1-03	Amend	8-1-03	410-120-1200(T)	7-1-03	Suspend	8-1-03
350-070-0040	8-1-03	Amend	8-1-03	410-120-1210	7-1-03	Adopt	8-1-03
350-070-0042	8-1-03	Adopt	8-1-03	410-120-1230	1-1-03	Adopt	2-1-03
350-070-0045	8-1-03	Adopt	8-1-03	410-120-1235	2-1-03	Adopt	3-1-03
350-070-0047	8-1-03	Adopt	8-1-03	410-120-1280	1-1-03	Amend	2-1-03
350-070-0050	8-1-03	Amend	8-1-03	410-120-1280	2-1-03	Amend	3-1-03
350-070-0060	8-1-03	Amend	8-1-03	410-120-1340	2-1-03	Amend	3-1-03
350-070-0070	8-1-03	Amend	8-1-03	410-120-1360	4-1-03	Amend	5-1-03
350-070-0080	8-1-03	Amend	8-1-03	410-120-1520	4-1-03	Amend	5-1-03
350-070-0085	8-1-03	Adopt	8-1-03	410-120-1540	4-1-03	Amend	5-1-03
350-070-0090	8-1-03	Amend	8-1-03	410-120-1560	4-1-03	Amend	5-1-03
350-070-0100	8-1-03	Repeal	8-1-03	410-120-1570	4-1-03	Adopt	5-1-03
350-070-0110	8-1-03	Amend	8-1-03	410-120-1580	4-1-03	Amend	5-1-03
350-070-0120	8-1-03	Amend	8-1-03	410-120-1600	4-1-03	Amend	5-1-03
350-070-0130	8-1-03	Amend	8-1-03	410-120-1620	4-1-03	Renumber	5-1-03
350-070-0140	8-1-03	Amend	8-1-03	410-120-1640	4-1-03	Amend	5-1-03
350-070-0150	8-1-03	Amend	8-1-03	410-120-1660	4-1-03	Amend	5-1-03
350-070-0160	8-1-03	Amend	8-1-03	410-120-1680	4-1-03	Amend	5-1-03
350-070-0170	8-1-03	Amend	8-1-03	410-120-1685	4-1-03	Adopt	5-1-03
350-070-0180	8-1-03	Repeal	8-1-03	410-120-1875	5-1-03	Amend	6-1-03
350-070-0190	8-1-03	Amend	8-1-03	410-121-0000	2-1-03	Amend	3-1-03
350-070-0200	8-1-03	Amend	8-1-03	410-121-0030	4-1-03	Amend	5-1-03
350-070-0210	8-1-03	Amend	8-1-03	410-121-0030	5-1-03	Amend	6-1-03
350-070-0220	8-1-03	Amend	8-1-03	410-121-0030	7-1-03	Adopt	8-1-03
350-070-0225	8-1-03	Adopt	8-1-03	410-121-0040	4-1-03	Amend	5-1-03
350-070-0230	8-1-03	Amend	8-1-03	410-121-0040	6-1-03	Amend	7-1-03
350-070-0240	8-1-03	Adopt	8-1-03	410-121-0040	7-1-03	Amend(T)	7-1-03
410-001-0030	11-22-02	Adopt	1-1-03	410-121-0060	4-1-03	Amend	5-1-03
410-001-0100	3-21-03	Adopt(T)	5-1-03	410-121-0061	6-1-03	Amend	7-1-03
410-001-0110	3-21-03	Adopt(T)	5-1-03	410-121-0140	3-1-03	Amend	4-1-03
410-001-0120	3-21-03	Adopt(T)	5-1-03	410-121-0140	4-1-03	Amend(T)	4-1-03
410-001-0130	3-21-03	Adopt(T)	5-1-03	410-121-0140	4-15-03	Amend(T)	5-1-03
410-001-0140	3-21-03	Adopt(T)	5-1-03	410-121-0140	6-1-03	Amend(T)	7-1-03

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410-121-0140(T)	4-1-03	Suspend	5-1-03	410-122-0540	4-1-03	Amend	5-1-03
410-121-0140(T)	4-15-03	Suspend	5-1-03	410-122-0560	4-1-03	Amend	5-1-03
410-121-0140(T)	6-1-03	Suspend	7-1-03	410-122-0580	4-1-03	Amend	5-1-03
410-121-0146	1-1-03	Amend	2-1-03	410-122-0600	4-1-03	Amend	5-1-03
410-121-0150	6-1-03	Amend	7-1-03	410-122-0620	4-1-03	Amend	5-1-03
410-121-0150	7-1-03	Amend(T)	7-1-03	410-122-0625	4-1-03	Amend	5-1-03
410-121-0153	2-1-03	Adopt	3-1-03	410-122-0630	4-1-03	Amend	5-1-03
410-121-0153	3-1-03	Repeal	4-1-03	410-122-0660	4-1-03	Amend	5-1-03
410-121-0154	1-1-03	Adopt	2-1-03	410-122-0665	4-1-03	Repeal	5-1-03
410-121-0155	6-1-03	Amend	7-1-03	410-122-0670	4-1-03	Repeal	5-1-03
410-121-0157	2-14-03	Amend(T)	3-1-03	410-122-0675	4-1-03	Repeal	5-1-03
410-121-0157	5-9-03	Amend	6-1-03	410-122-0678	4-1-03	Amend	5-1-03
410-121-0157	5-15-03	Amend(T)	6-1-03	410-122-0680	4-1-03	Amend	5-1-03
410-121-0157	7-7-03	Amend	8-1-03	410-122-0701	2-1-03	Adopt	3-1-03
410-121-0157(T)	2-14-03	Suspend	3-1-03	410-122-0701	3-1-03	Repeal	4-1-03
410-121-0160	4-15-03	Amend(T)	5-1-03	410-122-0720	4-1-03	Adopt	5-1-03
410-121-0190	4-1-03	Amend	5-1-03	410-123-1085	1-1-03	Adopt	2-1-03
410-121-0190	6-1-03	Amend	7-1-03	410-123-1085	2-1-03	Amend	3-1-03
410-121-0200	4-1-03	Amend	5-1-03	410-123-1220	2-1-03	Amend	3-1-03
410-121-0200	6-1-03	Amend	7-1-03	410-123-1240	1-1-03	Amend	2-1-03
410-121-0220	6-1-03	Amend	7-1-03	410-123-1260	2-1-03	Amend	3-1-03
410-121-0300	12-1-02	Amend(T)	1-1-03	410-123-1280	2-1-03	Repeal	3-1-03
410-121-0300	2-28-03	Amend	4-1-03	410-123-1290	2-1-03	Repeal	3-1-03
410-121-0300	3-1-03	Amend(T)	4-1-03	410-123-1300	2-1-03	Repeal	3-1-03
410-121-0300	5-29-03	Amend	7-1-03	410-123-1310	2-1-03	Repeal	3-1-03
410-121-0300(T)	12-1-02	Suspend	1-1-03	410-123-1320	2-1-03	Repeal	3-1-03
410-121-0300(T)	2-28-03	Repeal	4-1-03	410-123-1330	2-1-03	Repeal	3-1-03
410-121-0320	2-14-03	Amend(T)	3-1-03	410-123-1340	2-1-03	Repeal	3-1-03
410-121-0320(T)	2-14-03	Suspend	3-1-03	410-123-1360	2-1-03	Repeal	3-1-03
410-122-0020	12-24-02	Amend(T)	2-1-03	410-123-1380	2-1-03	Repeal	3-1-03
410-122-0020	5-1-03	Amend	6-1-03	410-123-1400	2-1-03	Repeal	3-1-03
410-122-0030	5-1-03	Amend	6-1-03	410-123-1420	2-1-03	Repeal	3-1-03
410-122-0180	4-1-03	Amend	5-1-03	410-123-1440	2-1-03	Repeal	3-1-03
410-122-0190	4-1-03	Amend	5-1-03	410-123-1460	2-1-03	Repeal	3-1-03
410-122-0200	4-1-03	Amend	5-1-03	410-123-1480	2-1-03	Repeal	3-1-03
410-122-0202	4-1-03	Amend	5-1-03	410-123-1500	2-1-03	Repeal	3-1-03
410-122-0203	4-1-03	Amend	5-1-03	410-124-0000	2-1-03	Amend	3-1-03
410-122-0205	4-1-03	Amend	5-1-03	410-124-0020	2-1-03	Amend	3-1-03
410-122-0207	4-1-03	Amend	5-1-03	410-124-0040	2-1-03	Amend	3-1-03
410-122-0208	4-1-03	Amend	5-1-03	410-124-0140	2-1-03	Amend	3-1-03
410-122-0209	4-1-03	Amend	5-1-03	410-124-0160	2-1-03	Amend	3-1-03
410-122-0210	4-1-03	Amend	5-1-03	410-125-0050	1-1-03	Adopt	2-1-03
410-122-0240	4-1-03	Amend	5-1-03	410-125-0055	2-1-03	Adopt	3-1-03
410-122-0300	4-1-03	Amend	5-1-03	410-125-0080	4-1-03	Amend	5-1-03
410-122-0320	4-1-03	Amend	5-1-03	410-125-0141	3-1-03	Amend	4-1-03
410-122-0340	4-1-03	Amend	5-1-03	410-125-0141	3-10-03	Amend(T)	4-1-03
410-122-0360	4-1-03	Amend	5-1-03	410-125-0141	5-1-03	Amend	6-1-03
410-122-0365	4-1-03	Amend	5-1-03	410-125-0181	3-1-03	Amend	4-1-03
410-122-0370	4-1-03	Repeal	5-1-03	410-125-0195	3-1-03	Amend	4-1-03
410-122-0375	4-1-03	Amend	5-1-03	410-125-0195	3-10-03	Amend(T)	4-1-03
410-122-0420	4-1-03	Amend	5-1-03	410-125-0195	5-1-03	Amend	6-1-03
410-122-0460	4-1-03	Repeal	5-1-03	410-125-0680	1-1-03	Amend	2-1-03
410-122-0470	4-1-03	Amend	5-1-03	410-125-0700	1-1-03	Amend	2-1-03
410-122-0500	4-1-03	Amend	5-1-03	410-127-0000	2-1-03	Amend	3-1-03
410-122-0510	4-1-03	Amend	5-1-03	410-127-0020	2-1-03	Amend	3-1-03
410-122-0525	4-1-03	Amend	5-1-03	410-127-0050	1-1-03	Adopt	2-1-03

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410-127-0080	2-1-03	Amend	3-1-03	410-141-0000	3-1-03	Amend	4-1-03
410-127-0120	1-1-03	Amend	2-1-03	410-141-0080	2-1-03	Amend	3-1-03
410-129-0120	1-1-03	Amend	2-1-03	410-141-0080	4-1-03	Amend	5-1-03
410-129-0140	1-1-03	Amend	2-1-03	410-141-0260	4-1-03	Amend	5-1-03
410-129-0190	1-1-03	Adopt	2-1-03	410-141-0261	4-1-03	Amend	5-1-03
410-129-0195	2-1-03	Adopt	3-1-03	410-141-0264	4-1-03	Amend	5-1-03
410-129-0200	4-1-03	Amend	5-1-03	410-141-0420	2-1-03	Amend	3-1-03
410-129-0240	4-1-03	Amend	5-1-03	410-141-0480	1-1-03	Amend	2-1-03
410-129-0260	2-1-03	Amend	3-1-03	410-141-0500	1-1-03	Amend	2-1-03
410-129-0260	4-1-03	Amend	5-1-03	410-141-0500	2-1-03	Amend	3-1-03
410-130-0010	1-1-03	Amend	2-1-03	410-141-0500	4-15-03	Amend	5-1-03
410-130-0040	1-1-03	Amend	2-1-03	410-141-0520	1-1-03	Amend	2-1-03
410-130-0100	4-1-03	Amend	5-1-03	410-141-0520	3-1-03	Amend	4-1-03
410-130-0160	4-1-03	Amend	5-1-03	410-141-0520	4-1-03	Amend	5-1-03
410-130-0180	4-1-03	Amend	5-1-03	410-141-0520(T)	1-1-03	Repeal	2-1-03
410-130-0200	4-1-03	Amend	5-1-03	410-142-0080	2-1-03	Amend	3-1-03
410-130-0240	4-1-03	Amend	5-1-03	410-142-0100	2-1-03	Amend	3-1-03
410-130-0250	4-1-03	Amend	5-1-03	410-142-0200	2-1-03	Amend	3-1-03
410-130-0400	4-1-03	Amend	5-1-03	410-142-0240	2-1-03	Amend	3-1-03
410-130-0540	4-1-03	Amend	5-1-03	410-142-0300	2-28-03	Amend	4-1-03
410-130-0562	4-1-03	Amend	5-1-03	410-142-0320	2-1-03	Amend	3-1-03
410-130-0580	4-1-03	Amend	5-1-03	410-146-0075	1-1-03	Adopt	2-1-03
410-130-0585	4-1-03	Amend	5-1-03	410-146-0075	2-1-03	Amend	3-1-03
410-130-0660	4-1-03	Amend	5-1-03	410-146-0080	2-1-03	Amend	3-1-03
410-130-0680	4-1-03	Amend	5-1-03	410-146-0320	1-1-03	Amend	2-1-03
410-130-0700	4-1-03	Amend	5-1-03	410-147-0085	1-1-03	Adopt	2-1-03
410-130-0760	4-1-03	Amend	5-1-03	410-147-0085	2-1-03	Amend	3-1-03
410-130-0780	4-1-03	Amend	5-1-03	410-147-0120	2-1-03	Amend	3-1-03
410-130-0800	4-1-03	Amend	5-1-03	410-147-0600	1-1-03	Amend	2-1-03
410-130-0940	4-1-03	Amend	5-1-03	410-148-0020	4-1-03	Amend	5-1-03
410-130-0960	1-1-03	Adopt	2-1-03	410-148-0040	4-1-03	Amend	5-1-03
410-130-0965	2-1-03	Adopt	3-1-03	410-148-0060	4-1-03	Amend	5-1-03
410-131-0220	1-1-03	Amend	2-1-03	410-148-0090	2-1-03	Adopt	3-1-03
410-131-0240	1-1-03	Amend	2-1-03	410-148-0095	1-1-03	Adopt	2-1-03
410-131-0270	1-1-03	Adopt	2-1-03	410-148-0100	2-1-03	Amend	3-1-03
410-131-0275	2-1-03	Adopt	3-1-03	410-148-0100	4-1-03	Amend	5-1-03
410-132-0050	1-1-03	Adopt	2-1-03	410-148-0180	1-1-03	Amend	2-1-03
410-132-0055	2-1-03	Adopt	3-1-03	410-148-0200	1-1-03	Amend	2-1-03
410-132-0140	1-1-03	Amend	2-1-03	410-148-0260	4-1-03	Amend	5-1-03
410-132-0180	4-1-03	Amend	5-1-03	410-148-0280	4-1-03	Amend	5-1-03
410-133-0000	4-1-03	Amend	5-1-03	410-148-0300	4-1-03	Amend	5-1-03
410-133-0020	4-1-03	Repeal	5-1-03	410-149-0000	2-1-03	Adopt	3-1-03
410-133-0040	4-1-03	Amend	5-1-03	410-149-0020	2-1-03	Adopt	3-1-03
410-133-0080	4-1-03	Amend	5-1-03	410-149-0040	2-1-03	Adopt	3-1-03
410-133-0120	4-1-03	Amend	5-1-03	410-149-0060	2-1-03	Adopt	3-1-03
410-133-0200	4-1-03	Amend	5-1-03	410-149-0080	2-1-03	Adopt	3-1-03
410-133-0220	4-1-03	Amend	5-1-03	410-150-0040	4-1-03	Amend	5-1-03
410-133-0240	4-1-03	Repeal	5-1-03	410-150-0080	4-1-03	Amend	5-1-03
410-133-0300	4-1-03	Amend	5-1-03	410-150-0100	4-1-03	Amend	5-1-03
410-133-0320	4-1-03	Amend	5-1-03	410-150-0120	4-1-03	Amend	5-1-03
410-136-0045	2-1-03	Adopt	3-1-03	410-150-0160	4-1-03	Amend	5-1-03
410-136-0300	4-1-03	Amend	5-1-03	410-150-0200	4-1-03	Amend	5-1-03
410-140-0060	1-1-03	Amend	2-1-03	410-150-0220	4-1-03	Amend	5-1-03
410-140-0110	1-1-03	Adopt	2-1-03	410-150-0260	4-1-03	Amend	5-1-03
410-140-0115	2-1-03	Adopt	3-1-03	410-150-0280	4-1-03	Amend	5-1-03

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411-015-0000	6-4-03	Amend	7-1-03	411-315-0100	4-1-03	Adopt	5-1-03
411-015-0005	12-6-02	Amend(T)	1-1-03	411-999-0010	3-11-03	Adopt(T)	4-1-03
411-015-0005	6-4-03	Amend	7-1-03	411-999-0010	4-25-03	Amend(T)	6-1-03
411-015-0010	12-6-02	Amend(T)	1-1-03	411-999-0010(T)	4-25-03	Suspend	6-1-03
411-015-0010	6-4-03	Amend	7-1-03	411-999-0011	3-11-03	Adopt(T)	4-1-03
411-015-0015	12-6-02	Amend(T)	1-1-03	411-999-0011	4-25-03	Amend(T)	6-1-03
411-015-0015	2-1-03	Amend	2-1-03	411-999-0011(T)	4-25-03	Suspend	6-1-03
411-015-0015	2-18-03	Amend(T)	3-1-03	411-999-0012	3-11-03	Adopt(T)	4-1-03
411-015-0015	3-12-03	Amend(T)	4-1-03	411-999-0013	3-11-03	Adopt(T)	4-1-03
411-015-0015	3-20-03	Amend(T)	5-1-03	411-999-0013	4-25-03	Amend(T)	6-1-03
411-015-0015	6-4-03	Amend	7-1-03	411-999-0013(T)	4-25-03	Suspend	6-1-03
411-015-0015(T)	2-18-03	Suspend	3-1-03	411-999-0014	3-11-03	Adopt(T)	4-1-03
411-015-0015(T)	3-12-03	Suspend	4-1-03	411-999-0014	4-25-03	Amend(T)	6-1-03
411-015-0015(T)	3-20-03	Suspend	5-1-03	411-999-0014(T)	4-25-03	Suspend	6-1-03
411-015-0100	12-6-02	Amend(T)	1-1-03	411-999-0015	3-11-03	Adopt(T)	4-1-03
411-015-0100	2-1-03	Amend	2-1-03	411-999-0015	4-25-03	Amend(T)	6-1-03
411-015-0100	6-4-03	Amend	7-1-03	411-999-0015(T)	4-25-03	Suspend	6-1-03
411-030-0040	2-1-03	Amend(T)	3-1-03	411-999-0020	5-15-03	Adopt(T)	5-1-03
411-030-0080	2-1-03	Amend(T)	3-1-03	413-010-0700	1-7-03	Amend	2-1-03
411-032-0000	5-2-03	Amend	6-1-03	413-010-0705	1-7-03	Amend	2-1-03
411-032-0001	5-2-03	Amend	6-1-03	413-010-0712	1-7-03	Amend	2-1-03
411-032-0005	5-2-03	Amend	6-1-03	413-010-0714	1-7-03	Amend	2-1-03
411-032-0010	5-2-03	Amend	6-1-03	413-010-0715	1-7-03	Amend	2-1-03
411-032-0015	5-2-03	Amend	6-1-03	413-010-0716	1-7-03	Amend	2-1-03
411-032-0020	5-2-03	Amend	6-1-03	413-010-0717	1-7-03	Amend	2-1-03
411-032-0044	5-2-03	Amend	6-1-03	413-010-0718	1-7-03	Amend	2-1-03
411-200-0010	7-1-03	Amend	8-1-03	413-010-0719	1-7-03	Amend	2-1-03
411-300-0100	12-28-02	Adopt	2-1-03	413-010-0720	1-7-03	Amend	2-1-03
411-300-0110	12-28-02	Adopt	2-1-03	413-010-0721	1-7-03	Amend	2-1-03
411-300-0120	12-28-02	Adopt	2-1-03	413-010-0722	1-7-03	Amend	2-1-03
411-300-0130	12-28-02	Adopt	2-1-03	413-010-0723	1-7-03	Amend	2-1-03
411-300-0140	12-28-02	Adopt	2-1-03	413-010-0732	1-7-03	Amend	2-1-03
411-300-0150	12-28-02	Adopt	2-1-03	413-010-0735	1-7-03	Amend	2-1-03
411-300-0160	12-28-02	Adopt	2-1-03	413-010-0738	1-7-03	Amend	2-1-03
411-300-0170	12-28-02	Adopt	2-1-03	413-010-0740	1-7-03	Amend	2-1-03
411-300-0180	12-28-02	Adopt	2-1-03	413-010-0743	1-7-03	Amend	2-1-03
411-300-0190	12-28-02	Adopt	2-1-03	413-010-0745	1-7-03	Amend	2-1-03
411-300-0200	12-28-02	Adopt	2-1-03	413-010-0746	1-7-03	Amend	2-1-03
411-300-0210	12-28-02	Adopt	2-1-03	413-010-0750	1-7-03	Amend	2-1-03
411-300-0220	12-28-02	Adopt	2-1-03	413-015-0100	7-1-03	Adopt	8-1-03
411-310-0010	4-1-03	Adopt	5-1-03	413-015-0105	7-1-03	Adopt	8-1-03
411-310-0020	4-1-03	Adopt	5-1-03	413-015-0110	7-1-03	Adopt	8-1-03
411-310-0030	4-1-03	Adopt	5-1-03	413-015-0115	7-1-03	Adopt	8-1-03
411-310-0040	4-1-03	Adopt	5-1-03	413-015-0120	7-1-03	Adopt	8-1-03
411-310-0050	4-1-03	Adopt	5-1-03	413-015-0125	7-1-03	Adopt	8-1-03
411-310-0060	4-1-03	Adopt	5-1-03	413-015-0200	7-1-03	Adopt	8-1-03
411-310-0070	4-1-03	Adopt	5-1-03	413-015-0205	7-1-03	Adopt	8-1-03
411-315-0010	4-1-03	Adopt	5-1-03	413-015-0210	7-1-03	Adopt	8-1-03
411-315-0020	4-1-03	Adopt	5-1-03	413-015-0215	7-1-03	Adopt	8-1-03
411-315-0030	4-1-03	Adopt	5-1-03	413-015-0220	7-1-03	Adopt	8-1-03
411-315-0040	4-1-03	Adopt	5-1-03	413-015-0225	7-1-03	Adopt	8-1-03
411-315-0050	4-1-03	Adopt	5-1-03	413-015-0300	7-1-03	Adopt	8-1-03
411-315-0060	4-1-03	Adopt	5-1-03	413-015-0305	7-1-03	Adopt	8-1-03
411-315-0070	4-1-03	Adopt	5-1-03	413-015-0310	7-1-03	Adopt	8-1-03
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413-015-0405	7-1-03	Adopt	8-1-03	413-020-0335	7-1-03	Repeal	8-1-03
413-015-0410	7-1-03	Adopt	8-1-03	413-020-0335(T)	1-23-03	Suspend	3-1-03
413-015-0500	7-1-03	Adopt	8-1-03	413-020-0340	7-1-03	Repeal	8-1-03
413-015-0505	7-1-03	Adopt	8-1-03	413-020-0345	1-23-03	Adopt(T)	3-1-03
413-015-0510	7-1-03	Adopt	8-1-03	413-020-0350	7-1-03	Repeal	8-1-03
413-015-0600	7-1-03	Adopt	8-1-03	413-020-0360	7-1-03	Repeal	8-1-03
413-015-0605	7-1-03	Adopt	8-1-03	413-020-0380	7-1-03	Repeal	8-1-03
413-015-0610	7-1-03	Adopt	8-1-03	413-020-0390	7-1-03	Repeal	8-1-03
413-015-0615	7-1-03	Adopt	8-1-03	413-020-0395	1-23-03	Amend(T)	3-1-03
413-015-0700	7-1-03	Adopt	8-1-03	413-020-0395(T)	1-23-03	Suspend	3-1-03
413-015-0705	7-1-03	Adopt	8-1-03	413-020-0400	7-1-03	Repeal	8-1-03
413-015-0710	7-1-03	Adopt	8-1-03	413-020-0405	7-1-03	Repeal	8-1-03
413-015-0715	7-1-03	Adopt	8-1-03	413-020-0410	7-1-03	Repeal	8-1-03
413-015-0720	7-1-03	Adopt	8-1-03	413-020-0420	7-1-03	Repeal	8-1-03
413-015-0725	7-1-03	Adopt	8-1-03	413-020-0430	7-1-03	Repeal	8-1-03
413-015-0730	7-1-03	Adopt	8-1-03	413-030-0100	7-1-03	Repeal	8-1-03
413-015-0735	7-1-03	Adopt	8-1-03	413-030-0110	7-1-03	Repeal	8-1-03
413-015-0740	7-1-03	Adopt	8-1-03	413-030-0120	7-1-03	Repeal	8-1-03
413-015-0800	7-1-03	Adopt	8-1-03	413-030-0130	7-1-03	Repeal	8-1-03
413-015-0900	7-1-03	Adopt	8-1-03	413-030-0200	1-7-03	Amend	2-1-03
413-015-0905	7-1-03	Adopt	8-1-03	413-030-0205	1-7-03	Adopt	2-1-03
413-015-1000	7-1-03	Adopt	8-1-03	413-030-0210	1-7-03	Amend	2-1-03
413-020-0000	1-7-03	Amend	2-1-03	413-030-0220	1-7-03	Amend	2-1-03
413-020-0005	1-7-03	Amend	2-1-03	413-040-0100	5-22-03	Amend	7-1-03
413-020-0010	1-7-03	Amend	2-1-03	413-040-0110	5-22-03	Amend	7-1-03
413-020-0020	1-7-03	Amend	2-1-03	413-040-0120	5-22-03	Repeal	7-1-03
413-020-0040	1-7-03	Amend	2-1-03	413-040-0130	5-22-03	Amend	7-1-03
413-020-0050	1-7-03	Amend	2-1-03	413-040-0135	5-22-03	Adopt	7-1-03
413-020-0100	1-9-03	Amend	2-1-03	413-040-0140	5-22-03	Amend	7-1-03
413-020-0110	1-9-03	Amend	2-1-03	413-040-0145	5-22-03	Amend	7-1-03
413-020-0120	1-9-03	Amend	2-1-03	413-040-0150	5-22-03	Amend	7-1-03
413-020-0130	1-9-03	Amend	2-1-03	413-040-0155	5-22-03	Adopt	7-1-03
413-020-0140	1-9-03	Amend	2-1-03	413-040-0157	5-22-03	Adopt	7-1-03
413-020-0150	1-9-03	Amend	2-1-03	413-040-0159	5-22-03	Adopt	7-1-03
413-020-0160	1-9-03	Amend	2-1-03	413-040-0160	5-22-03	Repeal	7-1-03
413-020-0170	1-9-03	Amend	2-1-03	413-040-0170	5-22-03	Amend	7-1-03
413-020-0200	1-7-03	Amend	2-1-03	413-040-0400	1-7-03	Amend	2-1-03
413-020-0210	1-7-03	Amend	2-1-03	413-040-0410	1-7-03	Amend	2-1-03
413-020-0220	1-7-03	Amend	2-1-03	413-040-0420	1-7-03	Amend	2-1-03
413-020-0230	1-7-03	Amend	2-1-03	413-040-0430	1-7-03	Amend	2-1-03
413-020-0240	1-7-03	Amend	2-1-03	413-040-0440	1-7-03	Amend	2-1-03
413-020-0250	1-7-03	Amend	2-1-03	413-040-0450	1-7-03	Amend	2-1-03
413-020-0260	1-7-03	Amend	2-1-03	413-050-0000	1-7-03	Amend	2-1-03
413-020-0270	1-7-03	Amend	2-1-03	413-050-0005	1-7-03	Adopt	2-1-03
413-020-0275	1-23-03	Adopt(T)	3-1-03	413-050-0010	1-7-03	Amend	2-1-03
413-020-0275	3-19-03	Adopt	5-1-03	413-050-0020	1-7-03	Amend	2-1-03
413-020-0275	7-1-03	Repeal	8-1-03	413-050-0030	1-7-03	Amend	2-1-03
413-020-0280	1-23-03	Adopt(T)	3-1-03	413-050-0040	1-7-03	Amend	2-1-03
413-020-0285	1-23-03	Adopt(T)	3-1-03	413-050-0050	1-7-03	Amend	2-1-03
413-020-0285	3-19-03	Adopt	5-1-03	413-050-0200	12-19-02	Amend(T)	2-1-03
413-020-0285	7-1-03	Repeal	8-1-03	413-050-0200	6-18-03	Amend(T)	8-1-03
413-020-0300	7-1-03	Repeal	8-1-03	413-050-0210	12-19-02	Amend(T)	2-1-03
413-020-0310	7-1-03	Repeal	8-1-03	413-050-0210	6-18-03	Amend(T)	8-1-03
413-020-0320	7-1-03	Repeal	8-1-03	413-050-0220	12-19-02	Amend(T)	2-1-03
413-020-0330	7-1-03	Repeal	8-1-03	413-050-0220	6-18-03	Amend(T)	8-1-03
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413-050-0240	12-19-02	Amend(T)	2-1-03	413-090-0030	1-7-03	Amend	2-1-03
413-050-0240	6-18-03	Amend(T)	8-1-03	413-090-0040	1-7-03	Amend	2-1-03
413-050-0250	12-19-02	Amend(T)	2-1-03	413-090-0050	1-7-03	Amend	2-1-03
413-050-0250	6-18-03	Amend(T)	8-1-03	413-090-0160	2-1-03	Amend(T)	3-1-03
413-050-0260	12-19-02	Amend(T)	2-1-03	413-090-0300	1-7-03	Amend	2-1-03
413-050-0260	6-18-03	Amend(T)	8-1-03	413-090-0310	1-7-03	Amend	2-1-03
413-050-0261	12-19-02	Adopt(T)	2-1-03	413-090-0320	1-7-03	Amend	2-1-03
413-050-0270	12-19-02	Amend(T)	2-1-03	413-090-0330	1-7-03	Amend	2-1-03
413-050-0270	6-18-03	Amend(T)	8-1-03	413-090-0340	1-7-03	Amend	2-1-03
413-050-0280	12-19-02	Amend(T)	2-1-03	413-090-0355	1-7-03	Amend	2-1-03
413-050-0280	6-18-03	Amend(T)	8-1-03	413-090-0365	1-7-03	Amend	2-1-03
413-050-0290	12-19-02	Amend(T)	2-1-03	413-090-0370	1-7-03	Amend	2-1-03
413-050-0290	6-18-03	Amend(T)	8-1-03	413-090-0380	1-7-03	Amend	2-1-03
413-050-0300	12-19-02	Amend(T)	2-1-03	413-090-0400	1-7-03	Amend	2-1-03
413-050-0300	6-18-03	Amend(T)	8-1-03	413-090-0405	1-7-03	Adopt	2-1-03
413-050-0301	12-19-02	Adopt(T)	2-1-03	413-090-0410	1-7-03	Amend	2-1-03
413-050-0430	1-9-03	Amend	2-1-03	413-090-0420	1-7-03	Amend	2-1-03
413-050-0440	1-9-03	Amend	2-1-03	413-090-0430	1-7-03	Amend	2-1-03
413-050-0500	1-7-03	Amend	2-1-03	413-120-0400	3-13-03	Amend	4-1-03
413-050-0510	1-7-03	Amend	2-1-03	413-120-0410	3-13-03	Amend	4-1-03
413-050-0515	1-7-03	Amend	2-1-03	413-120-0420	3-13-03	Amend	4-1-03
413-050-0530	1-7-03	Amend	2-1-03	413-120-0430	3-13-03	Amend	4-1-03
413-050-0535	1-7-03	Amend	2-1-03	413-120-0440	3-13-03	Amend	4-1-03
413-050-0540	1-7-03	Amend	2-1-03	413-120-0450	3-13-03	Amend	4-1-03
413-050-0545	1-7-03	Amend	2-1-03	413-120-0455	3-13-03	Adopt	4-1-03
413-050-0550	1-7-03	Amend	2-1-03	413-120-0460	3-13-03	Amend	4-1-03
413-050-0560	1-7-03	Amend	2-1-03	413-120-0470	3-13-03	Amend	4-1-03
413-050-0565	1-7-03	Amend	2-1-03	413-130-0120	2-1-03	Amend	3-1-03
413-050-0575	1-7-03	Amend	2-1-03	413-130-0125	2-1-03	Adopt	3-1-03
413-050-0580	1-7-03	Amend	2-1-03	413-130-0126	2-1-03	Adopt(T)	3-1-03
413-050-0585	1-7-03	Amend	2-1-03	413-200-0371	12-19-02	Amend(T)	2-1-03
413-070-0905	1-9-03	Amend	2-1-03	414-001-0000	4-27-03	Repeal	6-1-03
413-070-0915	1-9-03	Amend	2-1-03	414-600-0000	11-24-02	Adopt	1-1-03
413-070-0920	1-9-03	Amend	2-1-03	414-600-0010	11-24-02	Adopt	1-1-03
413-070-0930	1-9-03	Amend	2-1-03	414-600-0020	11-24-02	Adopt	1-1-03
413-070-0940	1-9-03	Amend	2-1-03	414-600-0030	11-24-02	Adopt	1-1-03
413-070-0945	1-9-03	Amend	2-1-03	414-600-0040	11-24-02	Adopt	1-1-03
413-070-0945	1-23-03	Amend(T)	3-1-03	414-600-0050	11-24-02	Adopt	1-1-03
413-070-0950	1-9-03	Amend	2-1-03	414-600-0060	11-24-02	Adopt	1-1-03
413-070-0980	1-23-03	Adopt(T)	3-1-03	414-600-0070	11-24-02	Adopt	1-1-03
413-070-0981	2-1-03	Adopt(T)	3-1-03	414-600-0080	11-24-02	Adopt	1-1-03
413-080-0000	1-7-03	Amend	2-1-03	414-600-0090	11-24-02	Adopt	1-1-03
413-080-0010	1-7-03	Amend	2-1-03	414-600-0100	11-24-02	Adopt	1-1-03
413-080-0020	1-7-03	Amend	2-1-03	415-020-0000	7-1-03	Amend	7-1-03
413-080-0030	1-7-03	Amend	2-1-03	415-020-0005	7-1-03	Amend	7-1-03
413-080-0200	1-9-03	Amend	2-1-03	415-020-0010	7-1-03	Amend	7-1-03
413-080-0205	1-9-03	Adopt	2-1-03	415-020-0015	7-1-03	Amend	7-1-03
413-080-0210	1-9-03	Amend	2-1-03	415-020-0020	7-1-03	Amend	7-1-03
413-080-0240	1-9-03	Amend	2-1-03	415-020-0025	7-1-03	Amend	7-1-03
413-080-0250	1-9-03	Amend	2-1-03	415-020-0030	7-1-03	Amend	7-1-03
413-080-0260	1-9-03	Amend	2-1-03	415-020-0035	7-1-03	Amend	7-1-03
413-080-0270	1-9-03	Amend	2-1-03	415-020-0040	7-1-03	Amend	7-1-03
413-090-0000	1-7-03	Amend	2-1-03	415-020-0045	7-1-03	Repeal	7-1-03
413-090-0005	1-7-03	Amend	2-1-03	415-020-0045	9-1-03	Repeal	8-1-03
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415-020-0054	7-1-03	Adopt	7-1-03	436-035-0340	2-1-03	Amend	2-1-03
415-020-0055	7-1-03	Repeal	7-1-03	436-035-0360	2-1-03	Amend	2-1-03
415-020-0055	9-1-03	Repeal	8-1-03	436-035-0370	2-1-03	Amend	2-1-03
415-020-0060	7-1-03	Amend	7-1-03	436-035-0390	2-1-03	Amend	2-1-03
415-020-0065	7-1-03	Amend	7-1-03	436-035-0395	2-1-03	Amend	2-1-03
415-020-0070	7-1-03	Amend	7-1-03	436-035-0420	2-1-03	Amend	2-1-03
415-020-0075	7-1-03	Amend	7-1-03	436-035-0430	2-1-03	Amend	2-1-03
415-020-0080	7-1-03	Amend	7-1-03	436-035-0440	2-1-03	Amend	2-1-03
415-020-0085	7-1-03	Amend	7-1-03	436-035-0500	1-15-03	Amend(T)	2-1-03
415-051-0015	9-1-03	Amend	8-1-03	436-035-0500	2-1-03	Amend	2-1-03
415-051-0055	9-1-03	Amend	8-1-03	436-035-0500	4-15-03	Amend(T)	5-1-03
415-051-0057	9-1-03	Amend	8-1-03	436-035-0500	7-15-03	Amend(T)	8-1-03
415-051-0060	9-1-03	Amend	8-1-03	436-050-0060	4-1-03	Amend	5-1-03
416-430-0050	1-16-03	Amend	3-1-03	436-105-0003	12-11-02	Amend(T)	1-1-03
436-009-0004	7-1-03	Amend	7-1-03	436-105-0003	6-8-03	Amend	7-1-03
436-009-0005	7-1-03	Amend	7-1-03	436-105-0008	6-8-03	Amend	7-1-03
436-009-0008	7-1-03	Amend	7-1-03	436-105-0500	12-11-02	Amend(T)	1-1-03
436-009-0010	7-1-03	Amend	7-1-03	436-105-0500	6-8-03	Amend	7-1-03
436-009-0015	7-1-03	Amend	7-1-03	436-105-0510	12-11-02	Amend(T)	1-1-03
436-009-0020	7-1-03	Amend	7-1-03	436-105-0510	6-8-03	Amend	7-1-03
436-009-0022	7-1-03	Amend	7-1-03	436-105-0520	6-8-03	Amend	7-1-03
436-009-0030	7-1-03	Amend	7-1-03	436-105-0530	6-8-03	Amend	7-1-03
436-009-0040	7-1-03	Amend	7-1-03	436-160-0001	4-1-03	Adopt	5-1-03
436-009-0050	7-1-03	Amend	7-1-03	436-160-0002	4-1-03	Adopt	5-1-03
436-009-0060	7-1-03	Amend	7-1-03	436-160-0003	4-1-03	Adopt	5-1-03
436-009-0070	7-1-03	Amend	7-1-03	436-160-0004	4-1-03	Adopt	5-1-03
436-009-0090	7-1-03	Amend	7-1-03	436-160-0005	4-1-03	Adopt	5-1-03
436-035-0001	2-1-03	Amend	2-1-03	436-160-0006	4-1-03	Adopt	5-1-03
436-035-0003	2-1-03	Amend	2-1-03	436-160-0010	4-1-03	Adopt	5-1-03
436-035-0005	2-1-03	Amend	2-1-03	436-160-0020	4-1-03	Adopt	5-1-03
436-035-0007	2-1-03	Amend	2-1-03	436-160-0030	4-1-03	Adopt	5-1-03
436-035-0010	2-1-03	Amend	2-1-03	436-160-0040	4-1-03	Adopt	5-1-03
436-035-0030	2-1-03	Amend	2-1-03	436-160-0050	4-1-03	Adopt	5-1-03
436-035-0040	2-1-03	Amend	2-1-03	436-160-0060	4-1-03	Adopt	5-1-03
436-035-0050	2-1-03	Amend	2-1-03	436-160-0070	4-1-03	Adopt	5-1-03
436-035-0060	2-1-03	Amend	2-1-03	436-160-0080	4-1-03	Adopt	5-1-03
436-035-0070	2-1-03	Amend	2-1-03	436-160-0090	4-1-03	Adopt	5-1-03
436-035-0075	2-1-03	Amend	2-1-03	436-160-0300	4-1-03	Adopt	5-1-03
436-035-0080	2-1-03	Amend	2-1-03	436-160-0310	4-1-03	Adopt	5-1-03
436-035-0100	2-1-03	Amend	2-1-03	436-160-0320	4-1-03	Adopt	5-1-03
436-035-0110	2-1-03	Amend	2-1-03	436-160-0330	4-1-03	Adopt	5-1-03
436-035-0150	2-1-03	Amend	2-1-03	436-160-0340	4-1-03	Adopt	5-1-03
436-035-0160	2-1-03	Amend	2-1-03	436-160-0350	4-1-03	Adopt	5-1-03
436-035-0170	2-1-03	Amend	2-1-03	436-160-0360	4-1-03	Adopt	5-1-03
436-035-0190	2-1-03	Amend	2-1-03	437-002-0080	4-21-03	Amend	6-1-03
436-035-0200	2-1-03	Amend	2-1-03	437-002-0100	4-21-03	Amend	6-1-03
436-035-0220	2-1-03	Amend	2-1-03	437-002-0107	4-21-03	Amend	6-1-03
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436-035-0260	2-1-03	Amend	2-1-03	437-003-0001	4-30-03	Amend	3-1-03
436-035-0270	2-1-03	Amend	2-1-03	437-003-0017	4-30-03	Adopt	3-1-03
436-035-0280	2-1-03	Amend	2-1-03	437-003-0420	1-30-03	Amend	3-1-03
436-035-0300	2-1-03	Amend	2-1-03	437-003-0706	4-30-03	Adopt	3-1-03
436-035-0310	2-1-03	Amend	2-1-03	437-005-0001	5-6-03	Amend	6-1-03
436-035-0320	2-1-03	Amend	2-1-03	437-006-0001	12-1-03	Repeal	7-1-03







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437-007-1055	12-1-03	Adopt	7-1-03	438-012-0075	9-1-03	Adopt	8-1-03
437-007-1060	12-1-03	Adopt	7-1-03	438-012-0080	9-1-03	Adopt	8-1-03
437-007-1100	12-1-03	Adopt	7-1-03	438-012-0085	9-1-03	Adopt	8-1-03
437-007-1105	12-1-03	Adopt	7-1-03	438-012-0090	9-1-03	Adopt	8-1-03
437-007-1110	12-1-03	Adopt	7-1-03	438-012-0095	9-1-03	Adopt	8-1-03
437-007-1115	12-1-03	Adopt	7-1-03	438-012-0100	9-1-03	Adopt	8-1-03
437-007-1120	12-1-03	Adopt	7-1-03	438-015-0080	9-1-03	Amend	8-1-03
437-007-1125	12-1-03	Adopt	7-1-03	438-022-0005	5-1-03	Adopt	4-1-03
437-007-1130	12-1-03	Adopt	7-1-03	438-022-0010	5-1-03	Adopt	4-1-03
437-007-1135	12-1-03	Adopt	7-1-03	440-035-0070	5-27-03	Amend	7-1-03
437-007-1140	12-1-03	Adopt	7-1-03	442-004-0010	12-6-02	Amend(T)	1-1-03
437-007-1145	12-1-03	Adopt	7-1-03	442-004-0010	6-16-03	Amend	8-1-03
437-007-1150	12-1-03	Adopt	7-1-03	459-005-0001	7-1-03	Amend(T)	7-1-03
437-007-1155	12-1-03	Adopt	7-1-03	459-005-0058	6-13-03	Adopt	7-1-03
437-007-1160	12-1-03	Adopt	7-1-03	459-005-0060	6-13-03	Adopt	7-1-03
437-007-1165	12-1-03	Adopt	7-1-03	459-005-0180	7-2-03	Adopt	8-1-03
437-007-1200	12-1-03	Adopt	7-1-03	459-005-0320	7-1-03	Amend(T)	7-1-03
437-007-1205	12-1-03	Adopt	7-1-03	459-007-0001	7-1-03	Amend(T)	7-1-03
437-007-1391	12-1-03	Adopt	7-1-03	459-007-0025	7-1-03	Amend(T)	7-1-03
437-007-1392	12-1-03	Adopt	7-1-03	459-007-0040	7-1-03	Amend(T)	7-1-03
437-007-1393	12-1-03	Adopt	7-1-03	459-007-0050	7-1-03	Amend(T)	7-1-03
437-007-1394	12-1-03	Adopt	7-1-03	459-007-0060	7-1-03	Amend(T)	7-1-03
437-007-1395	12-1-03	Adopt	7-1-03	459-007-0110	7-1-03	Amend(T)	7-1-03
437-007-1396	12-1-03	Adopt	7-1-03	459-007-0530	7-1-03	Amend(T)	7-1-03
437-007-1397	12-1-03	Adopt	7-1-03	459-007-0900	7-1-03	Amend(T)	7-1-03
437-007-1398	12-1-03	Adopt	7-1-03	459-009-0105	7-1-03	Adopt(T)	7-1-03
437-007-1399	12-1-03	Adopt	7-1-03	459-009-0350	1-15-03	Adopt	2-1-03
437-007-1400	12-1-03	Adopt	7-1-03	459-013-0300	7-1-03	Adopt(T)	7-1-03
437-007-1405	12-1-03	Adopt	7-1-03	459-013-0300	7-1-03	Suspend	8-1-03
438-005-0011	5-1-03	Amend	4-1-03	459-035-0000	11-18-02	Amend	1-1-03
438-005-0015	5-1-03	Amend	4-1-03	459-035-0001	11-18-02	Amend	1-1-03
438-005-0016	5-1-03	Repeal	4-1-03	459-035-0010	11-18-02	Amend	1-1-03
438-005-0040	5-1-03	Amend	4-1-03	459-035-0020	11-18-02	Amend	1-1-03
438-006-0031	5-1-03	Amend	4-1-03	459-035-0030	11-18-02	Amend	1-1-03
438-006-0036	5-1-03	Amend	4-1-03	459-035-0040	11-18-02	Amend	1-1-03
438-006-0075	5-1-03	Amend	4-1-03	459-035-0050	11-18-02	Amend	1-1-03
438-006-0081	5-1-03	Amend	4-1-03	459-035-0070	11-18-02	Amend	1-1-03
438-006-0091	5-1-03	Amend	4-1-03	459-035-0080	11-18-02	Amend	1-1-03
438-006-0095	5-1-03	Amend	4-1-03	459-035-0090	11-18-02	Amend	1-1-03
438-006-0099	5-1-03	Adopt	4-1-03	459-035-0200	11-18-02	Amend	1-1-03
438-007-0015	5-1-03	Amend	4-1-03	459-035-0210	11-18-02	Repeal	1-1-03
438-007-0018	5-1-03	Amend	4-1-03	459-035-0220	11-18-02	Adopt	1-1-03
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438-007-0024	5-1-03	Adopt	4-1-03	461-006-0452	1-1-03	Amend	2-1-03
438-007-0027	5-1-03	Adopt	4-1-03	461-025-0310	1-1-03	Amend(T)	2-1-03
438-012-0001	9-1-03	Amend	8-1-03	461-025-0310	7-1-03	Amend	8-1-03
438-012-0018	9-1-03	Amend	8-1-03	461-025-0315	1-1-03	Amend	2-1-03
438-012-0020	9-1-03	Amend	8-1-03	461-025-0315	1-1-03	Amend(T)	2-1-03
438-012-0024	9-1-03	Adopt	8-1-03	461-025-0315	7-1-03	Amend	8-1-03
438-012-0030	9-1-03	Amend	8-1-03	461-101-0010	2-1-03	Amend	3-1-03
438-012-0035	9-1-03	Amend	8-1-03	461-101-0010	4-1-03	Amend	5-1-03
438-012-0050	9-1-03	Amend	8-1-03	461-110-0110	2-1-03	Amend	3-1-03
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461-115-0450	6-16-03	Amend	7-1-03	461-135-1130	2-1-03	Amend	3-1-03
461-115-0530	2-1-03	Amend	3-1-03	461-135-1180	2-1-03	Adopt	3-1-03
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461-115-0540	7-1-03	Amend	8-1-03	461-145-0080	4-1-03	Amend	5-1-03
461-115-0651	4-1-03	Amend	5-1-03	461-145-0080	7-1-03	Amend	8-1-03
461-115-0705	2-1-03	Amend	3-1-03	461-145-0130	4-1-03	Amend	5-1-03
461-120-0120	1-1-03	Amend	2-1-03	461-145-0255	1-1-03	Amend	2-1-03
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461-120-0125	7-1-03	Amend	8-1-03	461-145-0540	11-19-02	Amend(T)	1-1-03
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461-120-0345	7-1-03	Amend	8-1-03	461-145-0540(T)	5-1-03	Repeal	6-1-03
461-120-0630	4-1-03	Amend	5-1-03	461-145-0820	4-1-03	Amend(T)	5-1-03
461-125-0370	4-11-03	Amend(T)	5-1-03	461-145-0820	7-1-03	Amend	8-1-03
461-125-0370	7-1-03	Amend	8-1-03	461-145-0830	4-1-03	Amend(T)	5-1-03
461-125-0600	1-1-03	Amend	2-1-03	461-145-0830	7-1-03	Amend	8-1-03
461-130-0305	4-1-03	Amend	5-1-03	461-150-0050	5-1-03	Amend(T)	6-1-03
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461-135-0301	7-1-03	Adopt	8-1-03	461-155-0150	7-1-03	Amend	8-1-03
461-135-0400	4-1-03	Amend	5-1-03	461-155-0150(T)	2-7-03	Suspend	3-1-03
461-135-0401	1-1-03	Adopt	2-1-03	461-155-0225	2-1-03	Amend	3-1-03
461-135-0401(T)	1-1-03	Repeal	2-1-03	461-155-0225	2-7-03	Amend(T)	3-1-03
461-135-0415	4-1-03	Amend	5-1-03	461-155-0225	4-1-03	Amend	5-1-03
461-135-0505	2-7-03	Amend(T)	3-1-03	461-155-0225(T)	4-1-03	Repeal	5-1-03
461-135-0505	7-1-03	Amend	8-1-03	461-155-0235	2-1-03	Amend	3-1-03
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461-135-0701	6-1-03	Adopt	7-1-03	461-155-0250	1-1-03	Amend	2-1-03
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461-135-0721	7-1-03	Adopt	8-1-03	461-155-0270	1-1-03	Amend	2-1-03
461-135-0725	5-1-03	Amend(T)	6-1-03	461-155-0290	4-1-03	Amend	5-1-03
461-135-0725	7-1-03	Amend	8-1-03	461-155-0291	4-1-03	Amend	5-1-03
461-135-0725(T)	7-1-03	Repeal	8-1-03	461-155-0295	1-1-03	Amend	2-1-03
461-135-0730	1-1-03	Amend	2-1-03	461-155-0295	1-1-03	Amend(T)	1-1-03
461-135-0730	1-1-03	Amend(T)	1-1-03	461-155-0295	4-1-03	Amend	5-1-03
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461-135-0832	7-1-03	Amend	8-1-03	461-155-0360	2-1-03	Amend	3-1-03
461-135-0835	7-1-03	Amend	8-1-03	461-155-0500	5-1-03	Amend	6-1-03
461-135-0900	1-1-03	Amend	2-1-03	461-155-0526	5-1-03	Adopt	6-1-03
461-135-0990	2-1-03	Amend	3-1-03	461-155-0551	5-1-03	Adopt	6-1-03
461-135-1070	2-1-03	Amend	3-1-03	461-155-0560	5-1-03	Repeal	6-1-03
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461-160-0193	4-1-03	Amend	5-1-03	461-200-1180	7-1-03	Am. & Ren.(T)	8-1-03
461-160-0580	1-1-03	Amend	2-1-03	461-200-1200	7-1-03	Am. & Ren.(T)	8-1-03
461-160-0600	7-1-03	Amend	8-1-03	461-200-1320	7-1-03	Am. & Ren.(T)	8-1-03
461-160-0610	7-1-03	Amend	8-1-03	461-200-1340	7-1-03	Am. & Ren.(T)	8-1-03
461-160-0620	1-1-03	Amend	2-1-03	461-200-1360	7-1-03	Am. & Ren.(T)	8-1-03
461-160-0620	7-1-03	Amend	8-1-03	461-200-1500	3-1-03	Amend	4-1-03
461-160-0700	2-1-03	Amend	3-1-03	461-200-1500	7-1-03	Am. & Ren.(T)	8-1-03
461-160-0810	1-1-03	Amend	2-1-03	461-200-1600	7-1-03	Am. & Ren.(T)	8-1-03
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461-165-0030	4-1-03	Amend	5-1-03	461-200-2040	7-1-03	Am. & Ren.(T)	8-1-03
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461-165-0180	1-1-03	Amend	2-1-03	461-200-2080	7-1-03	Am. & Ren.(T)	8-1-03
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461-200-1100	7-1-03	Am. & Ren.(T)	8-1-03	461-200-4040	7-1-03	Am. & Ren.(T)	8-1-03
461-200-1120	7-1-03	Am. & Ren.(T)	8-1-03	461-200-4060	7-1-03	Am. & Ren.(T)	8-1-03
461-200-1140	7-1-03	Am. & Ren.(T)	8-1-03	461-200-4080	7-1-03	Am. & Ren.(T)	8-1-03
461-200-1160	3-1-03	Amend	4-1-03	461-200-4100	7-1-03	Am. & Ren.(T)	8-1-03

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461-200-4140	7-1-03	Am. & Ren.(T)	8-1-03	461-200-7140	3-1-03	Amend	4-1-03
461-200-4160	7-1-03	Am. & Ren.(T)	8-1-03	461-200-7140	7-1-03	Am. & Ren.(T)	8-1-03
461-200-4180	7-1-03	Am. & Ren.(T)	8-1-03	461-200-7160	7-1-03	Am. & Ren.(T)	8-1-03
461-200-4200	7-1-03	Am. & Ren.(T)	8-1-03	461-200-7180	7-1-03	Am. & Ren.(T)	8-1-03
461-200-4220	7-1-03	Am. & Ren.(T)	8-1-03	462-110-0010	1-1-03	Amend	1-1-03
461-200-4240	7-1-03	Am. & Ren.(T)	8-1-03	462-110-0010	4-23-03	Amend	6-1-03
461-200-4260	7-1-03	Am. & Ren.(T)	8-1-03	462-110-0020	1-1-03	Amend	1-1-03
461-200-4280	7-1-03	Am. & Ren.(T)	8-1-03	462-110-0030	4-1-03	Amend(T)	5-1-03
461-200-4300	7-1-03	Am. & Ren.(T)	8-1-03	462-120-0020	1-1-03	Amend	1-1-03
461-200-4320	7-1-03	Am. & Ren.(T)	8-1-03	462-120-0040	1-1-03	Amend	1-1-03
461-200-4340	7-1-03	Am. & Ren.(T)	8-1-03	462-120-0050	1-1-03	Amend	1-1-03
461-200-4360	7-1-03	Am. & Ren.(T)	8-1-03	462-120-0100	1-1-03	Amend	1-1-03
461-200-4420	7-1-03	Am. & Ren.(T)	8-1-03	462-130-0010	1-1-03	Amend	1-1-03
461-200-4440	7-1-03	Am. & Ren.(T)	8-1-03	462-130-0050	1-1-03	Amend	1-1-03
461-200-4460	7-1-03	Am. & Ren.(T)	8-1-03	462-140-0030	1-1-03	Amend	1-1-03
461-200-4500	7-1-03	Am. & Ren.(T)	8-1-03	462-140-0040	1-1-03	Amend	1-1-03
461-200-4520	7-1-03	Am. & Ren.(T)	8-1-03	462-140-0100	1-1-03	Amend	1-1-03
461-200-4540	7-1-03	Am. & Ren.(T)	8-1-03	462-140-0120	4-1-03	Amend(T)	5-1-03
461-200-4560	6-30-03	Amend	8-1-03	462-140-0130	1-1-03	Amend	1-1-03
461-200-4560	7-1-03	Am. & Ren.(T)	8-1-03	462-140-0250	1-1-03	Amend	1-1-03
461-200-4620	7-1-03	Am. & Ren.(T)	8-1-03	462-140-0370	1-1-03	Amend	1-1-03
461-200-4640	7-1-03	Am. & Ren.(T)	8-1-03	462-140-0400	4-1-03	Amend(T)	5-1-03
461-200-5020	3-1-03	Amend	4-1-03	462-140-0420	4-1-03	Amend(T)	5-1-03
461-200-5020	7-1-03	Am. & Ren.(T)	8-1-03	462-140-0460	4-1-03	Amend(T)	5-1-03
461-200-5040	3-1-03	Amend	4-1-03	462-150-0010	1-1-03	Amend	1-1-03
461-200-5040	7-1-03	Am. & Ren.(T)	8-1-03	462-150-0050	1-1-03	Amend	1-1-03
461-200-5060	3-1-03	Amend	4-1-03	462-150-0070	1-1-03	Amend	1-1-03
461-200-5060	7-1-03	Am. & Ren.(T)	8-1-03	462-150-0080	1-1-03	Amend	1-1-03
461-200-5080	7-1-03	Am. & Ren.(T)	8-1-03	462-160-0010	1-1-03	Amend	1-1-03
461-200-5110	7-1-03	Am. & Ren.(T)	8-1-03	462-160-0020	1-1-03	Amend	1-1-03
461-200-5120	3-1-03	Amend	4-1-03	462-160-0030	1-1-03	Amend	1-1-03
461-200-5120	7-1-03	Am. & Ren.(T)	8-1-03	462-170-0030	4-1-03	Amend(T)	5-1-03
461-200-5125	3-1-03	Amend	4-1-03	462-170-0050	4-1-03	Amend(T)	5-1-03
461-200-5125	7-1-03	Am. & Ren.(T)	8-1-03	462-170-0080	4-1-03	Amend(T)	5-1-03
461-200-5220	7-1-03	Am. & Ren.(T)	8-1-03	462-180-0010	4-1-03	Amend(T)	5-1-03
461-200-5240	6-30-03	Amend	8-1-03	462-200-0630	4-23-03	Adopt	6-1-03
461-200-5240	7-1-03	Am. & Ren.(T)	8-1-03	462-220-0040	7-1-03	Amend	7-1-03
461-200-5400	7-1-03	Am. & Ren.(T)	8-1-03	462-220-0040	7-1-03	Amend	8-1-03
461-200-5420	7-1-03	Am. & Ren.(T)	8-1-03	471-010-0040	2-9-03	Amend	3-1-03
461-200-5520	7-1-03	Am. & Ren.(T)	8-1-03	471-010-0050	3-29-03	Amend(T)	5-1-03
461-200-6020	7-1-03	Am. & Ren.(T)	8-1-03	471-010-0054	12-1-02	Amend(T)	1-1-03
461-200-6025	7-1-03	Am. & Ren.(T)	8-1-03	471-010-0054	5-25-03	Amend	7-1-03
461-200-6040	7-1-03	Am. & Ren.(T)	8-1-03	471-010-0054(T)	5-25-03	Repeal	7-1-03
461-200-6100	7-1-03	Am. & Ren.(T)	8-1-03	471-020-0035	2-16-03	Adopt	3-1-03
461-200-6110	7-1-03	Am. & Ren.(T)	8-1-03	471-020-0035	4-27-03	Amend	6-1-03
461-200-6120	7-1-03	Am. & Ren.(T)	8-1-03	471-020-0040	2-16-03	Adopt	3-1-03
461-200-6220	7-1-03	Am. & Ren.(T)	8-1-03	471-030-0015	2-9-03	Amend	3-1-03
461-200-6240	7-1-03	Am. & Ren.(T)	8-1-03	471-030-0030	2-9-03	Amend	3-1-03
461-200-6260	7-1-03	Am. & Ren.(T)	8-1-03	471-030-0036	4-13-03	Amend	5-1-03
461-200-6280	7-1-03	Am. & Ren.(T)	8-1-03	471-030-0050	2-9-03	Amend	3-1-03
461-200-7020	7-1-03	Am. & Ren.(T)	8-1-03	471-030-0076	2-9-03	Amend	3-1-03
461-200-7040	7-1-03	Am. & Ren.(T)	8-1-03	471-030-0080	11-24-02	Amend	1-1-03
461-200-7060	7-1-03	Am. & Ren.(T)	8-1-03	471-031-0010	2-9-03	Amend	3-1-03
461-200-7080	7-1-03	Am. & Ren.(T)	8-1-03	471-031-0035	2-9-03	Amend	3-1-03
461-200-7100	7-1-03	Am. & Ren.(T)	8-1-03	471-031-0040	2-9-03	Amend	3-1-03

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471-031-0075	2-9-03	Amend	3-1-03	581-015-0088	3-10-03	Amend	4-1-03
471-031-0095	2-9-03	Amend	3-1-03	581-015-0093	3-10-03	Amend	4-1-03
471-040-0005	4-27-03	Amend	6-1-03	581-015-0094	3-10-03	Amend	4-1-03
471-040-0021	5-25-03	Amend	7-1-03	581-015-0097	3-10-03	Adopt	4-1-03
543-040-0040	12-16-02	Amend(T)	1-1-03	581-015-0099	3-10-03	Amend	4-1-03
571-060-0005	7-1-03	Amend	8-1-03	581-015-0101	3-10-03	Amend	4-1-03
571-060-0005	7-1-03	Amend	8-1-03	581-015-0108	4-30-03	Amend	6-1-03
573-040-0005	4-16-03	Amend	6-1-03	581-015-0109	4-30-03	Amend	6-1-03
573-070-0011	12-30-02	Amend	2-1-03	581-015-0126	3-10-03	Amend	4-1-03
573-071-0005	4-16-03	Amend	6-1-03	581-015-0131	3-10-03	Amend	4-1-03
573-071-0030	4-16-03	Repeal	6-1-03	581-015-0141	4-30-03	Amend	6-1-03
574-050-0005	4-2-03	Amend	5-1-03	581-015-0291	4-30-03	Amend	6-1-03
576-010-0000	7-1-03	Amend	8-1-03	581-015-0293	4-30-03	Amend	6-1-03
576-020-0010	6-19-03	Amend	8-1-03	581-015-0294	4-30-03	Amend	6-1-03
576-025-0020	9-18-03	Amend	8-1-03	581-015-0296	3-10-03	Amend	4-1-03
577-060-0020	7-1-03	Amend	8-1-03	581-015-0301	4-30-03	Amend	6-1-03
577-070-0005	7-1-03	Amend	8-1-03	581-015-0550	3-10-03	Amend	4-1-03
577-070-0010	7-1-03	Amend	8-1-03	581-015-0551	3-10-03	Amend	4-1-03
577-070-0015	7-1-03	Amend	8-1-03	581-015-0552	3-10-03	Amend	4-1-03
577-070-0020	7-1-03	Amend	8-1-03	581-015-0553	3-10-03	Amend	4-1-03
577-070-0025	7-1-03	Amend	8-1-03	581-015-0555	3-10-03	Amend	4-1-03
577-070-0030	7-1-03	Amend	8-1-03	581-015-0556	3-10-03	Amend	4-1-03
577-070-0035	7-1-03	Amend	8-1-03	581-015-0558	3-10-03	Amend	4-1-03
577-070-0040	7-1-03	Amend	8-1-03	581-015-0559	3-10-03	Amend	4-1-03
577-070-0045	7-1-03	Amend	8-1-03	581-015-0568	3-10-03	Amend	4-1-03
577-070-0050	7-1-03	Amend	8-1-03	581-015-0601	3-10-03	Amend	4-1-03
578-041-0030	6-11-03	Amend	7-1-03	581-015-0606	4-30-03	Amend	6-1-03
581-015-0005	3-10-03	Amend	4-1-03	581-015-0607	3-10-03	Adopt	4-1-03
581-015-0016	3-10-03	Amend	4-1-03	581-015-0608	3-10-03	Adopt	4-1-03
581-015-0017	3-10-03	Amend	4-1-03	581-015-0704	4-30-03	Amend	6-1-03
581-015-0017	4-30-03	Amend	6-1-03	581-015-0705	4-30-03	Amend	6-1-03
581-015-0035	3-10-03	Amend	4-1-03	581-015-0706	4-30-03	Amend	6-1-03
581-015-0037	3-10-03	Amend	4-1-03	581-015-0805	3-10-03	Amend	4-1-03
581-015-0039	3-10-03	Amend	4-1-03	581-015-0811	3-10-03	Amend	4-1-03
581-015-0042	3-10-03	Amend	4-1-03	581-015-0816	3-10-03	Amend	4-1-03
581-015-0044	3-10-03	Amend	4-1-03	581-015-0820	3-10-03	Amend	4-1-03
581-015-0048	3-10-03	Amend	4-1-03	581-015-0825	3-10-03	Amend	4-1-03
581-015-0049	3-10-03	Amend	4-1-03	581-015-0900	3-10-03	Amend	4-1-03
581-015-0051	3-10-03	Amend	4-1-03	581-015-0935	3-10-03	Amend	4-1-03
581-015-0053	4-30-03	Amend	6-1-03	581-015-0937	3-10-03	Amend	4-1-03
581-015-0054	3-10-03	Amend	4-1-03	581-015-0938	3-10-03	Amend	4-1-03
581-015-0057	3-10-03	Amend	4-1-03	581-015-0939	3-10-03	Amend	4-1-03
581-015-0059	3-10-03	Amend	4-1-03	581-015-0940	4-30-03	Amend	6-1-03
581-015-0061	3-10-03	Amend	4-1-03	581-015-0941	4-30-03	Amend	6-1-03
581-015-0062	3-10-03	Amend	4-1-03	581-015-0945	3-10-03	Amend	4-1-03
581-015-0063	3-10-03	Amend	4-1-03	581-015-0946	3-10-03	Amend	4-1-03
581-015-0066	3-10-03	Amend	4-1-03	581-015-0949	4-30-03	Amend	6-1-03
581-015-0067	3-10-03	Amend	4-1-03	581-015-0960	3-10-03	Amend	4-1-03
581-015-0068	3-10-03	Amend	4-1-03	581-015-0964	3-10-03	Amend	4-1-03
581-015-0074	4-30-03	Amend	6-1-03	581-015-0966	3-10-03	Amend	4-1-03
581-015-0075	3-10-03	Amend	4-1-03	581-015-0968	3-10-03	Amend	4-1-03
581-015-0079	3-10-03	Amend	4-1-03	581-015-0970	3-10-03	Amend	4-1-03
581-015-0080	3-10-03	Amend	4-1-03	581-015-0972	3-10-03	Adopt	4-1-03
581-015-0081	3-10-03	Amend	4-1-03	581-015-0980	3-10-03	Amend	4-1-03
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581-015-1008	3-10-03	Amend	4-1-03	589-005-0100	1-9-03	Amend	2-1-03
581-015-1051	3-10-03	Adopt	4-1-03	589-005-0200	1-9-03	Amend	2-1-03
581-015-1052	3-10-03	Adopt	4-1-03	589-005-0300	1-9-03	Amend	2-1-03
581-015-1100	3-10-03	Amend	4-1-03	589-005-0400	1-9-03	Amend	2-1-03
581-015-1105	6-10-03	Amend	7-1-03	589-005-0500	1-9-03	Amend	2-1-03
581-015-1106	6-10-03	Amend	7-1-03	589-006-0050	1-9-03	Adopt	2-1-03
581-015-1107	3-10-03	Repeal	4-1-03	589-006-0100	1-9-03	Amend	2-1-03
581-015-1110	3-10-03	Amend	4-1-03	589-006-0150	1-9-03	Adopt	2-1-03
581-020-0341	4-2-03	Amend(T)	5-1-03	589-006-0200	1-9-03	Amend	2-1-03
581-021-0021	5-15-03	Adopt(T)	6-1-03	589-006-0300	1-9-03	Amend	2-1-03
581-021-0021	6-20-03	Amend(T)	8-1-03	589-006-0350	1-9-03	Adopt	2-1-03
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581-022-0102	3-14-03	Amend	4-1-03	589-007-0100	3-10-03	Amend	4-1-03
581-022-1131	3-14-03	Adopt	4-1-03	589-007-0110	3-10-03	Adopt	4-1-03
581-022-1350	3-14-03	Amend	4-1-03	589-007-0120	3-10-03	Adopt	4-1-03
581-022-1730	7-1-03	Amend(T)	8-1-03	589-007-0130	3-10-03	Adopt	4-1-03
581-022-1732	7-1-03	Amend(T)	8-1-03	589-007-0140	3-10-03	Adopt	4-1-03
581-023-0035	3-10-03	Amend	4-1-03	589-007-0150	3-10-03	Adopt	4-1-03
581-023-0040	6-13-03	Amend	7-1-03	589-007-0160	3-10-03	Adopt	4-1-03
581-023-0230	6-13-03	Amend	7-1-03	589-007-0170	3-10-03	Adopt	4-1-03
581-053-0002	3-4-03	Amend(T)	4-1-03	589-007-0180	3-10-03	Adopt	4-1-03
581-053-0002	6-13-03	Amend	7-1-03	589-007-0200	1-9-03	Amend	2-1-03
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583-030-0015	4-16-03	Amend	6-1-03	589-008-0100	1-9-03	Amend	2-1-03
583-030-0020	4-16-03	Amend	6-1-03	589-008-0200	1-9-03	Amend	2-1-03
583-030-0021	4-16-03	Amend	6-1-03	589-009-0100	1-9-03	Amend	2-1-03
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583-030-0030	4-16-03	Amend	6-1-03	589-020-0270	5-14-03	Adopt	6-1-03
583-030-0035	4-16-03	Amend	6-1-03	603-001-0005	1-7-03	Amend	2-1-03
583-030-0036	4-16-03	Amend	6-1-03	603-011-0265	3-17-03	Amend(T)	5-1-03
583-030-0040	4-16-03	Amend	6-1-03	603-011-0376	1-17-03	Adopt(T)	3-1-03
583-030-0042	4-16-03	Amend	6-1-03	603-011-0376	3-27-03	Amend(T)	5-1-03
583-030-0045	4-16-03	Amend	6-1-03	603-011-0376	6-20-03	Adopt	8-1-03
583-030-0046	4-16-03	Amend	6-1-03	603-011-0376(T)	3-27-03	Suspend	5-1-03
583-030-0049	4-16-03	Amend	6-1-03	603-014-0095	1-15-03	Amend	2-1-03
584-005-0005	5-15-03	Amend	6-1-03	603-025-0010	1-1-03	Amend	2-1-03
584-017-0041	3-10-03	Adopt(T)	4-1-03	603-025-0020	1-1-03	Amend	2-1-03
584-017-0150	5-15-03	Amend	6-1-03	603-025-0030	1-1-03	Amend	2-1-03
584-017-0170	1-13-03	Amend	2-1-03	603-025-0180	1-1-03	Amend	2-1-03
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584-060-0061	1-13-03	Amend	2-1-03	603-025-0220	1-1-03	Repeal	2-1-03
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589-002-0400	1-9-03	Repeal	2-1-03	603-054-0030	1-7-03	Amend	2-1-03
589-002-0500	1-9-03	Amend	2-1-03	603-054-0080	1-7-03	Adopt	2-1-03
589-002-0600	1-9-03	Amend	2-1-03	603-056-0165	1-14-03	Amend	2-1-03
589-002-0700	1-9-03	Amend	2-1-03	603-057-0378	3-28-03	Adopt(T)	5-1-03
589-002-0800	1-9-03	Amend	2-1-03	603-057-0378	7-15-03	Adopt	8-1-03



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603-057-0410	12-4-02	Amend(T)	1-1-03	603-095-2640	7-8-03	Adopt	8-1-03
603-057-0410	4-22-03	Amend(T)	6-1-03	603-095-2660	7-8-03	Adopt	8-1-03
603-059-0055	1-1-03	Adopt	1-1-03	603-095-2700	7-8-03	Adopt	8-1-03
603-059-0070	1-1-03	Adopt	1-1-03	603-095-2720	7-8-03	Adopt	8-1-03
603-059-0080	1-1-03	Adopt	1-1-03	603-095-2740	7-8-03	Adopt	8-1-03
603-059-0100	1-1-03	Adopt	1-1-03	603-095-2760	7-8-03	Adopt	8-1-03
603-073-0070	6-11-03	Amend	7-1-03	603-095-3000	7-8-03	Adopt	8-1-03
603-077-0101	5-15-03	Amend	6-1-03	603-095-3020	7-8-03	Adopt	8-1-03
603-077-0105	5-15-03	Amend	6-1-03	603-095-3040	7-8-03	Adopt	8-1-03
603-077-0110	5-15-03	Amend	6-1-03	603-095-3060	7-8-03	Adopt	8-1-03
603-077-0112	5-15-03	Amend	6-1-03	603-095-3100	7-8-03	Adopt	8-1-03
603-077-0115	5-15-03	Amend	6-1-03	603-095-3120	7-8-03	Adopt	8-1-03
603-077-0125	5-15-03	Amend	6-1-03	603-095-3140	7-8-03	Adopt	8-1-03
603-077-0131	5-15-03	Amend	6-1-03	603-095-3160	7-8-03	Adopt	8-1-03
603-077-0133	5-15-03	Amend	6-1-03	603-105-0010	12-23-02	Adopt	2-1-03
603-077-0137	5-15-03	Amend	6-1-03	611-010-0010	5-12-03	Amend	6-1-03
603-077-0155	5-15-03	Amend	6-1-03	621-001-0005	2-1-03	Adopt	2-1-03
603-077-0165	5-15-03	Amend	6-1-03	621-001-0010	2-1-03	Adopt	2-1-03
603-077-0175	5-15-03	Amend	6-1-03	622-001-0000	1-16-03	Amend	2-1-03
603-077-0180	5-15-03	Amend	6-1-03	622-001-0005	1-16-03	Amend	2-1-03
603-077-0195	5-15-03	Amend	6-1-03	622-001-0010	1-16-03	Repeal	2-1-03
603-082-0010	2-27-03	Adopt	4-1-03	622-010-0000	1-16-03	Amend	2-1-03
603-082-0020	2-27-03	Adopt	4-1-03	622-010-0006	1-16-03	Amend	2-1-03
603-082-0030	2-27-03	Adopt	4-1-03	622-010-0011	1-16-03	Amend	2-1-03
603-082-0040	2-27-03	Adopt	4-1-03	622-020-0001	1-16-03	Amend	2-1-03
603-082-0050	2-27-03	Adopt	4-1-03	622-020-0140	1-16-03	Amend	2-1-03
603-082-0060	2-27-03	Adopt	4-1-03	622-020-0141	1-16-03	Amend	2-1-03
603-082-0070	2-27-03	Adopt	4-1-03	622-020-0142	1-16-03	Amend	2-1-03
603-082-0080	2-27-03	Adopt	4-1-03	622-020-0144	1-16-03	Amend	2-1-03
603-082-0090	2-27-03	Adopt	4-1-03	622-020-0145	1-16-03	Amend	2-1-03
603-082-0100	2-27-03	Adopt	4-1-03	622-020-0147	1-16-03	Amend	2-1-03
603-095-0200	1-7-03	Amend	2-1-03	622-020-0149	1-16-03	Amend	2-1-03
603-095-0220	1-7-03	Amend	2-1-03	622-020-0151	1-16-03	Repeal	2-1-03
603-095-0240	1-7-03	Amend	2-1-03	622-020-0153	1-16-03	Amend	2-1-03
603-095-0280	1-7-03	Amend	2-1-03	622-030-0005	1-16-03	Amend	2-1-03
603-095-0600	1-7-03	Amend	2-1-03	622-030-0010	1-16-03	Amend	2-1-03
603-095-0640	1-7-03	Amend	2-1-03	622-045-0000	1-16-03	Amend	2-1-03
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603-095-2040	1-7-03	Adopt	2-1-03	622-045-0019	1-16-03	Amend	2-1-03
603-095-2060	1-7-03	Adopt	2-1-03	622-050-0000	1-16-03	Repeal	2-1-03
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603-095-2460	1-7-03	Adopt	2-1-03	622-055-0005	1-16-03	Amend	2-1-03
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603-095-2540	7-8-03	Adopt	8-1-03	622-055-0020	1-16-03	Adopt	2-1-03
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622-065-0004	1-16-03	Repeal	2-1-03	635-004-0033	2-21-03	Amend(T)	4-1-03
622-065-0010	1-16-03	Amend	2-1-03	635-004-0033	3-26-03	Amend	5-1-03
622-065-0011	1-16-03	Amend	2-1-03	635-004-0033	7-16-03	Amend(T)	8-1-03
622-065-0012	1-16-03	Repeal	2-1-03	635-004-0050	1-1-03	Amend	2-1-03
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629-605-0100	7-1-03	Amend	8-1-03	635-005-0045	11-25-02	Amend(T)	1-1-03
629-605-0105	7-1-03	Adopt	8-1-03	635-005-0045	12-6-02	Amend(T)	1-1-03
629-606-0200	1-1-03	Amend	1-1-03	635-005-0045(T)	12-6-02	Suspend	1-1-03
629-606-0600	1-1-03	Amend	1-1-03	635-005-0190	3-26-03	Amend	5-1-03
629-623-0000	1-1-03	Adopt	1-1-03	635-006-0232	2-1-03	Amend	3-1-03
629-623-0100	1-1-03	Adopt	1-1-03	635-006-0850	1-1-03	Amend	2-1-03
629-623-0200	1-1-03	Adopt	1-1-03	635-006-0850	3-26-03	Amend	5-1-03
629-623-0250	1-1-03	Adopt	1-1-03	635-006-0850	5-12-03	Amend(T)	6-1-03
629-623-0300	1-1-03	Adopt	1-1-03	635-006-1010	2-10-03	Amend(T)	3-1-03
629-623-0400	1-1-03	Adopt	1-1-03	635-006-1035	2-10-03	Amend(T)	3-1-03
629-623-0450	1-1-03	Adopt	1-1-03	635-006-1085	2-10-03	Amend(T)	3-1-03
629-623-0500	1-1-03	Adopt	1-1-03	635-007-0501	11-22-02	Amend	1-1-03
629-623-0550	1-1-03	Adopt	1-1-03	635-007-0502	11-22-02	Adopt	1-1-03
629-623-0600	1-1-03	Adopt	1-1-03	635-007-0503	11-22-02	Adopt	1-1-03
629-623-0700	1-1-03	Adopt	1-1-03	635-007-0504	11-22-02	Adopt	1-1-03
629-623-0800	1-1-03	Adopt	1-1-03	635-007-0505	11-22-02	Adopt	1-1-03
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629-625-0330	1-1-03	Amend	1-1-03	635-013-0003	5-1-03	Amend	6-1-03
629-625-0600	1-1-03	Amend	1-1-03	635-013-0004	1-1-03	Amend	1-1-03
629-625-0700	1-1-03	Adopt	1-1-03	635-013-0004	3-1-03	Amend(T)	4-1-03
629-630-0100	1-1-03	Amend	1-1-03	635-013-0004	5-1-03	Amend	6-1-03
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629-630-0500	1-1-03	Amend	1-1-03	635-013-0009	5-1-03	Amend	6-1-03
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632-007-0010	6-29-03	Amend	8-1-03	635-017-0080	1-1-03	Amend	1-1-03
632-007-0020	1-1-03	Adopt	2-1-03	635-017-0090	1-1-03	Amend	1-1-03
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635-003-0004	5-1-03	Amend	6-1-03	635-018-0090	4-15-03	Amend(T)	5-1-03
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635-003-0085	5-1-03	Amend	6-1-03	635-019-0090	5-28-03	Amend(T)	7-1-03
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635-023-0090	4-3-03	Amend(T)	5-1-03	635-065-0001	1-17-02	Amend	3-1-03
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635-023-0090	5-1-03	Amend(T)	6-1-03	635-065-0015	1-17-02	Amend	3-1-03
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635-042-0180	5-1-03	Amend(T)	6-1-03	635-073-0070	1-17-02	Amend	3-1-03
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635-190-0010	2-14-03	Amend	3-1-03	690-205-0045	3-14-03	Adopt	4-1-03
635-190-0020	2-14-03	Amend	3-1-03	690-205-0050	3-14-03	Renumber	4-1-03
635-190-0030	2-14-03	Amend	3-1-03	690-205-0055	3-14-03	Adopt	4-1-03
635-412-0020	3-26-03	Adopt	5-1-03	690-205-0060	3-14-03	Renumber	4-1-03
635-412-0025	3-26-03	Adopt	5-1-03	690-205-0070	3-14-03	Am. & Ren.	4-1-03
635-412-0030	3-26-03	Adopt	5-1-03	690-205-0075	3-14-03	Adopt	4-1-03
644-001-0000	1-6-03	Amend	2-1-03	690-205-0080	3-14-03	Renumber	4-1-03
644-001-0005	1-6-03	Repeal	2-1-03	690-205-0085	3-14-03	Adopt	4-1-03
644-001-0010	1-6-03	Repeal	2-1-03	690-205-0095	3-14-03	Adopt	4-1-03
644-010-0015	1-6-03	Amend	2-1-03	690-205-0110	3-14-03	Adopt	4-1-03
647-010-0010	6-1-03	Amend	6-1-03	690-205-0120	3-14-03	Adopt	4-1-03
660-022-0030	3-28-03	Amend(T)	5-1-03	690-240-0010	3-14-03	Amend	4-1-03
660-026-0000	1-17-03	Adopt	3-1-03	690-240-0020	3-14-03	Amend	4-1-03
660-026-0010	1-17-03	Adopt	3-1-03	690-240-0035	3-14-03	Amend	4-1-03
660-026-0020	1-17-03	Adopt	3-1-03	690-240-0055	3-14-03	Amend	4-1-03
660-026-0030	1-17-03	Adopt	3-1-03	690-240-0065	3-14-03	Amend	4-1-03
660-026-0040	1-17-03	Adopt	3-1-03	690-240-0075	3-14-03	Renumber	4-1-03
678-010-0040	12-30-02	Amend	2-1-03	690-240-0080	3-14-03	Renumber	4-1-03
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690-015-0005	5-1-03	Am. & Ren.	6-1-03	690-240-0085	3-14-03	Renumber	4-1-03
690-015-0010	5-1-03	Am. & Ren.	6-1-03	690-240-0090	3-14-03	Am. & Ren.	4-1-03
690-015-0020	5-1-03	Renumber	6-1-03	690-240-0095	3-14-03	Am. & Ren.	4-1-03
690-015-0025	5-1-03	Renumber	6-1-03	690-240-0100	3-14-03	Am. & Ren.	4-1-03
690-015-0030	5-1-03	Am. & Ren.	6-1-03	690-240-0110	3-14-03	Renumber	4-1-03
690-015-0040	5-1-03	Am. & Ren.	6-1-03	690-240-0115	3-14-03	Renumber	4-1-03
690-015-0045	5-1-03	Am. & Ren.	6-1-03	690-240-0118	3-14-03	Am. & Ren.	4-1-03
690-015-0048	5-1-03	Am. & Ren.	6-1-03	690-240-0120	3-14-03	Renumber	4-1-03
690-015-0050	5-1-03	Am. & Ren.	6-1-03	690-240-0126	3-14-03	Am. & Ren.	4-1-03
690-015-0057	5-1-03	Am. & Ren.	6-1-03	690-240-0130	3-14-03	Renumber	4-1-03
690-015-0060	5-1-03	Am. & Ren.	6-1-03	690-240-0131	3-14-03	Renumber	4-1-03
690-015-0070	5-1-03	Am. & Ren.	6-1-03	690-240-0132	3-14-03	Am. & Ren.	4-1-03
690-015-0073	5-1-03	Am. & Ren.	6-1-03	690-240-0135	3-14-03	Am. & Ren.	4-1-03
690-015-0075	5-1-03	Renumber	6-1-03	690-240-0137	3-14-03	Am. & Ren.	4-1-03
690-015-0080	5-1-03	Am. & Ren.	6-1-03	690-240-0139	3-14-03	Renumber	4-1-03
690-015-0085	5-1-03	Am. & Ren.	6-1-03	690-240-0145	3-14-03	Renumber	4-1-03
690-015-0087	5-1-03	Am. & Ren.	6-1-03	690-240-0150	3-14-03	Renumber	4-1-03
690-015-0090	5-1-03	Am. & Ren.	6-1-03	690-240-0155	3-14-03	Am. & Ren.	4-1-03
690-015-0100	5-1-03	Am. & Ren.	6-1-03	690-240-0160	3-14-03	Renumber	4-1-03
690-015-0110	5-1-03	Am. & Ren.	6-1-03	690-240-0165	3-14-03	Renumber	4-1-03
690-015-0120	5-1-03	Renumber	6-1-03	690-240-0170	3-14-03	Renumber	4-1-03
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690-015-0130	5-1-03	Am. & Ren.	6-1-03	690-240-0180	3-14-03	Am. & Ren.	4-1-03
690-015-0140	5-1-03	Am. & Ren.	6-1-03	690-240-0200	3-14-03	Adopt	4-1-03
690-015-0150	5-1-03	Am. & Ren.	6-1-03	690-240-0210	3-14-03	Adopt	4-1-03
690-015-0210	5-1-03	Am. & Ren.	6-1-03	690-240-0220	3-14-03	Adopt	4-1-03
690-015-0240	5-1-03	Am. & Ren.	6-1-03	690-240-0240	3-14-03	Adopt	4-1-03
690-015-0300	5-1-03	Am. & Ren.	6-1-03	690-240-0250	3-14-03	Adopt	4-1-03
690-015-0310	5-1-03	Renumber	6-1-03	690-240-0260	3-14-03	Adopt	4-1-03
690-015-0320	5-1-03	Am. & Ren.	6-1-03	690-240-0270	3-14-03	Adopt	4-1-03
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690-205-0005	3-14-03	Amend	4-1-03	690-380-2000	5-1-03	Adopt	6-1-03
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690-205-0030	3-14-03	Renumber	4-1-03	690-380-2260	5-1-03	Adopt	6-1-03
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690-380-2340	5-1-03	Adopt	6-1-03	735-018-0060	5-14-03	Adopt	6-1-03
690-380-3050	5-1-03	Adopt	6-1-03	735-018-0070	5-14-03	Adopt	6-1-03
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690-380-3410	5-1-03	Adopt	6-1-03	735-018-0090	5-14-03	Adopt	6-1-03
690-380-4000	5-1-03	Adopt	6-1-03	735-018-0100	5-14-03	Adopt	6-1-03
690-380-4010	5-1-03	Adopt	6-1-03	735-018-0110	5-14-03	Adopt	6-1-03
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690-380-5050	5-1-03	Adopt	6-1-03	735-050-0120	1-1-03	Amend	1-1-03
690-380-6050	5-1-03	Adopt	6-1-03	735-062-0000	4-21-03	Amend	6-1-03
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695-020-0041	4-12-03	Adopt(T)	5-1-03	735-062-0060	6-1-03	Amend	6-1-03
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718-010-0000	4-1-03	Amend	5-1-03	735-074-0005	1-1-03	Adopt	1-1-03
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718-010-0050	4-1-03	Repeal	5-1-03	735-074-0045	6-1-03	Adopt	6-1-03
718-010-0055	4-1-03	Repeal	5-1-03	735-074-0050	6-1-03	Adopt	6-1-03
718-010-0060	4-1-03	Repeal	5-1-03	735-074-0060	6-1-03	Adopt	6-1-03
718-010-0070	4-1-03	Repeal	5-1-03	735-074-0070	6-1-03	Adopt	6-1-03
718-010-0080	4-1-03	Repeal	5-1-03	735-074-0080	6-1-03	Adopt	6-1-03
718-010-0085	4-1-03	Amend	5-1-03	735-074-0090	6-1-03	Adopt	6-1-03
718-010-0090	4-1-03	Amend	5-1-03	735-074-0100	6-1-03	Adopt	6-1-03
718-020-0000	4-1-03	Amend	5-1-03	735-074-0110	6-1-03	Adopt	6-1-03
718-020-0010	4-1-03	Amend	5-1-03	735-074-0120	6-1-03	Adopt	6-1-03
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718-020-0050	4-1-03	Amend	5-1-03	735-074-0140	6-1-03	Adopt	6-1-03
718-020-0080	4-1-03	Amend	5-1-03	735-074-0150	6-1-03	Adopt	6-1-03
718-020-0110	4-1-03	Amend	5-1-03	735-074-0160	6-1-03	Adopt	6-1-03
718-020-0120	4-1-03	Amend	5-1-03	735-074-0190	6-1-03	Adopt	6-1-03
718-020-0130	4-1-03	Amend	5-1-03	735-074-0200	6-1-03	Adopt	6-1-03
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735-018-0020	5-14-03	Adopt	6-1-03	735-090-0030	11-18-02	Repeal	1-1-03
735-018-0030	5-14-03	Adopt	6-1-03	735-090-0040	11-18-02	Amend	1-1-03
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736-018-0045	2-27-03	Amend	4-1-03	738-070-0080	12-1-02	Amend	1-1-03
736-018-0045	7-8-03	Amend	8-1-03	738-070-0100	12-1-02	Amend	1-1-03
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736-052-0001	5-16-03	Adopt	7-1-03	738-070-0170	12-1-02	Amend	1-1-03
736-052-0010	5-16-03	Adopt	7-1-03	738-070-0180	12-1-02	Amend	1-1-03
736-052-0020	5-16-03	Adopt	7-1-03	738-070-0210	12-1-02	Amend	1-1-03
736-052-0030	5-16-03	Adopt	7-1-03	738-070-0230	12-1-02	Amend	1-1-03
736-052-0040	5-16-03	Adopt	7-1-03	738-080-0030	12-1-02	Amend	1-1-03
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738-020-0030	12-1-02	Amend	1-1-03	740-100-0070	4-21-03	Amend	6-1-03
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738-035-0045	3-1-03	Adopt	4-1-03	801-001-0010	1-1-03	Amend	2-1-03
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738-035-0055	3-1-03	Adopt	4-1-03	801-001-0030	1-1-03	Adopt	2-1-03
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801-010-0340	1-1-03	Amend	2-1-03	808-004-0440	12-4-02	Amend	1-1-03
801-020-0620	1-1-03	Amend	2-1-03	808-004-0440	2-1-03	Amend	3-1-03
801-020-0690	1-1-03	Amend	2-1-03	808-004-0450	12-4-02	Adopt	1-1-03
801-020-0710	1-1-03	Amend	2-1-03	808-004-0460	12-4-02	Amend	1-1-03
801-020-0720	1-1-03	Amend	2-1-03	808-004-0480	12-4-02	Amend	1-1-03
801-030-0020	1-1-03	Amend	2-1-03	808-004-0500	12-4-02	Amend	1-1-03
801-040-0010	1-1-03	Amend	2-1-03	808-004-0520	12-4-02	Amend	1-1-03
801-040-0030	1-1-03	Amend	2-1-03	808-004-0540	12-4-02	Amend	1-1-03
801-040-0050	1-1-03	Amend	2-1-03	808-004-0550	12-4-02	Amend	1-1-03
806-001-0003	7-1-03	Amend	5-1-03	808-004-0560	12-4-02	Amend	1-1-03
806-010-0080	4-11-03	Amend	5-1-03	808-004-0560	2-1-03	Amend	3-1-03
806-010-0090	1-15-03	Amend	2-1-03	808-004-0580	12-4-02	Am. & Ren.	1-1-03
806-010-0095	12-12-02	Amend	1-1-03	808-004-0590	2-1-03	Adopt	3-1-03
806-010-0105	1-15-03	Amend	2-1-03	808-004-0600	12-4-02	Amend	1-1-03
806-010-0110	4-11-03	Amend	5-1-03	808-005-0020	12-4-02	Amend	1-1-03
806-010-0145	1-15-03	Amend	2-1-03	808-005-0020	6-1-03	Amend	7-1-03
808-001-0000	2-1-03	Amend	3-1-03	808-005-0030	12-4-02	Amend	1-1-03
808-001-0005	2-1-03	Amend	3-1-03	808-008-0020	2-1-03	Amend	3-1-03
808-001-0008	6-1-03	Adopt	7-1-03	808-008-0030	2-1-03	Adopt	3-1-03
808-001-0020	12-4-02	Amend	1-1-03	808-008-0040	2-1-03	Amend	3-1-03
808-001-0020	2-1-03	Amend	3-1-03	808-008-0060	2-1-03	Amend	3-1-03
808-001-0030	12-4-02	Amend	1-1-03	808-008-0080	2-1-03	Amend	3-1-03
808-001-0040	2-1-03	Repeal	3-1-03	808-008-0085	2-1-03	Adopt	3-1-03
808-002-0220	12-4-02	Amend	1-1-03	808-008-0090	2-1-03	Adopt	3-1-03
808-002-0290	12-4-02	Adopt	1-1-03	808-008-0100	2-1-03	Amend	3-1-03
808-002-0620	6-1-03	Amend	7-1-03	808-008-0110	2-1-03	Amend	3-1-03
808-002-0670	12-4-02	Amend	1-1-03	808-008-0120	2-1-03	Amend	3-1-03
808-002-0670	12-4-02	Renumber	1-1-03	808-008-0140	2-1-03	Amend	3-1-03
808-002-0680	12-4-02	Amend	1-1-03	808-008-0160	2-1-03	Amend	3-1-03
808-003-0015	2-1-03	Amend	3-1-03	808-008-0180	2-1-03	Amend	3-1-03
808-003-0020	2-1-03	Amend	3-1-03	808-008-0220	2-1-03	Amend	3-1-03
808-003-0025	12-4-02	Amend	1-1-03	808-008-0300	2-1-03	Amend	3-1-03
808-003-0025	6-1-03	Amend	7-1-03	808-008-0400	2-1-03	Amend	3-1-03
808-003-0035	2-1-03	Amend	3-1-03	808-008-0420	2-1-03	Amend	3-1-03
808-003-0040	2-1-03	Amend	3-1-03	808-008-0425	2-1-03	Adopt	3-1-03
808-003-0045	2-1-03	Amend	3-1-03	808-008-0430	2-1-03	Adopt	3-1-03
808-003-0045	6-1-03	Amend	7-1-03	808-008-0440	2-1-03	Amend	3-1-03
808-003-0050	6-1-03	Amend	7-1-03	808-008-0460	2-1-03	Amend	3-1-03
808-003-0055	12-4-02	Amend	1-1-03	808-008-0480	2-1-03	Amend	3-1-03
808-003-0060	2-1-03	Amend	3-1-03	808-009-0020	12-4-02	Amend	1-1-03
808-003-0065	2-1-03	Amend	3-1-03	808-009-0020	2-1-03	Amend	3-1-03
808-003-0070	12-4-02	Amend	1-1-03	808-009-0070	12-4-02	Amend	1-1-03
808-003-0075	12-4-02	Amend	1-1-03	808-009-0100	12-4-02	Amend	1-1-03
808-003-0081	12-4-02	Adopt	1-1-03	808-009-0120	12-4-02	Amend	1-1-03
808-003-0085	12-4-02	Adopt	1-1-03	808-009-0140	12-18-02	Amend	2-1-03
808-003-0095	2-1-03	Amend	3-1-03	808-009-0160	12-4-02	Amend	1-1-03
808-003-0100	12-4-02	Amend	1-1-03	808-009-0160	2-1-03	Amend	3-1-03
808-003-0105	2-1-03	Amend	3-1-03	808-009-0200	2-1-03	Adopt	3-1-03
808-003-0130	2-1-03	Amend	3-1-03	808-009-0220	12-4-02	Amend	1-1-03
808-004-0120	12-4-02	Adopt	1-1-03	808-009-0400	12-4-02	Amend	1-1-03
808-004-0180	12-4-02	Amend	1-1-03	808-009-0400	2-1-03	Amend	3-1-03

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808-009-0420	2-1-03	Amend	3-1-03	812-009-0160	11-20-02	Amend	1-1-03
808-009-0430	12-4-02	Adopt	1-1-03	812-009-0400	3-4-03	Amend	4-1-03
808-009-0440	12-4-02	Amend	1-1-03	812-009-0440	3-4-03	Amend	4-1-03
809-010-0025	7-1-03	Amend	7-1-03	812-010-0100	11-20-02	Amend	1-1-03
809-050-0030	12-2-02	Suspend	1-1-03	812-010-0100(T)	11-20-02	Repeal	1-1-03
809-050-0030	4-4-03	Repeal	5-1-03	812-010-0110	11-20-02	Amend	1-1-03
812-001-0020	12-23-02	Amend	2-1-03	812-010-0110(T)	11-20-02	Repeal	1-1-03
812-001-0020	3-11-03	Amend(T)	4-1-03	812-010-0120	11-20-02	Amend	1-1-03
812-001-0020	6-3-03	Amend	7-1-03	812-010-0120(T)	11-20-02	Repeal	1-1-03
812-001-0020(T)	6-3-03	Repeal	7-1-03	812-010-0220	11-20-02	Amend	1-1-03
812-002-0100	6-3-03	Amend	7-1-03	812-010-0420	11-20-02	Amend	1-1-03
812-002-0260	6-3-03	Amend	7-1-03	812-010-0440	11-20-02	Amend	1-1-03
812-002-0280	6-3-03	Amend	7-1-03	812-010-0440(T)	11-20-02	Repeal	1-1-03
812-002-0340	6-3-03	Amend	7-1-03	813-008-0005	12-5-02	Amend	1-1-03
812-002-0420	6-3-03	Amend	7-1-03	813-008-0010	12-5-02	Amend	1-1-03
812-002-0420	7-9-03	Amend(T)	8-1-03	813-008-0015	12-5-02	Amend	1-1-03
812-002-0480	3-4-03	Amend	4-1-03	813-008-0020	12-5-02	Amend	1-1-03
812-002-0640	6-3-03	Amend	7-1-03	813-008-0025	12-5-02	Amend	1-1-03
812-003-0000	6-3-03	Amend	7-1-03	813-008-0030	12-5-02	Amend	1-1-03
812-003-0000	10-1-03	Amend	7-1-03	813-008-0040	12-5-02	Adopt	1-1-03
812-003-0002	6-3-03	Amend	7-1-03	813-047-0001	11-20-02	Amend(T)	1-1-03
812-003-0020	6-3-03	Amend	7-1-03	813-047-0001	5-16-03	Amend	7-1-03
812-003-0025	6-3-03	Amend	7-1-03	813-047-0001(T)	5-16-03	Repeal	7-1-03
812-003-0050	6-3-03	Amend	7-1-03	813-047-0005	11-20-02	Amend(T)	1-1-03
812-004-0001	3-4-03	Amend	4-1-03	813-047-0005	5-16-03	Amend	7-1-03
812-004-0300	3-4-03	Amend	4-1-03	813-047-0005(T)	5-16-03	Repeal	7-1-03
812-004-0320	3-4-03	Amend	4-1-03	813-047-0006	11-20-02	Adopt(T)	1-1-03
812-004-0325	3-4-03	Adopt	4-1-03	813-047-0006	5-16-03	Adopt	7-1-03
812-004-0340	3-4-03	Amend	4-1-03	813-047-0006(T)	5-16-03	Repeal	7-1-03
812-004-0350	3-4-03	Adopt	4-1-03	813-047-0010	11-20-02	Amend(T)	1-1-03
812-004-0360	11-20-02	Amend	1-1-03	813-047-0010	5-16-03	Amend	7-1-03
812-004-0400	6-3-03	Amend	7-1-03	813-047-0010(T)	5-16-03	Repeal	7-1-03
812-004-0520	3-4-03	Amend	4-1-03	813-047-0015	11-20-02	Amend(T)	1-1-03
812-004-0535	3-4-03	Adopt	4-1-03	813-047-0015	5-16-03	Amend	7-1-03
812-004-0540	11-20-02	Amend	1-1-03	813-047-0015(T)	5-16-03	Repeal	7-1-03
812-004-0540	3-4-03	Amend	4-1-03	813-047-0020	11-20-02	Amend(T)	1-1-03
812-004-0550	3-4-03	Amend	4-1-03	813-047-0020	5-16-03	Amend	7-1-03
812-004-0560	11-20-02	Amend	1-1-03	813-047-0020(T)	5-16-03	Repeal	7-1-03
812-004-0560	3-4-03	Amend	4-1-03	813-047-0025	11-20-02	Amend(T)	1-1-03
812-004-0560(T)	11-20-02	Repeal	1-1-03	813-047-0025	5-16-03	Amend	7-1-03
812-006-0012	3-4-03	Amend	4-1-03	813-047-0025(T)	5-16-03	Repeal	7-1-03
812-006-0030	6-3-03	Amend	7-1-03	813-140-0000	11-25-02	Adopt	1-1-03
812-006-0050	3-4-03	Amend	4-1-03	813-140-0000(T)	11-25-02	Repeal	1-1-03
812-008-0050	6-3-03	Amend	7-1-03	813-140-0010	11-25-02	Adopt	1-1-03
812-008-0060	6-3-03	Amend	7-1-03	813-140-0010(T)	11-25-02	Repeal	1-1-03
812-008-0070	3-4-03	Amend	4-1-03	813-140-0020	11-25-02	Adopt	1-1-03
812-008-0072	11-20-02	Amend	1-1-03	813-140-0020(T)	11-25-02	Repeal	1-1-03
812-008-0072	6-3-03	Amend	7-1-03	813-140-0030	11-25-02	Adopt	1-1-03
812-008-0074	6-3-03	Amend	7-1-03	813-140-0030(T)	11-25-02	Repeal	1-1-03
812-008-0110	1-14-03	Amend(T)	2-1-03	813-140-0040	11-25-02	Adopt	1-1-03
812-008-0110	6-3-03	Amend	7-1-03	813-140-0040(T)	11-25-02	Repeal	1-1-03
812-008-0110(T)	6-3-03	Repeal	7-1-03	813-140-0050	11-25-02	Adopt	1-1-03
812-009-0020	11-20-02	Amend	1-1-03	813-140-0050(T)	11-25-02	Repeal	1-1-03
812-009-0070	3-4-03	Amend	4-1-03	813-140-0060	11-25-02	Adopt	1-1-03
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813-140-0080	11-25-02	Adopt	1-1-03	813-205-0070(T)	12-13-02	Repeal	1-1-03
813-140-0080(T)	11-25-02	Repeal	1-1-03	813-205-0080	12-13-02	Adopt	1-1-03
813-140-0090	11-25-02	Adopt	1-1-03	813-205-0080(T)	12-13-02	Repeal	1-1-03
813-140-0090(T)	11-25-02	Repeal	1-1-03	813-205-0090	12-13-02	Adopt	1-1-03
813-140-0100	11-25-02	Adopt	1-1-03	813-205-0090(T)	12-13-02	Repeal	1-1-03
813-140-0100(T)	11-25-02	Repeal	1-1-03	813-220-0000	5-12-03	Am. & Ren.	6-1-03
813-140-0110	11-25-02	Adopt	1-1-03	813-220-0001	5-12-03	Adopt	6-1-03
813-140-0110(T)	11-25-02	Repeal	1-1-03	813-220-0010	5-12-03	Amend	6-1-03
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813-200-0001	5-15-03	Adopt	6-1-03	813-220-0040	5-12-03	Repeal	6-1-03
813-200-0001	5-15-03	Repeal	6-1-03	813-220-0050	5-12-03	Amend	6-1-03
813-200-0005	5-15-03	Repeal	6-1-03	813-220-0060	5-12-03	Amend	6-1-03
813-200-0010	11-20-02	Amend(T)	1-1-03	813-220-0070	5-12-03	Adopt	6-1-03
813-200-0010	5-15-03	Amend	6-1-03	813-250-0000	5-12-03	Amend	6-1-03
813-200-0010	5-15-03	Repeal	6-1-03	813-250-0010	5-12-03	Amend	6-1-03
813-200-0020	11-20-02	Amend(T)	1-1-03	813-250-0020	5-12-03	Amend	6-1-03
813-200-0020	5-15-03	Amend	6-1-03	813-250-0030	5-12-03	Amend	6-1-03
813-200-0020	5-15-03	Repeal	6-1-03	813-250-0040	5-12-03	Amend	6-1-03
813-200-0030	11-20-02	Amend(T)	1-1-03	813-250-0050	5-12-03	Adopt	6-1-03
813-200-0030	5-15-03	Amend	6-1-03	813-280-0000	12-13-02	Adopt	1-1-03
813-200-0030	5-15-03	Repeal	6-1-03	813-280-0000(T)	12-13-02	Repeal	1-1-03
813-200-0040	11-20-02	Amend(T)	1-1-03	813-280-0010	12-13-02	Adopt	1-1-03
813-200-0040	5-15-03	Amend	6-1-03	813-280-0010(T)	12-13-02	Repeal	1-1-03
813-200-0040	5-15-03	Repeal	6-1-03	813-280-0020	12-13-02	Adopt	1-1-03
813-200-0050	11-20-02	Amend(T)	1-1-03	813-280-0020(T)	12-13-02	Repeal	1-1-03
813-200-0050	5-15-03	Amend	6-1-03	813-280-0030	12-13-02	Adopt	1-1-03
813-200-0050	5-15-03	Repeal	6-1-03	813-280-0030(T)	12-13-02	Repeal	1-1-03
813-200-0060	11-20-02	Amend(T)	1-1-03	813-280-0040	12-13-02	Adopt	1-1-03
813-200-0060	5-15-03	Amend	6-1-03	813-280-0040(T)	12-13-02	Repeal	1-1-03
813-200-0060	5-15-03	Repeal	6-1-03	813-280-0050	12-13-02	Adopt	1-1-03
813-202-0005	5-15-03	Adopt	6-1-03	813-280-0050(T)	12-13-02	Repeal	1-1-03
813-202-0010	5-15-03	Adopt	6-1-03	813-280-0060	12-13-02	Adopt	1-1-03
813-202-0015	5-15-03	Adopt	6-1-03	813-280-0060(T)	12-13-02	Repeal	1-1-03
813-202-0020	5-15-03	Adopt	6-1-03	813-280-0070	12-13-02	Adopt	1-1-03
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813-202-0040	5-15-03	Adopt	6-1-03	813-300-0005	4-4-03	Adopt	5-1-03
813-202-0050	5-15-03	Adopt	6-1-03	813-300-0005(T)	4-4-03	Repeal	5-1-03
813-202-0060	5-15-03	Adopt	6-1-03	813-300-0010	4-4-03	Adopt	5-1-03
813-205-0000	12-13-02	Adopt	1-1-03	813-300-0010(T)	4-4-03	Repeal	5-1-03
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813-205-0010(T)	12-13-02	Repeal	1-1-03	813-300-0030	4-4-03	Adopt	5-1-03
813-205-0020	12-13-02	Adopt	1-1-03	813-300-0030(T)	4-4-03	Repeal	5-1-03
813-205-0020(T)	12-13-02	Repeal	1-1-03	813-300-0040	4-4-03	Adopt	5-1-03
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813-205-0030(T)	12-13-02	Repeal	1-1-03	813-300-0050	4-4-03	Adopt	5-1-03
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813-205-0050	12-13-02	Adopt	1-1-03	813-300-0060(T)	4-4-03	Repeal	5-1-03
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813-300-0090(T)	4-4-03	Repeal	5-1-03	833-020-0130	4-28-03	Repeal	6-1-03
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813-300-0100(T)	4-4-03	Repeal	5-1-03	833-025-0001	4-28-03	Amend	6-1-03
813-300-0110	4-4-03	Adopt	5-1-03	833-025-0001(T)	4-28-03	Repeal	6-1-03
813-300-0110(T)	4-4-03	Repeal	5-1-03	833-025-0005	12-16-02	Amend(T)	1-1-03
813-300-0120	4-4-03	Adopt	5-1-03	833-025-0005	4-28-03	Amend	6-1-03
813-300-0120(T)	4-4-03	Repeal	5-1-03	833-025-0005(T)	4-28-03	Repeal	6-1-03
813-300-0130	4-4-03	Adopt	5-1-03	833-025-0006	12-16-02	Amend(T)	1-1-03
813-300-0130(T)	4-4-03	Repeal	5-1-03	833-025-0006	4-28-03	Amend	6-1-03
813-300-0140	4-4-03	Adopt	5-1-03	833-025-0006(T)	4-28-03	Repeal	6-1-03
813-300-0140(T)	4-4-03	Repeal	5-1-03	833-040-0001	12-16-02	Amend(T)	1-1-03
813-300-0150	4-4-03	Adopt	5-1-03	833-040-0001	4-28-03	Amend	6-1-03
813-300-0150(T)	4-4-03	Repeal	5-1-03	833-040-0001(T)	4-28-03	Repeal	6-1-03
813-300-0160	4-4-03	Adopt	5-1-03	833-040-0010	12-16-02	Amend(T)	1-1-03
813-300-0160(T)	4-4-03	Repeal	5-1-03	833-040-0010	4-28-03	Amend	6-1-03
813-300-0170	4-4-03	Adopt	5-1-03	833-040-0010(T)	4-28-03	Repeal	6-1-03
813-300-0170(T)	4-4-03	Repeal	5-1-03	836-009-0007	7-1-03	Amend(T)	8-1-03
813-300-0180	4-4-03	Adopt	5-1-03	836-011-0100	11-27-02	Amend	1-1-03
813-300-0180(T)	4-4-03	Repeal	5-1-03	836-011-0110	11-27-02	Amend	1-1-03
813-350-0005	5-1-03	Adopt	6-1-03	836-011-0120	11-27-02	Amend	1-1-03
813-350-0010	5-1-03	Adopt	6-1-03	836-011-0130	11-27-02	Amend	1-1-03
813-350-0020	5-1-03	Adopt	6-1-03	836-011-0140	11-27-02	Amend	1-1-03
813-350-0030	5-1-03	Adopt	6-1-03	836-011-0150	11-27-02	Amend	1-1-03
813-350-0040	5-1-03	Adopt	6-1-03	836-011-0160	11-27-02	Amend	1-1-03
813-350-0050	5-1-03	Adopt	6-1-03	836-011-0170	11-27-02	Amend	1-1-03
813-350-0060	5-1-03	Adopt	6-1-03	836-011-0180	11-27-02	Amend	1-1-03
813-350-0070	5-1-03	Adopt	6-1-03	836-011-0190	11-27-02	Amend	1-1-03
818-021-0011	4-18-03	Amend	6-1-03	836-011-0200	11-27-02	Amend	1-1-03
818-021-0025	4-18-03	Amend	6-1-03	836-011-0210	11-27-02	Amend	1-1-03
818-042-0050	7-18-03	Amend	8-1-03	836-011-0220	11-27-02	Amend	1-1-03
818-042-0060	7-18-03	Amend	8-1-03	836-011-0230	11-27-02	Amend	1-1-03
818-042-0120	7-18-03	Amend	8-1-03	836-011-0500	11-27-02	Adopt	1-1-03
818-042-0130	7-18-03	Amend	8-1-03	836-011-0505	11-27-02	Adopt	1-1-03
820-010-0200	1-28-03	Amend	3-1-03	836-011-0510	11-27-02	Adopt	1-1-03
820-010-0202	3-14-03	Adopt	4-1-03	836-011-0515	11-27-02	Adopt	1-1-03
820-010-0305	12-3-02	Amend	1-1-03	836-011-0520	11-27-02	Adopt	1-1-03
820-010-0325	7-1-03	Amend	6-1-03	836-011-0525	11-27-02	Adopt	1-1-03
820-010-0500	5-15-03	Amend	6-1-03	836-011-0530	11-27-02	Adopt	1-1-03
820-010-0635	1-28-03	Amend	3-1-03	836-011-0535	11-27-02	Adopt	1-1-03
820-040-0040	1-28-03	Adopt	3-1-03	836-011-0540	11-27-02	Adopt	1-1-03
833-020-0015	12-16-02	Amend(T)	1-1-03	836-011-0545	11-27-02	Adopt	1-1-03
833-020-0015	4-28-03	Amend	6-1-03	836-011-0550	11-27-02	Adopt	1-1-03
833-020-0015(T)	4-28-03	Repeal	6-1-03	836-012-0000	11-27-02	Amend	1-1-03
833-020-0040	12-16-02	Amend(T)	1-1-03	836-012-0011	11-27-02	Amend	1-1-03
833-020-0040	4-28-03	Amend	6-1-03	836-012-0021	11-27-02	Amend	1-1-03
833-020-0040(T)	4-28-03	Repeal	6-1-03	836-012-0031	11-27-02	Amend	1-1-03
833-020-0060	12-16-02	Amend(T)	1-1-03	836-012-0041	11-27-02	Amend	1-1-03
833-020-0060	4-28-03	Amend	6-1-03	836-012-0051	11-27-02	Amend	1-1-03
833-020-0060(T)	4-28-03	Repeal	6-1-03	836-012-0060	11-27-02	Amend	1-1-03
833-020-0090	12-16-02	Amend(T)	1-1-03	836-012-0070	11-27-02	Amend	1-1-03
833-020-0090	4-28-03	Amend	6-1-03	836-012-0080	11-27-02	Amend	1-1-03
833-020-0090(T)	4-28-03	Repeal	6-1-03	836-012-0090	11-27-02	Amend	1-1-03
833-020-0111	12-16-02	Amend(T)	1-1-03	836-012-0100	11-27-02	Amend	1-1-03
833-020-0111	4-28-03	Amend	6-1-03	836-020-0900	11-27-02	Am. & Ren.	1-1-03

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836-043-0044	1-17-03	Amend	3-1-03	845-003-0670	7-1-03	Amend	8-1-03
836-052-0142	12-13-02	Amend	1-1-03	845-004-0005	2-1-03	Amend	3-1-03
836-053-0005	7-1-03	Adopt	5-1-03	845-004-0100	5-1-03	Amend	6-1-03
836-053-0021	11-27-02	Amend	1-1-03	845-005-0327	4-1-03	Adopt	5-1-03
836-053-0430	11-27-02	Amend	1-1-03	845-005-0415	5-20-03	Amend(T)	7-1-03
836-053-0440	11-27-02	Amend	1-1-03	845-005-0422	5-20-03	Amend(T)	7-1-03
836-054-0300	11-27-02	Amend	1-1-03	845-005-0423	5-20-03	Amend(T)	7-1-03
836-071-0180	7-1-03	Amend(T)	8-1-03	845-005-0427	5-20-03	Amend(T)	7-1-03
836-080-0425	6-1-03	Adopt	2-1-03	845-006-0345	4-1-03	Amend	5-1-03
836-080-0430	6-1-03	Adopt	2-1-03	845-006-0390	5-20-03	Amend(T)	7-1-03
836-080-0432	6-1-03	Adopt	2-1-03	845-006-0395	5-20-03	Amend(T)	7-1-03
836-080-0435	6-1-03	Adopt	2-1-03	845-006-0396	5-20-03	Amend(T)	7-1-03
836-080-0440	6-1-03	Adopt	2-1-03	845-006-0398	5-20-03	Amend(T)	7-1-03
836-081-0101	3-17-03	Adopt	5-1-03	845-006-0430	5-20-03	Amend(T)	7-1-03
836-081-0106	3-17-03	Adopt	5-1-03	845-006-0433	5-20-03	Amend(T)	7-1-03
836-081-0111	3-17-03	Adopt	5-1-03	845-006-0434	5-20-03	Amend(T)	7-1-03
836-081-0116	3-17-03	Adopt	5-1-03	845-006-0450	1-1-03	Amend	2-1-03
836-081-0121	3-17-03	Adopt	5-1-03	845-006-0450	5-20-03	Amend(T)	7-1-03
836-081-0126	3-17-03	Adopt	5-1-03	845-007-0015	7-1-03	Amend	8-1-03
837-012-0021	2-10-03	Repeal	3-1-03	845-007-0020	7-1-03	Amend	8-1-03
837-012-0610	2-10-03	Amend	3-1-03	845-009-0005	7-1-03	Amend	8-1-03
837-012-0615	2-10-03	Amend	3-1-03	845-009-0010	7-1-03	Amend	8-1-03
837-012-0630	2-10-03	Amend	3-1-03	845-009-0015	7-1-03	Amend	8-1-03
837-012-0635	2-10-03	Amend	3-1-03	845-009-0085	7-1-03	Amend	8-1-03
837-012-0645	2-10-03	Amend	3-1-03	845-009-0105	7-1-03	Amend	8-1-03
837-012-0720	2-10-03	Amend	3-1-03	845-009-0140	4-1-03	Amend	5-1-03
837-012-0740	2-10-03	Amend	3-1-03	845-010-0166	5-1-03	Amend	6-1-03
837-012-0760	2-10-03	Amend	3-1-03	845-010-0210	5-1-03	Amend	6-1-03
837-012-0780	2-10-03	Amend	3-1-03	845-010-0915	6-1-03	Amend	7-1-03
837-012-0790	2-10-03	Amend	3-1-03	845-013-0030	5-1-03	Amend	6-1-03
837-012-0810	2-10-03	Amend	3-1-03	845-013-0070	7-1-03	Amend	8-1-03
837-012-0820	2-10-03	Amend	3-1-03	845-013-0075	7-1-03	Amend	8-1-03
837-012-0830	2-10-03	Amend	3-1-03	845-015-0007	2-1-03	Am. & Ren.	3-1-03
837-012-0835	2-10-03	Amend	3-1-03	845-015-0010	2-1-03	Am. & Ren.	3-1-03
837-012-0860	2-10-03	Amend	3-1-03	845-015-0012	2-1-03	Am. & Ren.	3-1-03
837-012-0865	2-10-03	Amend	3-1-03	845-015-0020	2-1-03	Am. & Ren.	3-1-03
837-012-0940	2-10-03	Amend	3-1-03	845-015-0022	2-1-03	Am. & Ren.	3-1-03
837-020-0040	12-6-02	Amend	1-1-03	845-015-0025	2-1-03	Am. & Ren.	3-1-03
837-020-0050	12-6-02	Amend	1-1-03	845-015-0027	2-1-03	Am. & Ren.	3-1-03
837-020-0060	12-6-02	Amend	1-1-03	845-015-0028	2-1-03	Am. & Ren.	3-1-03
837-020-0080	12-6-02	Amend	1-1-03	845-015-0030	2-1-03	Am. & Ren.	3-1-03
837-020-0125	12-6-02	Amend	1-1-03	845-015-0032	2-1-03	Am. & Ren.	3-1-03
837-061-0015	7-3-03	Amend	8-1-03	845-015-0035	2-1-03	Renumber	3-1-03
837-110-0007	2-1-03	Adopt	2-1-03	845-015-0045	2-1-03	Renumber	3-1-03
837-110-0060	2-1-03	Amend	2-1-03	845-015-0050	2-1-03	Renumber	3-1-03
837-110-0070	2-1-03	Amend	2-1-03	845-015-0055	2-1-03	Am. & Ren.	3-1-03
837-110-0075	2-1-03	Adopt	2-1-03	845-015-0060	2-1-03	Renumber	3-1-03
837-110-0140	2-1-03	Amend	2-1-03	845-015-0065	2-1-03	Am. & Ren.	3-1-03
837-110-0150	2-1-03	Amend	2-1-03	845-015-0070	2-1-03	Am. & Ren.	3-1-03
837-110-0155	2-1-03	Adopt	2-1-03	845-015-0075	2-1-03	Am. & Ren.	3-1-03
839-016-0700	1-1-03	Amend	2-1-03	845-015-0078	2-1-03	Am. & Ren.	3-1-03
839-016-0700	2-14-03	Amend	3-1-03	845-015-0080	2-1-03	Am. & Ren.	3-1-03
839-016-0700	4-1-03	Amend(T)	5-1-03	845-015-0085	2-1-03	Repeal	3-1-03
839-016-0700	7-1-03	Amend	8-1-03	845-015-0086	2-1-03	Am. & Ren.	3-1-03
839-016-0750	3-28-03	Amend(T)	5-1-03	845-015-0090	2-1-03	Renumber	3-1-03

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845-015-0092	2-1-03	Am. & Ren.	3-1-03	851-050-0131	12-17-02	Amend	2-1-03
845-015-0093	2-1-03	Renumber	3-1-03	851-050-0131	3-6-03	Amend	4-1-03
845-015-0095	2-1-03	Renumber	3-1-03	851-050-0131	4-23-03	Amend	6-1-03
845-015-0096	2-1-03	Renumber	3-1-03	851-050-0131	7-7-03	Amend	8-1-03
845-015-0100	2-1-03	Renumber	3-1-03	851-063-0060	4-23-03	Amend	6-1-03
845-016-0020	5-1-03	Amend	6-1-03	852-005-0005	7-1-03	Amend	7-1-03
847-001-0010	1-27-03	Amend	3-1-03	852-010-0025	7-1-03	Amend	7-1-03
847-005-0005	4-24-03	Amend	6-1-03	852-010-0027	12-18-02	Amend	2-1-03
847-008-0005	1-27-03	Amend	3-1-03	852-010-0051	12-18-02	Amend	2-1-03
847-010-0051	1-27-03	Amend	3-1-03	852-010-0080	7-1-03	Amend	7-1-03
847-010-0052	1-27-03	Amend	3-1-03	852-050-0005	12-18-02	Amend	2-1-03
847-010-0056	1-27-03	Amend	3-1-03	852-050-0005	7-1-03	Amend	7-1-03
847-010-0070	5-2-03	Amend	6-1-03	852-050-0006	7-1-03	Amend	7-1-03
847-020-0170	1-27-03	Amend	3-1-03	852-050-0012	7-1-03	Amend	7-1-03
847-020-0170	5-2-03	Amend	6-1-03	852-050-0014	7-1-03	Amend	7-1-03
847-020-0180	5-2-03	Amend	6-1-03	852-050-0018	12-18-02	Adopt	2-1-03
847-020-0190	7-15-03	Amend	8-1-03	852-070-0040	7-1-03	Amend	7-1-03
847-030-0041	7-15-03	Amend	8-1-03	855-041-0065	1-14-03	Amend	2-1-03
847-035-0030	1-27-03	Amend	3-1-03	855-041-0205	3-1-03	Amend	2-1-03
847-035-0030	7-15-03	Amend	8-1-03	855-080-0021	1-14-03	Amend	2-1-03
847-050-0005	7-15-03	Amend	8-1-03	855-110-0005	1-14-03	Amend	2-1-03
847-050-0010	7-15-03	Amend	8-1-03	856-010-0010	2-26-03	Amend	4-1-03
847-050-0020	1-27-03	Amend	3-1-03	856-010-0028	3-21-03	Adopt	5-1-03
847-050-0023	7-15-03	Amend	8-1-03	856-030-0000	5-23-03	Amend	7-1-03
847-050-0025	7-15-03	Amend	8-1-03	856-030-0001	5-23-03	Adopt	7-1-03
847-050-0027	7-15-03	Amend	8-1-03	856-030-0002	5-23-03	Adopt	7-1-03
847-050-0029	1-27-03	Amend	3-1-03	856-030-0010	5-23-03	Amend	7-1-03
847-050-0042	1-27-03	Amend	3-1-03	856-030-0015	5-23-03	Amend	7-1-03
847-080-0022	1-27-03	Amend	3-1-03	856-030-0020	5-23-03	Amend	7-1-03
848-010-0105	7-1-03	Amend	8-1-03	860-011-0010	7-3-03	Amend	8-1-03
848-030-0000	2-6-03	Amend	3-1-03	860-012-0010	12-9-02	Amend	1-1-03
850-010-0055	12-6-02	Adopt(T)	1-1-03	860-012-0035	3-11-03	Amend	4-1-03
850-010-0055	4-11-03	Adopt	5-1-03	860-012-0040	4-28-03	Adopt	6-1-03
850-010-0195	2-14-03	Adopt	3-1-03	860-014-0023	12-6-02	Adopt(T)	1-1-03
850-010-0210	12-10-02	Amend	1-1-03	860-014-0023	3-11-03	Adopt	4-1-03
850-010-0225	6-9-03	Amend	7-1-03	860-016-0015	6-10-03	Adopt	7-1-03
850-010-0226	6-9-03	Amend	7-1-03	860-016-0050	12-9-02	Amend	1-1-03
851-001-0020	12-17-02	Adopt	2-1-03	860-017-0050	7-9-03	Adopt(T)	8-1-03
851-002-0010	7-7-03	Amend	8-1-03	860-017-0100	7-9-03	Adopt(T)	8-1-03
851-002-0040	7-7-03	Amend	8-1-03	860-021-0015	7-3-03	Amend	8-1-03
851-021-0010	7-7-03	Amend	8-1-03	860-021-0036	4-28-03	Amend	6-1-03
851-021-0040	7-7-03	Amend	8-1-03	860-021-0037	4-28-03	Adopt	6-1-03
851-021-0120	4-23-03	Amend	6-1-03	860-021-0335	12-9-02	Amend	1-1-03
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851-031-0030	3-6-03	Amend	4-1-03	860-032-0005	3-11-03	Amend	4-1-03
851-031-0040	3-6-03	Amend	4-1-03	860-032-0020	2-12-03	Amend	3-1-03
851-031-0045	3-6-03	Amend	4-1-03	860-032-0095	4-28-03	Amend	6-1-03
851-031-0060	3-6-03	Amend	4-1-03	860-032-0097	4-28-03	Adopt	6-1-03
851-031-0070	3-6-03	Amend	4-1-03	860-032-0610	12-9-02	Adopt	1-1-03
851-031-0080	3-6-03	Amend	4-1-03	860-032-0620	12-9-02	Adopt	1-1-03
851-031-0085	3-6-03	Adopt	4-1-03	860-032-0630	12-9-02	Adopt	1-1-03
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860-032-0660	12-9-02	Adopt	1-1-03	918-090-0900	1-1-03	Repeal	2-1-03
860-032-0670	4-28-03	Adopt	6-1-03	918-225-0240	3-14-03	Amend	4-1-03
860-034-0060	7-3-03	Amend	8-1-03	918-225-0315	3-14-03	Adopt	4-1-03
860-034-0095	4-28-03	Amend	6-1-03	918-225-0560	3-14-03	Amend	4-1-03
860-034-0097	4-28-03	Adopt	6-1-03	918-225-0562	7-1-03	Adopt	4-1-03
860-034-0250	12-9-02	Amend	1-1-03	918-225-0610	1-1-03	Amend	2-1-03
860-034-0310	7-3-03	Amend	8-1-03	918-225-0610(T)	1-1-03	Repeal	2-1-03
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860-034-0740	12-20-02	Amend	2-1-03	918-225-0665	3-14-03	Adopt	4-1-03
860-036-0080	12-9-02	Amend	1-1-03	918-225-0670	2-3-03	Amend	3-1-03
860-036-0250	5-15-03	Adopt	6-1-03	918-225-0690	7-1-03	Repeal	4-1-03
860-036-0365	5-15-03	Adopt	6-1-03	918-225-0691	7-1-03	Adopt	4-1-03
860-036-0716	5-15-03	Adopt	6-1-03	918-225-0691	7-1-03	Amend	8-1-03
860-036-0756	5-15-03	Adopt	6-1-03	918-225-0700	7-1-03	Amend	4-1-03
860-037-0075	12-9-02	Amend	1-1-03	918-225-0720	7-1-03	Amend	4-1-03
860-038-0420	7-3-03	Amend	8-1-03	918-225-0740	7-1-03	Amend	4-1-03
860-038-0445	7-3-03	Amend	8-1-03	918-225-0760	1-1-03	Repeal	2-1-03
863-001-0005	2-28-03	Amend(T)	4-1-03	918-225-0900	2-3-03	Adopt	3-1-03
863-015-0010	2-28-03	Amend(T)	4-1-03	918-225-0910	2-3-03	Adopt	3-1-03
863-015-0025	2-28-03	Amend(T)	4-1-03	918-225-0920	2-3-03	Adopt	3-1-03
863-015-0030	2-28-03	Amend(T)	4-1-03	918-225-0930	2-3-03	Adopt	3-1-03
863-015-0040	2-28-03	Amend(T)	4-1-03	918-225-0940	2-3-03	Adopt	3-1-03
863-015-0045	2-28-03	Amend(T)	4-1-03	918-225-0950	2-3-03	Adopt	3-1-03
863-015-0055	2-28-03	Amend(T)	4-1-03	918-225-0960	2-3-03	Adopt	3-1-03
863-015-0065	2-28-03	Amend(T)	4-1-03	918-225-0970	2-3-03	Adopt	3-1-03
863-015-0080	2-28-03	Amend(T)	4-1-03	918-251-0090	1-1-03	Amend	2-1-03
863-015-0085	2-28-03	Amend(T)	4-1-03	918-251-0090	6-24-03	Amend(T)	8-1-03
863-015-0090	2-28-03	Amend(T)	4-1-03	918-251-0090(T)	1-1-03	Repeal	2-1-03
863-015-0095	2-28-03	Amend(T)	4-1-03	918-261-0020	6-24-03	Amend(T)	8-1-03
863-015-0100	2-28-03	Amend(T)	4-1-03	918-282-0017	1-1-03	Adopt	2-1-03
863-015-0120	2-28-03	Amend(T)	4-1-03	918-282-0017(T)	1-1-03	Repeal	2-1-03
863-015-0125	2-28-03	Amend(T)	4-1-03	918-282-0185	1-1-03	Adopt	2-1-03
863-015-0135	2-28-03	Amend(T)	4-1-03	918-282-0185(T)	1-1-03	Repeal	2-1-03
863-015-0140	2-28-03	Amend(T)	4-1-03	918-282-0290	1-1-03	Amend	2-1-03
863-015-0145	2-28-03	Amend(T)	4-1-03	918-282-0290(T)	1-1-03	Repeal	2-1-03
863-015-0175	2-28-03	Amend(T)	4-1-03	918-306-0000	6-24-03	Suspend	8-1-03
863-015-0185	2-28-03	Amend(T)	4-1-03	918-306-0010	6-24-03	Suspend	8-1-03
863-015-0255	2-28-03	Amend(T)	4-1-03	918-306-0100	6-24-03	Suspend	8-1-03
863-015-0260	2-28-03	Amend(T)	4-1-03	918-306-0110	6-24-03	Suspend	8-1-03
863-025-0010	2-28-03	Amend(T)	4-1-03	918-306-0120	6-24-03	Suspend	8-1-03
863-025-0020	2-28-03	Amend(T)	4-1-03	918-306-0130	6-24-03	Suspend	8-1-03
863-025-0025	2-28-03	Amend(T)	4-1-03	918-306-0140	6-24-03	Suspend	8-1-03
863-025-0030	2-28-03	Amend(T)	4-1-03	918-306-0150	6-24-03	Suspend	8-1-03
863-025-0035	2-28-03	Amend(T)	4-1-03	918-306-0160	6-24-03	Suspend	8-1-03
863-025-0050	2-28-03	Amend(T)	4-1-03	918-306-0170	6-24-03	Suspend	8-1-03
863-025-0065	2-28-03	Amend(T)	4-1-03	918-306-0200	6-24-03	Suspend	8-1-03
863-030-0060	7-1-03	Amend	8-1-03	918-306-0210	6-24-03	Suspend	8-1-03
863-030-0065	7-1-03	Amend	8-1-03	918-306-0220	6-24-03	Suspend	8-1-03
863-030-0075	7-1-03	Amend	8-1-03	918-306-0230	6-24-03	Suspend	8-1-03
863-030-0080	7-1-03	Amend	8-1-03	918-306-0300	6-24-03	Suspend	8-1-03
863-040-0010	7-1-03	Amend	8-1-03	918-306-0310	6-24-03	Suspend	8-1-03
863-040-0040	7-1-03	Amend	8-1-03	918-306-0320	6-24-03	Suspend	8-1-03
877-020-0020	7-1-03	Amend(T)	6-1-03	918-306-0330	6-24-03	Suspend	8-1-03
918-001-0010	1-1-03	Amend	2-1-03	918-306-0500	6-24-03	Suspend	8-1-03
918-001-0036	1-1-03	Adopt	2-1-03	918-306-0510	6-24-03	Amend(T)	8-1-03

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918-306-0610	6-24-03	Suspend	8-1-03	918-309-0030	7-1-03	Amend(T)	8-1-03
918-306-0700	5-5-03	Amend(T)	6-1-03	918-311-0020	7-1-03	Amend	7-1-03
918-306-0700	6-24-03	Suspend	8-1-03	918-400-0280	1-1-03	Amend	2-1-03
918-306-0700(T)	6-24-03	Suspend	8-1-03	918-400-0280	3-1-03	Amend	4-1-03
918-306-0705	5-5-03	Amend(T)	6-1-03	918-400-0280(T)	1-1-03	Repeal	2-1-03
918-306-0705	6-24-03	Suspend	8-1-03	918-400-0333	1-1-03	Adopt	2-1-03
918-306-0705(T)	6-24-03	Suspend	8-1-03	918-400-0333(T)	1-1-03	Repeal	2-1-03
918-306-0710	5-5-03	Amend(T)	6-1-03	918-400-0335	1-1-03	Repeal	2-1-03
918-306-0710	6-24-03	Suspend	8-1-03	918-400-0340	1-1-03	Amend	2-1-03
918-306-0710(T)	6-24-03	Suspend	8-1-03	918-400-0340(T)	1-1-03	Repeal	2-1-03
918-306-0715	5-5-03	Amend(T)	6-1-03	918-400-0345	1-1-03	Repeal	2-1-03
918-306-0715	6-24-03	Suspend	8-1-03	918-400-0350	1-1-03	Repeal	2-1-03
918-306-0715(T)	6-24-03	Suspend	8-1-03	918-400-0355	1-1-03	Repeal	2-1-03
918-306-0720	5-5-03	Amend(T)	6-1-03	918-400-0360	1-1-03	Repeal	2-1-03
918-306-0720	6-24-03	Suspend	8-1-03	918-400-0365	1-1-03	Repeal	2-1-03
918-306-0720(T)	6-24-03	Suspend	8-1-03	918-400-0370	1-1-03	Repeal	2-1-03
918-306-0730	5-5-03	Amend(T)	6-1-03	918-400-0375	1-1-03	Repeal	2-1-03
918-306-0730	6-24-03	Suspend	8-1-03	918-400-0380	1-1-03	Adopt	2-1-03
918-306-0730(T)	6-24-03	Suspend	8-1-03	918-400-0380(T)	1-1-03	Repeal	2-1-03
918-306-0740	5-5-03	Amend(T)	6-1-03	918-400-0385	1-1-03	Adopt	2-1-03
918-306-0740	6-24-03	Suspend	8-1-03	918-400-0385(T)	1-1-03	Repeal	2-1-03
918-306-0740(T)	6-24-03	Suspend	8-1-03	918-400-0390	1-1-03	Adopt	2-1-03
918-306-0750	5-5-03	Suspend	6-1-03	918-400-0390(T)	1-1-03	Repeal	2-1-03
918-306-0760	5-5-03	Amend(T)	6-1-03	918-400-0395	1-1-03	Adopt	2-1-03
918-306-0760	6-24-03	Suspend	8-1-03	918-400-0395(T)	1-1-03	Repeal	2-1-03
918-306-0760(T)	6-24-03	Suspend	8-1-03	918-400-0455	3-1-03	Amend	4-1-03
918-306-0770	5-5-03	Amend(T)	6-1-03	918-400-0465	3-1-03	Amend	4-1-03
918-306-0770	6-24-03	Suspend	8-1-03	918-400-0525	3-1-03	Amend	4-1-03
918-306-0770(T)	6-24-03	Suspend	8-1-03	918-400-0630	3-1-03	Amend	4-1-03
918-306-0780	5-5-03	Amend(T)	6-1-03	918-400-0740	3-1-03	Amend	4-1-03
918-306-0780	6-24-03	Suspend	8-1-03	918-400-0780	1-1-03	Repeal	2-1-03
918-306-0780(T)	6-24-03	Suspend	8-1-03	918-400-0800	1-1-03	Amend	2-1-03
918-307-0000	1-1-03	Repeal	2-1-03	918-400-0800(T)	1-1-03	Repeal	2-1-03
918-308-0020	1-1-03	Amend	2-1-03	918-480-0005	4-1-03	Amend	2-1-03
918-308-0020(T)	1-1-03	Repeal	2-1-03	918-480-0010	1-1-03	Amend	1-1-03
918-308-0060	1-1-03	Amend	2-1-03	918-480-0010	1-10-03	Amend(T)	2-1-03
918-308-0060(T)	1-1-03	Repeal	2-1-03	918-480-0010	4-1-03	Amend	2-1-03
918-308-0200	1-1-03	Amend	2-1-03	918-480-0010(T)	1-1-03	Repeal	1-1-03
918-308-0200(T)	1-1-03	Repeal	2-1-03	918-480-0020	4-1-03	Amend	2-1-03
918-308-0210	1-1-03	Amend	2-1-03	918-650-0085	1-1-03	Repeal	2-1-03
918-308-0210(T)	1-1-03	Repeal	2-1-03	918-785-0030	1-1-03	Repeal	2-1-03
918-309-0000	4-1-03	Amend	4-1-03				