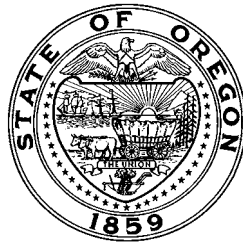


# OREGON BULLETIN

Supplements the 2003 *Oregon Administrative Rules Compilation*

**Volume 42, No. 2**  
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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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# TABLE OF CONTENTS

	Page
<b>Information and Publication Schedule</b> .....	2
<b>Table of Contents</b> .....	3
<b>Other Notices</b> .....	4-7
 <b>Matters of Public Interest</b>	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
 <b>Notices of Proposed Rulemaking Hearings/Notices</b>	
Board of Architect Examiners, Chapter 806 .....	8
Board of Chiropractic Examiners, Chapter 811 .....	8
Board of Geologist Examiners, Chapter 809 .....	8
Board of Investigators, Chapter 220 .....	8, 9
Board of Radiologic Technology, Chapter 337 .....	9
Construction Contractors Board, Chapter 812 .....	9, 10
Department of Administrative Services, Chapter 125 .....	10
Department of Agriculture, Oregon Raspberry and Blackberry Commission, Chapter 611 .....	10
Department of Consumer and Business Services, Workers' Compensation Division, Chapter 436 .....	10
Department of Environmental Quality, Chapter 340 .....	10, 11
Department of Fish and Wildlife, Chapter 635 .....	11, 12
Department of Human Services, Addiction Services, Chapter 415 .....	12
Child Welfare Programs, Chapter 413 .....	12
Departmental Administration and Medical Assistance Programs, Chapter 410 .....	12, 13
Self-Sufficiency Programs, Chapter 461 .....	13, 14
Vocational Rehabilitation Services, Chapter 582 .....	14
Department of Justice, Chapter 137 .....	14, 15
Department of Public Safety Standards and Training, Chapter 259 .....	15
Department of Transportation, Board of Maritime Pilots, Chapter 856 .....	15
Driver and Motor Vehicle Services Division, Chapter 735 .....	15, 16
Motor Carrier Transportation Division, Chapter 740 .....	16
Oregon Department of Education, Chapter 581 .....	16-18
Oregon State Marine Board, Chapter 250 .....	18
Oregon University System, University of Oregon, Chapter 571 .....	18
Western Oregon University, Chapter 574 .....	18
Parks and Recreation Department, Chapter 736 .....	19
Public Utility Commission, Chapter 860 .....	19
Secretary of State, Archives Division, Chapter 166 .....	19
Corporation Division, Chapter 160 .....	19
 <b>Administrative Rules</b>	
Appraiser Certification and Licensure Board , Chapter 161 .....	20
Board of Accountancy, Chapter 801 .....	20-33
Board of Architect Examiners, Chapter 806 .....	33, 34
Board of Nursing, Chapter 851 .....	34-36
Board of Optometry, Chapter 852 .....	36, 37
Board of Pharmacy, Chapter 855 .....	37-40
Bureau of Labor and Industries, Chapter 839 .....	40
Construction Contractors Board, Chapter 812 .....	40
County Fair Commission, Chapter 621 .....	40, 41
Department of Administrative Services, Chapter 125 .....	41-47
Department of Administrative Services, Budget and Management Division, Chapter 122 .....	47
Human Resource Services Division, Chapter 105 .....	47-49
Department of Agriculture, Chapter 603 .....	49-60
Department of Agriculture, Oregon Sheep Commission, Chapter 644 .....	60
Oregon Wheat Commission, Chapter 678 .....	60, 61
Department of Community Colleges and Workforce Development, Chapter 589 .....	61-73
Department of Consumer and Business Services, Building Codes Division, Chapter 918 .....	73-80
Insurance Division, Chapter 836 .....	80, 81
Workers' Compensation Division, Chapter 436 .....	81-101
Department of Environmental Quality, Chapter 340 .....	101-114
Department of Fish and Wildlife, Chapter 635 .....	114-118
Department of Geology and Mineral Industries, Chapter 632 .....	118, 119
Department of Human Services, Child Welfare Programs, Chapter 413 .....	119-144
Departmental Administration and Medical Assistance Programs, Chapter 410 .....	144-161
Public Health, Chapter 333 .....	161-166
Self-Sufficiency Programs, Chapter 461 .....	166-178
Seniors and People with Disabilities, Chapter 411 .....	178-184
Department of Oregon State Police, Office of Emergency Management , Chapter 104 .....	184-190
Office of State Fire Marshal, Chapter 837 .....	190, 191
Department of Revenue, Chapter 150 .....	191-206
Department of Veterans' Affairs, Chapter 274 .....	206
Division of State Lands, Chapter 141 .....	206-224
Health Licensing Office, Chapter 331 .....	224, 225
Landscape Contractors Board, Chapter 808 .....	225
Office of Energy, Chapter 330 .....	225-227
Oregon Liquor Control Commission, Chapter 845 .....	227, 228
Oregon Public Employees Retirement System, Chapter 459 .....	228, 229
Oregon State Fair and Exposition Center, Chapter 622 .....	229-234
Oregon State Marine Board, Chapter 250 .....	235
Oregon University System, Southern Oregon University, Chapter 573 .....	235
Public Utility Commission, Chapter 860 .....	235-238
Teacher Standards and Practices Commission, Chapter 584 .....	238, 239
<b>OAR Revision Cumulative Index</b> .....	240-253

## OTHER NOTICES

### CHANCE TO COMMENT ON PROPOSED NO FURTHER ACTION FOR THE CASCADE PLATING & MACHINE SITE

**COMMENTS DUE:** March 3, 2003

**PROJECT AND LOCATION:** Cascade Plating & Machine (CP&M), 3790 Cross Street in Eugene, Oregon

**NOTICE:** The Oregon Department of Environmental Quality (DEQ) requests public comment on its proposal for a conditional "no further action" determination regarding soil and groundwater contamination at Cascade Plating & Machine (CP&M) in Eugene, Oregon.

**HIGHLIGHTS:** CP&M has been operating at this location since approximately 1969. The facility experienced a spill of chromic acid plating solution sometime before May 1989, resulting in contamination of soil and groundwater by chromium. In 1989 and 1990, highly contaminated soil was removed from the site except for an area immediately next to or underneath a building. Contaminated groundwater was pumped and treated between 1992 and 1999, resulting in removal of over 179 pounds (lbs.) of chromium contamination from shallow groundwater.

DEQ requires responsible parties to clean-up contaminants to certain levels. These levels are based on the risk to human health and the environment and they depend on the land use and the activities that take place in the area affected. The DEQ evaluated the human health and environmental concerns from chromium contaminants at the site and proposed a final cleanup for public comment in May 2001. No comments were received at that time.

The remedy selected by DEQ in 2001 required CP&M to undertake the following actions:

- soils containing chromium above acceptable levels (i.e. 1,600 ppm) in the area beneath the plating room and along the western portion of the property be avoided by workers.
- one year of follow up groundwater monitoring needed to take place after groundwater treatment was discontinued, to ensure that contaminant levels in groundwater remained low.
- accept a deed restriction against any changes in the current industrial use of the property, until owner demonstrates that changed site conditions permit other uses.
- accept a deed restriction prohibiting installation or use of water supply wells.
- periodic review of records maintained by the Oregon Water Resources Department (OWRD) to identify any new water supply wells that might be drilled in the vicinity of the CP&M site.

The year of groundwater monitoring ensured that site-related contaminants are not migrating off-site at concentrations that may pose a risk to nearby residents (e.g., greater than 2.6 ppm chromium), and the on-site source area did not exceed 6.5 ppm, which was considered protective of human health and the environment. DEQ had chosen 2.6 ppm chromium as the appropriate site-specific cleanup levels because groundwater within the locality of facility is only used for irrigation and recreational use and is not likely to include drinking water.

DEQ is now proposing to grant CP&M's request for a conditional No Further Action determination, provided that CP&M agrees to maintain deed restrictions and periodically review OWRD records for information about water supply well drilling near the property.

**COMPLIANCE HISTORY:** The DEQ's "facility profilers" website (<http://deq12.deq.state.or.us/fp20/>) does not indicate any concerns with compliance. However, the Lane Regional Air Pollution Authority (LRAPA) stated that CP&M has had compliance problems in relation to their air quality permit. In 1993, they were issued a notice of civil penalty due to failure to submit a test plan for chromium emissions. In 1997 they were issued a notice of non-compliance for failure to perform testing to demonstrate compliance with 40 CFR 63.342; failure to demonstrate compliance with the chromium plating maximum standard; and failure of recordkeeping requirements. A stipulated final order was issued to address the non-compliance.

In 2000 a joint LRAPA and EPA oversight inspection determined that they were in compliance with air regulations.

**WHAT SIMILAR ACTIVITIES TAKE PLACE IN THE VICINITY OF THE FACILITY?** There are approximately twenty other sites on DEQ's "facility profilers" website (<http://deq12.deq.state.or.us/fp20/>) that are within 1/2 mile radius of this site. However, this website does not include air quality permits, which are under the jurisdiction of LRAPA. The area is a mix of residential, industrial, and commercial land use within this 1/2 mile area.

**WHAT HAPPENS NEXT?** DEQ will review and consider all comments received during the comment period. In addition, if a written request is received by 10 or more persons or by a group having 10 or more members, then DEQ will hold a public hearing to receive verbal comments regarding the proposed action. Following receipt of comments and the review, DEQ may issue the conditional "no further action" letter as proposed or modified, or deny the conditional "no further action" letter.

**HOW TO COMMENT:** Project documents, describing the investigation and cleanup work performed to date, are available for review at DEQ's Eugene office, 1102 Lincoln St., Suite 210, Eugene 97401. File reviewing hours are from 8:00 a.m. until 4:00 p.m., Monday through Friday, except on holidays. Contact the file specialist at (541) 686-7838, (TTY) (541) 687-5603, (Fax) (541) 686-7551, or 1-800-844-8467 (toll-free in Oregon) for an appointment. DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. For public transit information: the DEQ office is three blocks west of the LTD main downtown Eugene bus station off of 11th St. Technical questions may be directed to project manager Ms. Teresa Danovich at (541) 686-7838 ext. or via e-mail at [danovich.teresa.m@deq.state.or.us](mailto:danovich.teresa.m@deq.state.or.us). Written comments should be sent to Ms. Teresa Danovich, project manager, at DEQ, Western Region, 1102 Lincoln St., Suite 210, Eugene 97401 by March 3, 2003.

### PUBLIC COMMENT REQUESTED ON DEPARTMENT OF ENVIRONMENTAL QUALITY'S RECOMMENDATION FOR NO FURTHER ACTION

**COMMENTS DUE:** March 2, 2003

**PROJECT:** Overhead Door

**LOCATION:** 2195 Hyacinth Street NE, Salem, Oregon

**PROPOSAL:** The Department of Environmental Quality (DEQ) invites the public to comment on its recommendation that no further investigation or cleanup be required at the Overhead Door site located in Salem, Oregon.

**HIGHLIGHTS:** The site was owned and operated by Overhead Door Corporation from 1964 to April 2000 for manufacture and assembly of wood and metal overhead doors. Operations included the storage and use of hazardous wood treatment chemicals. Environmental investigations conducted at the site in April and May 2000 detected dioxins in surface soils at concentrations above safe levels. Contamination from wood preservative chemicals is limited to the soil and is not expected to impact the groundwater. The site and surrounding area is zoned for industrial uses only. No domestic groundwater uses are located within a half-mile of the site.

To reduce the potential health risk from exposure of on-site workers to dioxin, contaminated soils were capped with an asphalt cover to eliminate potential future contact with contamination. A cap maintenance plan was developed to maintain the security and integrity of the cover. For additional protection, an Easement and Equitable Servitude (E&ES) is being recorded with the property deed to address the use of the cap, management and reporting requirements, and groundwater use restrictions in the area.

With the construction of the asphalt cap, implementation of a management plan, and recording of a deed restriction, the contamination at the site no longer poses an unacceptable risk to human health or

## OTHER NOTICES

the environment. DEQ considers the investigation and cleanup at Overhead Door in Salem, Oregon to be complete and is recommending that no further action be required at the site.

**HOW TO COMMENT:** A file containing detailed information for the site is available for review in DEQ's Salem office located at 750 Front Street NE, Suite 120, Salem, Oregon 97301. To schedule an appointment to review the files or for questions concerning this site please contact Nancy Sawka in our Salem office at (503)378-8240 extension 262 (TYT 503-378-3684). Copies of written material in alternate format such as Braille or large print are available from DEQ Public Affairs at (541) 686-7888.

Written comments should be sent to the attention of Nancy Sawka by March 2, 2003 at the address listed above. A public meeting to answer questions and receive verbal comment on the proposed recommendation will be held if requested by 10 or more persons or a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all comments received before taking final action on this matter.

### PROPOSED APPROVAL OF CLEANUP AT CUMMINS NORTHWEST BEND BEND, OREGON

**COMMENTS DUE:** March 1, 2003

**PROJECT LOCATION:** 3500 North Highway 97, Bend, Oregon

**PROPOSAL:** The Department of Environmental Quality (DEQ) intends to issue a No Further Action (NFA) finding for this subject property known as Cummins Northwest Bend (Cummins Engine Company, Inc.), based upon completed site investigations and cleanup of petroleum contaminated sediment and slurry from Underground Injection Control catch basins/dry wells and subsurface soil remediation. Contaminated sediments from three (3) onsite drill holes were removed to the extent feasible, which were then permanently decommissioned. Approximately 25 cubic yards of petroleum contaminated soils were excavated and disposed of offsite at a permitted facility. One (1) small pocket of residual petroleum contaminated soil was left in place as it was not feasible to remove. All residual contamination at this site is documented at levels below selected cleanup and/or screening standards established by the DEQ for this site. Consequently, there is no significant residual risk of impact to the environment as a result of the historic wastewater discharges to the drill holes or other identified historic activities at this site.

**HOW TO COMMENT:** A public comment period will extend to March 1, 2003. Please address all comments and/or inquiries to Mr. Cliff Walkey. Written comments should be sent by March 1, 2003 to Cliff Walkey at the address listed below.

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.

Cliff Walkey  
Department of Environmental Quality  
2146 NE 4th Street, Suite 104  
Bend, Oregon 97701  
(541) 388-6146, ext. 224  
walkey.cliff@deq.state.or.us

### PROPOSED APPROVAL OF CLEANUP AT ACTIVE CRUSHER AREA — TUCKER FLAT QUARRY UNION COUNTY, OREGON

**COMMENTS DUE:** February 28, 2003

**PROJECT LOCATION:** 10 miles west of North Powder, Union County

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "No Further Action (NFA)" determination for the Active Crusher Area which had a documented release of diesel fuel and lube oil from two ASTs in November 2002. The Voluntary Cleanup Program has reviewed the remedial action performed at the site which indicates cleanup actions are complete.

**HIGHLIGHTS:** The diesel fuel release was attributed to a pin hole leak in a hose on the diesel AST. On December 2, 2002, contaminated soil from the diesel AST and lube oil AST were excavated and stockpiled. The soil was removed to bedrock located approximately 1.5 feet below grade. A confirmation soil sample was collected from the excavation and analyzed for diesel and heavy oil. Concentrations of diesel and heavy oil were not detected. A total of 51 tons of contaminated soil were transported to Grande Ronde Recovery Center in La Grande, Oregon for disposal on December 11, 2002.

**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 sent by February 28, 2003 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.

### PROPOSED APPROVAL OF CLEANUP AT THE PANOCO #64 SITE

**COMMENTS DUE:** March 3, 2003

**PROJECT LOCATION:** 9085 SW Beaverton-Hillsdale Hwy., Beaverton

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the cleanup completed at the Panoco #64 site. In 1993, approximately 80 tons of contaminated soil and 2,000-gallons of contaminated groundwater were removed to address site solvent contamination. An evaluation of the work was completed in 2002 under DEQ's Independent Cleanup Pathway. DEQ determined that residual contamination at the site does not exceed risk-based concentrations (under Oregon Administrative Rule (OAR) 340-122-0205 through 340-122-0360). DEQ has therefore proposed a no further action determination.

**HIGHLIGHTS:** The gasoline service station site is located in a strip of commercial development along Beaverton-Hillsdale Hwy., with surrounding use largely residential. A series of gasoline stations have operated at the site since 1968; Panoco #64 operated from 1986 to 1993. Chlorinated solvents including 1,1,1-trichloroethane, tetrachloroethene, and trichloroethene were detected in groundwater in 1993 during removal of fuel underground storage tanks (USTs). The source was determined to be a waste oil storage area, where a 550-gallon waste oil tank had been present until 1989, and waste oil drums were later stored and filled. In June 1993, approximately 80 tons of contaminated soil were removed from the drum/tank area, and 2,000-gallons of groundwater pumped from the excavation. Contaminated soil was transported to Hillsboro Landfill for disposal; groundwater was discharged to a sanitary sewer following approval. Four quarters of groundwater sampling were completed in 1994 during which solvents were detected at generally below risk-based screening values (for groundwater ingestion, vapor intrusion, direct contact). DEQ has determined that remaining contamination does not pose a significant threat to public health or the environment. (Note that a no further action determination was issued by DEQ in 1997 for historic fuel UST issues.) A closeout memorandum pre-

## OTHER NOTICES

senting DEQ's recommendation will be available for public review beginning February 1, 2003.

**HOW TO COMMENT:** To schedule an appointment at DEQ, contact Gerald Gamolo at (503) 229-6729. The DEQ project manager is Dan Hafley (503-229-5417). Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by March 3, 2003. A public meeting will be held to receive verbal comments if requested by 10 or more people, or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all comments received and the Voluntary Cleanup Manager will make a final decision after consideration of these comments.

### PROPOSED APPROVAL OF CLEANUP AT STARK STREET SHELL, 16150 SE STARK STREET, PORTLAND, OREGON

**COMMENTS DUE:** March 3, 2003

**PROJECT LOCATION:** 16150 SE Stark Street, Portland, 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 the "No Further Action" (NFA) determination proposed for the cleanup of petroleum-contaminated soils at the Stark Street Shell site in Portland, Oregon.

**HIGHLIGHTS:** In August 2002 a Phase II Environmental Investigation was performed at the site prior to the transaction of a property lease. Heavy oil contamination was found next to the southwest pump island and near the location of the former waste oil tank and drywell.

Following removal of the drywell, additional petroleum contamination was found and approximately 19 cubic yards of contaminated soil was excavated and transported to TPST Technologies in Portland for thermal desorption and recycling. A risk assessment was completed following soil removal. The results indicated that the remaining low-level soil contamination does not pose an unacceptable risk to human health and the environment.

DEQ has concluded that there are no unacceptable risks for human receptors that may be exposed to contamination present in soil on the site, and that further removal or remediation is not warranted. The cleanup action is considered protective of human health and the environment, and therefore, meets the requirements of the Oregon Environmental Cleanup Laws.

**HOW TO COMMENT:** DEQ's Staff Report, dated January 13, 2003, and other project file information is 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 Gerald Gamolo at 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at Williams.robert.k@deq.state.or.us. DEQ must receive written comments by 5 pm on March 3, 2002. 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 March 3, 2003 deadline. In the absence of comments, DEQ will issue the No Further Action.

### PROPOSED APPROVAL OF CLEANUP AT SE AMBLESIDE DRIVE AND HOGAN ROAD, PORTLAND, OREGON

**COMMENTS DUE:** March 2, 2003

**PROJECT LOCATION:** SE Ambleside Drive and Hogan Road, Portland, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed approval of a cleanup performed at the referenced location in Portland, Oregon.

**HIGHLIGHTS:** In December 2001, Multnomah County Transportation Division encountered petroleum-contaminated soil beneath the road bed while installing a new sewer line. Multnomah County removed approximately 240 tons of contaminated soil had thermally treated it off-site. The residual contamination does not pose an unacceptable risk to human health or the environment. An independent Soil Removal Activities report, summarizing the basis for DEQ's proposal, is available for public review beginning February 1, 2003.

**HOW TO COMMENT:** To schedule an appointment at DEQ, call 503-229-6729. 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 March 2, 2003.

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

### PROPOSED APPROVAL OF CLEANUP AT LOREN STOUT PROPERTY DAYVILLE, OREGON

**COMMENTS DUE:** February 28, 2003

**PROJECT LOCATION:** East of Dayville, Grant County

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "No Further Action (NFA)" determination for the former wood preservation area at the Loren Stout property with the completion of excavation activities performed in May 2002. The Voluntary Cleanup Program has reviewed site information for cleanup activities which indicate that the cleanup actions are complete.

**HIGHLIGHTS:** The former wood preservation area has been excavated with approximately 40 cubic yards of impacted soil having been excavated and transported to Chemical Waste Management in Arlington, Oregon for disposal. Confirmation soil samples indicate PCP, diesel, and heavy oil have been removed. The 2,3,7,8-TCDD TEQ calculated in sample B-3, collected at 7 feet below grade, exceeds the conservative EPA Region 9 PRG residential soil level of 3.9 ng/kg. The 2,3,7,8-TCDD TEQ calculated in sample B-4, collected at 9 feet below grade, is less than the EPA Region 9 PRG residential soil level of 3.9 ng/kg. A small pocket of dioxins, slightly exceeding the PRG residential levels, estimated to be less than 5 cubic yards remains between 7 feet and 9 feet below grade. The remaining amount of soil containing dioxins is greater than 7 feet below the ground surface which removes the valorization pathway. The carriers (PCP, diesel, heavy oil) of the dioxin have been removed, limiting the mobility of the remaining dioxin. The depth of the remaining dioxin concentration prevents dermal, ingestion, and inhalation exposure

**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 sent by February 28, 2003 to Katie Robertson, Project Manager, at the address listed above.

## OTHER NOTICES

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.

### **PROPOSED SELECTION OF CLEANUP OREGON BULB & PERENNIAL FARMS SITE 39391 SE LUSTED ROAD, SANDY, OREGON**

**COMMENT PERIOD:** February 1 to 28, 2003

**COMMENTS DUE:** February 28, 2003

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) proposes cleanup actions to remedy pesticide contaminated soil at the Oregon Bulb & Perennial Farms site.

**HIGHLIGHTS:** Several phases of environmental testing have been performed at the site, identifying pesticide constituents in site soil. A limited zone of pesticide-impacted soil was observed at a depth of approximately seven feet beneath a former settling pond. Pesticides were also found in near-surface soil beneath a storage shed. DEQ proposes remedial actions that include deed restrictions to limit future site excavation at the former pond area and excavation and off-site disposal of contaminated soil beneath the storage shed.

**HOW TO COMMENT:** The project file is available for public review. To schedule an appointment call (503) 229-6729. The DEQ project manager is Tom Gainer, (503) 229-5326. Written comments should be sent to Tom Gainer, DEQ, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by February 28, 2003. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all public comments before making the final decision.

### **PROPOSED ENVIRONMENTAL REMEDY PORT OF PORTLAND TERMINAL 4, SLIP 3**

**COMMENTS DUE:** March 3, 2003

**PROJECT LOCATION:** Port of Portland, Terminal 4, Slip 3 Upland, 11040 North Lombard Street, Portland, Oregon

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) has prepared a Staff Report regarding petroleum-contaminated soil and groundwater within the Upland area at Terminal 4, Slip 3. DEQ is recommending groundwater pump and treat and riverbank soil excavation as part of a remedial action to control the discharge of petroleum to the Willamette River.

**HIGHLIGHTS:** Terminal 4 is located on the east bank of the Willamette River in the northeast industrial area near river mile 5. Historically, diesel fuel was delivered to the terminal by marine vessels and was piped from Slip 3 to bulk storage tanks owned by Union Pacific Railroad east of the terminal. Fuel transfer operations ceased in 1983, however, historic pipeline leaks have caused the release of petroleum to soil and groundwater at the site. Seeps of petroleum into the water at Slip 3 have been observed and several methods to control the seep have been attempted over the years with limited success. Between 1998 and 2001, the Port of Portland completed a remedial investigation for T4, Slip 3 with DEQ oversight under the Voluntary Cleanup Program. A Feasibility Study to evaluate different cleanup options was prepared by the Port and reviewed and approved by DEQ in April 2002. As a final cleanup remedy for the Upland area, DEQ is proposing groundwater pump and treat to remove petroleum product and contaminated groundwater, excavation and off-site disposal of contaminated soil at the Slip 3 riverbank, and institutional controls to document the presence of contamination for protection of future site workers. Contaminated sediments in Slip 3 will be evaluated separately as part of the U.S. Environmental Protection Agency Portland Harbor site.

**HOW TO COMMENT:** The Staff Report and project file is available for public review. To schedule an appointment contact Gerald Gamolo at 503-229-6729. The DEQ project manager is Tom Roick, 503-229-5502. Written comments should be sent to the project manager at the DEQ, Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by March 3, 2003. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all public comments and publish the final decision. Please notify DEQ of any special physical or language accommodations you may need due to a disability, or if you need copies of written materials in an alternative format (e.g., Braille, large print, etc.). To make these arrangements, contact DEQ Public Affairs, 503-229-5317.

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

The following agencies provide Notice of Proposed Rulemaking to offer interested parties reasonable opportunity to submit data or views on proposed rulemaking activity. To expedite the rulemaking process, many agencies have set the time and place for a hearing in the Notice. Copies of rulemaking materials may be obtained from the Rules Coordinator at the address and telephone number 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 Architect Examiners  
Chapter 806**

**Date:** 3-11-03      **Time:** 9 a.m.      **Location:** OBAE  
750 Front St. NE, # 260  
Salem, OR

**Hearing Officer:** Kim Arbuckle  
**Stat. Auth.:** ORS 671.120 & 671.125; Other Auth.: SB 1127 (1999)  
**Stats. Implemented:** ORS 671.125  
**Proposed Amendments:** 806-001-0003  
**Last Date for Comment:** 3-14-03, 5 p.m.

**Summary:** As required by SB 1127, this rule is amended to adopt the Oregon State Board of Architect Examiners 2003-2005 biennial budget — with an expenditure limit of \$650,200. A copy of the proposed budget and/or the rule amendment is available by contacting the agency rules coordinator listed.

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

**Rules Coordinator:** Carol Halford  
**Address:** Oregon Board of Architect Examiners, 750 Front St. NE, Suite 260, Salem, OR 97310  
**Telephone:** (503) 378-4270

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**Date:** 3-11-03      **Time:** 9:30 a.m.      **Location:** OBAE  
750 Front St. NE, # 260  
Salem, OR

**Hearing Officer:** Kim Arbuckle  
**Stat. Auth.:** ORS 671.125; Other Auth.: ORS 60.701  
**Stats. Implemented:** ORS 671.041  
**Proposed Amendments:** 806-010-0080, 806-010-0110  
**Last Date for Comment:** 3-14-03, 5 p.m.

**Summary:** To clarify/simplify the rules to allow for architectural firms to become registered with the Oregon Board. This eliminates unnecessary restrictions to those firms who meet the definitions of ORS 60.701

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

**Rules Coordinator:** Carol Halford  
**Address:** Oregon Board of Architect Examiners, 750 Front St. NE, Suite 260, Salem, OR 97310  
**Telephone:** (503) 378-4270

## Board of Chiropractic Examiners Chapter 811

**Date:** 3-20-03      **Time:** 11 a.m.      **Location:** Morrow Crane Bldg.  
3218 Pringle Rd. SE  
Suite 150  
Salem, OR 97302

**Hearing Officer:** Dave McTeague, Exec. Director  
**Stat. Auth.:** ORS 684 & 58  
**Stats. Implemented:** ORs 684.054 & 684.090  
**Proposed Amendments:** 811-010-0085, 811-010-0086, 811-010-0110

**Last Date for Comment:** 3-20-03  
**Summary:** 811-010-0085: Makes changes to the new licensee initial licensing process. Changes from annual fee schedule to birth date renewal schedule.

811-010-0086: Makes changes to the annual registration process for DC's. Changes from annual renewal schedule to a birth date renewal schedule.

811-010-0110: Makes changes to the annual registration process for CCA's. Changes from annual renewal schedule to a birth date renewal schedule.

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

**Rules Coordinator:** Dave McTeague  
**Address:** Board of Chiropractic Examiners, 3218 Pringle Rd. SE - Suite 150, Salem, OR 97302-6311  
**Telephone:** (503) 378-5816, ext. 23

\*\*\*\*\*  
**Board of Geologist Examiners  
Chapter 809**

**Date:** 3-10-03      **Time:** 1 p.m.      **Location:** The Association Center  
Conference Rm. B  
707 13th St. SE  
Salem, OR

**Hearing Officer:** David Michael, Chair  
**Stat. Auth.:** ORS 672.525  
**Stats. Implemented:** ORS 672.505 & 672.525  
**Proposed Repeals:** 809-050-0030  
**Last Date for Comment:** 3-1-03

**Summary:** This rule states registration requirements for Public Testimony. The rule was suspended under a Temporary Administrative Rules filing of 12-2-02. That Temporary Rule expires June 2, 2003. This Rulemaking Action will repeal the rule entirely.

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

**Rules Coordinator:** Susanna R. Knight  
**Address:** Board of Geologist Examiners, 707 13th St. SE, Suite 275, Salem, OR 97301  
**Telephone:** (503) 566-2837

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**Board of Investigators  
Chapter 220**

**Date:** 3-14-03      **Time:** 1:30-4:30 p.m.      **Location:** 800 NE Oregon St.  
Suite 445  
Portland, OR

**Hearing Officer:** James Hennings  
**Stat. Auth.:** ORS 703.480  
**Stats. Implemented:** ORS 703.401 - 703.995  
**Proposed Adoptions:** 220-010-0300, 220-050-0300  
**Proposed Amendments:** 220-005-0005, 220-005-0010, 220-005-0110, 220-005-0115, 220-005-0130, 220-005-0135, 220-005-0140, 220-005-0150, 220-005-0160, 220-005-0170, 220-005-0180, 220-005-0210, 220-005-0220, 220-010-0020, 220-010-0030, 220-010-0200, 220-030-0035, 220-040-0035, 220-040-0045, 220-040-0050, 220-050-0100, 220-050-0110, 220-050-0140, 220-050-0150



# NOTICES OF PROPOSED RULEMAKING

**Proposed Repeals:** 220-010-0010, 220-010-0210, 220-020-0010, 220-020-0020, 220-020-0030, 220-020-0040, 220-030-0031, 220-040-0011, 220-040-0015, 220-040-0021, 220-040-0031, 220-040-0041, 220-050-0120, 220-050-0200

**Last Date for Comment:** 3-14-03

**Summary:** Adopt, amend, and repeal rules to conform to statutory language and provisions adopted during the 2001 legislative session (SB722). Move all definitions into one section; add definitions. Amend Continuing Education rules and adopt guidelines. Repeal Division 20 ("Operatives"), and repeal duplicate sections.

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

**Rules Coordinator:** Kelly Paige

**Address:** Board of Investigators, 800 NE Oregon St. #33 - Suite 445, Portland, OR 97232

**Telephone:** (503) 731-4359

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**Board of Radiologic Technology**  
**Chapter 337**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-15-03	10 a.m.	800 NE Oregon St. Rm. 445 Portland, OR

**Hearing Officer:** Lianne Thompson

**Stat. Auth.:** ORS 688.555(1)

**Stats. Implemented:** ORS 688.405 - 688.605

**Proposed Adoptions:** 337-001-0025, 337-020-0015, 337-021-0025

**Proposed Amendments:** 337-010-0006, 337-010-0025

**Proposed Repeals:** 337-020-0000, 337-020-0020

**Last Date for Comment:** 4-15-03

**Summary:** These rules add the model rule for confidentiality and inadmissibility of mediation communications in order to facilitate negotiating settlements. They also add violation of any order of the board to the definition of unprofessional conduct and a further definition of positioning. The material on renewals clarifies the responsibilities of licensees in the renewal process. The fee for a reinstated license has been charged for several years but has not had the language set in rule. The language on continuing education clarifies board standards for both consumers and providers of continuing education. The repeal of two sections of administrative rule is a house-keeping measure.

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

**Rules Coordinator:** Lianne Thompson

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

**Telephone:** (503) 731-4088, ext. 21

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**Construction Contractors Board**  
**Chapter 812**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-25-03	11 a.m.	West Salem Roth's IGA Glen Creek Room

**Hearing Officer:** Sydney Brewster

**Stat. Auth.:** ORS 183.310 - 183.500, 670.310, 701.075, 701.145, 701.235, 701.350 & 701.355

**Stats. Implemented:** ORS 183, 183.415, 183.460, 183.470, 701, 701.065, 701.075, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.260, 701.280, 701.350 & 701.355

**Proposed Adoptions:** 812-004-0325, 812-004-0350, 812-004-0535

**Proposed Amendments:** 812-002-0480, 812-004-0001, 812-004-0300, 812-004-0320, 812-004-0340, 812-004-0520, 812-004-0540, 812-004-0550, 812-004-0560, 812-006-0012, 812-006-0050, 812-008-0070, 812-009-0070, 812-009-0100, 812-009-0120, 812-009-0400, 812-009-0440

**Last Date for Comment:** 2-25-03

**Summary:** OAR 812-002-0480 is amended to conform rule to present practice regarding when a claimant is required to file a claim in court due to its nature or complexity.

OAR 812-004-0001 is amended to move last sentence of existing section (3) to new rule OAR 812-004-0325 because it does not fit in subject of this rule. List rules cited in section (3) in subsections to make it easier to read rules cited.

OAR 812-004-0300 is amended to clarify when a claim is accepted for filing if the Statement of Claim form submitted by claimant is deficient. Reference claims filed under ORS 701.146 so rule on filing date covers all claims.

OAR 812-004-0320 is amended to specify that a contractor must be licensed for the type of work the contractor was performing that gave rise to a claim by the contractor in order to file that claim. Specify that a contractor must also be in compliance with requirements of exempt or nonexempt status rules.

OAR 812-004-0325 is adopted to include requirement formerly in last sentence of existing OAR 812-004-0001(3) that Statement of Claim must be submitted to the agency before the agency will process a claim filed under ORS 701.146. Allow the agency to close a claim filed under ORS 701.146 if the claimant does not provide a Statement of Claim on request of the agency.

OAR 812-004-0340 is amended to provide that Statement of Claim may be signed by an agent if the authority of the agent is established. Require that a claim alleging a breach of contract must describe the nature of the breach. Make minor improvements to the wording of several rules.

OAR 812-004-0350 is adopted to provide procedure if claimant fails to provide information missing from Statement of Claim. Allow agency to refuse to open a claim if claimant and respondent are not identified or the respondent has never been licensed. This conforms rules to existing practice.

OAR 812-004-0520 is amended to clarify 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 812-004-0535 is adopted to consolidate elements of a valid claim for monetary damages in one rule. This list of the necessary elements for an award of damages is referenced in three rules.

OAR 812-004-0540 is amended to recognize that the agency may ask claimant to provide documents supporting claimant's request for damages that are in addition to or in lieu of repair estimates. Reference elements necessary for a valid claim for monetary damages listed in OAR 812-004-0535.

OAR 812-004-0550 is amended to correct citation that changed as a result of amendments to OAR 812-004-0320. Reference elements necessary for a valid claim for monetary damages listed in OAR 812-004-0535.

OAR 812-004-0560 is amended to improve style of and clarify certain passages in rule. No substantive changes are made in this amendment.

OAR 812-006-0012 is amended to allow for an open book test and to use the Oregon Contractor's Reference Manual during the test.

OAR 812-006-0050 is amended to more closely match the curriculum, classes and the fourth edition of the course manual that have changed some based on feedback of contractors, instructors, education providers, and others; and to correct terms and eliminate repetitive language.

OAR 812-008-0070 is amended to delete the date reference to 2001 since it is no longer needed.

OAR 812-009-0070 is amended to change the title so it more accurately reflects content of rule.

OAR 812-009-0100 is amended to improve style of and clarify certain passages in rule. No substantive changes are made in this amendment. Reference elements necessary for a valid claim for monetary damages listed in OAR 812-004-0535.

# NOTICES OF PROPOSED RULEMAKING

OAR 812-009-0120 is amended to reference elements of a valid claim for damages included in OAR 812-009-0100.

OAR 812-009-0400 is amended to improve style of and clarify certain passages in rule. No substantive changes are made in this amendment.

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

**Rules Coordinator:** Cathy Heine

**Address:** Construction Contractors Board, PO Box 14140, Salem, OR 97310

**Telephone:** (503) 378-4621, ext. 4077

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**Department of Administrative Services**  
**Chapter 125**

**Stat. Auth.:** ORS 184.305, 184.340, 279.712 & 279.727

**Stats. Implemented:** ORS 279.712

**Proposed Amendments:** 125-020-0610

**Last Date for Comment:** 2-23-03, 5 p.m.

**Summary:** This rule provides a procedure to procure Business Assistance Services that are delivered directly and expediently to small or troubled businesses in Oregon. These services assist businesses with start-up, growth, revitalization or stabilization.

**Rules Coordinator:** Mary Unger

**Address:** Department of Administrative Services, 155 Cottage St. NE U90, Salem, OR 97301-3972

**Telephone:** (503) 378-2349

.....  
**Department of Agriculture,**  
**Oregon Raspberry and Blackberry Commission**  
**Chapter 611**

Date:	Time:	Location:
2-21-03	11 a.m.	4845 B SW Dresden Ave. Corvallis, OR 97333

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 576

**Stats. Implemented:** ORS 576

**Proposed Amendments:** 611-010-0010

**Last Date for Comment:** 2-28-03

**Summary:** The proposed amendment to 611-010-0010 defines and exempts organic Caneberry Producers from paying assessments with proof of organic certification or exemption. Additionally, It requires the filling of a production report with the Oregon Raspberry & Blackberry Commission.

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

**Rules Coordinator:** Rachel Denué

**Address:** Department of Agriculture, Raspberry and Blackberry Commission, 712 NW 4th St., Corvallis, OR 97330

**Telephone:** (541) 758-4043

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

**Stat. Auth.:** ORS 656.726(4), 656.704 & 656.264; Other Auth.: ORS 183.335, Ch. 137, OAR 436-001

**Stats. Implemented:** ORS 656, 84.001 - 84.061

**Proposed Adoptions:** 436-160-0001, 436-160-0002, 436-160-0003, 436-160-0004, 436-160-0005, 436-160-0006, 436-160-0010, 436-160-0020, 436-160-0030, 436-160-0040, 436-160-0050, 436-160-0060, 436-160-0070, 436-160-0080, 436-160-0090, 436-160-0300, 436-160-0310, 436-160-0320, 436-160-0330, 436-160-0340, 436-160-0350, 436-160-0360

**Proposed Amendments:** 436-050-0060

**Last Date for Comment:** 2-28-03

**Summary:** Adoption of OAR 436-160 was proposed in July of 2002 and a public hearing was held August 22, 2002. Subsequent to that hearing, the Workers' Compensation Division determined the rules

regarding the filing, termination, and reinstatement of guaranty contracts needed to be brought into closer alignment with the governing statutes, ORS 656.419 through 656.427. Consequently, substantive changes are proposed that were not included in the rules proposed in July 2002. In addition, these newly proposed rules include changes as a result of public testimony received in 2002.

Adoption of OAR 436-160 is proposed to provide the general foundation for electronic data interchange (EDI), and the specific requirements regarding EDI for reporting proof of workers' compensation insurance coverage (POC) to the director. Insurers and other trading partners may elect to participate in EDI and report POC data electronically rather than via paper forms. These rules:

- incorporate, by reference, the *IAIABC EDI Implementation Guide for Proof of Coverage*, Release 2, dated May 1, 2002, with the qualification "unless otherwise provided in these rules";

- define terms pertinent to EDI, such as "electronic signature" and "recognized filing date";

- define terms unique to Oregon, such as "electronic guaranty contract" and additional terms with a unique meaning pursuant to Oregon's laws and rules;

- describe testing procedures and accuracy standards;

- specify security requirements for verification of electronic signatures and virus elimination;

- require development of a trading partner agreement prior to electronic filing;

- address retention requirements for electronic records;

- explain how the director will acknowledge accepted and rejected electronic transactions;

- list the data elements available for reporting POC data and state which elements are mandatory, optional, or conditional;

- state requirements for reporting election or exclusion of workers' compensation coverage for non-subject workers; and

- describe procedures for initiating, terminating, and reinstating guaranty contracts, and for correcting POC data previously submitted.

Amendment of OAR 436-050-0060 is proposed to make paper and electronic proof-of-coverage reporting requirements consistent. In the proposed OAR 436-160 rules, provision of specific data elements is mandatory. Parallel changes are therefore being proposed in OAR 436-050-0060.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us

The proposed rules are available on the Internet: [www.oregonwcd.org/docs/rules/rules.html#proprules](http://www.oregonwcd.org/docs/rules/rules.html#proprules), or from WCD Publications at 503-947-7627 or fax 503-947-7630.

**Rules Coordinator:** Fred Bruyns

**Address:** Department of Consumer and Business Services, Workers' Compensation Division, 350 Winter St. NE, Salem, OR 97301-3879  
**Telephone:** (503) 947-7717

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**Department of Environmental Quality**  
**Chapter 340**

Date:	Time:	Location:
2-18-03	7 p.m.	DEQ HQ Rm. 3A 811 SW 6th Ave. Portland, OR
2-19-03	1 p.m.	DEQ Salem Office Conference Rm. 750 Front St. Salem, OR
2-19-03	7 p.m.	DEQ Eugene Office Conference Rm. 1102 Lincoln St. Eugene, OR
2-20-03	7 p.m.	DEQ Bend Office Conference Rm. 2146 NE 4th, # 104 Bend, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Mark Charles  
**Stat. Auth.:** ORS 468.020 & 468.423 - 468.440  
**Stats. Implemented:** ORS 468.423 - 468.440 & 197.180  
**Proposed Adoptions:** 340-054-0021, 340-054-0022, 340-054-0023, 340-054-0024  
**Proposed Amendments:** 340-018-0020, 340-018-0030, 340-054-0005, 340-054-0010, 340-054-0015, 340-054-0020, 340-054-0025, 340-054-0035, 340-054-0055, 340-054-0060, 340-054-0065, 340-054-0085, 340-054-0087, 340-054-0090, 340-054-0093, 340-054-0095, 340-054-0097  
**Proposed Repeals:** 340-015-0005, 340-015-0010, 340-015-0015, 340-015-0020, 340-015-0025, 340-015-0030, 340-015-0035, 340-053-0005, 340-053-0010, 340-053-0015, 340-053-0020, 340-053-0025, 340-053-0027, 340-053-0030, 340-053-0035, 340-054-0080  
**Last Date for Comment:** 2-28-03, 5 p.m.

**Summary: CWSRF — Oregon Administrative Rules (OAR) Chapter 340, Division 054.** Amend rules governing the state revolving loan program, which provides loans to public agencies for water pollution control projects. The proposed amendments will:

- Make new projects eligible for CWSRF finding, including community loans for on-site system improvements, emergency and urgent repair of wastewater treatment facilities, and security improvements for those facilities;
- Revise the criteria used in ranking proposed projects to better address both point and nonpoint source projects;
- Increase flexibility in the terms and interest rates for loans;
- Simplify and increase the flexibility of the application process;
- Reduce the administrative fee for loans; and
- Reduce requirements for planning loans.

**Surety Bond Requirements — OAR Chapter 340, Division 015.** Repeal Division 15, which requires surety bonds or equivalent financial security during the construction, operation, and maintenance of certain wastewater treatment facilities.

**Construction Grants program — OAR Chapter 340, Division 053.** Repeal Division 53, which establishes procedures for developing a priority list of projects eligible for funding under the state's former Construction Grants Program.

**State Agency Coordination Program — OAR Chapter 340, Division 018.** Amend Division 18, governing state agency land use coordination, to delete references to construction grants provisions proposed for repeal in Division 053, and to amend the definition of "Total Maximum Daily Load (TMDL)" to conform to the Department's new TMDL rules.

To submit comments or request additional information, please contact Larry McAllister at the Department of Environmental Quality (DEQ), 811 SW Sixth Avenue, Portland, OR 97204-1390. Call toll free in Oregon at 800-452-4011 or (503) 229-6412, e-mail at [mcallister.larry@state.or.us](mailto:mcallister.larry@state.or.us), FAX (503) 229-6037, or visit DEQ's website <http://www.deq.state.or.us/news/publicnotices/>

*\*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 97204  
**Telephone:** (503) 229-5659

Date:	Time:	Location:
2-18-03	3 p.m.	Room A/B DEQ Northwest Region Office 2020 SW Fourth Ave. Suite 400 Portland, OR 97201
2-18-03	3 p.m.	Suite 2-D DEQ Western Region Office 201 W. Main St. Medford, OR 97501
2-19-03	1:30 p.m.	First Fl. Conference Rm. Pendleton State Office Bldg. 700 SE Emigrant Pendleton, OR 97801

**Hearing Officer:** Kevin McCrann, Steven Croucher, Tom Hack  
**Stat. Auth.:** ORS 468A.745(8) & 468A.025; Other Auth.: ORS 183.335

**Stats. Implemented:** ORS 468A.700 - 468A.760  
**Proposed Amendments:** 340-248-0010, 340-248-0100, 340-248-0120, 340-248-0130, 340-248-0140, 340-248-0150, 340-248-0160, 340-248-0180, 340-248-0205, 340-248-0210, 340-248-0220, 340-248-0240, 340-248-0250, 340-248-0260, 340-248-0270, 340-248-0275, 340-248-0280, 340-248-0290

**Last Date for Comment:** 2-20-03, 5 p.m.  
**Summary:** The proposed rule changes will make permanent a temporary rulemaking that the Environmental Quality Commission adopted on December 13, 2002. While developing amendments to the asbestos rules that were adopted in January 2002, the Department inadvertently neglected to involve all interested associations. The Department proposed the temporary rule to provide immediate relief from asbestos requirements causing implementation problems for some of the members of these associations.

This proposed rulemaking makes the temporary rule changes permanent. The changes include revisions to the pre-demolition asbestos survey requirements; clarifications to definitions that classify asbestos containing material as friable (easily releases fibers) or non-friable and other definitions; removal of nonfriable asbestos handling requirements; and error corrections.

*\*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 97204  
**Telephone:** (503) 229-5659

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**Department of Fish and Wildlife**  
**Chapter 635**

Date:	Time:	Location:
3-21-03	8 a.m.	Embarcadero 1000 SE Bay Blvd. Newport, OR 97365

**Hearing Officer:** Oregon Fish & Wildlife Commission  
**Stat. Auth.:** ORS 506.109 & 506.119

**Stats. Implemented:** ORS 506.129  
**Proposed Amendments:** 635-005-0190  
**Last Date for Comment:** 3-21-03

**Summary:** Amend rules to require the use of approved bycatch reduction devices for all trawling for pink shrimp.  
*\*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., Portland, OR 97201  
**Telephone:** (503) 872-5272, ext. 5447

Date:	Time:	Location:
2-7-03	8 a.m.	Expo Center - Hall D Rm. 202-204 2060 N. Marine Drive Portland, OR 97217

**Hearing Officer:** Fish & Wildlife Commission  
**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.162 & 496.164  
**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.162 & 496.164

**Proposed Amendments:** Rules in 635-160, 635-190  
**Last Date for Comment:** 2-7-03

**Summary:** Amend rules relating to Wildlife Management Plans for elk and mule deer.

This notice was originally published in the November Bulletin. This hearing was postponed until February 7, 2003. This notice reflects the date and location change only.

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

# NOTICES OF PROPOSED RULEMAKING

**Rules Coordinator:** Mike Lueck  
**Address:** Department of Fish and Wildlife, 2501 SW 1st Ave., Portland, OR 97201  
**Telephone:** (503) 872-5272, ext. 5447

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Date:	Time:	Location:
3-21-03	8 a.m.	Embarcadero 1000 SE Bay Blvd. Newport, OR 97365

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.138

**Stats. Implemented:** ORS 509.585 & 509.645

**Proposed Adoptions:** Rules in 635-412

**Last Date for Comment:** 3-21-03

**Summary:** Adopt rules to formalize the process by which actions at artificial obstructions requiring fish passage are approved.

*\*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., Portland, OR 97201

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

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Date:	Time:	Location:
3-21-03	8 a.m.	Embarcadero 1000 SE Bay Blvd. Newport, OR 97365

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.138, 506.036, 506.109, 506.119 & 506.129

**Stats. Implemented:** ORS 496.162 & 506.129

**Proposed Amendments:** Rules in 635-004, 635-006, 635-039

**Last Date for Comment:** 3-21-03

**Summary:** Adopt 2003 nearshore groundfish harvest caps, seasons, sport bag limits and commercial trip limits consistent with the instructions provided by the Oregon Fish and Wildlife Commission at their December 12, 2002 meeting.

*\*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., Portland, OR 97201

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

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## Department of Human Services, Addiction Services Chapter 415

Date:	Time:	Location:
2-27-02	1-5 p.m.	500 Summer St. NE Rm. 137 A&B Salem, OR

**Hearing Officer:** Robert Miller

**Stat. Auth.:** ORS 409.410 & 409.420

**Stats. Implemented:** ORS 430.010(4)(b) & 430.560 - 430.590

**Proposed Adoptions:** 415-020-0053, 415-020-0054

**Proposed Amendments:** 415-020-0000, 415-020-0005, 415-020-0010, 415-020-0015, 415-020-0020, 415-020-0025, 415-020-0030, 415-020-0035, 415-020-0040, 415-020-0050, 415-020-0060, 415-020-0065, 415-020-0070, 415-020-0075, 415-020-0080

**Proposed Repeals:** 415-020-0045, 415-020-0055

**Last Date for Comment:** 2-28-03

**Summary:** These rules are revised to ensure consistency and compatibility with revised federal rules published in March 2002. These changes also ensure that the standards are made compatible with current research and experience regarding effective treatment practices. Terminology is updated to ensure consistency with nationwide practice and with federal rules. The changes allow providers greater flexibility in making clinical decisions regarding dosage, clinic attendance, and the intensity of treatment services being provided.

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

**Rules Coordinator:** Robert Miller

**Address:** Department of Human Services, Addiction Services, 500 Summer St. NE - E86, Salem, OR 97301

**Telephone:** (503) 945-6185

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

Date:	Time:	Location:
2-25-03	11 a.m.	Rm. 137-B Human Services Bldg. 500 Summer St. NE Salem, OR

**Hearing Officer:** Barbara Carranza

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** ORS 181.537, 181.001 - 181.560 & 409.015

**Proposed Adoptions:** 413-120-0455

**Proposed Amendments:** 413-120-0400, 413-120-0410, 413-120-0420, 413-120-0430, 413-120-0440, 413-120-0450, 413-120-0460, 413-120-0470

**Last Date for Comment:** 2-28-03

**Summary:** Temporary rules were filed in September 2002 regarding Criminal History. These rules will expire in March. DHS is providing this Notice on intent to adopt permanent rules prior to March 12, 2003. Some refinements have been drafted in 413-120-0400, 420 and 450 and to clarify signature authority, procedures, application of these rules to a category of persons, and standards for granting exceptions, and the criteria for meeting criminal history safety standards. A copy of the draft rules can be accessed at the child welfare policy website: [http://170.104.12.72/intranet/scf\\_manuals/Draft/restructurememo.htm](http://170.104.12.72/intranet/scf_manuals/Draft/restructurememo.htm)

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

**Rules Coordinator:** Barbara J. Carranza

**Address:** Department of Human Services, Child Welfare Programs, 550 Summer St. NE, 2nd Floor S, Salem, OR 97310-1017

**Telephone:** (503) 945-6649

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

Date:	Time:	Location:
2-21-03	10:30 a.m.-12 p.m.	HSB, Rm. 137D 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson

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

**Stats. Implemented:** ORS 414.065

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

**Last Date for Comment:** 2-21-03

**Summary:** The General Rules program Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-120-1200 includes a list of services not covered under the Standard Benefit Package. Due to DHS budget shortfall projections, and in preparation for the January 2003 vote and possible failure to pass a tax package generated by HB 5100 from a 2002 Legislative Special Session, Rule 410-120-1200 will be amended to add prescription drugs to this list of not covered services in the Standard Benefit Package.

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

**Rules Coordinator:** Darlene Nelson

# NOTICES OF PROPOSED RULEMAKING

**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97310-1012  
**Telephone:** (503) 945-6927

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**Date:** 2-21-03      **Time:** 10:30 a.m.-12 p.m.      **Location:** HSB, Rm. 137D  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Repeals:** 410-130-0590  
**Last Date for Comment:** 2-21-03

**Summary:** The Medical-Surgical Services administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Due to HIPAA requirements, OAR 410-130-0590 is being repealed to eliminate OMAP unique codes no longer used.  
*\*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, Salem, OR 97310-1012  
**Telephone:** (503) 945-6927

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**Date:** 2-21-03      **Time:** 10:30 a.m.-12 p.m.      **Location:** HSB, Rm. 137D  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-121-0140  
**Proposed Repeals:** 410-121-0153  
**Last Date for Comment:** 2-21-03

**Summary:** The Pharmaceutical Services program rules govern Office of Medical Assistance Program (OMAP) payments for pharmaceutical products provided to clients. Due to DHS budget shortfall projections, and in preparation for the January 2003 vote and possible failure to pass a tax package generated by HB 5100 from a 2002 Legislative Special Session, Rule 410-121-0153 will be repealed to remove prescription drug coverage for the Standard Benefit Package. Rule 410-121-0140 is being amended to correct the definition for "Community Based Waiver."  
*\*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, Salem, OR 97310-1012  
**Telephone:** (503) 945-6927

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**Date:** 2-21-03      **Time:** 10:30 a.m.-12 p.m.      **Location:** HSB, Rm. 137D  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Repeals:** 410-122-0701  
**Last Date for Comment:** 2-21-03

**Summary:** The Durable Medical Equipment and Medical Supplies administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-122-0701 was adopted effective February 1, 2003. Due to action of the November 2002 Emergency Board mandating the elimination of

DME products and supplies from the Standard Benefit Package, this rule is being repealed, effective March 1, 2003.  
*\*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, Salem, OR 97310-1012  
**Telephone:** (503) 945-6927

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**Date:** 2-21-03      **Time:** 10:30 a.m.-12 p.m.      **Location:** HSB, Rm. 137D  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-125-0090, 410-125-0141, 410-125-0142, 410-125-0150, 410-125-0155, 410-125-0190, 410-125-1060, 410-125-1070  
**Last Date for Comment:** 2-21-03

**Summary:** The Hospital Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rules will be amended to allow the State of Oregon flexibility in setting hospital reimbursement rates, to establish one rate reimbursement methodology and to change the Outlier eligibility criteria to establish one hospital rate reimbursement methodology. These amendments are a result of budget directives from the third 2002 Legislative Special Session.  
*\*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, Salem, OR 97310-1012  
**Telephone:** (503) 945-6927

\*\*\*\*\*

**Stat. Auth.:** ORS 409.010  
**Stats. Implemented:** ORS 409.110 & 414.065  
**Proposed Amendments:** 410-122-0020  
**Last Date for Comment:** 2-21-03

**Summary:** The Durable Medical Equipment and Medical Supplies administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Effective December 2002, OMAP temporarily amended rule 410-122-0020 to correct an October 2002 filing error regarding prescription requirements and clarify the true intent of the rule.

**Rules Coordinator:** Darlene Nelson  
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97310-1012  
**Telephone:** (503) 945-6927

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

**Date:** 2-25-03      **Time:** 10 a.m.      **Location:** Rm. 251  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Annette Tesch  
**Stat. Auth.:** ORS 409.050, 411.060, 411.816, 414.342 & 418.100  
**Stats. Implemented:** ORS 411.060, 411.070, 411.105, 411.111, 411.117, 411.122, 411.700, 411.816, 414.342 & 418.100  
**Proposed Adoptions:** 461-165-0171  
**Proposed Amendments:** 461-101-0010, 461-115-0651, 461-120-0125, 461-120-0630, 461-130-0305, 461-130-0315, 461-130-0330, 461-135-0082, 461-135-0400, 461-135-0415, 461-135-0530, 461-

## NOTICES OF PROPOSED RULEMAKING

135-1110, 461-145-0080, 461-145-0130, 461-155-0225, 461-155-0235, 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-160-0040, 461-160-0193, 461-165-0030, 461-165-0160, 461-165-0190, 461-170-0015, 461-170-0020, 461-170-0030, 461-175-0207, 461-180-0010, 461-180-0070, 461-190-0360

**Last Date for Comment:** 2-25-03

**Summary:** Rules 461-101-0010, 461-120-0630, 461-145-0080, 461-145-0130, 461-160-0193, 461-165-0160, 461-175-0207, 461-180-0010, 461-180-0070 and 461-190-0360 are being amended to clarify language that the REF program is for single adults and married couples without children. The REF program does not include children.

Rule 461-115-0651 is being amended to show that actual utility expenses no longer need to be verified when actual costs are used instead of the Utility Allowance.

Rule 461-120-0125 is being amended for several reasons. It is being clarified that for noncitizens who were in the U.S. prior to August 22, 1996 but received their qualified status after that date, the noncitizen will meet the alien status requirement if they can prove that they were lawfully and continuously residing in the U.S. for five years from the last date they entered the U.S. before they received their qualified status. It is also being amended because the ERDC-SBG program is no longer available to applicants regardless if they meet the alien status requirement due to DHS budget cut. It is also being amended to allow qualified noncitizens who have been in the U.S. for at least five years with qualified immigration status to meet the alien status requirement for the Food Stamp program. It is also being amended because victims of a severe form of trafficking under the Trafficking Protection Act of 2002 will be treated in a similar manner as refugees. Thus, they meet the alien status requirements without additional qualification effective April 1, 2003.

Rules 461-130-0305, 461-130-0315 and 461-130-0330 are being amended to correct language that the Refugee program referred to is actually the REF program.

Rule 461-135-0082 is being amended to correct language regarding the eligibility for the Refugee Case Services Program.

Rule 461-135-0400 is being amended to clarify the determination of child care need when two caretaker adults are in the home. The reference to "parent" is being replaced with "adults who are required to be in the filing group".

Rule 461-135-0415 is being amended to add bankruptcy filing as a circumstance which satisfies the program requirement to make a child care copayment. The amendment also removes the conditions placed on the three year waiting period for waiver of copayment requirements.

Rule 461-135-0530 is being amended to correct the definition of commercial boarding homes for the Food Stamp Program.

Rule 461-135-1110 is being filed without change to the current rule.

Rules 461-155-0225, 461-155-0235, 461-155-0250, 461-155-0290, 461-155-0291 and 461-155-0295 are being amended to reflect the annual increase in the federal poverty levels when those levels are published in the Federal Register. These rules includes standards/allowances based on the federal poverty levels.

Rule 461-160-0040 is being amended to clarify the limitation of child care hours when free care is available includes during school hours.

Rule 461-165-0030 is being amended to specify that families can receive both ERDC and TANF benefits for the children if the needy caretaker relative is not included in the TANF benefit group because of the receipt of SSI.

Rule 461-165-0171 is being adopted to identify how a child care provider receives payment for their services to subsidy families and the length of time payment forms are valid.

Rule 461-165-0190 is being amended to remove options to pay a client directly for short term child care for reasons other than seeking a provider approved to receive payment.

Rules 461-170-0015, 461-170-0020 and 461-170-0030 are being amended so that clients receiving ERDC, FS, MAA, MAF and TANF will not be required to report when their rate of pay changes due to the annual adjustment to the state minimum wage.

(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, E47, Salem, OR 97301-1066

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

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### Department of Human Services, Vocational Rehabilitation Services Chapter 582

**Stat. Auth.:** ORS 344.530(2)

**Stats. Implemented:** ORS 344.530(2)

**Proposed Amendments:** 582-070-0020, 582-070-0025

**Last Date for Comment:** 2-22-03

**Summary:** The Office of Vocational Rehabilitation Services intends to amend permanent Division 70 rules on Applicant/Client Transportation. These amended rules more accurately describe the standards for our program's services related to vehicle purchase and vehicle modification including a definition of critical terms, the nature and scope of program services, the general purpose of the provision for vehicle modifications, and funding limitations. Interested persons may obtain a copy of the proposed rule by contacting the Rules Coordinator listed.

**Rules Coordinator:** Kristina Kennedy

**Address:** Department of Human Services, Vocational Rehabilitation Services, 500 Summer St. NE, Salem, OR 97301-1097

**Telephone:** (503) 945-6260

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### Department of Justice Chapter 137

**Date:**  
2-24-03

**Time:**  
9-11 a.m.

**Location:**  
CVAS Conference Rm.  
Promontory Plaza  
4035 12th St. SE  
Salem, OR

**Hearing Officer:** Marshall Brogie

**Stat. Auth.:** ORS 418-782 - 418-793 & 183.341(4)

**Stats. Implemented:** ORS 418.780 - 418.796 & 183.341(4)

**Proposed Adoptions:** 137-083-0000 - 137-083-0050

**Proposed Amendments:** 137-008-0000

**Last Date for Comment:** 2-24-03

**Summary:** Effective January 1, 2002, the responsibility for the administration of the Child Abuse Multidisciplinary Intervention (CAMI) Account and related programs was transferred to the Department of Justice. OAR 137-083-0000 to 137-083-0050 implement the grant program established in ORS 418.786 for CAMI Account grants for regional and community child abuse medical assessment centers. The proposed rules set forth the application requirements, criteria for awarding grants, reporting and other performance requirements and grievance procedures. They also define the services offered by regional assessment centers and referral of complex cases to regional assessment centers. The CAMI program rules currently set out in OAR 417-001-0001 to OAR 417-001-0011 (Department of Human Services) will be repealed.

OAR 137-008-0000(2) is amended to comply with ORS 183.341(4) and give reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule related to the Child Abuse Multidisciplinary Intervention (CAMI) Account.

# NOTICES OF PROPOSED RULEMAKING

A complete copy of the proposed rules may be obtained by contacting Marshall Brogie, CAMI account Coordinator, Crime Victims Assistance Section, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301; marshall.brogie@state.or.us; (503) 378-8705, ext. 238.

Comments on the proposed rules should be submitted to Marshall Brogie, CAMI account Coordinator, Crime Victims Assistance Section, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301; marshall.brogie@state.or.us; (503) 378-8705, ext. 238. Comments must be received by 12 p.m. on February 24, 2003.

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

**Rules Coordinator:** Carol Riches

**Address:** Department of Justice, 1162 Court St. NE, Salem, OR 97305

**Telephone:** (503) 378-6313

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Date:	Time:	Location:
2-26-03	9:30 a.m.	State Office Bldg. 800 NE Oregon St. Portland, OR 97232
3-12-03	1:30 p.m.	3218 Pringle Rd. SE Salem, OR 97302

**Hearing Officer:** C. Chute

**Stat. Auth.:** ORS 183.341

**Stats. Implemented:** ORS 183 & OL 1999 Ch. 849

**Proposed Adoptions:** 137-003-0572

**Proposed Amendments:** 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, 137-003-0615, 137-003-0630, 137-003-0635, 137-003-0650, 137-003-0655, 137-003-0665, 137-003-0670

**Last Date for Comment:** 3-21-03

**Summary:** The proposed rulemaking makes many changes to the procedural rules that apply to hearings before the Hearing Officer Panel, primarily in 1) discovery procedures; 2) late hearing requests; 3) service of documents; 4) transmittal of legal questions to agencies; and 5) the scope of the authority of hearing officers over the proceedings.

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

**Rules Coordinator:** Carol Riches

**Address:** Department of Justice, 1162 Court St. NE, Salem, OR 97305

**Telephone:** (503) 378-6313

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## Department of Public Safety Standards and Training Chapter 259

**Stat. Auth.:** ORS 181.640

**Stats. Implemented:** ORS 181.640

**Proposed Amendments:** 259-008-0010

**Last Date for Comment:** 2-24-03

**Summary:** Allows certification for those who attend high school outside the United States by removing the word accredited.

**Rules Coordinator:** Shawn M. Irish

**Address:** Department of Public Safety Standards and Training, 550 N Monmouth Ave., Monmouth, OR 97361

**Telephone:** (503) 378-2100, ext. 2223

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**Stat. Auth.:** ORS 181.640

**Stats. Implemented:** ORS 181.640

**Proposed Amendments:** 259-006-0000

**Last Date for Comment:** 2-24-03

**Summary:** Our current rule is outside the intent and scope of the enabling statute. This rule change brings the rule into line with statute.

**Rules Coordinator:** Shawn M. Irish

**Address:** Department of Public Safety Standards and Training, 550 N Monmouth Ave., Monmouth, OR 97361

**Telephone:** (503) 378-2100, ext. 2223

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## Department of Transportation, Board of Maritime Pilots Chapter 856

Date:	Time:	Location:
2-19-03	10 a.m.	800 N.E. Oregon St. #120C Portland, OR 97232

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 776

**Stats. Implemented:** ORS 776.115

**Proposed Adoptions:** 856-010-0028

**Proposed Amendments:** 856-010-0010

**Last Date for Comment:** 2-19-03

**Summary:** New rule establishes recommended area for exchange between bar and river pilots on Columbia River; requires pilot-to-pilot information exchange, requires master-pilot information exchange. Rule amendment is housekeeping that deletes subparagraph (g), repealed effective 12/31/2000.

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

**Rules Coordinator:** Susan Johnson

**Address:** Department of Transportation, Board of Maritime Pilots, 800 NE Oregon St. #15, Suite 507, Portland, OR 97232

**Telephone:** (503) 731-4044

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

Date:	Time:	Location:
2-24-03	6 p.m.	Bay Area Hospital Spruce/Fir Rm. 1775 Thompson Rd. Coos Bay, OR
2-25-03	6 p.m.	Jackson Cty Public Works Bldg. Auditorium 200 Antelope Rd. White City, OR
2-26-03	6 p.m.	Lane Comm College Bldg. 3, Rm. 216 4000 E. 30th Ave. Eugene, OR
2-27-03	6 p.m.	Bend Memorial Clinic Physicians Lounge, 2nd Flr. 1501 Med. Ctr. Dr. Bend, OR
3-3-03	5:30 p.m.	Bob Chisholm Community Ctr. Hall 1225 Ave. A Seaside, OR
3-4-03	11 p.m.	Beaverton Library Meeting Rm. B 12375 SW 5th St. Beaverton, OR
3-4-03	6 p.m.	Multnomah Bldg. 1st Flr. Boardroom 100 501 SE Hawthorne Blvd. Portland, OR
3-5-03	6 p.m.	Dept. of Forestry Operations Bldg., Rm. 101 2600 State St. Salem, OR

**Hearing Officer:** Liz Woods

**Stat. Auth.:** ORS 184.616, 184.619, 807.090, 807.120, 807.340, 807.350, 807.710, 809.410 & 809.440

**Stats. Implemented:** ORS 807.070, 807.090, 807.120, 807.340, 807.350, 807.710, 809.410 & 809.440

# NOTICES OF PROPOSED RULEMAKING

**Proposed Adoptions:** 735-074-0045, 735-074-0050, 735-074-0060, 735-074-0070, 735-074-0080, 735-074-0090, 735-074-0100, 735-074-0110, 735-074-0120, 735-074-0130, 735-074-0140, 735-074-0150, 735-074-0160, 735-074-0190, 735-074-0200, 735-074-0210, 735-074-0220, 735-076-0005

**Proposed Amendments:** 735-076-0000, 735-076-0010, 735-076-0020, 735-076-0030, 735-076-0040, 735-076-0050, 735-076-0060

**Proposed Repeals:** 735-074-0000, 735-074-0030, 735-074-0040

**Proposed Ren. & Amendments:** 735-074-0010 to 735-074-0170, 735-074-0020 to 735-074-0180

**Last Date for Comment:** 3-12-03

**Summary:** This rulemaking deals with the revision and expansion of the Medical Reporting Program and the Driver Reexamination Program. The proposed changes broaden the mandatory reporting requirements, establish criteria for the receipt and assessment of mandatory reports; establish criteria for the receipt and assessment of voluntary reports related to both mental or physical conditions that may affect driving and observed bad driving behavior; establish procedures to be followed when a mandatory or voluntary report is received; and sets forth guidelines for the suspension, cancellation and reinstatement of driving privileges and the reexamination of qualifications for driving privileges.

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

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

**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, 814.619, 807.040, 807.050, 807.060, 807.120 & 809.310

**Stats. Implemented:** ORS 807.040, 807.060 & 807.066

**Proposed Amendments:** 735-062-0000

**Last Date for Comment:** 3-12-03

**Summary:** This rule establishes who is eligible to be issued either an instructional permit or drivers license. This rule also details what a person must present to DMV in order to be issued an instructional permit or drivers license. A person under 18 years of age is required to have approval of a mother, father or guardian to be issued a driver permit or driver license. The reason for this particular amendment is to clarify how DMV interprets the terms mother, father and guardian as used in ORS 807.060(2)(a). DMV only accepts the approval of a biological or adoptive mother, biological or adoptive father or person appointed by the court as guardian or given guardianship by statute. The main purpose of the rule amendment is to clarify that DMV will not accept approval from a stepparent or grandparent who has not adopted or gained legal custody of the applicant. The amendment of this rule does not change any DMV process. The title of the rule is being amended to clarify what the rule entails.

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 823.011, 823.061, 825.137, 825.210, 825.232, 825.252 & 825.258

**Stats. Implemented:** ORS 825.210, 825.250, 825.252, 825.258 & 825.260

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

**Last Date for Comment:** 3-12-03

**Summary:** These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The proposed changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Other proposed changes re-define intrastate driver hours-of-service exclusions to reflect current practice, update passenger carrying vehicles subject to external identification requirements and reformat a subsection.

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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**Oregon Department of Education  
Chapter 581**

**Date:**  
2-18-03

**Time:**  
3 p.m.

**Location:**  
Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 343

**Stats. Implemented:** ORS 343.261

**Proposed Amendments:** 581-015-0017

**Last Date for Comment:** 2-18-03

**Summary:** School Programs in Private Hospitals.

For questions regarding this rule, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@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:**  
2-18-03

**Time:**  
3 p.m.

**Location:**  
Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326 & 323.055

**Stats. Implemented:** ORS 343.041

**Proposed Amendments:** 581-015-0108, 581.015-0109

**Last Date for Comment:** 2-18-03

**Summary:** definitions and Procedures for a Hearing under section 504 of the Rehabilitation Act.

For questions regarding this rule, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@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



# NOTICES OF PROPOSED RULEMAKING

**Date:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 343.157 & 343.173  
**Stats. Implemented:** ORS 343.157, 343.173 & 20 USC 1415(5)(c)  
**Proposed Amendments:** 581-015-0074  
**Last Date for Comment:** 2-18-03

**Summary:** Need to delete subsection (4), which has been moved to OAR 581-015-0051 Criteria for Evaluation and Eligibility Determination.

For questions regarding these rules, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@state.or.us). For copies of these rules, 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:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 326.051(b)  
**Stats. Implemented:** ORS 326.051(b)  
**Proposed Adoptions:** 581-022-1431  
**Last Date for Comment:** 2-18-03  
**Summary:** Mercury Elimination Policies.

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:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 343.465 & 343.534  
**Stats. Implemented:** ORS 343.521, 343.527 & 343.531  
**Proposed Amendments:** 581-015-0940, 581-015-0941, 581-015-0949  
**Last Date for Comment:** 2-18-03

**Summary:** Prior Written Notice and Notice of Procedural Safeguards (EL/ECSE Program); ECSE Evaluation; Provision of EL services before an Evaluation and Assessment are Completed.

For questions regarding these rules, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@state.or.us). For copies of these rules, 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:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 343.055 & 343.157  
**Stats. Implemented:** ORS 343.055  
**Proposed Amendments:** 581-015-0705, 581-015-0706  
**Last Date for Comment:** 2-18-03

**Summary:** Definitions for Parentally Placed Private School Children and Expenditures for Parentally Places Private School Children.

For questions regarding these rules, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@state.or.us). For a copy of these rules, 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:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 343.035  
**Stats. Implemented:** ORS 343.041, 343.155 & 343.173  
**Proposed Amendments:** 581-015-0606  
**Last Date for Comment:** 2-18-03

**Summary:** Access to Student Education Records -- need to correct cross-reference to Division 21 records rules.

*\*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:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 343.236(a)  
**Stats. Implemented:** ORS 343.236  
**Proposed Amendments:** 581-015-0291, 581-015-0293, 581-015-0294  
**Last Date for Comment:** 2-18-03

**Summary:** Definitions for Regional Programs, Eligibility for Regional Programs, Referral for Regional Services.

For questions regarding this rule, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@state.or.us). For a copy of this rules, 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

# NOTICES OF PROPOSED RULEMAKING

**Date:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 343.041 & 343.055

**Stats. Implemented:** ORS 343.941 & 343.221

**Proposed Amendments:** 581-015-0141

**Last Date for Comment:** 2-18-03

**Summary:** Correct title to remove reference to EI/ECSE program -- this rule applies to both school districts and EI/ECSE programs. Minor numbering corrections and update wording.

For questions regarding this rule, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@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:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 343.151

**Stats. Implemented:** ORS 343.151

**Proposed Amendments:** 581-015-0704

**Last Date for Comment:** 2-18-03

**Summary:** ORS 343.151 requires the Office of Special Education to develop a standard individualized education program (IEP) form. Notwithstanding this requirement, school districts may use alternate forms if the form is approved by the Office of special Education. The current criteria for approval of alternate IEP forms does not include a prompt for considering extended school year or listing of the IEP team on the form. The Office of Special Education believes these items are necessary to ensure full compliance with the state and federal regulations under the Individuals with Disabilities Education Act (IDEA).

*\*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:** 2-18-03  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 336.585 & 326.051

**Stats. Implemented:** ORS 326.695 - 712, 336.585

**Proposed Amendments:** 581-015-0301

**Last Date for Comment:** 2-18-03

**Summary:** Youth Corrections Education and Juvenile Detention Education.

For questions regarding these rules, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@state.or.us). For copies of these rules, 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

\*\*\*\*\*

## Oregon State Marine Board Chapter 250

**Stat. Auth.:** ORS 830.082 & 830.110

**Stats. Implemented:**

**Proposed Amendments:** 250-018-0010, 250-018-0060, 250-018-0080

**Last Date for Comment:** 2-28-03

**Summary:** The 1999 Legislature passed HB 2977 which required the Marine Board to adopt Administrative Rules to implement a program for mandatory boating education. The rules were approved by the Board at their October 12, 2000 meeting and filed. A few house-keeping issues have been encountered and at the January 7, 2003 meeting the Board directed staff to open the rules for Mandatory Education to amend the language in response to specific issues. The Board will accept comment and consider the final rules to become effective upon filing.

**Rules Coordinator:** Jill E. Andrick

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

**Telephone:** (503) 373-1405, ext. 243

\*\*\*\*\*

## Oregon University System, University of Oregon Chapter 571

**Date:** 3-11-03  
**Time:** 3 p.m.  
**Location:** University of Oregon  
Erb Memorial Union  
Walnut Rm.  
Eugene, OR

**Hearing Officer:** Donna Chittenden, Office of Resource Mangm.

**Stat. Auth.:** ORS 351.070, 351 & 352

**Stats. Implemented:** ORS 351.070

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

**Last Date for Comment:** 3-11-03, 5 p.m.

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

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

**Rules Coordinator:** Deb Eldredge

**Address:** Oregon State System of Higher Education, University of Oregon, 1226 President's Office, University of Oregon, Eugene, OR 97403-1226

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

\*\*\*\*\*

## Oregon University System, Western Oregon University Chapter 574

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

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

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

**Last Date for Comment:** 2-24-03

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

**Rules Coordinator:** Darin Silbernagel

**Address:** Oregon State System of Higher Education, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361

**Telephone:** (503) 838-8175

# NOTICES OF PROPOSED RULEMAKING

## Parks and Recreation Department Chapter 736

**Date:** 2-20-03  
**Time:** 1 p.m.  
**Location:** Oregon Parks and Rec. Dept.  
1115 Commercial St. NE  
Salem, OR

**Hearing Officer:** James M. Hamrick, Jr., Assist. Director

**Stat. Auth.:** ORS 358.640(4)

**Stats. Implemented:** ORS 358.640(3) & 358.647

**Proposed Adoptions:** 736-052-0000 - 736-052-0040

**Last Date for Comment:** 3-7-03

**Summary:** This rule provides department procedure for considering a request from a state agency to transfer, sell, demolish, substantially alter or otherwise dispose of any state-owned historical artifacts. "Historic artifacts" are historically-significant three-dimensional objects, and can include furniture, art objects, or personal property.

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

**Rules Coordinator:** Angie Springer

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

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

## Public Utility Commission Chapter 860

**Date:** 3-12-03  
**Time:** 9 a.m.  
**Location:** Public Utility Commission  
Main Hearing Rm.  
550 Capitol St. NE  
Salem, OR

**Hearing Officer:** Michael Grant

**Stat. Auth.:** ORS 183, 192, 756 & 759

**Stats. Implemented:** ORS 759.425(8)

**Proposed Adoptions:** 860-032-0670

**Last Date for Comment:** 3-12-03

**Summary:** The proposed rule establishes the procedure for allowing pay telephone providers to apply for a refund of the Oregon Universal Fund surcharges paid on or after July 1, 2003.

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

**Rules Coordinator:** Lauri Salsbury

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

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

**Stat. Auth.:** ORS 756

**Stats. Implemented:** ORS 757.205 et seq. & 759.180 et. seq

**Proposed Adoptions:** 860-012-0040

**Last Date for Comment:** 2-21-03

**Summary:** The proposed rule is to insure that all Commissioners are in attendance when the Commission approves a major rate change. The rule is intended to reduce the possibility that major rate changes could take effect on a tie vote.

**Rules Coordinator:** Lauri Salsbury

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

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

**Stat. Auth.:** ORS 183, 192, 756 & 759

**Stats. Implemented:** ORS 756.040, 756.310, 756.320 & 756.350

**Proposed Adoptions:** 860-021-0037, 860-032-0097, 860-034-0097

**Proposed Amendments:** 860-021-0036, 860-032-0095, 860-034-0095

**Last Date for Comment:** 2-21-03

**Summary:** Update the Commission's rules to address late-filed PUC fee statements and late PUC fee payments, improve the collection and refund processes for PUC fees, establish parameters for PUC fee audits and hearings, and make the confidentiality portion of the PUC fee rules consistent with other rules. These changes would be consistent with the recently-adopted OARs 860-032-0610 through 860-032-0660 for the Oregon Universal Service Fund (PUC Order 02-787) and should aid the Commission in collecting and writing-off overdue PUC fees.

**Rules Coordinator:** Lauri Salsbury

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

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

## Secretary of State, Archives Division Chapter 166

**Date:** 2-14-03  
**Time:** 10 a.m.  
**Location:** Archives Bldg.  
800 Summer St. NE  
Salem, OR

**Hearing Officer:** Mary Beth Herkert

**Stat. Auth.:** ORS 192 & 357

**Stats. Implemented:** ORS 192.005 - 192.170 & 357.805 - 357.895

**Proposed Adoptions:** Rules in 166-115

**Last Date for Comment:** 2-14-03

**Summary:** Create a records retention schedule for county Community Corrections programs. This schedule was previously noticed in the March 1, 1997 Oregon Bulletin.

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

**Rules Coordinator:** Julie Yamaka

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

**Telephone:** (503) 373-0701, ext. 240

## Secretary of State, Corporation Division Chapter 160

**Stat. Auth.:** ORS 194.335

**Stats. Implemented:** ORS 194.166 & 194.080

**Proposed Amendments:** 160-100-0610

**Last Date for Comment:** 2-28-03

**Summary:** OAR 160-100-0610 describes the sanctions that may be levied on notaries public for official misconduct. The rule is being clarified to specifically address notaries who abuse the notarial act of protest of commercial paper by protesting non-commercial paper and doing it in a manner other than that specified by the statute.

OAR 160-100-0610 is also amended to address notaries public that claim to be citizens of countries that are not recognized by the United States of America, primarily fictional places that do not exist in geopolitical atlases.

OAR 160-100-0610 is also amended to address notaries public that seek to reply to official government correspondence from the Secretary of State and other agencies through certain, specific, documents that have no basis in law or proper procedure.

Finally, OAR 160-100-0610 is amended to update statutory reference.

**Rules Coordinator:** Thomas E. Wrosch

**Address:** Secretary of State, Corporation Division, 255 Capitol St. NE - Suite 151, Salem, OR 97310

**Telephone:** (503) 986-2208

# ADMINISTRATIVE RULES

## Appraiser Certification and Licensure Board Chapter 161

**Adm. Order No.:** ACLB 1-2003(Temp)

**Filed with Sec. of State:** 1-14-2003

**Certified to be Effective:** 1-14-03 thru 7-11-03

**Notice Publication Date:**

**Rules Amended:** 161-006-0025

**Subject:** Amends Oregon Administrative Rule 163, Division 006, Rule 0025, regarding the Board's budget.

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

### 161-006-0025

#### Budget

The Board hereby adopts by reference the Board's 2001-2003 Biennium Budget of \$763,511 covering the period from August 22, 2001 through June 30, 2003. The Board will amend budgeted accounts as necessary within the approved budget of \$763,511 for the effective operation of the Board. The Board will not exceed the approved 2001-2003 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

## Board of Accountancy

### Chapter 801

**Adm. Order No.:** BOA 1-2002

**Filed with Sec. of State:** 12-27-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 801-001-0030

**Rules Amended:** 801-001-0000, 801-001-0005, 801-001-0010, 801-001-0020

**Subject:** This rulemaking amends rules to reflect current effective dates of model rules adopted by the Board and adopts a rule to allow for extension of time limits when proper documentation is presented.

**Rules Coordinator:** Kimberly Bennett—(503) 378-4181, ext. 24

### 801-001-0000

#### Notice of Proposed Rule

Prior to the adoption, amendment or repeal of any rule, the Oregon Board of Accountancy shall give notice of the intended action:

(1) By publishing Notice at least 21 days prior to the effective date of the rule in the bulletin compiled by the Secretary of State and referred to in ORS 183.360;

(2) By mailing a copy of the Notice to persons on the Board of Accountancy's mailing list established pursuant to ORS 183.335 at least 28 days before the effective date of the rule;

(3) By mailing or furnishing a copy of the Notice to the following persons and organizations:

- (a) Capitol Press Room;
- (b) Associated Press;
- (c) Oregon Society of Certified Public Accountants;
- (d) Oregon Association of Independent Accountants; and

(4) By mailing a copy of the Notice to legislators as provided by ORS 183.335(15).

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.335 & ORS 183.360

Hist.: AB 37, f. & ef. 12-3-75; AB 2-1982, f. & ef. 4-20-82; AB 4-1992, f. & cert. ef. 8-10-92; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03

### 801-001-0005

#### Model Rules or Procedure

Pursuant to ORS 183.341, the Oregon Board of Accountancy adopts by this reference the *Model Rules of Procedure* as promulgated by the Attorney General under the Administrative Procedures Act and in effect December 31, 2002.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Board of Accountancy.]

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.335

Hist.: AB 20A, f. 1-17-72, ef. 2-1-72; AB 25, f. 9-15-72, ef. 10-1-72; 1AB 33, f. 11-6-73, ef. 11-25-73; 1AB 38, f. & ef. 2-10-76; 1AB 3-1978, f. & ef. 3-23-78; 1AB 1-1980, f. & ef. 2-26-80; 1AB 1-1982, f. & ef. 1-8-82; AB 5-1988, f. & cert. ef. 10-31-88; AB 6-1991, f. & cert. ef. 12-18-91; AB 3-1994, f. & cert. ef. 8-10-94; AB 1-1-96, f. & cert. ef. 1-29-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03

### 801-001-0010

#### Screening and Selection Procedures for Personal Services Contracts

The Oregon Board of Accountancy adopts by this reference the Personal Contract Rules as promulgated by the Department of Administrative Services and in effect as of December 31, 2002, for procedures to be followed when entering into personal services contracts.

Stat. Auth.: ORS 670

Stats. Implemented: ORS 279.051

Hist.: AB 4-1992, f. & cert. ef. 8-10-92; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03

### 801-001-0020

#### Hearing Panel Rules

The Oregon Board of Accountancy adopts by this reference the Hearing Panel Rules (OAR Chapter 137), as promulgated by the Department of Justice and in effect as of December 31, 2002.

Stat. Auth.: OL 1999 Ch. 849 Sec. 2-21, ORS 183.310

Stats. Implemented: ORS 183

Hist.: BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03

### 801-001-0030

#### Extension of time limits created in Administrative Rules

(1) The Oregon Board of Accountancy may extend specified time requirements stated in OAR chapter 801 if the person seeking the extension shows good cause for failing to meet the time requirement stated by the applicable rule. A request for an extension of any time requirement must be submitted in writing within a reasonable time.

(2) Definitions. For the purposes of subsection (1) of this rule:

(a) "Good cause" exists when the person seeking the extension establishes by satisfactory evidence that the cause of the failure to meet the time requirement stated by the applicable rule was beyond his or her reasonable control.

(b) "Reasonable time" means that the person acted promptly in filing the request for extension after the cessation of the circumstances that prevented him or her from meeting the time requirement stated by the applicable rule.

(3) Time limits not subject to extension. The provisions for extension are not applicable to the following time limits:

(a) Renewal of permits described in OAR 801 division 010,

(b) Renewal of firm registrations described in OAR 801 division 010.

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 673.410

Hist.: BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03

**Adm. Order No.:** BOA 2-2002

**Filed with Sec. of State:** 12-27-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 11-1-02

**Rules Amended:** 801-005-0010

**Subject:** This rulemaking amends or adds definitions to provide clarification.

**Rules Coordinator:** Kimberly Bennett—(503) 378-4181, ext. 24

### 801-005-0010

#### Definitions and Safe Harbor Language

801-005-0010 As used in OAR chapter 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) **AICPA:** American Institute of Certified Public Accountants.

(2) **Applicant:** a person applying for a certificate, license or permit to practice public accountancy.

(3) **Attest:** includes the following financial statement services:

(a) An audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(b) A review of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

## ADMINISTRATIVE RULES

(c) An examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); and

(d) An agreed-upon-procedures report on a financial statement to be performed in accordance with Statements on Standards for Attestation Engagements (SSAE).

(e) The statements on standards specified in this definition are those developed by the AICPA and in effect as of December 31, 2002.

(4) **Business organization:** any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(5) **CPA or Certified Public Accountant:** a person who has a certificate of certified public accountant issued under ORS 673.040.

(6) **CPA Exam:** the Uniform Certified Public Accountant Examination.

(7) **CPE:** continuing professional education.

(8) **Candidate:** a person applying for the CPA Exam.

(9) **Certificate:** a certificate of certified public accountant issued under ORS 673.040.

(10) **Client:** a person who agrees with a licensee to receive any professional service from the licensee.

(11) **Commission:** a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

(12) **Compilation:** a professional service performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(13) **Contingent fee:** a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(14) **Direct supervision:** a clear connection between the supervisor and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling and evaluating activities, and in discharging the employee being supervised.

(15) **Enterprise:** any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(16) **Financial statements:** the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(17) **Firm:** a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

(18) **First time candidate:** a candidate for the CPA exam who is sitting for the exam for the first time in any state.

(19) **Generally Accepted Accounting Principles:** accounting principles or standards generally accepted in the United States, including but not limited to *Statements of Financial Accounting Standards* and interpretations thereof, as published by the *Financial Accounting Standards Board*, and *Statements of Governmental Accounting Standards* and interpretations thereof, as published by the Government Accounting Standards Board and in effect as of December 31, 2002.

(20) **Generally Accepted Auditing Standards:** the *Generally Accepted Auditing Standards* adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in *Statements on Auditing Standards* issued by the AICPA, and for federal audits, the *Single Audit Act* of 1984 and related U.S. Office of Management and Budget Circulars published by the General Accounting Office and in effect as of December 31, 2002.

(21) **Holding out as a CPA or PA:** to assume or use by oral or written communication the titles or designations "certified public accountant" or "public accountant" or the abbreviations "CPA" or "PA", or any number or other title, sign, card or device tending to indicate that the person holds a certificate or license and permit in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(22) **Inactive status:** permit status that may be granted to a licensee who is not holding out as a CPA or PA and otherwise not engaged in the practice of public accountancy, if the license is not suspended, on probation or revoked.

(23) **In good standing:** the status of a holder of a permit, license or registration issued by any jurisdiction, that is not inactive, suspended, revoked, on probation or lapsed.

(24) **Jurisdiction:** the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(25) **License:**

(a) A certificate, permit or registration, or a license issued under ORS 673.100, or other authority enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(26) **Licensee:** the holder of a license as defined in these rules.

(27) **Material participation:** participation that is regular, continuous and substantial.

(28) **Manager:** a manager of a limited liability company.

(29) **Member:** a member of a limited liability company.

(30) **NASBA:** National Association of State Boards of Accountancy.

(31) **Non-licensee owner:** a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(32) **PA or Public Accountant:** a person who is the holder of a license issued under ORS 673.100.

(33) **Peer Review:** a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a permit under ORS 673.150 or of a registered business organization that performs attestation or compilation services. The peer review is conducted by a person or persons who are permitted under ORS 673.150 to practice public accountancy and who are independent of the permit holder or registered business organization being reviewed.

(34) **Permit:** a permit to practice public accountancy issued under ORS 673.150.

(35) **Practice of public accountancy:** performance of or any offer to perform one or more services for a client or potential client, by a licensee while holding out as a CPA or PA, of the professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated, such as *Statements of Financial Accounting Standards*, *Statements on Auditing Standards*, *Statements on Standards for Accounting and Review Services*, *Statements on Standards for Consulting Services*, *Statements of Governmental Accounting Standards*, and *Statements on Standards for Attestation Engagements*, including the performance of such services while in the employ of another person.

(36) **Professional:** arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(37) **Professional services:** any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(38) **Referral fee:** includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(39) **Registration:** the authority issued under ORS 673.160 to a business organization to practice public accountancy in this state.

(40) **Returning candidate:** a person who has received grades for any section of the Uniform CPA exam in any state and who applies to sit for any part of the CPA exam in Oregon.

(41) **Single Audit Act of 1984:** the Single Audit Act of 1984 with the Single Audit Act Amendments of 1996, as published by the United States General Accounting Office, Office of Management and Budget.

# ADMINISTRATIVE RULES

(42) **Standards for Accounting and Review Services:** the *Statements on Standards for Accounting and Review Services* published by the AICPA and in effect as of December 31, 2002.

(43) **Standards for board approved peer review programs:** the *Standards for Performing and Reporting on Peer Reviews* published by the AICPA and in effect as of December 31, 2002.

(44) **Statements on Standards for Attestation Engagements:** the statements by that name issued by the AICPA and in effect as of December 31, 2002.

(45) **State:** any state, territory or insular possession of the United States, and the District of Columbia.

(46) **Substantial equivalency:** a determination by the National Qualification Appraisal Service of the National Association of State Boards of Accountancy that:

(a) The education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act; or

(b) An individual's education, examination and experience qualifications are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act.

(47) **Supervisor licensee:** A certified public accountant or public accountant whose license is not revoked, suspended, on probation, lapsed or inactive, who qualifies under OAR 801-010-0065 as a supervisor for the purpose of verifying the experience requirement of an applicant for certification under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under OAR 801-010-0100.

(48) **Uniform Accountancy Act (UAA):** A model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 670.310, ORS 673.010, 673.012, 673.153, ORS 673.410  
Stats. Implemented: ORS 670.310, ORS 673.410, ORS 673.010, OL 2001, ch 638 & ch 313, ORS 673.010, 673.012, 673.153, ORS 673.040, 673.220, 673.320  
Hist.: IAB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert. ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03

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**Adm. Order No.:** BOA 3-2002

**Filed with Sec. of State:** 12-27-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 11-1-02

**Rules Amended:** 801-010-0010, 801-010-0045, 801-010-0050, 801-010-0060, 801-010-0065, 801-010-0075, 801-010-0078, 801-010-0079, 801-010-0080, 801-010-0085, 801-010-0100, 801-010-0110, 801-010-0115, 801-010-0340

**Subject:** The Board of Accountancy is amending the attached rules to change fees charged for public records; clarify supervisor licensee requirements; reference current dates of standards or rules adopted by the Board; provide statutory or rule references for clarification and grammatical changes.

**Rules Coordinator:** Kimberly Bennett—(503) 378-4181, ext. 24

## 801-010-0010

### Fees

For the purpose of ORS 673.010 to 673.455 and 297.670 to 297.740, the Board of Accountancy shall charge the following fees:

- (1) **Application fees.** All application fees are non-refundable.
  - (a) CPA Examination:
    - (A) All subjects — \$150
    - (B) Auditing — \$ 50
    - (C) Business Law & Professional Responsibilities (LPR) — \$ 50
    - (D) Financial Accounting & Reporting (FARE) — \$ 50
    - (E) Accounting & Reporting (ARE) — \$ 50
    - (F) Proctor Fee — \$100
  - (b) CPA Certificate or PA License — \$150
  - (c) Substantial equivalency by notification — \$100
- (2) **Initial permit and registration fees:**
  - (a) Initial CPA or PA Permit — \$150
  - (b) Municipal Auditor — \$100
  - (c) Firm Registration — \$100

### (3) Biennial renewal fees:

- (a) Active Permit — \$150
- (b) Inactive Permit — \$ 50
- (c) Municipal Auditor — \$100
- (d) Firm Registration — \$100

### (4) Annual renewal fees:

- (a) Substantial equivalency by notification — \$100
- ### (5) Late renewal penalty fee:
- (a) Active Permit — \$ 50
  - (b) Inactive Permit — \$ 35
  - (c) Firm Registration — \$ 35

### (6) Miscellaneous fees:

(a) Copies of existing mailing lists shall be provided for a fee equal to the amount necessary to prepare each list, including the cost of materials, if any, and the cost of staff time. Staff time shall be calculated at the hourly rates stated in subsection (d) of this section.

(b) Municipal Auditor lists shall be provided at no charge to municipal entities that are subject to audit law.

(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of \$2.50 for five pages or less, and 25 cents per page thereafter.

(d) Staff time required to locate, produce, summarize or otherwise provide records shall be charged as follows:

(A) Secretarial/clerical, \$17 per hour, in quarter hour increments at \$4.25 per quarter hour.

(B) Professional/technical, \$25 per hour, in quarter hour increments at \$6.25 per quarter hour.

### (7) Form of Payment:

(a) Checks or money orders shall be made payable to "Oregon Board of Accountancy".

(b) Visa and Mastercard payments may be submitted in person, by mail or by fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection. All payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties, will be considered late and a late penalty will be assessed.

Stat. Auth.: ORS 670.310, ORS 673.040, ORS 673.060, ORS 673.100, ORS 673.150, ORS 673.160; ORS 197.720 & OL 2001, Ch 638

Stats. Implemented: ORS 673, ORS 297, ORS 192.440

Hist.: IAB 10, f. 2-7-63; IAB 14, f. 8-15-68; IAB 20, f. 10-22-71, ef. 11-15-71; IAB 34, f. 1-29-74, ef. 2-25-74; IAB 41, f. & ef. 12-2-76; IAB 44, f. & ef. 3-31-77; IAB 48, f. & ef. 7-21-77; IAB 6-1978, f. & ef. 6-22-78; IAB 7-1981, f. & ef. 7-27-81; IAB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. ef. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0045

### Uniform Certified Public Accountant Exam

(1) **CPA exam rules.** The Board adopts by this reference the CPA Examination Rules of Conduct as promulgated by the AICPA and effective as of December 31, 2002. The Board may deny credit for any or all sections of the exam and may prohibit candidates from retaking the exam for any of the following reasons:

- (a) Conduct that violates the CPA Examination Rules of Conduct,
- (b) Tardiness for any section of the CPA exam, and
- (c) Violation of the confidentiality provisions of the CPA Examination Rules of Conduct, which shall result in denial of credit for the candidate's scores on the CPA exam and the candidate shall be prohibited from retaking the CPA exam for a period of ten years.

Stat. Auth.: ORS 670.310, ORS 673.060

Stat. Implemented: ORS 673.060, ORS 673.410

Hist.: BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0050

### Application for Uniform CPA Examination

(1) **Applications.** The CPA exam will be administered by the Board and shall be offered each year at such times as the Board may determine. Qualified candidates shall be notified by letter, mailed to the address provided on the application, of the time and place appointed for holding the CPA exam.

(a) Applications for the CPA exam shall be made on a form provided by the Board and shall be accompanied by the appropriate fee.

# ADMINISTRATIVE RULES

(b) Applications that are received after the dates specified in subsection (d) of this rule will not be accepted by the Board.

(c) The act of filing an application for the CPA exam shall constitute an agreement by the candidate to observe and comply with the rules adopted by the Board.

(d) Applications for the CPA exam offered in May must be received by the Board office on or before March 1 of each year and on or before September 1 of each year for the November CPA exam.

(e) All foreign academic credentials submitted as evidence of eligibility for the CPA exam are required to be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(2) **Eligibility under education requirements.** Candidates for admission to the CPA exam after January 1, 2000 who are applying under the educational requirements of ORS 673.050(1)(a) shall demonstrate eligibility by one of the following standards:

(a) **150 Hour rule:** Candidates shall present satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

(A) A baccalaureate or higher degree from an accredited college or university as described in ORS 673.050(1)(a);

(B) A minimum of 24 semester hours or 36 quarter hours, or the equivalent thereof, in the study of accounting; and

(C) A minimum of 24 semester hours or 36 quarter hours in accounting or related subjects. Related subjects are defined as business, finance, economics, and written and oral communication.

(D) The required number of hours in accounting or related subjects may be obtained by satisfactory completion of such hours taken from divisions of continuing education extended by an accredited four-year college or university, or from a community college, providing the community college courses are transferable as equivalent courses to an accredited four-year college or university.

(E) Credit for community college courses. Applicants who have earned a baccalaureate or higher degree from an accredited college or university may obtain additional hours from a community college, if such hours would be transferable to an accredited college or university. However, completion of 150 hours consisting entirely of courses taken from a community college or divisions of continuing education shall not be considered equivalent to a baccalaureate or higher degree from a four-year accredited college or university under the requirements of ORS 673.050.

(b) **Candidates who applied before January 1, 2000:** Returning candidates after January 1, 2000 who do not meet the educational requirement under ORS 673.050(1)(a) are required to sit for the CPA exam at least once each year after January 1, 2000 in order to maintain eligibility under the requirements of ORS 673.050 that were in effect prior to January 1, 2000. Returning candidates shall provide satisfactory evidence that:

(A) The candidate met CPA exam eligibility requirements that were in effect in Oregon at the time the candidate sat for the CPA exam for the first time in any jurisdiction; and

(B) The candidate sat for and received grades for at least one of the Uniform CPA Examinations in any jurisdiction in 1998 or 1999.

(c) Evidence of eligibility. Candidates must meet all requirements under this rule at the time of application. Satisfactory evidence of the educational requirement may be provided in the following manner:

(A) Candidates who have completed all course requirements and been awarded a baccalaureate or higher degree shall provide an official transcript(s) demonstrating successful completion of all courses required under these rules, and that a degree was awarded.

(B) Candidates who have completed all course requirements at the time of application, but for whom a baccalaureate degree has not yet been awarded shall provide an official transcript(s) showing successful completion of all courses required under these rules, together with a letter from the Registrar's Office of the college or university stating that the candidate has met the degree requirements and the date that the degree will be awarded.

(C) Only official transcripts that are forwarded directly to the Board office by the issuing college or university will be accepted. All transcripts must be received in the Board office 14 days prior to the date of the CPA exam.

(D) Only colleges or universities accredited by one of the six regional accrediting associations and listed as accredited in the Directory of Post Secondary Institutions published by the National Center for Education Statistics, effective as of December 31, 2002, shall be recognized by the Board.

(E) An exam application may be accepted pending completion of course requirements if the following requirements are met:

(i) The application is submitted in a timely fashion and the candidate meets all other application requirements;

(ii) The candidate is enrolled in course requirements at the time of application;

(iii) The candidate successfully completes all courses before the deadline for submitting official transcripts to the Board of Accountancy;

(iv) The official transcript includes credit for all courses necessary to establish the candidate's eligibility, and

(v) The official transcript is received in the board office no later than 14 days before the exam for which the application is submitted.

(3) **Eligibility under experience standards.** Candidates for the CPA exam who are applying under the experience requirements of ORS 673.050(2) to be licensed as a Public Accountant shall submit satisfactory evidence that:

(a) The candidate graduated from a high school with a four-year program, or the equivalent; and

(b) The candidate completed two years of experience in public accountancy or the equivalent satisfactory to the Board.

(c) Returning candidates after January 1, 2002 who were eligible to take two sections of the CPA Exam under provisions of ORS 673.100 in effect prior to January 1, 2002, are required to sit for the required sections of the CPA exam at least once each year in order to maintain eligibility under those requirements.

Stat. Auth.: ORS 670.310, ORS 673.050, ORS 673.100

Stat. Implemented: ORS 673.050, ORS 673.100, ORS 673.410

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0060

### Credit for Uniform CPA Examination Sections

(1) Exam section requirements.

(a) Candidates who are eligible to take the CPA exam by education under ORS 673.050(1) are required to take and pass all sections of the CPA exam as provided under this rule.

(b) Candidates sitting for the CPA exam for the first time shall sit for all sections of the CPA exam. Returning candidates shall sit for all required sections of the CPA exam for which the candidate has not previously received credit.

(c) The Board may waive the requirements of subsection (1)(b) of this rule upon demonstration satisfactory to the Board that a candidate's absence from any section of the CPA exam was caused by extraordinary circumstances over which the candidate had no control.

(d) Candidates who were eligible under the provisions of ORS 673.050(2) (1999 Edition) and who sat and received grades for two sections of the CPA exam before January 1, 2002 are required to take and pass the following two sections of the CPA exam: Accounting and Reporting (ARE) and Audit.

(e) After January 1, 2002, candidates who are eligible under ORS 673.050(2) (2001 Edition) to be licensed as a public accountant are required to take and pass the following three sections of the CPA exam: Financial Accounting and Reporting (FARE), Accounting and Reporting (ARE) and Business Law and Professional Responsibility (LPR).

(2) Credit for CPA exam sections. The passing grade for all sections of the exam is 75 percent. Credit for the CPA exam will be allowed as follows:

(a) Candidates who, in a single sitting of the CPA exam, receive a passing grade of 75 percent or higher in at least two sections of the CPA exam and a grade of 50 percent or higher in the remaining section(s), shall receive credit for sections passed. However, such credit shall be granted on the condition that the candidate receives a grade of 75 percent or higher on the remaining sections on re-examination at any one or more of the next six successive CPA exams.

(b) A candidate who receives conditional credit under subsection (2)(a) of this rule and who subsequently receives a grade of 75 percent or higher in any one section and a grade of 50 percent or higher on the remaining section, shall receive credit for the section passed, on the condition that the candidate receives a grade of 75 percent or higher on the remaining section on re-examination at any one or more examinations through the sixth successive examination following the first examination at which conditional credit was granted.

# ADMINISTRATIVE RULES

(c) A candidate who, at one sitting of the CPA exam receives a passing grade of 75 percent or higher in any three sections of the examination shall receive credit for the sections passed, regardless of the grade received on the remaining section. Credit for the sections passed is granted on the condition that the candidate receives a grade of 75 percent or higher in the remaining section on re-examination at any one or more of the next six successive CPA exams.

(d) A candidate who applied under the experience requirements under ORS 673.050(2) (1999 edition) and sat for the CPA exam after January 1, 2000 and before January 1, 2002, shall sit for the Audit and ARE sections of the CPA exam. Conditional credit shall be awarded for a passing grade of 75 percent or higher in one section of the CPA exam if the candidate earned a grade of 50 percent or higher in the remaining section, on the condition that the candidate receives a grade of 75 percent or higher in the remaining section on re-examination at any one or more examinations through the sixth successive examination following the first CPA exam at which conditional credit was granted.

(e) A candidate who applies and sits for the CPA exam under ORS 673.050(2) (2001 Edition) after January 1, 2002, shall sit for the LPR, FARE and ARE sections of the CPA exam. Conditional credit shall be awarded for a passing grade of 75 percent or higher in any two sections of the CPA exam, if the candidate earned a grade of 50 percent or higher in the remaining section. Credit described herein is allowed on the condition that the candidate receives a grade of 75 percent or higher in the remaining section on re-examination at any one or more CPA exams through the six successive examinations following the first CPA exam at which conditional credit was granted.

(f) Conditional credit shall remain valid for six successive CPA exams from the date that conditional credit was first granted to the candidate.

(g) The time limitations for a candidate to complete all sections of the CPA exam stated herein may be extended by the Board because of illness, accident or other exigent circumstance, and shall be extended during the time a candidate is in active military service.

(3) CPA exam papers. All CPA exam papers shall remain the property of the Board. In the event that any CPA exam papers are lost or destroyed, the liability of the Board is limited to the fee paid by the applicant for that examination.

(4) Transfer of CPA exam scores from other jurisdictions. The Board may allow the transfer of CPA exam scores and grant credit to a candidate who has successfully completed two or more sections of the CPA exam in another jurisdiction if the Board determines that:

(a) The examination for which credit is requested is the Uniform Certified Public Accountant Examination;

(b) The candidate received a grade of 75 percent or higher in two or more sections in which the candidate was examined in the other jurisdiction, and that the candidate did not willfully circumvent the requirements of ORS 673.050; and

(c) Any candidate who sat for the CPA exam in another jurisdiction after January 1, 2000 was qualified under the educational requirement of ORS 673.050(1) at the time the candidate took the CPA exam in the jurisdiction from which grades are requested to be transferred.

Stat. Auth.: ORS 670.310, ORS 673.010

Stats. Implemented: ORS 673.050, ORS 673.060, ORS 673.075

Hist.: IAB 12, f. 3-30-65; IAB 14, f. 8-15-68; IAB 16, f. 1-30-70, ef. 2-25-70; IAB 19, f. 10-22-71, ef. 11-15-71; IAB 21, f. 3-2-72, ef. 3-15-72; IAB 30, f. 9-18-73, ef. 10-1-73; IAB 35, f. 10-29-74, ef. 11-25-74; IAB 36, f. 1-28-75, ef. 2-25-75; IAB 40, f. & ef. 5-5-76; IAB 41, f. & ef. 12-2-76; IAB 43, f. & ef. 3-31-77; IAB 2-1978, f. & ef. 3-21-78; IAB 11-1978, f. & ef. 12-1-78; IAB 3-1979, f. & ef. 12-21-79; IAB 2-1980, f. & ef. 4-8-80; IAB 3-1980, f. 10-23-80, ef. 12-1-80; IAB 5-1981, f. & ef. 7-27-81; IAB 6-1981, f. & ef. 7-27-81; IAB 3-1982, f. & ef. 4-20-82; IAB 2-1984, f. & ef. 5-21-84; IAB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0065

### Qualifications for Certification

(1) Requirements. Applicants for the certificate of Certified Public Accountant shall meet the following requirements:

(a) Complete and pass all sections of the CPA exam;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.040 as follows:

(A) Applicants who qualified for the CPA Exam by meeting CPA exam requirements under provisions of ORS 673.040 in effect prior to January 1, 2000 are required to have two years of experience, which means at least 24 months of full-time employment, or a total of 4,160 hours of

part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(B) Applicants who qualified for the CPA exam by meeting the CPA exam requirements under ORS 673.040 (1999 Edition) in effect after January 1, 2000 are required to have one year of experience, which means at least 12 months of full-time employment, or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(C) Applicants who sat and received grades at the CPA exam prior to January 1, 2000, without the completion of 150 semester hours or 225 quarter hours, may choose to complete the 150 hour requirement under ORS 673.050(1)(a) and meet the experience requirement by completing one year of public accounting experience as described in paragraph (1)(c)(B) of this rule.

(d) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application for a certificate.

(2) Experience Requirements.

(a) Overtime hours worked will not be credited toward the experience requirement.

(b) All experience must be gained under the direct supervision of a supervisor licensee, as defined in OAR 801-005-0010.

(A) "Direct supervision" as used in this rule means that there is a clear connection between the supervisor licensee and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling, and evaluating activities, and having authority to discharge the employee being supervised.

(B) In order to qualify as a supervisor licensee for the purpose of this rule the person providing supervision must have held an active CPA or PA permit recognized by the state during the period of supervision and for at least five years prior to such supervision.

(C) An applicant's employer shall act as supervisor licensee and shall attest as to whether or not the applicant has gained qualifying experience under this rule.

(c) The experience required under ORS 673.040 shall consist solely of experience within activities generally performed by certified public accountants and public accountants licensed in Oregon, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestations, management advisory services, tax advisory services, tax return preparation, personal financial planning or reporting on an entity's internal controls.

(3) Experience portfolio. The applicant shall develop a portfolio of experience that demonstrates to the satisfaction of the Board that the applicant has achieved experience in all of the following competencies:

(a) Understanding of the Code of Professional Conduct promulgated and adopted by the Board;

(b) Ability to assess the achievement of a client's objectives by demonstrating knowledge of various business organizations, understanding of the objectives and goals of business entities, ability to develop and analyze performance measures and critical success factors, and understanding of the economic and regulatory trends that affect the environment of a business entity.

(c) Experience in preparing working papers that include sufficient relevant data to support the analysis and conclusions required by the applicant's work.

(d) Understanding transaction streams and information systems, including the ability to understand how individual transactions aggregate at the organizational level, to infer how transactions impact the organization as a whole, and to evaluate the integrity and reliability of various client information systems, including relevant computer aspects.

(e) Skills in risk assessment and verification demonstrated by a sufficient understanding of accounting and other information systems to:

(A) Assess the risk of misstatement in an information system;

(B) Obtain sufficient relevant data based on the risk of misstatement and the nature of the engagement to determine the appropriateness of underlying data in terms of its completeness, existence and occurrence, valuation and allocation, rights and obligations, presentation and disclosures.

(f) Skills in decision making, problem solving, critical analytical thinking including the ability to evaluate and interpret sufficient relevant data in a variety of engagements and settings. For example, the candidate must evaluate a client's cash flow, profitability, liquidity, solvency, operat-



# ADMINISTRATIVE RULES

ing cycle, achievement of management's plans, accomplishment of service efforts and systems reliability.

(g) Ability to express scope of work, findings and conclusions including the ability to determine the appropriateness of reports on financial statements, system reliability, or reports expressing scope of work, findings and conclusions.

(4) Qualifying experience. An applicant shall demonstrate to the satisfaction of the Board that the portfolio of experience submitted is of sufficient quality and diversity to meet the requirements of this rule. Qualifying experience may be obtained in the following categories:

(a) Experience based on attest or assurance. Experience that demonstrates the competencies prescribed in section (3) of this rule shall be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants;

(B) Engaged in employment that is equivalent to that described in paragraph (4)(a)(A) of this rule including internal audit employment; or

(C) Employed in an organization where employment is equivalent to that described in paragraph (4)(a)(A) of this rule if a peer review is conducted or if such employment is with audit agencies, internal audit departments or other organizations where a peer review is conducted. Experience under this subsection shall include:

(i) Conducting attest-oriented functions where third party reliance is an objective of the report;

(ii) Preparing opinions in accordance with professional standards;

(iii) Preparing financial statements with footnotes to generally accepted accounting principles or other comprehensive bases of accounting;

(iv) The audit agency, internal audit department, or other organization is independent of the entity, and

(v) Accounting and review services.

(D) "Third party reliance" as used in this rule means:

(i) Actual third party reliance, such as takes place with respect to the reader of financial statements upon which an audit opinion has been rendered by a Public Accountant licensed in Oregon or a Certified Public Accountant;

(ii) Audits performed by government agencies, including tax authorities, on organizations which are not subject to management control by the auditing agency; or

(iii) Financial audits performed by independent working groups where the purpose of the audit is reliance by the board of directors on the fairness of the presentation of internally generated financial statements in accordance with generally accepted accounting principles or other comprehensive bases of accounting.

(b) Experience based on other professional standards. Any other experience that demonstrates the competencies prescribed in section (3) of this rule shall be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants; or

(B) Employed in Board approved equivalent experience programs in industry, government or other settings.

(C) Experience described in paragraph (4)(b)(B) of this rule shall be performed in accordance with the standards of the profession. For example, other experience may be performed in accordance with the established standards for:

(i) Consulting services,

(ii) Tax practice,

(iii) Personal financial planning,

(iv) Internal audits,

(v) Government finance manager, or

(vi) Regulatory agencies.

(D) Experience obtained in accordance with other professional standards shall meet guidelines established by the Board.

(c) Experience based on industry, government, and other. Qualifying experience that demonstrates the competencies described in section (3) of this rule may also be obtained while the applicant is employed in industry, government, or other settings under the direct supervision of a public accountant or certified public accountant as provided under this rule.

(A) Industry, government or other experience related to subsection (3)(b) of this rule, assessing the achievement of an entity's objectives, will include obtaining an understanding of the industry in which the entity operates, including the employer's competition (or other similar service providers in the case of government) and key competitiveness factors that affect the industry.

(B) Industry, government or other experience related to subsection (3)(d) of this rule, understanding transaction streams and information systems, will include assessing the adequacy of an entity's internal controls.

(C) Experience, other than experience described in subsections (4)(a) and (b) of this rule will be evaluated by the Board on a case-by-case basis to ensure that experience is equivalent to subsection (4)(a) or (b) of this rule.

(5) Submitting applications to the Board.

(a) An applicant's file must be complete in every particular within three months of the date of application or the file will be closed and the permit fee will be refunded. The application fee is not refundable.

(b) An applicant's file may be included on the agenda of any meeting of the Board if the file is complete in every particular no less than seven days prior to the date of a scheduled Board meeting.

Stat. Auth.: ORS 670.310 & ORS 673.410

Stats. Implemented: ORS 673.040

Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 2-1988, f. 3-31-88, cert. ef. 3-30-88; AB 7-1989, f. & cert. ef. 9-11-89; AB 1-1991, f. & cert. ef. 1-2-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 2-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 3-1997, f. & cert. ef. 6-5-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1998, f. & cert. ef. 6-16-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2000, f. 8-30-00, cert. ef. 9-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0075

### Public Accountants Becoming Certified Public Accountants

(1) Public Accountants applying for certificate of public accountancy. A Public Accountant licensed in Oregon who is applying for a certificate of public accountancy shall:

(a) Hold an active Public Accountant license issued under ORS 673.100 that is not revoked, suspended, on probation or lapsed;

(b) Successfully complete all sections of the CPA exam. Credit may be received for sections of the CPA exam previously completed if the requirements of OAR 801-010-0060 are satisfied; and

(c) Satisfy the experience requirements under ORS 673.040 and OAR 801-010-0065.

(d) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application.

Stat. Auth.: ORS 670.310, ORS 673.410

Stats. Implemented: ORS 673.050

Hist.: BOA 4-1998, f. & cert. ef. 6-16-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0078

### Experience as a Self-Employed Public Accountant

(1) Self-employment eligible to meet the experience requirement. A Public Accountant licensed in Oregon prior to January 1, 2000 who is self-employed in the practice of public accountancy may fulfill the one year experience requirement under ORS 673.040 from the applicant's experience as a self-employed public accountant. The applicant shall show to the satisfaction of the Board that:

(a) The applicant is a Public Accountant licensed in Oregon prior to January 1, 2000;

(b) The applicant's experience was gained while the applicant was employed full-time, or the equivalent of full-time, in the practice of public accountancy. In no case will employment of less than 30 hours per week be accepted under this rule; and

(c) The experience meets all of the requirements of OAR 801-010-0065, with the exception of the requirement for direct supervision by a Public Accountant or a Certified Public Accountant, which requirement shall be waived for the one year claimed through self-employment as a Public Accountant.

(d) Experience used to qualify for the CPA exam may not also be used to qualify under the requirements of ORS 673.040 and OAR 801-010-0065.

(2) Verification of self-employment. The period of self-employment shall be verified either by a Public Accountant or a Certified Public Accountant licensed in Oregon and approved by the Board, who is qualified to review the applicant's practice. The applicant shall submit the name of a proposed reviewer to the Board. The reviewer must be in full-time practice. The reviewer shall not be the subject of current or past disciplinary action by the Board, or the subject of ongoing complaints and must not be found to have violated technical standards set by the Peer Review Oversight Committee. The reviewer shall not be related to or financially affiliated with the applicant. The applicant shall reimburse the reviewer for

# ADMINISTRATIVE RULES

expenses of the review. The reviewer shall certify to the following information about the applicant:

- (a) The length of time in full-time public practice;
- (b) The nature and extent of the work performed by the applicant;
- (c) Whether the work performed by the applicant demonstrates satisfactory knowledge of current practice standards and pronouncements of the accounting profession;
- (d) Whether the applicant has been practicing public accountancy as defined in OAR 801-005-0010; and
- (e) Whether the applicant's experience is sufficient to meet the entry requirements stated in OAR 801-010-0065, including the seven core competencies prescribed in OAR 801-010-0065(3).

Stat. Auth.: ORS 670.310, ORS 673.410

Stats. Implemented: ORS 673.040

Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 6-1989, f. & cert. ef. 9-11-89; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0079

### Experience Obtained in Foreign Countries

(1) Experience obtained by an applicant outside the United States that is claimed to be equivalent to public accountancy experience obtained in the United States may be acceptable under ORS 673.040 provided that the experience meets all of the requirements of OAR 801-010-0065. The applicant's experience must be directly supervised by:

(a) A licensed Public Accountant or a Certified Public Accountant whose license is active and in good standing, and who held an active permit during the period of supervision and for a period of no less than five years prior to the period of supervision; or

(b) A Chartered Accountant licensed by a jurisdiction that is eligible for reciprocal licensing under agreement with the International Qualifications Appraisal Board (IQAB) as described in OAR 801-010-0085, who also meets the following requirements:

(A) The Chartered Accountant certificate is active and in good standing;

(B) The Chartered Accountant held an active Chartered Accountant certificate during the period of supervision and for no less than five years prior to the period of supervision; and

(c) The person who directly supervises the applicant's experience shall certify to the Board that the applicant's experience is obtained under professional standards approved by the Board of Accountancy, including but not limited to the Statements on Auditing Standards (SAS) for audits or other engagements, the Statement of Standards for Accounting and Review Services (SSARS) for the review of financial statements and the Statements on Standards of Attestation Engagements (SSAE) for examinations of prospective financial information, or

(d) That the applicant's experience is obtained under professional standards deemed by the Board of Accountancy to be equivalent to experience obtained in the practice of public accountancy in this state.

Stat. Auth.: ORS 670.310 & ORS 673.410

Stats. Implemented: ORS 673.040

Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0080

### Holders of Certificates in Other States, US Territories or Foreign Countries

(1) Substantial equivalency applications by notification. An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by another jurisdiction, and who meets the standards of substantial equivalency, may receive authorization to practice public accountancy in this state, upon application. Eligibility under the standards of substantial equivalency shall be based on evaluations conducted by the National Qualification Appraisal Service. An applicant may meet one of the following two standards to establish eligibility under this rule:

(a) The jurisdiction that issued the license on which the application is based is verified to be of substantial equivalency; or

(b) The applicant as an individual meets qualifications that are verified to be of substantial equivalency.

(2) Notification requirements. Applicants under section (1) of this rule shall:

(a) Submit an application on a form provided by the Board no less than 30 days before the applicant:

(A) Accepts an engagement or an assignment to render professional services in this State, or

(B) Offers to render professional services through direct solicitation or marketing targeted to persons in this State.

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state; and

(d) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice, and is not the subject of any pending actions alleging violations of that jurisdiction's standards of conduct or practice; and

(C) Is in compliance with continuing education and peer review requirements of the licensing jurisdiction.

(3) Renewal of application by notification. Every authorization to practice by notification shall be renewed on or before January 1 of each year that the holder wishes to practice in this state. Renewal applicants are required to provide the information stated in section (2) of this rule and submit payment of the fee designated in OAR 801-010-0010 with each renewal application.

(4) Applications by reciprocity. Individuals who wish to establish a principal place of business in this state are required to obtain a CPA certificate and permit under this section prior to practicing as a CPA in this state.

(a) Applications based on an active CPA license that is in good standing and was issued by another jurisdiction prior to January 1, 2000 are eligible under this subsection if the issuing jurisdiction required successful completion of the CPA exam, a Baccalaureate degree and two years public accountancy experience or the equivalent for certification at the time the applicant's license was issued;

(b) Applications based on an active CPA license issued by another jurisdiction that is in good standing are eligible under this subsection if the applicant meets the following qualifications:

(A) Successful completion of the CPA exam,

(B) 150 semester hours, including a Baccalaureate degree, or the equivalent thereof, and 24 semester (36 quarter) hours in accounting and 24 semester (36 quarter) hours in accounting and/or related subjects which are defined as business, economics, finance and written/oral communication and,

(C) At least one year public accounting experience or the equivalent.

(c) Applications based on an active CPA license that is in good standing, but that do not meet the requirements of subsections (4)(a) or (b) of this rule, are eligible under this subsection if the applicant demonstrates to the satisfaction of the Board that during four of the ten years immediately preceding the application under ORS 673.040, the applicant:

(A) Held an active CPA license issued by another jurisdiction that is in good standing at the time of application;

(B) Has four years of public accounting experience or the equivalent thereof, after completing the CPA exam and during the ten year period immediately preceding the application; and

(C) Successfully completed the CPA exam.

(5) Reciprocity application requirements. Applicants under section (4) of this rule shall:

(a) Submit an application on a form provided by the Board;

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;

(C) Has no pending actions alleging violations of that jurisdiction's standards of conduct or practice; and

(D) Is in compliance with continuing education requirements and peer review requirements of the licensing jurisdiction.

(6) Verification of National Qualification Appraisal Service comparable licensing standards. The Board shall review the licensing requirements of other jurisdictions on an annual basis to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, ORS 673.410, ORS 673.153

Stat. Implemented: ORS 673.040, ORS 673.153

# ADMINISTRATIVE RULES

Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0085

### Holders of Foreign Certificates, Credentials or Degrees

(1) The Board recognizes the International Qualifications Appraisal Board (IQAB), a joint body of NASBA and AICPA. IQAB is charged with:

(a) Evaluating the professional credentialing process of certified public accountants or their equivalents in countries other than the United States; and

(b) Negotiating principles of reciprocity agreements with the appropriate professional and/or governmental bodies of other countries seeking recognition as having requirements substantially equivalent to requirements in the United States to qualify for and receive the certificate of certified public accountant.

(2) The Board shall honor the principles of reciprocity agreements issued by IQAB.

(3) An applicant for a certified public accountant certificate or license to practice public accountancy in Oregon who holds a certificate, credential or degree issued by a foreign country that is claimed to be comparable to a certificate or license issued by the Board, or an applicant who holds a certificate or license issued by the licensing body of any state or US Territory that is based upon the certificate, credential or degree granted by a foreign country that is not recognized under any IQAB Reciprocity Agreement is required to meet the following requirements:

(a) Satisfy the educational requirement under ORS 673.050 for admission to the CPA exam. The applicant's academic credentials shall be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(b) Pass all sections of the CPA exam required by ORS 673.060; and

(c) Complete the experience requirement under ORS 673.040, 673.100 and OAR 801-010-0065.

Stat. Auth.: ORS 670.310 & ORS 673.410

Stats. Implemented: ORS 673.040, ORS 673.060

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0100

### Public Accountant Licenses

(1) Application requirements. Applicants for the license of Public Accountant shall meet the following requirements:

(a) Complete and pass the required sections of the CPA exam as described in ORS 673.100 and OAR 801-010-0060;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.100 as follows:

(A) Obtain one year of experience, which means at least 12 months of full-time employment or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(d) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application for license.

(2) Experience requirements:

(a) Overtime hours worked will not be credited toward the experience requirement.

(b) All experience must be gained under the direct supervision of a supervisor licensee, as defined in OAR 801-005-0010:

(A) "Direct supervision" as used in this rule means that there is a clear connection between the supervisor and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling and evaluating activities and having authority to discharge the employee being supervised.

(B) The supervisor licensee required by this rule must have held an active CPA or PA permit recognized by the state during the period of supervision and for at least five years prior to such supervision.

(C) An applicant's employer shall act as supervisor licensee and shall certify whether or not the applicant has gained qualifying experience under this rule.

(c) The experience required under ORS 673.100 shall be as follows:

(A) For applicants who qualified for the CPA exam before January 1, 2002, the experience requirement shall consist solely of experience within activities generally performed by certified public accountants and public accountants, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestation, management advisory services, tax advisory services, tax return preparation or personal financial planning and reporting on an entity's internal controls.

(B) For applicants who qualified for the CPA exam after January 1, 2002, the experience requirement shall consist solely of experience within activities generally performed by certified public accountants and public accountants, including (but not limited to) financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestation, management advisory services, tax advisory services, tax return preparation or personal financial planning and reporting on an entity's internal controls.

(3) Experience portfolio. The applicant's experience portfolio shall meet the requirements stated in OAR 801-010-0065.

(4) Public Accountant practice restrictions.

(a) Licensed Public Accountants who qualified for the CPA exam after January 1, 2002 shall not perform audits.

Stat. Auth.: ORS 670.310, ORS 673.410, ORS 673.100

Stats. Implemented: ORS 673.100, 673.150, ORS 673.103

Hist.: 1AB 9, f. 6-24-60; 1AB 41, f. & ef. 12-2-76; 1AB 4-1982, f. & ef. 5-21-82; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0110

### Renewal of Permits

(1) Unless properly renewed, permits issued under ORS 673.150 that end in even numbers shall expire on June 30 of even-numbered years and permits that end in odd numbers shall expire on June 30 of odd-numbered years. To renew an active or inactive permit, the certificate or license holder shall:

(a) Submit the current renewal form provided by the Board, fully completed and postmarked by the US Post Office or other delivery service no later than June 30 of the year in which the permit shall expire;

(b) Pay the renewal fee specified in OAR 801-010-0010; and

(c) If applying for renewal of an active permit, provide evidence that the applicant has satisfied continuing education and peer review requirements.

(2) The Board may waive the initial permit fee if an initial permit is issued in May or June of the year in which the permit is due for renewal.

Stat. Auth.: ORS 670.310 & ORS 673.410

Stats. Implemented: ORS 673.150

Hist.: 1AB 4-1981, f. & ef. 6-17-81; AB 3-1991, f. & cert. ef. 4-10-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 5-1993, f. & cert. ef. 8-16-93; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0115

### Resignation of Licensee

(1) Resigning permits that are not the subject of pending complaints or Board investigations. A certified public accountant or public accountant may resign and surrender the licensee's certificate or license and permit issued under ORS 673.040, 673.100 and 673.150, by submitting a written resignation, together with the original certificate or license issued by the Board. The licensee's resignation shall be accepted by the Board only if the licensee acknowledges in writing that:

(a) The license or certificate issued to the licensee must be returned to the Board; and

(b) After such resignation, in the event that the licensee wishes to reapply for a permit to practice public accountancy, the licensee will be required to meet all requirements of ORS Chapter 673 and OAR chapter 801.

(c) All resignations are effective upon acceptance by the Board.

(2) Resigning permits that are the subject of pending complaints or Board investigations. If the licensee's certificate or license is the subject of a complaint filed with the Board or a Board investigation, or if disciplinary proceedings are pending against a licensee, the resignation by such licensee shall be deemed to be a revocation for misconduct in the event that the licensee applies for a certificate or license after such resignation is accepted by the Board. The Board may refuse to accept such a resignation under this provision if the written resignation does not include an express acknowledgment by the resigning licensee of the following:

# ADMINISTRATIVE RULES

(a) That the licensee is required to return the CPA certificate or PA license to the Board;

(b) That the licensee has knowledge of any pending investigation or disciplinary proceedings and does not wish to contest or defend the matter;

(c) That the licensee understands that in the event the licensee submits a subsequent application to be licensed to practice public accountancy, the licensee shall not be entitled to a reconsideration or re-examination of the facts, complaints, or instances of misconduct upon which investigations or disciplinary proceedings were pending at the time of the resignation; and

(d) That upon any subsequent application to practice public accountancy, the licensee must meet all requirements of ORS Chapter 673 and OAR chapter 801.

(e) Unless otherwise ordered by the Board, any pending investigation or disciplinary proceeding shall be closed upon acceptance of the licensee's resignation.

(3) Requirements upon acceptance of resignation. Upon resignation, a former licensee is required to:

(a) Surrender the CPA certificate or PA license to the Board;

(b) Take all reasonable steps to avoid foreseeable harm to any client;

(c) Maintain client records for a period of at least six years, or return such records to the client; and

(d) Continue to comply with the requirements of OAR 801, division 030 pertaining to confidential information and client records.

Stat. Auth.: ORS 670.310, ORS 673.410

Stats. Implemented: ORS 673.410

Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-010-0340

### Non-CPA and Non-PA Ownership of Business Organizations

(1) Requirements of non-CPA or non-PA ownership. The ownership of a business organization, defined in ORS 673.010 and registered as a firm under ORS 673.160 and OAR 801-010-0345, that is lawfully engaged in the practice of public accountancy in this state, may include owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(a) Licensed certified public accountants and public accountants shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(b) If the business organization has its principal place of business in this state and performs public accountancy services in this state, licensees under the provisions of ORS 673.150 or 673.100 shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(c) The business organization shall designate in writing a permit holder under ORS 673.150 who shall be responsible for the management and registration of the business organization in this state;

(d) A permit holder under ORS 673.150 shall have ultimate responsibility for each financial statement attest service engagement performed in this state;

(e) Non-licensee owners shall be material participants in the business of the firm or an entity affiliated with the firm;

(f) Non-licensee owners may be natural persons or legal entities provided that each ultimate beneficial owner of an equity interest in such entity shall be a natural person who materially participates in the business conducted by the firm.

(g) Non-licensee owners shall not hold themselves out as certified public accountants or public accountants.

(h) Business organizations with non-CPA or non-PA ownership that are registered under OAR 801-010-0345 shall comply with the requirements for peer review as provided in ORS 673.455 if such business organization performs attestation or compilation services.

(i) For purposes of this rule, "material participation" means an activity that is regular, continuous and substantial.

(2) Registration. A business organization with non-licensee ownership that is registered in this state under OAR 801-010-0345 shall certify at the time of registration and at each renewal that the business organization is in compliance with the provisions of this rule.

(3) CPA designation. A business organization of which the majority ownership is held by individuals licensed as public accountants under ORS 673.100, may not use the term "CPA firm" or any similar name that would indicate that a majority of the owners of the firm hold CPA certificates issued under ORS 673.040.

Stat. Auth.: ORS 670.310, ORS 673.410, ORS 673.160

Stats. Implemented: ORS 673.160

Hist.: 1AB 18, f. 11-25-70, ef. 12-25-70; 1AB 29, f. 4-25-73, ef. 5-15-73; 1AB 3-1982, f. & ef. 4-20-82; AB 5-1990, f. & cert. ef. 8-16-90; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994,

f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03

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**Rules Amended:** 801-020-0620, 801-020-0690, 801-020-0710, 801-020-0720

**Subject:** This rulemaking clarifies the requirements for municipal auditors to reinstate their municipal license and conforms audit requirements to provisions of HB 2975 (2001).

**Rules Coordinator:** Kimberly Bennett—(503) 378-4181, ext. 24

## 801-020-0620

### Bidding and Contracting for Municipal Audits

(1) Licensees authorized to bid and contract for municipal audits. The following licensees may bid and contract for municipal audits:

(a) A licensed CPA who is a sole proprietor and who is admitted to the Oregon Board of Accountancy roster of accountants authorized to conduct municipal audits and reviews (municipal roster);

(b) A licensed PA under ORS 673.100 who completed the audit section of the CPA Exam as a requirement for licensing and who is admitted to the Oregon Board of Accountancy roster of accountants authorized to conduct municipal audits and reviews (municipal roster);

(c) A member of a business organization defined in ORS 673.010, of which all owners of the business organization are qualified and admitted to the Oregon Board of Accountancy roster of accountants authorized to conduct municipal audits and reviews (municipal roster), may bid, contract or issue municipal audits in accordance with ORS 297.465 under the name of such business organization.

(2) A business organization having at least one, but not all members who are qualified and admitted to the municipal roster may bid, contract or issue in accordance with ORS 297.465, in the name of the business organization only if the contract and the related audit report are both signed in the name of the business organization by the member who is on the municipal roster.

(3) Except as provided in subsections (1) and (2), no person may bid, contract or otherwise offer to issue or issue an audit under ORS 297.405 to 297.555.

Stat. Auth.: ORS 297.670, ORS 297.680, ORS 297.740

Stats. Implemented: ORS 297.680

Hist.: 1AB 8, f. 8-17-54; 1AB 15, f. 4-23-69; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 2-1991, f. & cert. ef. 2-28-91; AB 3-1992, f. & cert. ef. 2-18-92; AB 3-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-020-0690

### Qualifications for Admission to Municipal Roster

(1) Eligibility. The following licensees are eligible to apply for admission to the municipal roster:

(a) Individuals holding an active CPA permit issued under ORS 673.150,

(b) Individuals holding an active PA license issued under ORS 673.100 prior to January 1, 2002, and

(c) Individuals holding an active PA license issued under ORS 673.100 who were licensed after January 1, 2002 and who completed the audit section of the CPA Exam as a requirement of licensing.

(d) Individuals holding an active PA license issued after January 1, 2002 who did not complete the audit section of the CPA Exam as a requirement of licensing are not eligible for admission to the municipal roster.

(2) Application Requirements. Qualified applicants for admission to the municipal roster authorized by ORS 297.670 shall meet the following requirements:

(a) The applicant must be a licensee in good standing;

(b) Every application shall be on a form provided by the Board and shall be accompanied by a fee prescribed by OAR 801-010-0010; and

(c) The application, signed by the applicant, shall constitute an agreement between the applicant and the Board that the applicant will comply with the provisions of the Municipal Audit Law, ORS 297.405 through 297.555, and OAR chapter 801 division 020.

(3) Grounds for Denial. In addition to the specific grounds stated in ORS 673.170(2), the Board may deny admission or reinstatement to the municipal roster if:

# ADMINISTRATIVE RULES

(a) The applicant has not complied with the requirements of OAR 801-020-0620;

(b) The applicant has committed any act or engaged in conduct that reflects adversely on the licensee's fitness to practice public accountancy; or

(c) The applicant has committed any act or engaged in conduct that would cause a reasonable person to have substantial doubts about the applicant's honesty, fairness and respect for the rights of others or for any law.

(A) Any act or conduct that resulted in a criminal conviction, other than a crime described in ORS 673.170(2)(h) or (i), will not be used to deny admission to the municipal roster unless such act or conduct is rationally connected to the applicant's fitness to practice public accountancy.

(4) Initial CPE Requirements. The applicant shall demonstrate to the satisfaction of the Board that, within the two year period immediately preceding the date of application to the municipal roster, the applicant completed 40 hours of Level 1 or Level 2 education in the following subjects, including at least 4 hours in each subject:

(a) Audits of state and local governmental units;

(b) Governmental Accounting and Financial Reporting Standards;

(c) Generally Accepted Governmental Auditing Standards;

(d) Single Audit Act of 1984 and related circulars and supplements published by the United States General Accounting Office, Office of Management and Budget;

(e) Oregon Local Budget Law; and

(f) Minimum standards of audits and reviews of Oregon municipal corporations.

(5) Other CPE Courses. Other courses in governmental accounting and auditing may also qualify if the applicant obtains Board approval of such course prior to enrollment. All courses are subject to the requirements of OAR chapter 801 division 040 and must provide the applicant with a comprehensive, working level knowledge of the subject. Conferences and seminars that are not Level 1 or Level 2 may not be included in the hours required for admission to the municipal roster. The 40 hours of education required for admission to the municipal roster may be included in the 80 hours of CPE required for renewal of the CPA/PA permit.

(6) Approval. Upon approval of an application to the municipal roster, the Board shall:

(a) Notify the applicant in writing that the application is approved;

(b) Enter the applicant's name on the municipal roster; and

(c) Notify the Secretary of State that the applicant is authorized to conduct municipal audits.

Stat. Auth.: ORS 297.670, ORS 297.680 & ORS 297.740

Stats. Implemented: ORS.297.680

Hist.: AB 8, f. 8-17-54; 1AB 32, f. 9-18-73, ef. 10-1-73; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; AB 3-1992, f. & cert. ef. 2-18-92; AB 5-1992, f. & cert. ef. 8-10-92; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-020-0710

### Biennial Fee for Inclusion on Roster

(1) Renewal. Licensees admitted to the municipal roster are required to renew their authorization to conduct municipal audits by submitting the CPA/PA permit renewal application to the Board, together with the appropriate fee as provided by ORS 297.720, and reporting the required CPE as described in OAR 801-020-0700 at each biennial renewal period described in ORS 673.150(2).

(2) Removal from Roster. Licensees whose CPA/PA permits lapse as described in OAR 801-040-0090, or who fail to renew the authorization to conduct municipal audits as described in subsection (1) of this rule shall be removed from the municipal roster, and the Board of Accountancy shall notify the Secretary of State.

Stat. Auth.: ORS 297.670, ORS 297.680 & ORS 297.740

Stats. Implemented: ORS.297.680, ORS 297.720

Hist.: AB 8, f. 8-17-54; 1AB 32, f. 3-2-72, ef. 3-15-72; 1AB 9-1978, f. & ef. 9-22-78; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; Renumbered from 801-020-0720; AB 3-1992, f. & cert. ef. 2-18-92; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-020-0720

### Removal from and Reinstatement to the Municipal Rosterr

(1) Removal. Licensees may be removed from the municipal roster for the following reasons:

(a) Failure to pay the biennial fee required by OAR 801-020-0710

(b) Failure to complete the required CPE described in OAR 801-020-0700; or

(c) Failure to maintain an active CPA/PA permit in good standing as required by OAR 801-020-0690.

(2) Suspension. Licensees may be suspended from the municipal roster for the following reasons:

(a) Failure to comply with the provisions of the Oregon Municipal Audit Law, ORS 297.405 through 297.555; or

(b) Any of the reasons stated in OAR 801-020-0690(3).

(3) Reinstatement:

(a) Licensees who wish to be reinstated to the municipal roster are required to hold an active CPA/PA permit in good standing.

(b) A licensee seeking to be reinstated to the municipal roster within the two year period following the date such licensee was removed from the roster is required to:

(A) Pay the appropriate fee stated in OAR 801-010-0010, and

(B) Complete and report 24 hours of CPE as described in OAR 801-020-0700, and a 16-hour CPE penalty.

(c) A licensee seeking to be reinstated to the municipal roster more than two years after the date such licensee was removed from the roster is required to:

(A) Pay the appropriate fee stated in OAR 801-010-0010, and

(B) Meet the requirements for initial admission to the municipal roster described in OAR 801-020-0690.

(d) A licensee who is suspended from the municipal roster and who applies for reinstatement is required to:

(A) Pay the appropriate fee stated in OAR 801-010-0010, and

(B) Meet the requirements for initial admission to the municipal roster described in OAR 801-020-0690; and

(C) Complete and report a 16-hour CPE penalty.

(D) Reinstatement applications submitted by licensees who are suspended from the municipal roster will be considered by the Board of Accountancy on a case-by-case basis.

(e) All CPE hours required for reinstatement to the municipal roster, including CPE penalty hours, must be in subjects directly related to the governmental environment and governmental auditing and must be completed within two years preceding the date of the reinstatement application.

Stat. Auth.: ORS 297.670, ORS 297.680 & ORS 297.740

Stats. Implemented: ORS.297.680 & ORS 297.710

Hist.: AB 8, f. 8-17-54; 1AB 32, f. 9-18-73, ef. 10-1-73; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; Renumbered from 801-020-0710; AB 3-1992, f. & cert. ef. 2-18-92; AB 5-1992, f. & cert. ef. 8-10-92; AB 3-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03

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**Rules Amended:** 801-030-0020

**Subject:** To clarify requirements pertaining to Board communications and Board investigations.

**Rules Coordinator:** Kimberly Bennett—(503) 378-4181, ext. 24

## 801-030-0020

### Other Responsibilities and Practices

(1) Professional misconduct:

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) Verification of experience for CPA or PA applicants.

## ADMINISTRATIVE RULES

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(A) Make any false or misleading statement as to material matters in any certificate of experience, or

(B) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(3) Acting through others. A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(4) Public communications and advertising. A licensee shall not use or participate in the use of any form of public communication, including advertising or solicitation by direct personal communication, having reference to the licensee's professional services which contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim which:

(a) Includes a misrepresentation of fact;

(b) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(c) Includes any testimonial or laudatory statement, or other statement or implication about the services that is not based on verifiable fact;

(d) Is intended or likely to create false or unjustified expectations of favorable results;

(e) Implies educational or professional attainments or licensing recognition not supported in fact;

(f) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;

(g) Falsely represents that professional services can or will be competently performed for a stated fee, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

(h) Contains other representations or implications that may cause a reasonable person to misunderstand or be deceived.

(5) Professional designations. A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee if such representation contains a false, fraudulent, misleading, or deceptive statement or claim within the meaning of section (4) of this rule.

(6) Form of practice. A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a) Non-CPA or non-PA ownership. A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(b) Branch offices:

(A) Every branch office located in this state shall be managed by a licensee holding a permit issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(7) Firm names:

(a) False and misleading firm names.

(A) Licensees shall not practice public accountancy under a firm name which is misleading in any way as to the legal entity or organization of the firm, or as to the persons who are owners or managers of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business form of the firm, the nature of the services provided or the

identity of individual members of the firm, and shall not include information about, or indicate an association with, individuals who are not members of the firm;

(C) A firm name shall include words or abbreviations sufficient to identify the form of business organization or legal entity being used by the firm as required by the laws under which the business organization is organized.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor. A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements of this rule.

(b) Singular firm names. A Certified Public Accountant or Public Accountant in individual practice may use, in a title or designation, the individual's full legal name in the singular form, which may be followed by the title "Certified Public Accountant," "Public Accountant", "CPA" or "PA".

(c) Plural firm names.

(A) Firms may use a plural title or designation, including words like "company", "and company", "associates" and "accountants", only if the firm employs at least one staff person, working a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance. Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.

(d) Assumed business names.

(A) A firm name that does not include the designations "PC", "LLC", "LP", or "LLP" to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (7)(a)(B) of this rule.

(e) Notice to Board. A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

(8) Board communications and investigations:

(a) Communications from the Board to licensees shall be sent by first class mail, addressed to the licensee at the last official address or to the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(9) Business transactions with clients:

# ADMINISTRATIVE RULES

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein and if the client expects the licensee to exercise the licensee's professional judgment therein, unless the client has consented to the transaction after full disclosure in writing. Disclosure shall be made prior to the time the business transaction is initiated.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(10) Notification of change of address, employer or assumed business name. Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(11) School loan defaults. In accordance with ORS 348.393 to 348.399, the Board shall provide the Oregon State Scholarship Commission ("Commission") with certification and licensing information that may be electronically cross-matched with the Commission's post default database:

(a) The Board shall refuse to issue or renew or shall suspend the certificate or license and permit of any licensee who is in default on any student loan guaranteed or insured by the Commission, or who is not repaying such loan in a satisfactory manner as determined by the Commission and in accordance with federal regulations.

(b) Pursuant to ORS 348.393(3), the Board shall notify a licensee of any action being taken against the license at the direction of the Commission, and shall refer the licensee to the Commission for resolution of any dispute regarding school loans.

(c) Upon notification by the Commission and receipt of a release notice that a licensee has met satisfactory borrower repayment status, the Board shall issue, renew, or reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(12) Child support defaults. In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b) and/or (c):

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(13) State tax defaults. In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a):

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

Stat. Auth.: ORS 670.310, ORS 673.410

Stats. Implemented: ORS 673.160, ORS 673.410, ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03

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**Adm. Order No.:** BOA 6-2002

**Filed with Sec. of State:** 12-27-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 1-1-03

**Rules Amended:** 801-040-0010, 801-040-0030, 801-040-0050

**Subject:** This rulemaking requires ethics CPE courses to be QAS approved; clarifies the use of published articles for CPE credit and allows CPE credit for members of the Oregon Legislative Joint Ways and Means Committee.

**Rules Coordinator:** Kimberly Bennett—(503) 378-4181, ext. 24

## 801-040-0010

### Basic Requirements

(1) Biennial CPE requirement. Each biennial renewal period, certified public accountants and public accountants shall report satisfactory evidence of having completed 80 hours of continuing professional education (CPE) unless such requirement is waived by the Board under ORS 673.165 and OAR 801-040-0150. The 80-hour CPE requirement shall be completed as follows:

(a) At least 24 of the required 80 hours of CPE shall be completed in each year of the renewal period. Hours carried forward from the previous reporting period (carry-forward hours) may not be used to meet the minimum annual requirement.

(b) CPE hours must be completed during the two-year period immediately preceding the renewal date, except for carry-forward hours described in subsection (c) of this rule.

(c) A maximum of 20 hours may be carried forward from one reporting period to the next, and may be used in partial fulfillment of the 80-hour requirement.

(2) Ethics requirement. Active licensees are required to successfully complete and report four hours of CPE in professional conduct and ethics (ethics requirement) every four years commencing with the renewal period that begins July 1, 2000 for even-numbered licensees and July 1, 2001 for odd-numbered licensees.

(a) Hours earned in professional conduct and ethics are included in the 80-hour requirement for each renewal period.

(b) If a licensee's principal place of business is located in another jurisdiction and the other jurisdiction has established a professional conduct and ethics CPE requirement, the licensee may meet the ethics requirement by demonstrating compliance with the other jurisdiction's professional conduct and ethics CPE requirement. Ethics courses that meet the CPE requirement of such other jurisdiction will be accepted in Oregon, and the licensee shall report such classes as provided in these rules.

(c) If a licensee has a principal place of business in another jurisdiction that does not have a professional conduct and ethics CPE requirement, the licensee must complete the ethics requirement from a sponsor registered with the Board.

(3) CPE ethics programs. CPE programs in professional conduct and ethics shall qualify for CPE credit under this section if such programs are offered by a sponsor registered with the Board and include information pertaining to each of the following topics:

(a) Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy;

(b) Examples of issues or situations that require a licensee to understand the statutes, rules and case law that are relevant to the practice of public accountancy;

(c) The Code of Professional Conduct adopted by the Board and set forth in OAR chapter 801, division 030; and

(d) Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession.

# ADMINISTRATIVE RULES

(4) Substantial equivalency. Licensees who are authorized to practice public accountancy in this state under the provisions of substantial equivalency authorized by ORS 673.153 may satisfy the CPE requirements under this section by demonstrating to the satisfaction of the Board that the licensee is in compliance with CPE requirements of the jurisdiction in which the licensee's principal place of business is located.

(a) If such jurisdiction has no CPE requirement the licensee shall complete and report the CPE requirements under these rules. The requirement to complete four hours of CPE in ethics and professional conduct may also be satisfied by meeting the ethics requirement of the other jurisdiction, and if none, by completing ethics programs offered by a sponsor registered with the Board.

(b) Licensees described in this section (4) are required to comply with the continuing education requirement from the date such permit is issued. The number of CPE hours required for a partial licensing period shall be calculated in the same manner as described in OAR 801-040-0090 (8).

(c) Licensees described in this section (4) are required to:

(A) Submit a signed statement that the licensee is in compliance with the CPE requirements of the jurisdiction in which the licensee's principal place of business is located or, if such jurisdiction has no CPE requirements, the licensee shall complete and report CPE programs as described in OAR 801-040-0010, and

(B) Submit a signed statement that the licensee is in compliance with CPE requirements in professional conduct and ethics of the jurisdiction in which the licensee's principal place of business is located or, if such jurisdiction has no CPE requirements in professional conduct and ethics, the licensee shall report Ethics CPE programs as described in OAR 801-040-0010(3).

Stat. Auth.: ORS 670.310, ORS 673.040, ORS 673.050, ORS 673.410

Stat. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-040-0030

### Programs that Qualify for CPE Credit

(1) Qualifying programs. In order to qualify for CPE credit under these rules, a CPE program must be a formal program of learning that contributes directly to the professional competence of the licensee. It is the obligation of each licensee to select a course of study that contributes to the licensee's professional competence in public accountancy. The licensee may take programs in a variety of topics that are relevant to the licensee's practice.

(2) Program requirements. CPE programs must meet the following requirements to qualify for CPE credit:

- (a) An outline of the program is prepared in advance and preserved;
- (b) The program is at least one hour (fifty-minute period) in length;
- (c) A record of attendance is maintained by the sponsor;
- (d) Certification of completion is provided to participating licensees;
- (e) The program is conducted by a qualified instructor whose background, training, education or experience makes it appropriate for the person to teach or lead a discussion on the subject matter of the particular program.

(3) Eligible programs. The following programs will qualify for CPE credit provided they also meet the requirements of section (2) of this rule:

(a) Professional development programs presented by recognized national and state accounting organizations;

(b) Technical sessions presented at meetings of recognized national and state accounting organizations and associated local chapters;

(c) Formal programs offered by a firm to licensees;

(d) Programs sponsored by recognized organizations that provide professional educational programs on a regular basis; and

(e) University or college courses shall qualify as follows:

(A) Courses offered for college credit: each semester hour credit shall equal 15 CPE hours toward the requirement. Each quarter hour credit shall equal 10 CPE hours.

(B) Courses that do not earn college credit: Each classroom hour shall equal one CPE hour.

(4) Individual study programs:

(a) Beginning with the reporting period that commences July 1, 2000 for even-numbered permits and July 1, 2001 for odd-numbered permits, correspondence courses or other individual study programs will not qualify for CPE credit unless approved by the NASBA Quality Assurance Service (QAS). Licensees who purchased courses prior to July 22, 1999 from a sponsor that is not QAS-approved will be allowed a one-year extension

in which to complete and receive proof-of-completion for such courses. The one-year extension expires June 30, 2001 for all licensees.

(5) Programs not eligible for CPE credit. The following programs do not qualify for CPE credit:

(a) Courses taken to fulfill the requirements for licensure as a certified public accountant or public accountant;

(b) Ethics courses that were taken to fulfill the Ethics exam requirement for licensure; and

(c) CPA exam review or study courses.

Stat. Auth.: ORS 670.310, ORS 673.040, ORS 673.050, ORS 673.410

Stat. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 1-1994, f. & cert. ef. 1-21-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03

## 801-040-0050

### Credit Hours Granted

(1) CPE credit for group study programs:

(a) CPE credit shall be allowed for actual class hours attended.

(b) Only class hours or the equivalent, as described in paragraph (d) of this rule, will be counted.

(c) Travel time does not qualify for CPE credit.

(d) CPE credit is allowed for whole hours only, with a minimum of 90 minutes constituting one hour. As an example, 100 minutes of continuous instruction shall count for two hours; however, more than 50 but fewer than 100 minutes of continuous instruction shall only count for one hour.

(2) CPE Credit for individual study programs:

(a) Individual study programs are eligible for CPE credit only if the program is offered by an approved NASBA-QAS sponsor (QAS approved sponsor), as described in OAR 801-040-0030, and CPE credit will be awarded in an amount equal to the average completion time as determined by the QAS approved sponsor.

(b) Licensees claiming credit for individual study programs shall present evidence of satisfactory completion provided by the program sponsor that includes the date of completion, the average completion time and the name of the participating licensee.

(c) CPE credit is allowed as of the completion date specified on the proof-of-completion provided by the sponsor.

(3) CPE Credit for service as lecturer, discussion leader or speaker:

(a) CPE credit for a lecture, training session or speaking engagement at which the licensee was an instructor, discussion leader or speaker is allowed provided that the lecture, training or engagement meets CPE requirements for the participants;

(b) CPE credit for one hour of continuing education is allowed for each hour completed as an instructor or discussion leader only if such activity increases the instructor's professional competence, and only for the first presentation of the subject material. A licensee may provide evidence that the program content was substantially changed and that such change required significant additional study or research;

(c) CPE credit for preparation time allowed for an instructor, discussion leader, or a speaker shall be calculated on the basis of two CPE hours of preparation for each hour of teaching;

(d) The maximum CPE credit allowed for preparation and teaching under this section and for published articles described in section (4) of this rule, combined, shall not exceed one-half of the total number of hours required for the renewal period; and

(e) CPE credit for licensees who are not participating as instructors, discussion leaders or speakers is limited to the actual meeting time.

(4) CPE credit for published articles:

(a) CPE credit may be allowed for authorship of published articles or books, provided the work contributes to the professional competence of the licensee;

(b) The maximum credit for published articles and books allowed under this section, and for preparation and teaching under section (3) of this rule, combined, shall not exceed one-half of the total requirement for the renewal period;

(c) In exceptional circumstances, a licensee may request additional CPE credit for authoring an article(s) or book(s) by submitting an explanation of the circumstances which justify greater credit than is otherwise allowed. The Board shall determine whether additional credit is warranted.

(d) CPE credit for authoring published articles or books is allowed as of the date of publication, and is only allowed for the first publication of such writing.

(e) Published articles may be reviewed on a case-by-case basis to determine whether such articles contribute to the licensee's professional



# ADMINISTRATIVE RULES

competence. A published article does not contribute to the professional competence of the licensee unless it is suitable for a professional audience.

(5) CPE credit for reviewing peer review reports for Board approved Peer Review Programs. Licensees who serve as volunteer members of the Review Acceptance Body or any other committee that reviews peer review reports on behalf of a board approved peer review program shall be allowed two hours of CPE credit per meeting attended, for a maximum of 16 hours of the total CPE requirement for the renewal period.

(6) CPE credit for Government Finance Officers Association (GFOA) Certificate of Achievement program. Licensees who review reports for the GFOA Certificate of Achievement program shall be allowed up to 16 hours of the total CPE requirement for the renewal period.

(7) CPE credit for State Legislative Joint Ways and Means Committee members. Licensees who serve as members of the Oregon Joint Ways and Means Legislative Committee shall be allowed up to 16 hours of the total CPE requirement for the renewal period.

Stat. Auth.: ORS 670.310, ORS 673.040, ORS 673.050, ORS 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 7-1992, f. & cert. ef. 12-15-92; AB 4-1993, f. & cert. ef. 5-14-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; AB 4-1997, f. & cert. ef. 7-25-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998 f. & cert. ef. 7-29-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2000, f. 3-22-00, cert. ef. 3-24-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03

## Board of Architect Examiners Chapter 806

**Adm. Order No.:** BAE 1-2003

**Filed with Sec. of State:** 1-15-2003

**Certified to be Effective:** 1-15-03

**Notice Publication Date:** 12-1-02

**Rules Amended:** 806-010-0090, 806-010-0105, 806-010-0145

**Subject:** This amendment allows licensees to obtain CPE during the renewal grace period for an additional late fee. Licensees previously had a full year to obtain 12 hours of CPE. With this amendment, licensees may not choose to obtain CPE after the reporting period (but within the grace period) without loss of active status. Of course, the same CPE may be used only for one renewal period.

**Rules Coordinator:** Carol Halford—(503) 378-4270

### 806-010-0090

#### Penalty for Late Filing of Renewal Fee

(1) Upon failure by a registrant to have his or her certificate of registration renewed on or before July 1st of each year, in accordance with ORS 671.080 and 670.410, the certificate holder shall be deemed to be delinquent. However, such person may renew his or her certificate during the grace periods, as follows:

(a) Not later than the 30th day after July 1st, without paying a late renewal fee, upon payment of the renewal fee and payment of the late CPE reporting fee, if applicable; or

(b) After the 30th day, but before the 61st day, after July 1st, upon payment of the renewal fee, the late renewal fee, and the late CPE reporting fee, if applicable.

(2) On the 61st day following the renewal date, the certificate of the architect who fails to pay the renewal fee, the late renewal fee, or the late CPE reporting fee, or fails to provide a complete renewal application form to the Board office shall become inactive in Oregon. Reinstatement of certification will be in accordance with the provisions of OAR 806-010-0060.

Stat. Auth.: ORS 670 & ORS 671.125

Stats. Implemented: ORS 671.080

Hist.: AE 18(Temp), f. 10-4-77; AE 21, f. & ef. 12-20-77; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 3-1992, f. & cert. ef. 6-30-92; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03

### 806-010-0105

#### Schedule of Actual Fees

The following fee schedule is established, under the provisions of ORS 671.085, to set forth the actual fees charged individuals and architectural firms:

- (1) Registration Fees — \$75;
- (2) Renewal Fees — \$100;
- (3) Late Renewal Fees — \$100;
- (4) Fee for Obtaining CPE after deadline, but during grace period —

\$100

- (5) Examination Application Fee — \$75;
- (6) Reciprocal Application Fee — \$100;

- (7) Duplicate Wallet Card Certificate — \$25;
- (8) Architectural Firm Registration Fee — \$100;
- (9) Architectural Firm Renewal Fee — \$100;
- (10) Reinstatement Fee — \$300;
- (11) Miscellaneous Fees:

- (a) Labels, lists, or computer disk of licensees — \$50;
- (b) Roster — \$10;
- (c) Copying charges:

- (A) The first 5 pages — free;
- (B) Additional pages — \$0.25 per page.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.085

Hist.: AE 3-1983, f. 1-12-83, ef. 3-1-83; AE 2-1984, f. & ef. 10-23-84; AE 1-1986, f. 11-12-86, ef. 11-13-86; AE 1-1988, f. & cert. ef. 3-14-88; AE 2-1988, f. & cert. ef. 9-9-88; AE 4-1992, f. & cert. ef. 9-2-92; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; BAE 5-2001, f. & cert. ef. 10-24-01; BAE 2-2002, f. & cert. ef. 4-30-02; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03

### 806-010-0145

#### Continuing Professional Education

(1) Every person holding a certificate of registration, as provided for in ORS 671.010 to 671.220, who desires to continue to practice the profession in Oregon, shall annually, complete and submit documentation of continuing professional education as part of the annual renewal process (which covers the annual reporting period of July 1st through June 30th and is due by the close of business on July 1st of each year) per OAR 806-010-0090.

#### (2) Purpose and Scope:

(a) These rules provide for a continuing professional education program to insure that all architects remain informed of those technical subjects necessary to safeguard life, health, property, and promote the public welfare. These rules shall apply to all architect certificate holders in Oregon.

(b) Documentation submittal for continuing professional education shall begin with license renewals effective after June 30, 2000 (first submittal due with 2001 renewals). All architects will be required to show compliance with the education requirements as a condition for renewing registration.

(3) **Requirements:** To renew or reinstate registration, in addition to other requirements, an architect must have acquired continuing professional education for each 12-month period since the architect's last renewal of initial registration, as the case may be, or be exempt from these continuing professional education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration, or other disciplinary action or both.

(4) **License Period and Carryover Hours:** Within any 12-month license period, a minimum of 12 contact hours shall be acquired.

(a) Of those 12 hours, a minimum of 8 contact hours shall be public protection subjects, safeguarding life, health, property and promoting the public welfare, acquired in structured educational activities. All 12 hours may be acquired in such subjects and activities.

(b) If an architect exceeds the continuing professional education requirement in a renewal period, the architect may carry a maximum of 12 contact hours forward into the subsequent renewal period. A minimum of 12 contact hours, including the 8 hours of public protection subjects and the allowed carryover hours, shall be obtained and reported annually.

#### (5) Reporting and Record Keeping:

(a) A registered architect shall complete and submit forms approved by the board certifying to the architect's having acquired the required continuing professional education hours.

(b) Architect's submission may be selected for review by the board for verification of compliance with these requirements. Evidence of compliance shall be maintained by the architect for two years after the period for which the form was submitted. If selected for the CPE review by the Board, the applicant must provide such evidence to verify attendance at reported CPE activities.

(c) If the board disallows any continuing professional education hours, the architect shall have six months from notice of disallowance to make up the deficiency by acquiring the required number of contact hours and reporting evidence of the completion of such hours to the Board. Such contact hours shall not again be used for any subsequent renewal. No such allowance will be made if the board finds following notice and hearing that the architect willfully disregarded these requirements.

(d) One continuing professional education hour shall represent a minimum of 50 minutes of actual course time. No credit will be allowed for introductory remarks, meals, breaks, or administration matters related to courses of study.

# ADMINISTRATIVE RULES

(e) Failure to fulfill the continuing professional education requirements and/or file the required annual report, properly and completely, including all required signatures, shall result in non-renewal of an architect's certificate of registration or disciplinary action, or both, unless the completed renewal has been resubmitted and received by the Board prior to the deadline and the minimum CPE requirements have been met.

(f) Continuing professional education shall be acquired during the 12 months immediately preceding the license renewal period, with the exception of the allowed hours carried forward from the previous renewal period (as allowed under OAR 806-010-0145(4)) and the hours allowed during the grace period (as allowed under OAR 806-010-0090 and 806-010-0105).

(g) Any false statements or misrepresentations with respect to course attendance or any other aspect of continuing professional educational activity shall subject the architect to license revocation or other disciplinary action.

(6) **Initial Registration:** An architect, registered in Oregon for less than 12 months from date of initial registration, shall not be required to report continuing professional education hours at the first registration renewal. An architect registered in Oregon for at least 12 months, shall be required to report 12 contact hours, which includes a minimum of 8 hours in public protection subjects, earned in the 12 months preceding the first renewal.

(7) **Activities:** The following suggested list may be used by all registrants in determining the types of activities, which may fulfill continuing professional education requirements. (Refer to section (5) for reporting and record keeping procedures.)

(a) Contact hours in attendance at short courses or seminars, dealing with architectural subjects and sponsored by colleges or universities.

(b) Contact hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and function. Such presentations as those sponsored by the American Institute of Architects, Construction Specifications Institute, Construction Products Manufacturers Council or similar organizations devoted to architectural education may qualify.

(c) Contact hours in attendance at short courses or seminars, relating to business practice or new technology and offered by colleges, universities, professional organizations or system suppliers.

(d) Contact hours acquired in self-study courses such as those sponsored by the National Council of Architectural Registration Boards, American Institute of Architects or similar organizations.

(e) Three preparation hours for each class hour spent teaching architectural courses or seminars. College or University faculty may not claim credit for teaching regular curriculum courses.

(f) Contact hours spent in architectural research, which is published or formally presented to the profession or public.

(g) Reading designated articles in Architectural Record and on Architecturalrecord.com, or similar professional journals, and receiving a certificate of completion issued by the provider. The professional journal articles dated before two years prior to the date of testing will not be allowed as acceptable CPE. The Board will allow continuing professional education (CPE) credit for renewal for no more than 8 hours of CPE each renewal period for professional journal articles meeting this criteria.

(h) College or University credit courses dealing with architectural subjects or business practice. Each semester hour shall equal 15 contact hours. Each quarter hour shall equal 10 contact hours.

(i) Contact hours spent in professional service to the public which draws upon the registrant's professional expertise on boards and commissions, such as: serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees.

(j) Contact hours spent in educational tours of architecturally significant buildings, where the tour is sponsored by a college, university or professional organization.

(k) A maximum of 2 contact hours annually may be used for serving as a mentor or sponsor for the Intern Development Program (IDP).

(8) **Activities Not Allowed:** The purpose of the CPE requirement is to require architects to obtain regular and continual education during the course of their professional life. As such, contact hours spent on the same CPE, even if obtained on different dates, may be used only once during a renewal period to meet the annual renewal/CPE requirements.

(9) **Exemptions:** A registered architect shall be deemed to have complied with the foregoing continuing professional education requirements if the architect attests in the required affidavit that for not less than 10 months of the preceding one year period of registration, the architect has met one of the following exemption criteria:

(a) Has served honorably on active duty in the military service (exceeding ninety consecutive days).

(b) Is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for registration as an architect and has complied with all requirements of that state or district for practice therein.

(c) Is a government employee working as an architect and assigned to duty outside the United States.

(d) Special Exemption — The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The architect must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board.

Stat. Auth.: ORS 671.125

Stats. Implemented ORS 671.125 & ORS 671.080

Hist.: BAE 1-2000, f. & cert. ef. 2-23-00; BAE 2-2000, f. & cert. ef. 7-24-00; BAE 3-2001,

f. & cert. ef. 10-4-01; BAE 3-2002, f. 7-10-02 cert. ef. 7-15-02; BAE 4-2002, f. & cert. ef.

8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03

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

**Adm. Order No.:** BN 20-2002

**Filed with Sec. of State:** 12-17-2002

**Certified to be Effective:** 12-17-02

**Notice Publication Date:** 10-1-02

**Rules Adopted:** 851-001-0020

**Subject:** Rule OAR 851-001-0020 is related to mental health, physical condition, and chemical dependency evaluations in terms of the process to be followed to obtain an evaluation.

**Rules Coordinator:** KC Cotton—(503) 731-4754

**851-001-0020**

**Orders for an Evaluation to Determine Fitness to Practice**

(1) Pursuant to ORS 678.113, during the course of an investigation into the performance or conduct of an applicant, certificate holder or licensee (Respondent), the Oregon State Board of Nursing may order mental health, physical condition or chemical dependency evaluations of the Respondent. The order will only be issued if the Board has a reasonable belief based upon the information available to the Board that the Respondent is unable to practice nursing with reasonable skill and safety to patients due to a mental health problem, physical condition, or chemical dependency.

(2) The Board delegates to the Program Executive the authority to select a health care professional to conduct the evaluation. Within ten (10) calendar days from the issuance of the Order, the Board's Program Executive for Professional Services (hereafter Program Executive) shall select the health care professional to conduct the evaluation.

(3) Following selection of the health care professional, the Program Executive will provide the health care professional the following information:

(a) A copy of the Order for Evaluation.

(b) A letter from the Program Executive, identifying the areas to be assessed and evaluated, to include a set of written questions for the evaluator's response, to include whether Respondent is diagnosed with a mental disorder, physical condition or chemical dependency, resulting in an impaired ability to practice nursing with reasonable skill and safety to patients or other health care providers.

(c) Other documents, as determined by the Program Executive, to include any questions submitted by Respondent.

(4) Respondent shall sign a written release in a form acceptable to the Program Executive within three (3) days from the date the Program Executive selects the health care professional to conduct the evaluation, thereby allowing the health care professional to speak directly to board staff throughout the evaluation process.

(5) The health care professional shall produce a written assessment and evaluation, providing a duplicate copy simultaneously to both the Board and the Respondent, unless the health care professional has a good faith belief that providing a copy of the report to the Respondent may be injurious to the Respondent's mental or physical health.

(6) The Respondent shall pay for costs associated with complying with the Board's Order for Evaluation, to include paying the health care professional in a timely manner to ensure that the Board receives the report of assessment and evaluation by the specified due date.

(7) If the health assessment and evaluation is a mental health evaluation that offers a diagnosis of mental disorders, the evaluation shall follow

# ADMINISTRATIVE RULES

the guidelines of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), published by the American Psychiatric Association. The health care professional shall indicate in the written assessment and evaluation the information relied upon that formed the basis for the findings and conclusions in the report.

(8) If the health assessment is a substance abuse or dependence evaluation that offers a diagnosis of substance abuse or substance dependence, the evaluator shall follow professionally accepted guidelines for the evaluation which may include the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), published by the American Psychiatric Association or ASAM criteria published by the American Society of Addiction Medicine. The health care professional shall indicate in the written assessment and evaluation the information relied upon that formed the basis for the finding and conclusions in the report.

(9) If the health assessment is a physical health evaluation that offers a diagnosis of a physical condition, the evaluator shall follow the professionally recognized standard of care to arrive at a diagnosis and shall indicate both the diagnosis and the information relied on to make the diagnosis in a written report to the Board.

(10) It is conduct derogatory to the standards of nursing for a Respondent to:

(a) Violate any provision of this rule.

(b) Fail to undergo a Board ordered evaluation within the time specified by the terms of this Order.

(c) Fail to cooperate with any effort by the Board to secure a copy of the written assessment/evaluation prepared by the examining health care professional.

Stat. Auth: ORS 678.113, 678.150

Stats. Implemented: ORS 678.113

Hist.: BN 20-2002, f. & cert. ef. 12-17-02

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**Adm. Order No.:** BN 21-2002

**Filed with Sec. of State:** 12-17-2002

**Certified to be Effective:** 12-17-02

**Notice Publication Date:** 10-1-02

**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 in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, IIIN, N, IV and V. The amendments add the September and October 2002 update 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 October 2002 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 pro-

vided 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 October 2002:

(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) Fomivirsen Sodium (Vitrvavene);

(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);

# ADMINISTRATIVE RULES

(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. & cert. ef. 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; BN 4-1998, f. & cert. ef. 3-13-98; BN 5-1998, f. & cert. ef. 5-11-98; BN 8-1998, f. & cert. ef. 7-16-98; BN 12-1998, f. & cert. ef. 9-22-98; BN 13-1998, f. & cert. ef. 12-1-98; BN 1-1999, f. & cert. ef. 3-4-99; BN 3-1999, f. & cert. ef. 5-4-99; BN 5-1999, f. & cert. ef. 7-1-99; BN 9-1999, f. & cert. ef. 10-20-99; BN 13-1999, f. & cert. ef. 12-1-99; BN 3-2000, f. & cert. ef. 2-25-00; BN 5-2000, f. & cert. ef. 4-24-00; BN 8-2000, f. & cert. ef. 7-3-00; BN 9-2000, f. & cert. ef. 9-18-00; BN 10-2000, f. & cert. ef. 12-15-00; BN 2-2001, f. & cert. ef. 2-21-01; BN 6-2001, f. & cert. ef. 4-24-01; BN 9-2001, f. & cert. ef. 7-9-01; BN 13-2001, f. & cert. ef. 10-16-01; BN 4-2002, f. & cert. ef. 3-5-02; BN 11-2002, f. & cert. ef. 4-25-02; BN 14-2002, f. & cert. ef. 7-17-02; BN 19-2002, f. & cert. ef. 10-18-02; BN 21-2002, f. & cert. ef. 12-17-02

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## Board of Optometry Chapter 852

**Adm. Order No.:** OPT 2-2002

**Filed with Sec. of State:** 12-18-2002

**Certified to be Effective:** 12-18-02

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 852-050-0018

**Rules Amended:** 852-010-0027, 852-010-0051, 852-050-0005

**Subject:** 852-010-0027, 0051: Further defines unprofessional conduct. Establishes standards for transfer of custody of patient records.

852-050-0005, 0018: Sets criteria for multiple location license certificate. establishes definitions of "Official address of record", and penalties for failure to notify the Board of changes.

**Rules Coordinator:** David W. Plunkett—(503) 373-7721, ext. 23

### 852-010-0027

#### Definition of Unprofessional Conduct

Unprofessional conduct within the meaning of ORS 683.140(3) includes, but is not limited to:

- (1) Fraud, misrepresentation or dishonesty.
- (2) Advertising optometric services, treatments, or advice in which untruthful, improbable, misleading, deceiving or impossible statements are made.
- (3) Aiding an unlicensed person in the practice of optometry.
- (4) Failure to train and supervise any unlicensed person who performs any work covered in this chapter.
- (5) Permitting another person to use the licensee's certificate.
- (6) Excessive use of intoxicants.
- (7) Unlawful use of drugs or controlled substances.
- (8) The use of threats or harassment or to delay or to obstruct any person in providing evidence in any investigation, disciplinary action, or other legal action instituted by the Board.
- (9) The discharge of an employe based primarily on the employe's attempt to comply or aid in the compliance of the Board's rules.
- (10) The use of threats, harassment, or any other conduct which obstructs or delays a member of the Board, a member of the Board's staff or a duly appointed agent of the Board in carrying out their functions under the Board's rules.
- (11) Willfully deceiving or attempting to deceive the Board, an employe of the Board, or an agent of the Board in reference to any matter under investigation by the Board including the alteration or destruction of any records in order to obstruct or delay an investigation by the Board.
- (12) Failing to respond in writing to a Board request for information as required.
- (13) Failing to appear before the Board at a time and place designated by the Board for such appearance.
- (14) Violations of ORS 676.110(5) (use of titles), which states, in part, that any person practicing optometry who uses the title "doctor", or any contraction thereof, "clinic", "institute", "specialist" or any other assumed name or title in connection with the profession, in all advertisements, professional notices, or any written or printed matter must add the word "optometrist" or the words "doctor of optometry" or "optometric physician."

(15) Conduct which could be construed as moral turpitude; and

(16) Any conduct or practice contrary to recognized standards of ethics of the optometric profession which includes:

(a) Sexual abuse — comprises conduct which constitutes a violation of any provision of ORS 163.305 through 163.465, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil, or administrative litigation, or admitted or stipulated by the professional.

(b) Sexual Violation — Comprises professional-patient sex, whether initiated by the patient or not, and engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, including, but not limited to: sexual intercourse; genital to genital contact; oral to genital contact; oral to anal contact; oral to oral contact except CPR; touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment or where the patient has refused or has withdrawn consent; encouraging the patient to masturbate in the presence of the professional or masturbation by the professional while the patient is present.

(c) Sexual Impropriety — Comprises any behavior, gestures, or expressions that are seductive or sexually demeaning to a patient of normal sensibilities; inappropriate procedures, including, but not limited to, disrobing or draping practices that reflect a lack of respect for the patient's privacy; inappropriate comments about or to the patient, including, but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, inappropriate comments on the patient's or professional's sexual orientation (homosexual or heterosexual or bisexual), making comments about potential sexual performance during an examination or consultation, requesting the details of sexual history or sexual likes or dislikes; initiation by the professional of conversation regarding the sexual problems, preferences or fantasies of the professional or the patient; kissing of a sexual nature.

(17) Failing to make full payment to the Board of all Board assessed fees, fines and penalties.

(18) Failing to give written notification to the Board of any disciplinary action or sanction related to the practice of optometry by any state licensing agency.

(19) Failing to give written notification to the Board of any felony or misdemeanor convictions except minor traffic offenses.

(20) Failing to keep complete and accurate records for a patient.

(21) Failing to retain or make appropriate transfer of the care of patient records.

Stat. Auth.: ORS 683 & ORS 182

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

Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 1-1993, f. & cert. ef. 2-10-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-2000, f. 4-28-00, cert. ef. 5-1-00; OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 2-2002, f. & cert. ef. 12-18-02

### 852-010-0051

#### Records

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

(2) A patient's records shall be kept by the doctor of optometry for a minimum of seven years from the date of the last office visit or pertinent clinical notation on the record. If a patient is a minor, the records shall be kept seven years or until the patient is 21 years of age, whichever is longer.

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

(4) Doctors of optometry shall provide copies of records or detailed summaries of records to patients, or persons designated by patients, upon the appropriate written and signed request of the patient. Requested records shall be forwarded within 30 days of the request.

# ADMINISTRATIVE RULES

(a) Optometric records do not include personal office notes of the doctor of optometry or personal communications between referring or consulting physicians.

(b) Doctors of optometry shall preserve a patient's records from unauthorized disclosure and shall release them only upon the written and signed request of the patient or the patient's legal guardian.

(c) Doctors of optometry may establish a reasonable charge to the patient for copies of his/her patient records.

(d) Doctors of optometry must release copies of patient prescriptions without additional charges. Doctors of optometry may establish a reasonable charge to the patient for faxing prescriptions by long distance phone services, or for any unusual mailing or handling costs.

Stat. Auth.: ORS 683 & ORS 182

Stats. Implemented: ORS 683.140(3) & ORS 683.270(1)(k), ORS 182.466

Hist.: OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1995, f. 10-31-95, cert. ef. 11-1-95; OPT 2-2002, f. & cert. ef. 12-18-02

## 852-050-0005

### Certificate of Registration

(1) Upon the successful completion of the practical examination for licensure each licensee shall pay to the Oregon Board of Optometry a \$20 fee for the certificate of registration (wall certificate). Each licensee shall be required to pay a license renewal fee on or before the license renewal date established by the Board. The licensee will be given written notification of the license renewal period at the time of licensure. The license renewal period will remain the same for the licensee once established.

(2) If a licensee engages in practice in more than one office or place of business, the licensee shall post a current license conspicuously in each office or place of business. For such purpose, upon written application of the licensee to the Administrator, the Board shall issue such number of licenses upon receipt of \$20 for each license. The licensee must renew each practice location on an annual basis during the license renewal period.

(3) If a licensee engages in practice at multiple locations, the Board may issue upon written application to the Administrator and receipt of an additional \$40 fee, a license for practicing at multiple locations. This license shall be conspicuously displayed at each location prior to practicing there. It is the responsibility of the licensee to keep the Board informed of all practice locations.

(4) The licensee's status (active or inactive, DPA or TPA certified, etc.) shall be indicated directly upon the annual license form.

Stat. Auth.: ORS 683 & ORS 182

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

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

## 852-050-0018

### Official Address of Record

(1) In accordance with ORS 683.100, each Doctor of Optometry shall notify the board in writing of his/her practice location, which is automatically recorded as the licensee's official address of record for mailing purposes. The licensee may change the official address of record to a home address or another address by notifying the Board in writing of the new mailing address. All correspondence from the Board will be sent to the designated official address of record.

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

Stat. Auth.: ORS 683; ORS 182

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

Hist.: OPT 2-2002, f. & cert. ef. 12-18-02

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**Board of Pharmacy**  
**Chapter 855**

**Adm. Order No.:** BP 1-2003

**Filed with Sec. of State:** 1-14-2003

**Certified to be Effective:** 1-14-03

**Notice Publication Date:** 11-1-02

**Rules Amended:** 855-041-0065, 855-080-0021, 855-110-0005

**Subject:** Rules are amended to clarify: refill authority in Division 041, Oregon Licensing fees and delinquent renewal fee deadline as approved by the Board in 12/2001 — Division 110. Finally, to add

two drugs to the Schedule I list of controlled substances in Division 80 in order to remain consistent with the Drug Enforcement Administration's federal list of controlled substances. The amendments were approved unanimously at a regularly scheduled Board Meeting on 12-11-02.

**Rules Coordinator:** Gary Schnabel—(503) 731-4032

## 855-041-0065

### Requirements for Prescriptions — Prescription Refills

Prescriptions, prescription refills, and drug orders must be correctly dispensed in accordance with the prescribing practitioner's authorization. When a prescription is transmitted orally, both the receiving pharmacist's name or initials and the name of the person transmitting must be noted on the prescription.

(1) Each pharmacy must document the following information:

(a) The name of the patient for whom, or the owner of the animal for which, the drug is dispensed;

(b) The full name and, in the case of controlled substances, the address and the Drug Enforcement Administration registration number of the practitioner or other number as authorized under rules adopted by reference under rule OAR 855-080-0085;

(c) If the prescription is for an animal, the species of the animal for which the drug is prescribed;

(d) The name, strength, dosage forms of the substance, quantity prescribed and, if different from the quantity prescribed, the quantity dispensed;

(e) The directions for use, if given by the practitioner;

(f) The date of filling, and the total number of refills authorized by the prescribing practitioner, and

(g) One of the following phrases or notations, in the prescribing practitioner's handwriting or, if the prohibition was communicated by telephone, the pharmacist's handwriting, if the practitioner wishes to prohibit the substitution of a brand name drug specified in the prescription:

(A) No substitution;

(B) N.S.;

(C) Brand medically necessary;

(D) Brand necessary;

(E) Medically necessary;

(F) D.A.W. (Dispense As Written); and

(G) Words with similar meaning.

(2) Where refill authority is given other than by the original prescription, documentation that such refill authorization was given, the date of authorization, and name of the authorizing prescriber or the prescriber's agent must be recorded. This documentation must be readily retrievable. Prescriptions for controlled substances in Schedules III and IV are limited to five refills or six months from date of issue, whichever comes first.

(3) If the practitioner is not available and in the professional judgment of the pharmacist an emergency need for the refill of a prescription drug has been demonstrated, the pharmacist may dispense a sufficient quantity of the drug consistent with the dosage regimen, provided it is not a controlled substance, to last until a practitioner can be contacted for authorization, but not to exceed a 72-hour supply. The practitioner shall be promptly notified of the emergency refill.

(4) Each refilling of a prescription must be accurately documented, readily retrievable, and uniformly maintained for three years. This record must include.

(a) The identity of the responsible pharmacist;

(b) Name of the patient;

(c) Name of the medication;

(d) Date of refill; and

(e) Quantity dispensed.

(5) After two years from date of issue, a prescription for a non-controlled substance becomes invalid and must be re-authorized by the prescriber. When used alone as a prescription refill designation the abbreviation, "PRN" for a non-controlled substance means that the medication can be refilled in proper context for a period of one year. When this abbreviation is used alone as a means to authorize refills for a controlled substance, the medication can be refilled in proper context for a period of six months or five refills, whichever comes first. When this abbreviation is used in conjunction with a definite time period, or a specific number of refills, the non-controlled medication can be refilled in proper context for a period not to exceed two years. The prescription shall not be refilled out of context with the approximate dosage schedule unless specifically authorized by the prescriber. A "non-controlled substance" means those drugs defined as "legend" pursuant to ORS 689.005(29) but does not include those drugs or sub-

# ADMINISTRATIVE RULES

stances controlled under the jurisdiction of the United States Department of Justice Drug Enforcement Administration.

(6) Prescriptions must be labeled with the following information:

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

(b) Date;

(c) Identifying number;

(d) Name of patient;

(e) Name of drug, strength, and quantity dispensed; when a generic name is used, the label shall also contain the name of the manufacturer or distributor;

(f) Directions for use by the patient;

(g) Name of practitioner;

(h) Required precautionary information regarding controlled substances;

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

(j) An expiration date after which the patient should not use the drug or medicine. Expiration dates on prescriptions must be the same as that on the original container unless, in the pharmacist's professional judgement, a shorter expiration date is warranted. Any drug bearing an expiration date shall not be dispensed beyond the said expiration date of the drug; and

(k) After July 1, 2000, any dispensed prescription medication, other than those in unit dose or unit of use packaging, shall be labeled with its physical description, including any identification code that may appear on tablets and capsules. Between the implementation date of July 1, 2000, and June 30, 2002, the Board will not take formal disciplinary action against a licensee or registrant for failure to achieve full compliance with this rule. During this period, the Board will issue a letter of noncompliance requiring a response as to the reason(s) for the failure to comply and the plan to reach compliance. A letter of noncompliance will not be considered a disciplinary action, nor will it initiate or affect any other disciplinary action. Failure to respond to a letter of noncompliance or failure to demonstrate a good faith effort to comply may result in disciplinary action.

(7) Upon written request and for good cause, the Board may waive any of the requirements of this rule. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.505

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; 1PB 1-1986, f. & ef. 6-5-86; PB 8-1987, f. & ef. 9-30-87; PB 10-1989, f. & cert. ef. 7-20-89; PB 1-1991, f. & cert. ef. 1-24-91; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 3-1997(Temp), f. & cert. ef. 11-12-97; BP 1-1998(Temp), f. & cert. ef. 1-27-98 thru 5-4-98; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 2-2000, f. & cert. ef. 2-16-00; BP 3-2000, f. & cert. ef. 2-16-00; BP 6-2000, f. & cert. ef. 6-29-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03

## 855-080-0021

### Schedule I

Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this rule:

(1) Opiates. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) Acetyl-Alpha-Methylfentanyl

(b) Acetylmethadol

(c) Allylprodine

(d) Alphacetylmethadol (except levo-alpha-cetylmethadol also known as levo-alpha-acetylmethadol, levomethadylacetate, or LAAM)

(e) Alphameprodine

(f) Alphamethadol

(g) Alpha-methylfentanyl

(h) Alpha-methylthiofentanyl

(i) Benzethidine

(j) Benzlfentanyl

(k) Betacetylmethadol

(l) Beta-hydroxyfentanyl

(m) Beta-hydroxy-3-methylfentanyl

(n) Betameprodine

(o) Betamethadol

(p) Betaprodine

(q) Clonitazene

(r) Dextromoramide

(s) Diamprodine

(t) Diethylthiambutene

(u) Difenoxin

(v) Dimenoxadol

(w) Dimepheptanol

(x) Dimethylthiambutene

(y) Dioxaphetyl butyrate

(z) Dipipanone

(aa) Ethylmethylthiambutene

(bb) Etonitazene

(cc) Etoxeridine

(dd) Furethidine

(ee) Hydroxypethidine

(ff) Ketobemidone

(gg) Levomoramide

(hh) Levophenacymorphan

(ii) 3-methylfentanyl

(jj) 3-methylthiofentanyl

(kk) Morpheridine

(ll) MPPP (1-methyl-4 phenyl-4 propionoxipiperidine)

(mm) Noracymethadol

(nn) Norlevorphanol

(oo) Normethadone

(pp) Norpipanone

(qq) Para-fluorofentanyl

(rr) PEPAP (1-(2 phenethyl)-4-phenyl-4-acetoxypiperidine)

(ss) Phenadoxone

(tt) Phenampromide

(uu) Phenomorphan

(vv) Phenoperidine

(ww) Piritamide

(xx) Proheptazine

(yy) Properidine

(zz) Propiram

(aaa) Racemoramide

(bbb) Thenylfentanyl

(ccc) Thiofentanyl

(ddd) Tilidine

(eee) Trimeperidine.

(2) Opium derivatives: Unless specifically excepted or unless listed in another schedule, any quantity of the following of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Acetorphine

(b) Acetyldihydrocodeine

(c) Benzylmorphine

(d) Codeine methylbromide

(e) Codeine-N-Oxide

(f) Cyprenorphine

(g) Desomorphine

(h) Dihydromorphine

(i) Drotebanol

(j) Etorphine (except hydrochloride salt)

(k) Heroin

(l) Hydromorphanol

(m) Methyldesorphine

(n) Methyldihydromorphine

(o) Morphine methylbromide

(p) Morphine methylsulfonate

(q) Morphine-N-Oxide

(r) Myrophone

(s) Nicocodeine

(t) Nicomorphine

(u) Normorphine

(v) Pholcodine

(w) Thebacon.

(3) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this section only, the term "isomer" includes the optical position and geometric isomers):

(a) Alpha-ethyltryptamine

(b) 4-bromo-2,5-dimethoxy-amphetamine

(c) 4-bromo-2,5-dimethoxyphenethylamine

# ADMINISTRATIVE RULES

- (d) 2,5 dimethoxyamphetamine
- (e) 2,5 dimethoxy-4-ethylamphetamine
- (f) 4-methoxyamphetamine
- (g) 5-methoxy-3,4-methylenedioxy-amphetamine
- (h) 4-methyl-2,5-dimethoxy-amphetamine
- (i) 3,4-methylenedioxy amphetamine
- (j) 3,4-methylenedioxy methamphetamine (MDMA)
- (k) 3,4-methylenedioxy-N-ethylamphetamine (MDA, MDE, MDDE)
- (l) N-hydroxy- 3,4-methylenedioxyamphetamine (N-hydroxy MDA)
- (m) 3,4,5-trimethoxy amphetamine
- (n) Bufotenine
- (o) Diethyltryptamine
- (p) Dimethyltryptamine
- (q) Ibogaine
- (r) Lysergic acid diethylamide
- (s) Marihuana
- (t) Mescaline
- (u) Parahexyl
- (v) Peyote — Meaning all parts of the plant presently classified botanically as *lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds and extracts.

(w) N-ethyl-3-piperidyl benzilate

(x) N-methyl-3-piperidyl benzilate

(y) Psilocybin

(z) Psilocyn

(aa) Tetrahydrocannabinols

(bb) Ethylamine analog of phencyclidine

(cc) Pyrrolidine analog of phencyclidine

(dd) Thiophene analog of phencyclidine.

(ee) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine

(ff) N-Benzylpiperazine (BZP)

(gg) 1-(3-trifluoromethylphenyl) piperazine (TFMPP)

(4) Depressants. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Mecloqualone
- (b) Methaqualone.
- (5) Stimulants. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including its salts, isomers, and salts of isomers:
  - (a) Aminorex
  - (b) Cathinone
  - (c) Fenethylline
  - (d) Methcathinone
  - (e) (+) cis-4-methylaminorex
  - (f) N-ethylamphetamine.
  - (g) N-N Dimethylamphetamine
- (6) Other Substances. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, its analog or derivative, including any salt, compound, isomer, ester or ether:
  - (a) gamma-hydroxybutyric acid (Except that a drug containing gamma-hydroxybutyrate has been approved by the Food and Drug Administration as a legend drug is a Schedule III controlled substance.)
  - (b) gamma-butyrolactone, or
  - (c) 1,4-butanediol
- (7) Exceptions. The following are exceptions to subsection (6) of this rule:

(a) 1, 4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of its sale to a legitimate manufacturer of industrial products and the person is in compliance with the Drug Enforcement Administration requirements for List I Chemicals.

(b) 1,4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of the legitimate manufacture of industrial products.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.035, ORS 475.940  
Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 2-2002(Temp), f. & cert. ef. 2-4-02 thru 7-31-02; BP 3-2002(Temp), f. & cert. ef. 3-1-02 thru 8-23-02; BP 4-2002, f. & cert. ef. 6-27-02, cert. ef. 7-1-02; BP 5-2002, f. & cert. ef. 11-14-02; BP 1-2003, f. & cert. ef. 1-14-03

## 855-110-0005

### Fees for Examinations and Intern/Pharmacist Licenses

- (1) Pharmacist license examination and re-examination fee — \$50.
- (2) Pharmacist jurisprudence re-examination fee — \$25.
- (3) Pharmacist licensing by reciprocity fee — \$200.
- (4) Pharmacist licensing by score transfer fee — \$200.
- (5) Intern License fee. Expires May 31 every four years — \$30.
- (6) Pharmacist license fee. Expires June 30 annually — \$120
- Delinquent renewal fee, (postmarked after May 31) — \$50.
- (7) Certification of approved providers of continuing education course fee, none at this time.
- (8) Technician registration fee. Expires September 30 annually — \$35.

- (9) Delinquent renewal fee, (postmarked after August 31) — \$20.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1980, f. 5-3-80, ef. 5-3-80 & 7-1-80; 1PB 2-1982, f. 3-8-82, ef. 4-1-82; 1PB 1-1984, f. & ef. 2-16-84; 1PB 3-1985, f. & ef. 12-2-85; PB 3-1988, f. & cert. ef. 5-23-88; PB 7-1989, f. & cert. ef. 5-1-89; PB 15-1989, f. & cert. ef. 12-26-89; PB 10-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; BP 2-1998, f. & cert. ef. 3-23-98; BP 1-2001, f. & cert. ef. 3-5-01; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03

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**Adm. Order No.:** BP 2-2003

**Filed with Sec. of State:** 1-14-2003

**Certified to be Effective:** 3-1-03

**Notice Publication Date:** 9-1-02, 11-1-02

**Rules Amended:** 855-041-0205

**Subject:** Rules are amended to eliminate all references of pharmacy technician ratio. Public hearing was held October 9, 2002 and the written comment deadline was extended to November 4, 2002. This rule change has been in process for several years. There has been significant input from constituents, work groups, committees and staff. The Board voted at its regularly scheduled Board meeting on 12/11-02 to eliminate the technician ratio.

**Rules Coordinator:** Gary Schnabel—(503) 731-4032

## 855-041-0205

### Use of Technicians

(1) A pharmacist may only use technicians as authorized by the rules of the Board.

(2) Technicians shall be supervised by a pharmacist.

(3) Pharmacists, pharmacist interns and technicians shall be clearly identified as such to the public.

(4) Work performed by technicians assisting the pharmacist to prepare medications must be verified by a pharmacist prior to release for patient use and the verification must be documented. Verification and documentation must be done in a manner approved by the Board.

(5) Written procedures which describe the tasks performed by the technician and the methods of verification and documentation of work performed by technicians in a pharmacy shall be prepared by the pharmacist-in-charge, and shall be kept on file in the pharmacy for inspection. These procedures shall be reviewed annually and documentation of that review shall be made to the Board on the annual pharmacist-in-charge inspection sheet.

(6) Training:

(a) Technicians shall complete initial training as outlined by the pharmacist-in-charge which includes on-the-job and related education commensurate with the tasks they are to perform, prior to the regular performance of those tasks.

(b) The pharmacist-in-charge shall assure the continuing competency of technicians through in-service education and training to supplement initial training.

(c) A written record of initial and in-service training of technicians shall be maintained and contain the following information:

(A) Name of the person receiving the training;

(B) Date(s) of the training;

(C) General description of the topics covered;

(D) Name of the person supervising the training; and

(E) Signature of the technician and the pharmacist-in-charge.

(7) A pharmacy technician shall keep all patient information confidential, as required in 855-041-0103.

# ADMINISTRATIVE RULES

(8) The supervising pharmacist and the pharmacist-in-charge are responsible for the actions of technicians. The use of technicians in the performance of tasks not included in approved written procedures may be considered to be unprofessional conduct on the part of the pharmacist supervising the technician and the pharmacist-in-charge.

(9) Any pharmacy requiring or allowing pharmacists to use technicians in violation of the Oregon pharmacy act or Board rules is subject to revocation, suspension, or restriction of the drug outlet registration as well as a fine of \$1,000 for each offense.

(10) The pharmacy shall maintain on file the current certificate of registration of each pharmacy technician.

(11) Prior to utilizing any person as a technician, the pharmacy shall obtain verification that the person is currently registered as a pharmacy technician.

(12) No pharmacy shall knowingly utilize, without written Board approval, any person as a pharmacy technician who has been:

(a) Convicted of any crime or offense involving dishonesty or involving drugs;

(b) Disciplined by a Board of Pharmacy in any other state; or

(c) Licensed as a pharmacist or pharmacist intern in this or any other state and has been disciplined or has surrendered his/her license.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.225

Hist.: PB 3-1989, f. & cert. ef. 1-30-89; PB 15-1989, f. & cert. ef. 12-26-89; PB 5-1990, f. & cert. ef. 4-12-90; PB 4-1991, f. & cert. ef. 9-19-91; PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-2003, f. 1-14-03 cert. ef. 3-1-03

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## Bureau of Labor and Industries Chapter 839

**Adm. Order No.:** BLI 16-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:**

**Rules Amended:** 839-016-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 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 January 1, 2003 are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2003, and the effective date of the applicable special wage determination: 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 January 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

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

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

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## Construction Contractors Board Chapter 812

**Adm. Order No.:** CCB 11-2002

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 12-23-02

**Notice Publication Date:** 12-1-02

**Rules Amended:** 812-001-0020

**Subject:** OAR 812-001-0020 is amended to adopt a new revision date for the Information Notice to Owners About Construction Liens that was amended to delete the reference to phone extensions no longer in use by the agency and change the name of an agency brochure referred to in the form.

**Rules Coordinator:** Cathy Heine—(503) 378-4621, ext.4077

### 812-001-0020

#### Information Notice to Owners

(1) The Construction Contractors Board adopts the form entitled "Information Notice to Owner," as revised October 18, 2002. This form may be obtained from the agency. Previously adopted versions of the Information Notice may also be used.

(2) The Construction Contractors Board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised May 22, 2000.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 87.093 & ORS 701.055

Stats. Implemented: ORS 87.093 & ORS 701.055

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02

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**Adm. Order No.:** CCB 1-2003(Temp)

**Filed with Sec. of State:** 1-14-2003

**Certified to be Effective:** 1-14-03 thru 7-13-03

**Notice Publication Date:**

**Rules Amended:** 812-008-0110

**Subject:** OAR 812-008-0110 is amended to clarify refunds for home inspector fees and to NSF check charges for home inspectors.

**Rules Coordinator:** Cathy Heine—(503) 378-4621, ext. 4077

### 812-008-0110

#### Prescribed Fees

The following prescribed fees are established:

- (1) Application to become certified; \$50.
- (2) Test, first attempt; \$50.
- (3) Test, each sitting to retake one or more sections; \$25.
- (4) Certification; \$75 per year.
- (5) Certification renewal (two years); \$150.
- (6) Reinstatement fee; \$15.
- (7) Refunds:

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

(b) Except as set forth in subsection (c) of this section, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of \$40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-13-03

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## County Fair Commission Chapter 621

**Adm. Order No.:** CFC 1-2003

**Filed with Sec. of State:** 1-15-2003

**Certified to be Effective:** 2-1-03

**Notice Publication Date:** 12-1-03

**Rules Adopted:** 621-001-0005, 621-001-0010



# ADMINISTRATIVE RULES

**Subject:** The rules implement the process for reviewing county fair policies and records as required by ORS 565. The rules further outline a procedure for appealing a declaratory ruling of the County Fair Commission about a county fair policy.

**Rules Coordinator:** John McCulley—(503) 370-7019

## 621-001-0005

### Policies Subject to Audit Examination

(1) The County Fair Commission shall conduct an annual audit examination of available county fair records to check for compliance with the following policies:

- (a) Appropriate treatment of animals;
- (b) Adherence to environmental requirements;
- (c) Participation of fair board and staff in professional development activities; and
- (d) Compliance with the federal Americans with Disabilities Act of 1990 (P.L. 101-336), as amended.

(2) The results of the compliance check must be included within the scope of the opinion expressed by the County Fair Commission examiner about the county fair records.

Stats. Auth.: ORS 565.405 - ORS 65.455

Stats. Implemented: ORS 565.405 - ORS 65.455

Hist.: CFC 1-2003, f. 1-15-03, cert. ef. 2-1-03

## 621-001-0010

### Issuance and Appeal of Declaratory Ruling

(1) Upon the request of a county fair or an auditor, the County Fair Commission may issue a declaratory ruling whether a particular county fair policy is a policy described in OAR 621-001-0005(1).

(2) A county fair board may appeal the decision of the County Fair Commission to the Director of Agriculture subject to the following procedures:

- (a) The appeal must be in writing and received by the Director within 30 days of the date of the County Fair Commission's declaratory ruling;
- (b) The county fair board must specifically state its objection and describe the impact the ruling will have on the county fair; and
- (c) Failure to comply with (2)(a) above will nullify the appeal and the ruling of the County Fair Commission will stand.

(3) The Director must render a decision within 60 days of receipt of the appeal.

(4) The Director's decision is subject to ORS 183.310 to 183.550.

Stats. Auth.: ORS 565.405 - ORS 65.455

Stats. Implemented: ORS 565.405 - ORS 65.455

Hist.: CFC 1-2003, f. 1-15-03, cert. ef. 2-1-03

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## Department of Administrative Services Chapter 125

**Adm. Order No.:** DAS 7-2002

**Filed with Sec. of State:** 12-27-2002

**Certified to be Effective:** 12-27-02

**Notice Publication Date:** 12-1-02

**Rules Amended:** 125-500-0000, 125-500-0005, 125-500-0010

**Subject:** Amends OAR 125-500-0000 through OAR 125-500-0010. Nature of State of Oregon Enterprise Network.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 125-500-0000

### Definitions

(1) The "State of Oregon Enterprise Network" ("SOEN") is the State's "Advanced Digital Communications ("ADC") Network" that provides for the transmission of voice, data, image and video over distance on a single network. SOEN is a backbone network consisting of high capacity switching devices and transmission facilities providing shared communication paths for clusters of dispersed users. SOEN is comprised of switched services procured from telecommunications providers and provisioned on devices and facilities that are generally available to the public and other customers.

(2) "Department of Administrative Services" ("DAS") means the state agency that is authorized to acquire ADC network services for the provision of SOEN pursuant to ORS 283.500 to 283.520 and 291.038.

(3) "Eligible Purchasers" include the entities eligible under:

(a) The Oregon Cooperative Purchasing Program ("ORCPP") which includes:

(A) Cities, Counties, School Districts, Special Districts, or Other Units of Local Government;

(B) U.S. Government Agencies;

(C) Indian Tribes or Agencies;

(D) Qualified Rehabilitation Facilities ("QRF");

(E) Residential Programs;

(F) Certain Qualified Public Benefit Corporations; and

(b) "Communities of Interest" approved in accordance with Oregon Administrative Rules § 125-400-0000 through § 125-400-0060.

(4) "E-Rate" means a program administered by the Universal Service Administrative Company to make discounted telecommunications and Internet services available to classrooms or other places of instruction at schools and libraries that meet the federal statutory definition of an eligible institution.

(5) "Telecommunications Systems" mean devices, components, facilities and applications that provide telecommunications services for the state and its agencies and enable the aggregation and transmission of voice, video or data between and among state agency users. Telecommunications Systems include gateway devices that enable clusters of users to access SOEN for the purpose of transmitting voice, data, image or video over distance. Telecommunications Systems may include gateway devices used to connect to private telecommunications networks or the Internet.

Stat. Auth.: ORS 291.038

Stats. Implemented: ORS 283.500 - ORS 283.520

Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02

## 125-500-0005

### Objectives of State of Oregon Enterprise Network

In planning for, acquiring, implementing and managing SOEN, the Department of Administrative Services shall be guided by the following objectives:

(1) SOEN shall provide high quality, reliable, and advanced digital communications network services for subscribing state agencies and Eligible Purchasers at the best value.

(2) SOEN shall be based upon a very high-capacity, high speed network that will enable service provisioning to all state agencies and Eligible Purchasers.

(3) SOEN shall be capable of delivering point-to-point or multipoint video for distance education and training to subscribing state agencies and Eligible Purchasers.

(4) SOEN shall have sufficient capacity to support the voice, video, and data transport requirements of state agencies and Eligible Purchasers.

(5) DAS shall not construct, install, operate or maintain SOEN.

(6) DAS may construct, install, operate or maintain Telecommunications Systems and shall coordinate the consolidation and operation of all Telecommunications Systems used by the state and state agencies.

(7) DAS will use agency service charges to acquire and improve SOEN services as needed. This will enhance the economic value of the advanced digital communications network infrastructure in Oregon.

(8) When feasible, SOEN may interconnect other publicly-owned, available and proven communications networks.

(9) When economically feasible, SOEN may interconnect existing State of Oregon wide area network services and Telecommunications Systems and regional networks established by Eligible Purchasers.

(10) The SOEN service providers' shall be responsible for all administrative and management functions necessary to operate SOEN at the required levels of service.

(11) To the extent feasible, SOEN shall enable the State of Oregon to obtain full period interactive monitoring, deployment configuration, and network segment management across the entire network.

(12) SOEN services shall be provided using state-of-the-art technology where economically and technically feasible. The SOEN service provider shall be responsible for the costs, labor and necessary equipment upgrades to make SOEN state-of-the-art.

(13) SOEN services may be provided by a single entity or a consortium of service providers. The prime contractor in any consortium shall be responsible for the performance of the obligations required by the SOEN purchase agreement.

(14) On behalf of participating schools or libraries, DAS may make application to the Universal Service Administrative Company to obtain E-Rate discounts on those eligible SOEN services. Applicable services include, but are not limited to:

- (a) Inter-LATA services;
- (b) Intra-LATA services;
- (c) Dedicated Internet access;
- (d) Dial-up Internet access statewide; and

# ADMINISTRATIVE RULES

(e) Integrated services for routers and digital service units.  
Stat. Auth.: ORS 291.038  
Stats. Implemented: ORS 283.500 - ORS 283.520  
Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02

## 125-500-0010

### Procurement of Telecommunications or Data Transport Services

The development and procurement of telecommunications or data transport services by the Department of Administrative Services shall be guided by the following standards:

(1) DAS may procure telecommunications services and data transport, including SOEN services, from a single entity or a number of service providers to allow greater competition in the marketplace.

(2) Prior to the procurement of any telecommunications or data transport services, the Department of Administrative Services may consult with the appropriate advisory entities established under ORS 291.038, state agencies, and any other affected public bodies or interest groups that have an interest in the use of the State's information resources.

(3) To the extent feasible, interim purchase of telecommunications or data transport services shall be guided by the objectives set forth in section 125-500-0005 of these rules and shall be compatible with eventual full procurement of the SOEN services. The Department of Administrative Services shall use the state purchasing process to procure telecommunications or data transport services.

(4) Telecommunications or data transport services, including SOEN services, or statewide integrated video conferencing and statewide on-line access services, may be extended to Eligible Purchasers.

(5) To the extent feasible, the award of any contract for telecommunications or data transport services by the Department of Administrative Services shall be based upon specifications and requirements that promote electronic communication and information sharing among state agencies and between state and local governments, and with the public where appropriate; and that are based upon industry standards for open systems to the extent possible. The Department of Administrative Services shall also consider, wherever feasible, the achievement of the economic development and quality of life outcomes in the Oregon benchmarks, as well as the promotion of competition in the marketplace for the provision of advanced digital communication networks, in the award of these contracts.

Stat. Auth.: ORS 291.038  
Stats. Implemented: ORS 283.500 - ORS 283.520  
Hist.: DAS 6-2000(Temp), f. & cert. ef. 9-11-00 thru 3-4-01; DAS 2-2001, f. & cert. ef. 3-1-01; DAS 4-2002(Temp), f. 8-13-02 cert. ef. 8-15-02 thru 2-10-03; DAS 7-2002, f. & cert. ef. 12-27-02

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**Adm. Order No.:** DAS 8-2002

**Filed with Sec. of State:** 12-27-2002

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**Notice Publication Date:** 12-1-02

**Rules Amended:** 125-045-0100, 125-045-0105, 125-045-0110, 125-045-0120, 125-045-0130, 125-045-0140, 125-045-0150, 125-045-0160

**Subject:** This action removes the ability of the Division to grant exemptions to these rules. References to granting exemptions are also removed. This action is taken to comply with Legislative Counsel opinion.

**Rules Coordinator:** Mary Unger—(503) 378-2349

## 125-045-0100

### Purpose and Application

(1) **Purpose.** These rules are adopted under the authority of ORS 270.015 and 270.100. These rules set forth certain procedures that must be followed by State Agencies that intend to acquire, sell, transfer or exchange real property, including transfers of fee title, options and certain long-term leasehold interests.

(2) **Application.** Unless stated elsewhere in these rules, these rules apply to all State Agencies seeking the Acquisition or Terminal Disposition of a Real Property Interest, except:

(a) The Department of Veterans' Affairs in any transaction for the acquisition or sale, or both, by the Director of Veterans' Affairs of a home or farm under ORS 88.720, 273.388, 406.050, 407.135, 407.145, 407.375 and 407.377; and

(b) Any other State Agency that may be subject to constitutional or statutory obligations that supersede all or some of the following rules. Any State Agency that believes that an Acquisition or Terminal Disposition of a

Real Property Interest is exempt from all or a part of these rules as a result of such a superseding constitutional or statutory requirement shall, at least thirty (30) days prior to the Acquisition or Terminal Disposition, provide notice to the Division, identifying the specific Real Property Interest or defined class of Real Property Interests the Acquisition or Terminal Disposition of which is subject to such superseding constitutional or statutory requirement. Such notice shall also include the following information:

(A) The Real Property Interest to be acquired or disposed of;

(B) The specific requirements of these rules from which the State Agency claims to be exempt; and

(C) The constitutional or statutory authority that the State Agency believe supersedes such rule or rules.

Stat. Auth.: ORS 270.015(2) & ORS 270.100(1)(d)  
Stats. Implemented: ORS 244.010 & ORS 270.010  
Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

## 125-045-0105

### Definitions

As used in this Division 45, the following definitions shall apply, unless the context requires otherwise.

(1) **"Acquiring State Agency"** means a State Agency that intends to acquire a Real Property Interest and that is not an Exempt Acquiring State Agency.

(2) **"Acquisition"** means the obtaining by a State Agency of a Real Property Interest, including, but not limited to, a purchase, exchange, conveyance, donation, or other transfer of that Real Property Interest.

(3) **"Appraisal"** means a written report by a competent real estate appraiser estimating the fair market value of a Real Property Interest prepared in accordance with OAR 125-045-0120 or, for Acquisitions of Real Property Interests having an estimated fair market value of less than \$100,000, a letter of opinion from a licensed real estate professional.

(4) **"Appraised Fair Market Value"** means the fair market value of a Real Property Interest as determined by an Appraisal.

(5) **"Department"** means the Oregon Department of Administrative Services.

(6) **"Director"** means the Director of the Department.

(7) **"Division"** means the Facilities Division of the Department.

(8) **"Division Administrator"** means the Administrator of the Division.

(9) **"Disposing State Agency"** means a State Agency that will be disposing of a Real Property Interest.

(10) **"Exempt Acquiring State Agency"** means every State Agency that, pursuant to ORS 270.100(2), is not required to report to the Department its intent to acquire a Real Property Interest, which at the time of the adoption of these rules are:

(a) The Department of Transportation, if acquiring a highway right of way;

(b) The State Parks and Recreation Department, if acquiring park properties; and

(c) The Department of Higher Education, if acquiring property within the approved projected campus boundaries of institutions subject to its authority. An Exempt Acquiring State Agency shall comply with all other requirements of these rules.

(11) **"Exempt Disposing State Agency"** means every State Agency that, pursuant to ORS 270.100(4), is exempt from having to secure Department approval of the intended Terminal Disposition of State Real Property Interests, unless such Terminal Disposition will be for less than the State Real Property Interest's Appraised Fair Market Value. At the time of the adoption of these rules, the Exempt Disposing State Agencies are:

(a) The State Department of Fish and Wildlife;

(b) The State Forestry Department, if disposing of State forestlands;

(c) The Department of Transportation;

(d) The Division of State Lands;

(e) The Department of Higher Education;

(f) Any legislative or judicial branch of the State; and

(g) The State Parks and Recreation Department. An Exempt Disposing State Agency shall comply with all other requirements of these rules.

(12) **"Governing Body"** means a board or commission, with constitutional or statutory governing authority over a State Agency, including the authority to approve the Acquisition or Terminal Disposition of a Real Property Interest by such State Agency. The term "Governing Body" includes but is not limited to the following bodies:

(a) The State Land Board;

(b) The Oregon Board of Forestry;

(c) The State Board of Higher Education;

# ADMINISTRATIVE RULES

- (d) The Oregon Transportation Commission;
- (e) The State Parks and Recreation Commission; and
- (f) The Oregon Fish and Wildlife Commission.

(13) **“Improvements”** means any and all structures on or attachments to Real Property Interests, but excluding public improvements as defined in ORS 279.011.

(14) **“Office Quarters”** has the definition set forth in OAR 125-120-0100(8).

(15) **“PLAC”** means the Public Lands Advisory Committee.

(16) **“Political Subdivision”** means any local governmental unit, including, but not limited to, a county, city, town, port, dock, commission or district, that exists under the laws of Oregon and that has the power to levy taxes.

(17) **“Proposal”** means a written offer to purchase a State Real Property Interest, including all necessary attachments, submitted in response to a Request for Proposals.

(18) **“Proposer”** means a private individual or entity that submits a Proposal in response to a Request for Proposals.

(19) **“Public Lands Advisory Committee”** means the advisory committee established under ORS 270.120.

(20) **“Real Property Interest”** means any legal or equitable interest in land together with any and all Improvements thereon, including fee title, options, and leasehold interests with a term of more than twenty (20) years. A Real Property Interest does not include the leasing of Office Quarters regardless of the term of the lease. A Real Property Interest does not include an easement, unless the easement has an estimated Appraised Fair Market Value of \$100,000 or greater.

(21) **“Request for Proposals”** means a solicitation of offers to acquire a State Real Property Interest made pursuant to OAR 125-045-0160.

(22) **“Right of First Refusal”** means the conditional privilege that the Disposing State Agency, in the exercise of its discretion, consistent with the its and the Department’s, or their officers and employees, Trust Responsibilities, may grant to a qualifying Proposer under OAR 125-045-0170 to match the best Proposal for purchase of a State Real Property Interest. The Right of First Refusal shall contain such conditions and terms as the Department, subject to legal sufficiency approval of the Attorney General’s office, may determine to be necessary or desirable.

(23) **“State”** means the State of Oregon.

(24) **“State Agency”** means every board, commission, department or agency of the State of Oregon, whose costs are paid, in whole or in part, from funds held in the State Treasury and which is authorized by statute or rule to acquire or dispose of real property that is or will become a State Real Property Interest.

(25) **“State Real Property Interest”** means any Real Property Interest that is owned in the name of the State of Oregon.

(26) **“Terminal Disposition”** means the relinquishment by the Disposing State Agency of a State Real Property Interest, including, but not limited to, a sale, exchange, conveyance, donation, or other transfer of that State Real Property Interest.

(27) **“Trust Responsibility”** means the full range of fiduciary responsibilities, including any statutory or constitutional responsibilities, that the Department and the Acquiring or Disposing State Agency, or their officers and employees, have regarding Real Property Interests proposed to be acquired or State Real Property Interests offered for Terminal Disposition including but not limited to, the responsibility of the Department and a Disposing State Agency, or their officers and employees, to conduct a Terminal Disposition in a commercially reasonable manner that will ensure a full and reasonable consideration for the State Real Property Interest being sold.

Stat. Auth.: ORS 270.015(2) & ORS 270.100(1)(d)  
Stats. Implemented: ORS 244.010, ORS 270.010, ORS 270.100, ORS 270.105, ORS 270.110, ORS 270.120, ORS 270.130 & ORS 270.135  
Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

## 125-045-0110

### Declaration of Intent to Transfer or Acquire a Real Property Interest

(1) **Declaration of Intent to Transfer.** Prior to the Terminal Disposition by a State Agency of a State Real Property Interest, the State Agency shall first declare in writing to the Division its intent to dispose of such property. Such written declaration shall include the following:

(a) A detailed description of the State Real Property Interest to be transferred, including the approximate size in square feet or acreage and its legal description;

(b) A map showing the location of the State Real Property Interest;

(c) An explanation of the reason for disposal;

- (d) An Agency Surplus Real Property Notification Form; and
- (e) Any other information the Division may request.

(2) **Declaration of Intent to Acquire.** Except for Exempt Acquiring State Agencies, before a State Agency offers to acquire a Real Property Interest, it shall first declare to the Division in writing its intent to acquire such property. Such written declaration shall include the following:

(a) A detailed description of the Real Property Interest sought to be acquired, including its approximate size in square feet or acreage and any other requirements of the State Agency;

(b) A description of the location of the Real Property Interest, including a map showing the location;

(c) An explanation of the reason for the Acquisition;

(d) An Agency Real Property Acquisition Notification Form; and

(e) Any other information the Division may request.

Stat. Auth.: ORS 270.100(1)(d)

Stats. Implemented: ORS 270.100

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

## 125-045-0120

### Appraisal and Determination of Value of Real Property Interests

(1) **In General.** Prior to Acquisition from or Terminal Disposition to a party other than a State Agency of a Real Property Interest, the Acquiring or Disposing State Agency shall obtain an Appraisal, as defined in OAR 125-045-0105(3), of the State Real Property Interest.

(2) **Interests Valued at \$500,000 or Greater.** If the estimated fair market value of the Real Property Interest is \$500,000 or greater, the Division Administrator:

(a) Shall either select the appraiser or approve the selection of the appraiser by the Disposing State Agency;

(b) Must approve of the form and substance of the written Appraisal and the final determination of Appraised Fair Market Value by the appraiser; and

(c) May require that more than one Appraisal be obtained to establish the Appraised Fair Market Value for the subject property.

(d) Upon written request by a State Agency, the Division Administrator may preapprove the State Agency’s appraisal process, provided such process is consistent with the rule stated herein.

(3) **Terminal Disposition for Less Than Appraised Fair Market Value.** Except for transfers from one State Agency to another, in no event may any State Agency sell or dispose of any State Real Property Interest for less than its Appraised Fair Market Value without complying with OAR 125-0045-0190(2).

(4) **Consideration of Values.** Regardless of the Appraised Fair Market Value of the State Real Property Interest, and prior to Terminal Disposition of a State Real Property Interest to a party other than a State Agency, the Disposing State Agency shall consider all the values of such State Real Property Interest to the people of the State, including values for fish and wildlife habitat and public access to other real property.

(5) **Public Comment on Values.** If the Appraised Fair Market Price of the State Real Property Interest is greater than \$100,000, consideration of the value of the State Real Property Interest under OAR 125-045-0120(4) above shall include inviting public comment on such values. Public comment shall be solicited in the manner set forth in OAR 125-045-0160(3) or in such other manner as the Division may approve.

Stat. Auth.: ORS 270.015(2) & ORS 270.100(1)(d)

Stats. Implemented: ORS 270.100 & ORS 270.105

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

## 125-045-0130

### Acquisition of a Real Property Interests

(1) **Notice to State Agencies of Intended Acquisition.** After receipt of a declaration to acquire a Real Property Interest as set forth in OAR 125-045-0110(2) and before an Acquiring State Agency other than an Exempt Acquiring State Agency may unconditionally offer to acquire any Real Property Interest, the Division shall provide written notification of the intended Acquisition to all other State Agencies authorized by statute to own Real Property Interests in the name of the State. Such notification shall be directed to the office of the State Agency official who is responsible for an agency’s Real Property Interest transactions (e.g., “Facilities Coordinator,” “Senior Property Specialist,” or other comparable positions). Such written notification shall include the following:

(a) A request that the State Agency give the Division written notification if such State Agency has a State Real Property Interest that may match the needs of the Acquiring State Agency that it no longer needs;

(b) The information required to be provided under OAR 125-045-0110(1);

# ADMINISTRATIVE RULES

(c) The deadline for the State Agency to inform the Division in writing of any matching State Real Property Interest it controls and which it no longer needs. Such deadline shall not be less than thirty (30) days from the date of mailing the notification to State Agencies by the Division, unless the Division Administrator determines that a shorter period is in the State's interest; and

(d) Any other information that the Division or the Acquiring State Agency deems desirable.

## (2) Negotiation with State Agencies.

(a) If a State Agency timely responds to the written notice described in OAR 125-045-0130(1)(a) above, such responding State Agency shall thereafter negotiate with the Acquiring State Agency to determine if an Acquisition and transfer can be consummated.

(b) The Acquiring State Agency may not reject a bona fide offer by another State Agency to transfer a matching State Real Property Interest to the Acquiring State Agency, without Division approval.

(3) Final Acquisition. The Acquiring State Agency may proceed with an Acquisition of a Real Property Interest upon satisfaction of the requirements of OAR 125-045-0110 to 125-045-0130, provided such Acquisition is consistent with other applicable provisions of law.

Stat. Auth.: ORS 270.015(2) & ORS 270.100(d)(1)

Stat. Implemented: ORS 270.100

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

## 125-045-0140

### Notice to State Agencies of Intended Terminal Disposition of State Real Property Interests and First Opportunity to Acquire

(1) **Notice to State Agencies.** After receipt of a declaration to dispose of a State Real Property Interest as set forth in OAR 125-045-0110(1) above, and before a Disposing State Agency may unconditionally offer the State Real Property Interest for sale, long-term lease or other transfer, the Division shall provide written notification of the intended Terminal Disposition to all State Agencies authorized by law to acquire Real Property Interests. Such notification shall be directed to the office of the State Agency official who is responsible for an agency's Real Property Interest transactions (e.g., "Facilities Coordinator," "Senior Property Specialist," or other comparable positions). Such written notification shall include the following:

(a) A request that any State Agency with an interest in acquiring the State Real Property Interest, notify the Division in writing of such interest;

(b) The information required to be provided under OAR 125-045-0110(1);

(c) The deadline for the State Agency to provide written notification to the Division of its interest in acquiring the State Real Property Interest. Such deadline shall not be less than thirty (30) days from the date of mailing the notification to State Agencies by the Division, unless the Division Administrator determines that a shorter period is in the State's interest; and

(d) Any other information that the Division or the Disposing State Agency deems desirable.

## (2) Negotiation with State Agencies.

(a) If one or more State Agencies timely respond to the written notice described in OAR 125-045-0140(1) above, such responding State Agencies shall thereafter negotiate with the Disposing State Agency to determine if a sale, assignment, lease or other transfer can be consummated.

(b) Without Division approval, the Disposing State Agency may not reject another State Agency's bona fide offer to acquire the State Real Property Interest.

(c) In the event two or more State Agencies make bona fide offers to acquire the State Real Property Interest of a Disposing State Agency, the Division and the Disposing State Agency shall determine, in their reasonable discretion, which, if any, offer is most advantageous to the State and the Disposing State Agency. Prior to making such determination, the Division may solicit the advice of the PLAC.

(d) Neither the Division nor the Disposing State Agency must utilize a competitive bidding process in connection with the Terminal Disposition of a State Real Property Interest to another State Agency.

Stat. Auth.: ORS 270.015(2) & ORS 270.100(d)(1)

Stat. Implemented: ORS 270.100 & ORS 270.120

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

## 125-045-0150

### Notice to Political Subdivisions of Intended Terminal Disposition of State Real Property Interests and Right of Second Opportunity to Acquire

(1) **Notice to Political Subdivisions.** Before a Disposing State Agency may unconditionally dispose of a State Real Property Interest to other than another State Agency, the Division shall first provide notification

of the intended Terminal Disposition to Political Subdivisions. Written notification shall be given by mail to each city, county and school district within whose boundaries the State Real Property Interest is located. Notification shall be given to all other Political Subdivisions by at least one of the following methods:

(a) Posting notification of the intended Terminal Disposition on the Division's Web site; or

(b) Publication meeting the requirements set forth in OAR 125-045-0160 (3).

(2) **Contents of Notice.** All such notifications shall include the following:

(a) A request that any Political Subdivision with an interest in acquiring the State Real Property Interest notify the Division in writing of such interest;

(b) The information required to be provided under OAR 125-045-0110(1);

(c) The deadline for the Political Subdivision to provide written notification to the Division of its interest in acquiring the State Real Property Interest. Such deadline shall not be less than thirty (30) days from the date of the first notification, unless the Division Administrator finds a shorter period is in the State's interest;

(d) A Reservation of the right of the Disposing State Agency and the Division to reject any offers;

(e) Notice to Political Subdivisions that a Political Subdivision's right to acquire the State Real Property Interest is subject and subordinate to the right of State Agencies to acquire the State Real Property Interest (this notice is unnecessary if the procedure described in OAR 125-45-0140 has been fully completed without a transfer to another State Agency); and

(f) Any other information that the Division or the Disposing State Agency deems desirable.

## (3) Transfer to Political Subdivisions.

(a) If no State Agency indicates an interest in acquiring the State Real Property Interest, or if a sale or other transfer to another State Agency cannot be finalized, any Political Subdivision that has timely responded to the notice described in OAR 125-045-0150(1) above may negotiate with the Disposing State Agency to determine if a sale or other transfer can be consummated.

(b) The Disposing State Agency shall consider any bona fide offer submitted by a Political Subdivision, but shall have no obligation to sell or otherwise transfer the State Real Property Interest to the Political Subdivision.

(c) No sale or other transfer of a State Real Property Interest to a Political Subdivision for less than the Appraised Fair Market Value shall be permitted without the written approval of the Division or Director in accordance with OAR 125-045-0190(2).

(d) In the event of two or more Political Subdivisions make bona fide offers to acquire the State Real Property Interest of a Disposing State Agency, the Division and the Disposing State Agency shall determine, in their reasonable discretion, which, if any, offer is acceptable to the State.

(e) The Disposing State Agency or the Division may place any conditions on the transfer of a State Real Property Interest to a Political Subdivision it deems advisable, including but not limited to a requirement that:

(A) Any State Real Property Interest sold or transferred to a Political Subdivision be subject to a deed restriction that the property be used solely for a public purpose or benefit; and/or

(B) That such State Real Property Interest not be resold to a private purchaser without the consent of the State.

(f) Neither the Division nor the Disposing Agency must utilize a competitive bidding process in connection with the Terminal Disposition of State Real Property Interest to a Political Subdivision.

Stat. Auth.: ORS 270.100(1)(d)

Stat. Implemented: ORS 270.100

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

## 125-045-0160

### Terminal Dispositions of State Real Property Interests to Other Individuals or Entities

(1) **In General.** If a Disposing State Agency does not sell or transfer a State Real Property Interest to either a State Agency or a Political Subdivision pursuant to the provisions outlined above, then the Disposing State Agency may dispose of such State Real Property Interest to any other party subject to the rules and procedures set forth below.

(2) **Right of First Refusal Determination.** Prior to proceeding with the public notice and solicitation procedures below, the Disposing State Agency shall determine, with the advice and consent of the Division,

# ADMINISTRATIVE RULES

whether any party is entitled to a Right of First Refusal pursuant to OAR 125-045-0170 below. If a Right of First Refusal is granted, the provisions of OAR 125-045-0170 shall apply.

(3) **Notice.** The Disposing State Agency or the Division shall provide published notice of the proposed Terminal Disposition of the State Real Property Interest. Such notice shall be published in one or more newspapers of general circulation in the county or counties in which the State Real Property Interest is located, and in any other newspapers the Disposing State Agency or the Division deems advisable. The notice shall be published not less than once a week, for three successive weeks. The published notification shall include the following:

(a) A general description of the State Real Property Interest subject to Terminal Disposition, including a legal subdivision description, if any;

(b) The minimum asking price;

(c) The name and address of the person to contact to obtain any additional information concerning the State Real Property Interest;

(d) A Request for Proposals, including the address to which the Proposal must be delivered and the date and time the Proposal is due, which shall not be less than thirty (30) days from the date of the first notice;

(e) A requirement that a security deposit in the amount and form required by OAR 125-045-0160(4) shall be submitted with the Proposal;

(f) If applicable, a notice that the Terminal Disposition of the State Real Property Interest may be subject to a Right of First Refusal granted pursuant to OAR 125-045-0170 below; and

(g) A reservation of the right of the Disposing State Agency or the Division to accept or reject any Proposal; and

(h) Any other information the Disposing State Agency or the Division deems desirable.

(i) If the Appraised Fair Market Value is more than \$100,000, the notice may also invite public comment on the values of the State Real Property Interest as set forth in OAR 125-045-0120(4) above.

(4) **Proposals for Purchase of Property.**

(a) All Proposals submitted in response to the published notice described in OAR 125-045-0160(3) above, shall be accompanied by a deposit, in the form of:

(A) A certified check; or

(B) Sufficient bond furnished by a surety company authorized to do business in this State, in favor of the State of Oregon, in a sum not less than ten percent (10%) of the total amount of the value of the Proposal.

(b) Deposits will be refunded to all unsuccessful Proposers after:

(A) The closing of the sale to a successful Proposer; or

(B) Rejection of all Proposals.

(c) Each Proposal shall clearly set forth the amount offered for the purchase of the State Real Property Interest, and shall include the following additional matters:

(A) Any conditions upon the Proposer's offer to acquire the State Real Property Interest;

(B) A detailed statement explaining Proposer's proposed use for the State Real Property Interest; and

(C) Any other information the Proposer believes is relevant to its Proposal.

(d) If the Disposing State Agency finds any Proposal to be ambiguous, it may request that the Proposer submit further information in order to clarify the Proposer's Proposal. If the Disposing State Agency does not request any such clarification, the ambiguous Proposal may be rejected.

(5) **Opening of Proposals.** After the date and time for submitting Proposals has passed, the Disposing State Agency shall open all Proposals that have been timely delivered and that have the required deposit. All responsive Proposals shall be evaluated by the Disposing State Agency and/or the Division in order to determine the Proposal most advantageous to the State. The determination of the most advantageous Proposal shall be final and conclusive and shall not be subject to review by any court.

(6) **Negotiations.** The Disposing State Agency shall notify the apparent successful Proposer and shall negotiate to determine if the transfer can be consummated. If such negotiations are unsuccessful, the Disposing State Agency shall notify the next highest ranking, acceptable Proposal and shall similarly attempt to negotiate the Terminal Disposition of the State Real Property Interest.

(7) **Sale or Other Transfer of State Real Property Interest.** If the Disposing State Agency and a Proposer reach a final agreement with regard to the disposal of the State Real Property Interest and (if required) such agreement is approved by the Attorney General pursuant to ORS 291.047, the State Real Property Interest shall be transferred to such successful Proposer in accordance with the terms of the such agreement.

(8) **Rejection of All Proposals.** The Disposing State Agency, in its sole discretion, may reject any or all Proposals.

(9) **Continued Marketing of Real Property Interest After Rejection of All Proposals.** If all Proposals are rejected, the Disposing State Agency may market and sell the Real Property Interest in any manner the Disposing State Agency deems appropriate, including by and through a real estate licensee as set forth in ORS 696.007, provided that: (a) If required by ORS 291.047, any resulting agreement of sale must be approved by the Attorney General; and

(b) If no agreement of sale is executed within 18 months of the publication of the first public notice of sale described in OAR 125-045-0160(3) above, no agreement of sale may be accepted without again first publishing a public notice of sale and complying with the provisions of OAR 125-045-0160 et. seq.

Stat. Auth.: ORS 270.015(2) & ORS 270.100(1)(d)

Stats. Implemented: ORS 270.010, ORS 270.110, 270.130, 270.135 & ORS 270.140

Hist.: DAS 5-2001, f. & cert. ef. 9-10-01; DAS 8-2002, f. & cert. ef. 12-27-02

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**Adm. Order No.:** DAS 9-2002(Temp)

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 12-31-02 thru 6-28-03

**Notice Publication Date:**

**Rules Adopted:** 125-055-0100, 125-055-0105, 125-055-0110, 125-055-0115, 125-055-0120, 125-055-0125, 125-055-0130

**Subject:** Effective December 31-2002, the Department of Administrative Services (the "Department") is adopting a temporary Administrative Rule to prescribe 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 state contracting agencies are covered entities under the Privacy Rule and must comply with the business associate contracting requirements. The compliance date for all business associate contracts is April 14, 2003 (with certain exceptions).

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 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 receive, use, or create Protected Health Information. This Rule contains the written assurances that an Agency must include in its Contract with a Business Associate. The requirements contained in this Rule apply both to contracts for trade services, as defined in OAR 125-030-000(57), and to contracts for personal services, as defined in OAR 125-020-0130.

[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

## 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, including the term "Business Associate," shall have the same meaning as those terms in the Privacy Rule.

# ADMINISTRATIVE RULES

(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) “**Contract**” means the written agreement between an Agency and a Business Associate setting forth the rights and obligations of the parties.

(3) “**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.

(4) “**Privacy Rule**” means the Standards for Privacy of Individually Identifiable Health Information at **45 CFR part 160 and 164, subparts A and E (2002)**.

(5) “**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

## 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

## 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

# ADMINISTRATIVE RULES

cure the breach of the requirements of this Rule or end the violation within the time specified by Agency;

(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 acknowledgment 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

## 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 preempts 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

## 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

## 125-055-0130

### Standards in Individual Contracts

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.

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

## Department of Administrative Services, Budget and Management Division Chapter 122

**Adm. Order No.:** BMD 1-2003(Temp)

**Filed with Sec. of State:** 1-2-2003

**Certified to be Effective:** 1-2-03 thru 6-30-03

**Notice Publication Date:**

**Rules Adopted:** 122-065-0030

**Subject:** This rule is intended to balance the budget and avoid creation of a deficit as required by law.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 122-065-0030

### Allotment Reductions to Balance Budget and Prevent Deficit

(1)(a) The Department of Administrative Services (Department) has determined that probable receipts from taxes and other revenue sources for 2001-03 General Fund appropriations will be less than anticipated by the Legislative Assembly when it enacted the state's budget for the 2001-03 biennium and made adjustments to that budget in special sessions held during the 2002 calendar year. Consequently, the amount of General Fund revenue available for appropriations for the remainder of the 2001-03 biennium will be less than the amounts estimated or allotted therefore. Pursuant to ORS 291.254, acting on this determination and with the Governor's approval, and following notice to the agencies affected, the Department is reducing allotment amounts for the remainder of the 2001-03 biennium to balance the state's budget and prevent state government from incurring a deficit in violation of Article XI, Section 7, of the Oregon Constitution.

(b) The reductions in moneys allotted specified in Section (2) of this rule take effect on the date on which the Department files the rule with the Archives Division, Secretary of State.

(c) If one or more individual allotment reductions made under Section 2 of this rule is for any reason held to be invalid or unlawful, the remaining reductions shall not be affected but shall remain in full force and effect in accordance with the terms of this rule, and to this end the reductions made by this rule are severable.

(2) Moneys allotted for the final two quarters of the 2001-03 biennium from General Fund appropriations to agencies subject to the allotment system established in ORS chapter 291 are reduced by the amounts necessary to effectively reduce the General Fund appropriations allotted during the entire 2001-03 biennium by 1.2097 percent. The Department shall also reduce moneys allotted from federal fund and other non-General Fund appropriations to the extent such reductions are required by Department-approved agency actions to implement the reductions in allotments from General Fund appropriations.

(3) On a schedule to be established by the Department, each agency for which allotments are reduced under this rule must submit to the Department estimates for the remaining allotment periods of the 2001-03 biennium that are consistent with the reductions.

(4) Notwithstanding section (2) above, the Department shall make no reductions in moneys allotted for payment on debt obligations incurred by the state prior to the effective date of this rule.

Stat. Auth.: ORS 183.335(5), ORS 184.340 & ORS 291.232 - ORS 291.260  
Stats Implemented: ORS 291.254  
Hist.: BMD 1-2003(Temp), f. & cert. ef. 1-2-03 thru 6-30-03

## Department of Administrative Services, Human Resource Services Division Chapter 105

**Adm. Order No.:** HRSD 1-2003(Temp)

**Filed with Sec. of State:** 1-13-2003

**Certified to be Effective:** 1-13-03 thru 7-12-03

**Notice Publication Date:**

**Rules Amended:** 105-040-0020

**Subject:** 105-040-0020(1)(c) — change language to clarify that management and classified unrepresented service employees must have been separated from state service and completed initial trial service in State service to be on the Statewide Reemployment Lay-off List. 105-040-0020(1)(d)(C) — change language to clarify that employees who have gained regular status in their positions are qualified to be on the open competitive list.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

# ADMINISTRATIVE RULES

## 105-040-0020

### Types and Order of Applicant Lists

Applicability: Applicants for State of Oregon positions, classified unrepresented and management service employees, and initial appointment to all classified positions:

(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 reinstatement and reemployment rights in accordance with state workers' compensation laws.

(A) These lists are established by class for specific entry level classes. Placement on the list shall be in ascending order of year the employee requested return to work. The term of eligibility on the list is until the employee is returned to an available and suitable position in any agency within the Executive Branch as long as they meet eligibility requirements under OAR 105-050-0020, Return to Work of Injured Workers.

(B) Injured Worker lists shall be used first when filling a vacant position in an entry level class identified for the return on injured workers. 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 class 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 regular status permanent (full or part-time) and/or regular status seasonal employees who separated from the service in good standing due to layoff or demotion in lieu of layoff.

(A) These lists are established by class 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, or until the employee is returned to an equivalent position from which laid off, whichever comes first.

(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 class 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 employees in the management and classified unrepresented service who have separated from state service due to layoff, and unclassified executive service employees terminated from state service due to reduction in force. Employees in the management and classified unrepresented service who are placed on the list because of separation due to layoff, must have completed initial trial service in state service prior to the layoff.

(A) These lists are established by class. An employee may request placement on the list via his/her agency's personnel office for classes for which qualified and which are the same classification, or same, equal, or lower salary level number. The term of eligibility on the list shall not be longer than two years from the date of layoff, 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 candidates 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 class. 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 state employees who meet the qualifications of the position and pass the appropriate promotional test, if any. These lists are established by class. 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;

(C) Statewide Transfer Lists shall consist of names of qualified state employees who desire a transfer to a position of the same classification, or same, equal, or lower salary level number. These lists are established by class. 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;

(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 class. 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) Rule Clarification: Refer to HRSD State Policy 50.020. 01, Return to Work of Injured Workers, for the list of the entry level classes established for injured workers and to obtain eligibility requirements.

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

Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250

Stats. Implemented: ORS 240.306, ORS 659.412, ORS 659.415 & ORS 659.420

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 1-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03

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**Adm. Order No.:** HRSD 2-2003(Temp)

**Filed with Sec. of State:** 1-13-2003

**Certified to be Effective:** 1-13-03 thru 7-12-03

**Notice Publication Date:**

**Rules Amended:** 105-040-0040

**Subject:** 105-040-0040(1)(d) — Add language that allows agencies with limited options the flexibility to hire limited duration employees to meet critical workload needs. A policy change (HRSD State Policy 40.025.01, Temporary Appointments) has taken effect and the rule must be immediately changed to conform to policy. 105-040-0040(1)(d)(C) — Language added to clarify limited duration appointments shall not exceed two years. This allows for conformity amongst other types of limited duration contracts. In addition, this makes the rule consistent with policy and past practice.

**Rules Coordinator:** Mary Unger—(503) 378-4309, ext. 320

## 105-040-0040

### Types of Appointments

Applicability: Classified unrepresented, management service, initial appointment to state service or temporary appointment.

(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 Policy 40.025.01;

(d) Limited Duration Appointment: The appointment of a person for a study, project, or workload need or when position reduction is anticipated.

(A) Appointments 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 ended.

(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.



# ADMINISTRATIVE RULES

(D) An 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) Rule Clarification: Appointment means the hiring of a person in state service.

[ED. NOTE: The Agreement referenced in this rule is available from the agency.]

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

Stat. Auth.: ORS 240.145 & ORS 240.350

Stats. Implemented: ORS 240.306, ORS 240.309, ORS 240.321 & ORS 240.425

Hist.: PD 7-1981, f. & ef. 12-18-81; 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 2-1992(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

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## Department of Agriculture Chapter 603

**Adm. Order No.:** DOA 27-2002

**Filed with Sec. of State:** 12-23-2002

**Certified to be Effective:** 12-23-02

**Notice Publication Date:** 11-1-02

**Rules Amended:** 603-053-0200

**Subject:** The amended rule would establish fees for Good Agricultural Practice and Good Handling Practice audits. The audits are voluntary and based on the FDA guidelines to reduce microbial contamination in fresh fruit and vegetables. The rule will set the new fee at \$60.00 hour.

**Rules Coordinator:** Sherry Kudna—(503) 986-4552

### 603-053-0200

#### Inspection Fees For Agricultural Products

The following fees and charges are established for grading, inspection, and certification of horticultural and agricultural products. Fees will be established in an amount reasonably necessary to cover the cost of providing grading, inspection and certification in each of the Shipping Point Inspection Districts and administration of the program pursuant to ORS 632.940:

(1) Separate fees and hourly rates for inspection of fresh products at specific facilities may be available upon request. At the option of the department, fees and hourly rates may be established for specific facilities at an amount reasonably necessary to cover the cost of services rendered. Such fees and hourly rates shall be calculated by determining the costs, including administrative overhead, for providing the service to the specific facility. Fees and rates established pursuant to this section supersede the fee schedule and rates established herein.

(2) Regular inspection and Expense Guarantee: Regular inspection fees are established in an amount reasonably necessary to cover the cost of providing inspection services and administration of the program in each of the Shipping Point Inspection Districts. An expense guarantee may be part of the regular inspection charges. Expense Guarantee: When inspection is requested that will require the assignment of an inspector at a point where the volume of work, at regular fee schedule, would not be adequate to pay the costs of handling the work, an expense guarantee may be required. This guarantee may include:

(a) A charge for a minimum of four hours of service at a rate of \$28 per hour;

(b) Travel time at the rate of \$28 per hour;

(c) Mileage at the rate per mile established by the Department of Administrative Services;

(d) Eight hours per day at \$28 per hour for a minimum of five days per week Monday through Friday during the assignment;

(e) When regular fees equal or exceed the Expense Guarantee, the regular Fee Schedule shall apply;

(f) Credit may be given towards the Expense Guarantee for any work performed for other applicants;

(g) Overtime charges shall be in addition to the Expense Guarantee.

(3) Fresh Product Grade and Condition Certification:

(a) All Fresh Fruit and Vegetables (except Onions and Potatoes):

(A) 20 lbs. to 65 lbs. net — 4 1/2¢ per container;

(B) Bulk or bulk bins — \$2.25 per ton

(b) Brine Cherries:

(A) 15,500 lbs. or less - \$30;

(B) 15,501 to 31,250 lbs. - \$35;

(C) 31,251 to 37,500 lbs. — \$40;

(D) Quantities in excess of 37,500 lbs. — 12¢ per cwt. for the over-  
age;

(c) Onions: — 8 1/2¢ per cwt.

(d) Potatoes: — 8 1/2¢ per cwt.;

(A) Certified Seed — 8 1/2¢ per cwt.;

(B) Diversion — 5 1/2¢ per cwt.

(e) Tree Nuts;

(A) Filberts Inshell — 13 1/2¢ per cwt.;

(B) Walnuts Inshell — 19¢ per cwt.;

(C) Filbert Kernels — 26 1/2¢ per cwt.;

(D) Shelled Walnuts — 33 1/2¢ per cwt.

(4) Intermittent Inspection Fee: Intermittent Inspection will be on a first come, first serve basis as inspectors are available. Intermittent inspection fees may be applied when applicant uses the service on less than a full time basis. The cost of intermittent inspection may include:

(a) A charge for a minimum of four hours of service at a rate of \$35 per hour;

(b) Travel time at the rate of \$35 per hour;

(c) Mileage at the rate per mile established by the Department of Administrative Services;

(d) Overtime charges shall be in addition to the Intermittent Inspection Fee.

(5) Inspection of Product for Processing: Fees and hourly rates for inspecting fruits and vegetables intended for processing shall be established on a separate, uniform basis for each facility. The fees and hourly rates shall be set at an amount reasonably necessary to cover the cost of services rendered. Such fees and hourly rates shall be calculated by determining the costs, including administrative overhead, for providing the service to the specific facility.

(6) Good Agricultural Practices (GAP) and Good Handling Practices (GHP) Audit Fee: GAP and GHP Audits will be on a first come, first served basis as auditing staff is available. GAP and GHP Audit fees will be applied when an applicant requests a mock audit or an audit review of practices based on the voluntary FDA Standards for Minimizing Microbial Contamination to Fresh Fruits and Vegetables or other audit based standards as requested by the industry. The cost for such services may include:

(a) A charge for a minimum of four hours of service at a rate of \$60 per hour;

(b) Travel time at the rate of \$60 per hour;

(c) Mileage, lodging and per diem reimbursed at rates established by the Department of Administrative Services.

(7) Minimum Certificate Charge: When small lots are written up to meet a specific need in an operating packing house, of a commodity which is being inspected on a regular basis, the minimum certificate charge shall be calculated on the regular schedule for that commodity with a \$5 minimum fee.

(8) Mileage Charges: Mileage may be charged in addition to all inspection fees or time charges, at the rate per mile established by the Department of Administrative Services, when travel is required.

(9) Special Services or Determinations: When platform inspections, checkloading, checkweighing, count certification, sealing, or other special services are requested, then at the option of the Department the fee, hourly charge, and/or the minimum number of hours per day, per week or period, may be agreed upon by prior written contractual agreement between the applicant or applicants and the Department. In no case, however, shall such charges be less than is necessary to completely reimburse the Department for its total costs of furnishing such services. The provisions of this section supersede the other fee schedules and provisions relating thereto.

# ADMINISTRATIVE RULES

## (10) Off Grade or Size Certification:

(a) In operating packing houses which are taking inspection on a regular basis: When containers in which the commodity fails to meet with grade and/or size specifications are immediately emptied; no charge. When containers of rejected commodity are not emptied by the close of the business day, an off grade certificate shall be issued covering the total amount of rejected commodity and the regular fee schedule shall be applied to determine charges. (Minimum Service Charge — \$5);

(b) For applicants who do not take inspection on a regular basis, all containers of rejected commodity shall be written up, and off grade certificate issued. The intermittent fee schedule shall be applied to determine charges.

(11) Overtime Charges: For all inspection services performed during the following times (which will be considered overtime), the regular inspection fees or hourly charges shall be charged plus \$10 per hour for all time involved. Overtime charges shall be figured to the nearest one-half hour:

(a) After eight hours shed operation (per scheduled shift) or 6:00 p.m., whichever comes first, on Monday through Friday of each week;

(b) At any time on Saturdays or Sundays; and

(c) At any time on any day which is declared by law to be a holiday for state employees.

(12) Overtime Service Charge: The minimum overtime service charge for Saturdays, Sundays and other legal holidays shall be four hours.

(13) No Service Days: No service will be given on Thanksgiving, Christmas, or New Years days.

(14) Standardization Inspection Charges: Produce requiring inspection under the Onion, Walnut, and Filbert Laws, ORS 632, arriving on Oregon terminal markets without evidence of inspection or without request for inspection being made to the Department prior to arrival will be assessed double the applicable fee stated in the fee schedule and a state certificate will be issued.

(15) Extra Service Charge: When extra service is requested in conjunction with grade and condition certification such as checkweighing, checkloading, count certification, temperature recording, or sealing, an additional charge at the applicable fee stated per hour may be made for additional time used to make these determinations. Time shall be figured to the nearest 1/2 hour.

(16) Extra Certificates or Certificate Copies: When it is necessary to issue extra certificates or certificate copies, a charge of \$5 for each certificate shall be made.

(17) Telegrams and FAX Services: A service charge of \$5 per telegram will be made when a shipper does not secure inspection. When a shipper does secure inspection and requests a telegram to verify inspection, a service charge of \$1 per telegram will be made. In addition to the service charge, the shipper will be charged with the cost of the telegram. When it is necessary to send clearance telegrams due to errors of the Inspection Service, no charge will be made. Fax charges shall be \$5 for up to five pages, and \$1 per page for each additional page.

(18) Phytosanitary or Federal FV-294 Certificates (extra service charge for sampling and inspection):

(a) When in conjunction with grade inspection — 1¢ per cwt.;

(b) When not grade inspected, the intermittent inspection fee plus — 1¢ per cwt.;

(c) Minimum service charge for each certificate issued — \$5.

(19) Fumigation Certificates: When fumigation certification is requested, a charge at the applicable rate per hour will be made for all time required, including travel time, plus mileage at a rate established by the Department of Administrative Services.

Stat. Auth.: ORS 561.190, ORS 632.940 & ORS 632.945

Stats. Implemented: ORS 632.940 & ORS 632.945

Hist.: AD 562, f. & ef. 10-7-57; AD 611, f. 7-10-59; AD 672, f. 6-29-61; AD 767, f. & ef. 7-17-63; AD 799(6-65), f. 6-30-65, ef. 7-15-65; AD 854(26-67), f. 9-26-67, ef. 10-1-67; AD 886(16-68), f. 8-21-68, ef. 10-1-68; AD 904(10-69), f. 8-29-69, ef. 9-8-69; AD 973(6-72), f. 7-11-72, ef. 8-1-72; AD 1037(27-74), f. 8-20-74, ef. 9-11-74; AD 1069(15-75), f. 9-5-75, ef. 9-25-75; AD 13-1979, f. 9-28-79, ef. 10-1-79; AD 10-1983, f. & ef. 8-22-83; AD 2-1991, f. & cert. ef. 2-15-91; AD 17-1992, f. & cert. ef. 11-30-92; AD 11-1994, f. 8-30-94, cert. ef. 9-1-94; AD 9-1996, f. & cert. ef. 7-26-96; DOA 7-1999, f. & cert. ef. 4-26-99; DOA 28-2000, f. & cert. ef. 10-13-00; DOA 27-2002, f. & cert. ef. 12-23-02

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**Adm. Order No.:** DOA 28-2002

**Filed with Sec. of State:** 12-23-2002

**Certified to be Effective:** 12-23-02

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 603-105-0010

**Subject:** House Bill 3961, enacted by the 71st Oregon Legislative Assembly and enrolled on July 19, 2001 (the "Act") creates a program to grant manufacturers or importing distributors of wine certain privilege tax credits for expenditures in qualified marketing activities.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-105-0010

### Qualified Marketing Activity

(1) For the purposes of the credits that may be granted against privilege taxes otherwise payable under ORS 473.030(2) for expenditures in qualified marketing activities, "qualified marketing activity" is described as a marketing event, public relations campaign, publication, or advertisement (whether written or broadcast), or any coordinated combination thereof; which

(A) Promotes the sale and responsible use of wine or wine products; and/or, promotes sustainable viticulture and production;

(B) Does not promote specific brands of wine or wine products or exclusively promote the products of any particular manufacturer or importing distributor;

(C) Is evidenced by a true and complete description of such event, campaign, publication, or advertisement or combination thereof, including estimates of projected out-of-pocket expenditures (or summary reports of actual expenditures if already incurred) by the taxpaying manufacturer or importing distributor therefore;

(D) Is approved by the Oregon Wine Advisory Board following a review of the application and any supporting information submitted by the taxpaying manufacturer or importing distributor.

(2) Notwithstanding subsection (1)(B) an otherwise qualified marketing activity shall not be disqualified because an event included servings and samples of branded wine products, provided that wine products of at least three (3) different manufacturers are served.

(3) The information required pursuant to paragraph (1)(D) should be submitted in such format as the Oregon Wine Advisory Board may request or on such forms as the Oregon Wine Advisory Board may prescribe. The Oregon Wine Advisory Board may request such supplementary information or responses from the applicant as it deems necessary to ensure that the activity is consistent with the guidelines stated in the Act (ORS 473.047) and the statutory purpose given the Wine Advisory Board.

(4) Expenditures by the taxpaying manufacturer or importing distributor directly in connection with its participation in an event or campaign sponsored by the Oregon Wine Advisory Board shall be deemed to be a Qualified Marketing Activity.

(5) An otherwise qualified marketing activity shall not be disqualified because approval of the Wine Advisory Board may not have been obtained until after the event, campaign, publication, or advertisement or combination thereof was undertaken or completed.

(6) Qualified Marketing Activity Certification Process: The Oregon Wine Advisory Board (ORS 576.750) meets every two months throughout the year. Thirty Days prior to each Board meeting, the OWAB Administrative staff shall:

(A) Review applications on hand within fifteen days. Applications received later than thirty days prior to the meeting will be held for consideration at the next regular OWAB meeting.

(B) Summarize each QMA, prepare and distribute written recommendations to the Board and place on the Consent Agenda for approval.

(C) Following Board meeting, OWAB Administrative staff shall print the minutes, and notify applicant of outcome and issue certificate, accordingly.

(7) A Qualified Marketing Activity certificate will be issued upon Wine Advisory Board approval and shall include:

(A) Winery name and address;

(B) Oregon Liquor Control Commission reporting requirements;

(C) Amount of credit requested and

(D) Statement of the qualifying marketing activity.

(8) Upon receipt of the Qualified Marketing Activity certificate the winery may apply to the Oregon Liquor Control Commission (OLCC) to receive a tax credit.

Stat. Auth.: ORS 471.810 & ORS 561.190

Stats. Implemented: ORS 473.047

Hist.: DOA 28-2002, f. & cert. ef. 12-23-02

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**Adm. Order No.:** DOA 29-2002

**Filed with Sec. of State:** 12-23-2002

**Certified to be Effective:** 1-1-03

# ADMINISTRATIVE RULES

**Notice Publication Date:** 9-1-02

**Rules Amended:** 603-025-0010, 603-025-0020, 603-025-0030, 603-025-0180, 603-025-0190

**Rules Repealed:** 603-025-0220

**Subject:** The purpose of this change is to adopt a modified version of the 1999 FDA Food Code. In addition it adopts the 2001 version of the Code of Federal Regulations and repeals the Organic Materials and Practices List.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-025-0010

### Definitions

In addition to the definitions set forth in ORS Chapter 616, the following shall apply:

(1) "Bulk Food" means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn, but does not include fresh fruits, fresh vegetables, nuts in the shell, salad bar ingredients or potentially hazardous foods.

(2) "Corrosion-Resistant Materials" means those materials that maintain acceptable sanitary surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of usage.

(3) "Display Area" means a location, including physical facilities and equipment, where bulk food is offered for customer self-service.

(4) "Distressed Merchandise" means any food which has had the label lost or destroyed, or which has been subjected to possible damage due to accident, fire, flood, adverse weather, or to any other similar cause, and which may have been thereby rendered unsafe or unsuitable for human or animal consumption or use.

(5) "Easily Cleanable" means readily accessible and of such material, fabrication and finish that residues may be effectively removed by normal cleaning methods.

(6) "Employee" means any person working in a food establishment.

(7) "Equipment" means all display cases, storage cases, tables, counters, shelving, refrigerators, sinks, food processing preparation and packaging equipment, and any other items used in the operation of a food establishment.

(8) "Food Source" means food shall be in a sound condition and safe for human consumption and shall be produced in compliance with applicable laws relating to food safety.

(9) "Food-Contact Surfaces" means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

(10) "Food Processing" means the cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing or otherwise manufacturing a food or changing the physical characteristics of a food, and the packaging, canning or otherwise enclosing of such food in a container, but does not mean the sorting, cleaning or water-rinsing of a food.

(11) "Food Retailing" or "Operating a Retail Food Store" means the preparing, packaging, storing, handling or displaying of food for sale at retail to the consumer or user, and may include produce trimming, processed meat slicing, cheese slicing, preparing gutted and filleted fish, and providing retail customer services to change the form of food such as juice squeezing or peanut grinding (if more than one of these customer services is made available, the activities shall then be considered food processing rather than food retailing).

(12) "Food Service Establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, whether consumption is on or off the premises and whether or not there is a charge for the food, and includes a delicatessen that offer prepared foods in individual service portions, but does not include a private home where food is prepared or served for individual family consumption, a retail food store, a food vending machine location or a supply vehicle.

(13) "Food Storage Warehouse" means any building or place where food is stored as a commercial venture or business, or stored in connection with or as a part of a commercial venture or business, but does not include a home, restaurant, rooming house, hotel or similar place where food is stored to be used or consumed by the owner or served to employees, customers, or guests, nor an establishment licensed by the department under other laws.

(14) "Hazardous Substance" means a substance or mixture of substances which is toxic, corrosive, an irritant, flammable, which generates pressure through heat, decomposition or other means, which has been designated by the U.S. Food and Drug Administration as a strong sensitizer or a radioactive material, or which may cause substantial personal injury or substantial illness during or as a proximate result of any reasonable foreseeable handling or use, including reasonably foreseeable ingestion by children.

(15) "Hermetically Sealed Container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(16) "Kitchenware" means all multi-use utensils other than tableware.

(17) "Non-Salvageable Merchandise" means distressed merchandise which cannot be safely or practically reconditioned.

(18) "Operator" means any person having the direct and primary responsibility for the construction, maintenance and operation of a food establishment.

(19) "Packaged" means bottled, canned, cartoned, bagged or completely wrapped.

(20) "Physical Facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(21) "Plant" means the building or buildings or parts thereof, used for or in connection with the manufacturing, packaging, storing, labeling or holding of food for humans, dogs or cats.

(22) "Potentially Hazardous Food" means any food that consists whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, but does not include food which has a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

(23) "Product Module" means a food-contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.

(24) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with all federal or state requirements so as to make it suitable for consumption or for use as human or animal feed.

(25) "Retail Fruit and Vegetable Stand" means any place where fresh fruits or vegetables are offered for sale at retail to the user or consumer.

(26) "Safe Materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food, if they are food additives or color additives (as defined in Section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act), are used in conformity with the federal regulations adopted under Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act, and if they are not food additives or color additives, are used in conformity with other applicable regulations of the U.S. Food and Drug Administration.

(27) "Safe Temperatures" as applied to potentially hazardous food, means air temperatures of 41°F or below and 140°F or above.

(28) "Salvage Dealer" or "Salvage Distributor" means any person who is engaged in selling or distributing salvaged merchandise.

(29) "Salvage Processing Facility" means an establishment engaged in the business of reconditioning distressed merchandise.

(30) "Salvage Processor" means any person who operates a salvage processing facility.

(31) "Salvaged Merchandise" means reconditioned distressed merchandise, and "salvageable merchandise" means distressed merchandise capable of being reconditioned.

(32) "Sanitize" or "Sanitization" means effective bactericidal treatment of physically clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in reducing microorganisms, including pathogens, to a safe level.

(33) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

(34) "Servicing Area" means a designated location equipped for cleaning, sanitizing, drying, refilling product modules, or preparing bulk food.

(35) "Single-Service Articles" means items used by the retailer or consumer such as cups, containers, lids, packaging materials, bags and similar articles, intended for contact with food and designed for one-time use, but does not include single use articles, such as No. 10 cans, aluminum pie

# ADMINISTRATIVE RULES

pans, bread wrappers and similar articles, into which food has been packaged by the manufacturer.

(36) "Supplier" means any person who transfers distressed merchandise to a salvage processor.

(37) "Tableware" means multi-use eating and drinking utensils.

(38) "Transportation" means the movement of food, the delivery of food from one location to another location while under the control of an operator.

(39) "Utensil" means any food-contact implement used in the storage, preparation, transportation, or dispensing of food.

(40) "Vehicle" means any truck, trailer, car, bus, railcar, aircraft, boat, ship or barge by which food is transported from one location to another.

(41) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

(42) "Wholesome" means food found in sound condition, clean, free from adulteration and otherwise suitable for human consumption.

Stat. Auth.: ORS 561, ORS 616 & ORS 619

Stats. Implemented: ORS 616.230

Hist.: AD 2-1987, f. & ef. 1-30-87; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-1999, f. & cert. ef. 6-15-99; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

## 603-025-0020

### General Standards of Food Establishment Construction and Maintenance

(1) Buildings: Food establishment structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food preparation or distribution purposes.

(2) Surroundings: The grounds around a food establishment that are under the control of the operator shall be free from conditions which may result in contamination of food, including the following:

(a) Improperly stored equipment, litter, waste, or refuse, and uncut weeds or grass, within the immediate vicinity of the establishment structures that may constitute an attractant, breeding place or harborage for rodents, insects, birds and other pests;

(b) Excessively dusty roads, yards or parking lots that may constitute a source of contamination in areas where food is exposed; or

(c) Inadequately drained areas that may constitute a source of contamination of food products through seepage or food-borne filth, or by providing a breeding place for insects or microorganisms.

(3) Floors: Floors in a food establishment shall be easily cleanable, smooth, and of tight construction. All new constructed, or reconstructed, floors shall be of nonabsorbent materials. When subject to flood-type cleaning, floors in new construction shall be sloped to drain and be provided with drains in compliance with state plumbing code standards. Joints at wall-floor junctions shall be covered and tight. The floors shall be kept clean and in good repair, and sweeping compounds (dust arrestors) shall be used when dry-sweeping floors.

(4) Walls and Ceilings: The surface of walls and ceilings of all display, storage and processing rooms in a food establishment shall be reasonably smooth and easily cleanable. All walls and ceilings shall be kept clean, in good repair and of a light color.

(5) Doors and Windows: All openings to the outside in a food establishment shall have tight-fitting doors, windows and effective screens. Properly operating air screens are acceptable. All doors used by the public shall be self-closing.

(6) Lighting: Adequate lighting shall be provided in handwashing areas, dressing and locker rooms, toilet rooms, all areas where food or food ingredients are examined, processed or stored, and areas where equipment and utensils are cleaned. Light bulbs, fixtures, skylights or other glass fixtures suspended over exposed food in any step of preparation shall be of the safety type or the food otherwise protected to prevent contamination in case of breakage.

(7) Ventilation: Adequate ventilation or control equipment shall be provided in order to minimize odors and noxious fumes or vapors (including steam) in areas where they may contaminate food. The ventilation or control equipment shall not create conditions that may contribute to food contamination by airborne contaminants, and shall be constructed and installed to comply with the State Fire Marshal codes.

(8) Water Supply: The water supply shall be sufficient for the operation intended and shall be derived from a source of adequate pressure and volume, be safe, be of sanitary quality, and comply with the State Plumbing Code. Running water at a suitable temperature and under needed pressure shall be provided in all areas where the processing of food, the cleaning of equipment, utensils or containers, or employee sanitary facilities takes place. Water used for washing, rinsing or conveying of food products shall be of adequate quality, and water shall not be re-used for washing, rinsing,

or conveying products in a manner that may result in contamination of food products. There shall be no cross-connections between a safe water supply and any unsafe or questionable water supply. All private water supplies shall be inspected and approved before the water can be used. Where applicable, and for the manufacture of ice, a water supply shall comply with all requirements of the Oregon Drinking Water Quality Act, ORS 448.119 to 448.285, and the administrative rules adopted thereunder, OAR 333-061-0010 to 333-061-0095.

(9) Toilet and Handwashing Facilities: The toilet and handwashing facilities shall be plumbed to comply with the State Plumbing Code. The toilet and handwashing facilities must be adequate, clean, in good repair, and conveniently located. The door to the toilet room shall be tight, self-closing, and shall not open directly into any room where foods are exposed for sale. The toilet room shall be completely enclosed and any window openings screened to prevent entrance of insects. All handwashing facilities shall have hot and cold running water, a wash basin, soap, single-service towels, and a waste container. A handwashing notice shall be posted in each toilet room and handwashing facilities. Handwashing facilities shall be provided convenient to food packaging and preparation area.

(10) Waste Disposal: All liquid wastes resulting from cleaning and rinsing utensils, equipment and floors, from flush toilets, and from handwashing facilities, refrigeration devices and air conditioners, shall be disposed of into a public sewage system or by a method approved by the State Department of Environmental Quality or local health department having jurisdiction. All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leak-proof, nonabsorbent, and easily cleanable containers, and be stored so as to be inaccessible to vermin. The containers, unless kept in a special vermin-proofed room or enclosure, shall be covered with tight-fitting lids. Disposable containers with leak proof liners may be used. Containers shall be provided for trash or rubbish. The establishment shall be free of unnecessary litter and rubbish, such as paper, empty containers or other material, that might serve as a place for rodent harborage or other vermin. The containers, and the room or area in which such containers are stored, shall be thoroughly cleaned and sanitized and shall be disposed of at regular intervals so as not to constitute being a nuisance or health hazard.

(11) Vermin Control: All reasonable measures shall be taken to protect the establishment against the entrance, breeding or presence of rodents, birds, flies, roaches, weevils and other vermin. Unwrapped food display items shall be covered when an aerosol method of applying approved pesticides is being used for vermin control in the establishment.

(12) Personnel Cleanliness:

(a) No person known to be affected with any disease in a communicable form, known to be a carrier of a communicable disease, known to be afflicted with boils, infected wounds or open sores, or known to have acute respiratory infection, shall work in any area of an establishment in any capacity in which there is a likelihood of the person contaminating food or food-contact surfaces with pathogenic organisms, or of transmitting disease to other individuals. The operator of an establishment, when he knows or has reason to believe that any employee has contacted any disease in a communicable form transmissible through food, or has become a carrier of such disease, shall immediately notify the county health officer or the department. The department may require a person engaged in the production, manufacture, packing, storage or distribution of food products to be examined by a physician if there is reasonable cause to believe that such person is affected by communicable or infectious disease;

(b) All persons, while working in direct contact with food preparations, food ingredients or contact surfaces shall:

(A) Wear clean and suitable outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices, while on duty so as to the extent necessary to prevent contamination of food products;

(B) Wash their hands thoroughly (and sanitize if necessary to prevent contamination by undesirable microorganisms) in a handwashing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated;

(C) Remove all unsecure jewelry or jewelry that cannot be sanitized, during periods when food is manipulated by hand;

(D) If gloves are used in food handling, they should be of an impermeable material (except where their usage would be inappropriate or incompatible with the work involved) and maintained in an intact, clean and sanitary condition;

(E) Wear hairnets, headbands, caps or other effective hair restraints for both head and facial hair;

(F) Not store clothing or other personal belongings, eat food, drink beverages, or use tobacco in any form, in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils;

# ADMINISTRATIVE RULES

(G) Take any other precautions required to prevent contamination of foods with microorganisms or foreign substances (including perspiration, hair, cosmetics, tobacco, chemicals or medicants).

(c) The establishment shall be responsible for the education of personnel, the training of food handlers and supervisors, and the appointment of competent supervisory personnel.

(13) Dressing and Locker Room Facilities: A room or enclosure separate from food display, packaging and preparation areas in an establishment shall be provided where employees may change clothes, store outer garments and eat lunches. Dressing rooms and lunch rooms shall be kept clean, in good repair and be provided with covered waste receptacles.

(14) Protection of Stored Foods Against Contamination: No dogs, cats, fowl, birds or other type animal shall be permitted in an establishment except for guide-dogs for blind or deaf persons, as authorized by ORS 346.620 and 346.650. All hazardous substances shall be stored in an area separate from food products so as to preclude any possible contamination of the stored foods. Rodenticides shall be placed in covered bait boxes, if necessary, to prevent spillage or possible contamination of stored food and danger to employees. The bait boxes shall be properly labeled with a warning notice. All rodenticide baits shall be applied so as to prevent contamination of stored food products. All pesticides used for control of vermin shall be of approved type and applied so as to protect stored foods from contamination and shall be applied in accordance with labeled instructions. Cleaning materials, pesticides, rodenticides or any other hazardous substances used in the operation of an establishment shall be stored in properly labeled containers, in a closed closet or cabinet, with a hazardous substance warning notice on the door. When a licensed pest control service is employed, it shall deliver to the establishment a diagram of the bait station locations and the rodenticides in use, or advise an employee of the establishment who has been designated by the operator to be responsible for the pest control program. There shall be no overhead waste drainpipes or other piping that may cause undue condensation problems unless equipped with protective shields to preclude possible contamination of foods stored below. Storage methods shall be used which will minimize deterioration and prevent contamination of stored food products. Shelves, cabinets, dunnage and pallets shall be used, if necessary, to protect stored food products from contamination or deterioration. Construction of shelving, cabinets, and storage methods shall permit ready access to cleaning and sanitary inspection. Bagged animal feeds shall be stored so as not to be intermingled with the storage of human food products. Storage on separate pallets is acceptable. Fixtures, ducts, pipes and catwalks shall not be suspended over working areas so that drip or condensate may contaminate foods, raw materials or food-contact surfaces. Only the toxic materials that are required to maintain sanitary conditions, for use in laboratory testing procedures, for maintenance and operation of equipment, or for manufacturing or processing operations, shall be used or stored in the establishment. These materials shall only be used in a manner and under conditions as will be safe for their intended uses.

(15) Transportation of Foods: All cars, trucks or other vehicles used in the transportation of food products shall be kept in a clean condition at all times. Refuse, dirt and waste products subject to decomposition shall be removed daily. Food products shall be handled so as to protect them from deterioration or contamination by hazardous substances while in transit.

(16) Protection of Food Quality: Potentially hazardous foods in food establishments shall be stored or displayed at a safe temperature in keeping with good manufacturing practices so as to insure that the food will reach the consumer in a condition that is safe and fit for human consumption. All refrigerated food display cases, food storage refrigerators and walk-in coolers shall be equipped with an accurate, visible thermometer located in the warmest storage areas. Frozen food shall be kept frozen and shall be stored in storage or display facilities capable of maintaining and having an air temperature of 0°F. or below, except during defrost cycles and brief periods of loading or unloading. All refrigerated food display cases, food storage refrigerators and walk-in coolers shall be kept clean and in good repair. Refrigerated food display cases shall not be filled above the load line.

(17) Labeling of Food Containers and Packages: Labels on closed food containers and packages shall be clearly legible and contain all the information required by the provisions of ORS Chapter 616, the administrative rules adopted thereunder, and the Federal Fair Packaging and Labeling Act.

(18) Distressed Merchandise: Distressed merchandise shall not be offered for sale for human food unless reconditioned and inspected by the department to determine if it complies with the requirements of the 1984 Model Food Salvage Code, Chapters 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and

the labeling and placard requirements of OAR 603-025-0160 and 603-025-0170.

(19) Variance clause: Upon written petition by the owner of a food establishment, the department may grant a variance to those sections of OAR 603-025-0020, 0030 or 0150 that regulate the physical facilities, equipment standards, and food source requirements when:

(a) No health or sanitation hazard would exist as a result of this action; and

(b) The variance is consistent with the intent of these regulations.

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

Stat. Auth.: ORS 561, ORS 616 & ORS 619

Stats. Implemented: ORS 616.700

Hist.: AD 2-1987, f. & ef. 1-30-87; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-1999, f. & cert. ef. 6-15-99; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

## 603-025-0030

### Retail Food Code

(1) In addition to the provisions of OAR 603-025-0020 a retail food establishment shall comply with the **Retail Food Code**. [Food Code not included. See ED NOTE.]

(2) Retail Fruit and Vegetable Stands and Similar Outlets: Retail fruit and vegetable stands, and other similar unusual food sales outlets, are also subject to these retail food establishment provisions, except as follows:

(a) Fruit and vegetable stands located on a farmers own property, wherein only fruits; and

(b) Vegetables grown by the owner are sold, and no food processing is being done, are exempt from licensing;

(c) Other fruit and vegetable stands may be exempted from certain retail food establishment requirements where the department determines that public health principles would be compromised.

(3) New Establishment Construction or Remodeling:

(a) Prior to undertaking construction of a new retail food establishment, and as a condition to obtaining a license to operate the establishment, a copy of the construction plans and specifications, together with a statement of an expected completion date, shall be submitted to the department for review and comment as to sanitation and food maintenance;

(b) Prior to undertaking remodeling of an existing establishment in order to expand or add food processing or food service facilities, a copy of the construction plans and specifications, together with a statement of an expected completion date, shall be submitted to the department for review and comment as to sanitation and food maintenance.

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

Stat. Auth.: ORS 561, ORS 616 & ORS 619

Stats. Implemented: ORS 616.700

Hist.: AD 2-1987, f. & ef. 1-30-87; AD 21-1990, f. & cert. ef. 11-27-90; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

## 603-025-0180

### Responsibility

The responsibility for the salvage labeling required by OAR 603-025-0180 or 603-025-0170 shall be:

(1) If in bulk display form, the person selling or offering to sell such food at wholesale or retail.

(2) If salvaged within the State of Oregon, the person selling or offering to sell at retail or for institutional use.

(3) If salvaged outside of the State of Oregon, the first person selling or offering to sell such food at wholesale or retail within the State of Oregon.

Stat. Auth.: ORS 561.190, ORS 616.230 & ORS 616.700

Stats. Implemented: ORS 616.230 & ORS 616.700

Hist.: AD 1053(42-74), f. 12-20-74, ef. 1-11-75; Renumbered from 603-023-0190; AD 2-1987, f. & ef. 1-30-87; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

## 603-025-0190

### Standards of Identity, Additives, Pesticide Standards, Food Labeling, Good Manufacturing Practices, Low Acid Canned Foods, and Acidified Foods

(1) As provided in ORS 616.230, 616.780, 621.060, 621.311, 621.405, 625.160, and 635.045, the rules governing food identity, food color additives, food additives, pesticide tolerances, and labeling of or in food adopted by the Food and Drug Administration of the U.S. Department of Health and Human Services, are hereby adopted as the rules governing this subject matter in Oregon. In addition the Good Manufacturing Practices, Fish and Fishery Products, Low Acid Canned Foods, Acidified Foods and other federal programs contained in the Code of Federal Regulations as specified below are adopted. The adopted federal programs and standards are those set out in Title 21, Chapter 1, Parts 1, 70, 73, 74, 81, 82 and 100 through 199, of the 2001 Code of Federal Regulations.

# ADMINISTRATIVE RULES

(2) In addition, the level of microcystins in Blue-Green Algae (Aphanizomenon flos aquae) finished products shall not exceed 1 microgram per gram (1 ppm.). The microcystins level in finished products shall be determined by an approved laboratory analytical procedure that is acceptable to the Department of Agriculture.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 561.190, ORS 561.605, ORS 561.620 & ORS 616.230  
Stats. Implemented: ORS 561.605 - ORS 561.620 & ORS 616.230  
Hist.: AD 2-1987, f. & ef. 1-30-87; AD 17-1993, f. & cert. ef. 11-26-93; AD 17-1997, f. & cert. ef. 10-23-97; DOA 13-1999, f. & cert. ef. 6-15-99; DOA 4-2000, f. & cert. ef. 1-18-00; Administrative correction 4-20-01; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

**Adm. Order No.:** DOA 1-2003

**Filed with Sec. of State:** 1-7-2003

**Certified to be Effective:** 1-7-03

**Notice Publication Date:** 10-1-02

**Rules Amended:** 603-001-0005

**Subject:** Rule text needs to be updated to include statement that the Department will include "collaborative dispute resolution" under its adoption of the Attorney General's Model Rules for Procedures under the Administrative Procedures Act.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-001-0005

### Model Rules of Procedure

The Attorney General's "Model Rules of Procedure Under the Administrative Procedures Act," effective October 3, 2001 are hereby adopted as the rules of procedure for the Department in its rulemaking activities, declaratory ruling activities, collaborative dispute resolution and contested case considerations.

Stat. Auth.: ORS 183.341(1)  
Stats. Implemented: ORS 183.341(1)  
Hist.: AD 953(20-71), f. 10-20-71, ef. 11-11-71; AD 999(13-73), f. 10-26-73, ef. 11-25-73; AD 1090(13-76), f. & ef. 3-26-76; AD 4-1978, f. & ef. 5-11-78; AD 1-1980, f. & ef. 1-24-80; AD 23-1981, f. & ef. 11-24-81; AD 5-1986, f. & ef. 2-11-86; AD 16-1993, f. & cert. ef. 11-24-93; DOA 5-1998, f. & cert. ef. 5-20-98; DOA 4-2002, f. & cert. ef. 1-28-02; DOA 1-2003, f. & cert. ef. 1-7-03

**Adm. Order No.:** DOA 2-2003

**Filed with Sec. of State:** 1-7-2003

**Certified to be Effective:** 1-7-03

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 603-054-0020, 603-054-0024, 603-054-0080

**Rules Amended:** 603-054-0016, 603-054-0017, 603-054-0018, 603-054-0030

**Subject:** The amendments adjust the nursery license fee tables to more closely align costs with services provided. Minimum license fees have been raised from \$75 to \$100. The multiplier for greenhouse growers and dealers with annual sales over \$2 million have been changed from .0001 to .0004 to match that of nursery stock growers. The service fee for unlicensed persons have been raised from \$45 to \$60/hr. New fees have been established for pine shoot moth trapping of nurseries and Christmas tree plantations and issuance of phytosanitary certificates. Landscapers holding plants for more than one year are required to obtain a nursery license.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-054-0016

### License Fees: Growers and Collectors

(1) The license fee for nursery growers, other than greenhouse growers of herbaceous plants, and for collectors of native plants shall be as follows: **If Annual Sales are — The license fee is:**

- Up to \$20,000 = \$100;
- \$20,001 - \$100,000 = \$100 plus .0031 over \$20,000;
- \$100,001 - \$200,000 = \$348 plus .0029 over \$100,000;
- \$200,001 - \$500,000 = \$638 plus .0023 over \$200,000;
- \$500,001 - \$2,000,000 = \$1,328 plus .0014 over \$500,000;
- \$2,000,001 & above = \$3,428 plus .0004 over \$2,000,000;
- Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

Stat. Auth.: ORS 561 & ORS 571  
Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03

## 603-054-0017

### License Fees: Greenhouse Growers of Herbaceous Plants

(1) The license fee for greenhouse growers of herbaceous plants shall be as follows: **If Annual Sales are — The license fee is:**

- Up to \$20,000 = \$100;
- \$20,001 - \$100,000 = \$100 plus .00125 over \$20,000;
- \$100,001 - \$200,000 = \$200 plus .001 over \$100,000;
- \$200,001 - \$500,000 = \$300 plus .0005 over \$200,000;
- \$500,001 - \$2,000,000 = \$450 plus .00025 over \$500,000;
- \$2,000,001 & above = \$825 plus .0004 over \$2,000,000;
- Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

Stat. Auth.: ORS 561 & ORS 571  
Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03

## 603-054-0018

### License Fees: Dealers, Florist and Landscape Contractors

(1) The license fee for dealers, florist, and landscape contractors shall be as follows: **If Annual Sales are — The license fee is:**

- Up to \$20,000 = \$100;
- \$20,001 - \$100,000 = \$100 plus .00125 over \$20,000;
- \$100,001 - \$200,000 = \$200 plus .001 over \$100,000;
- \$200,001 - \$500,000 = \$300 plus .0005 over \$200,000;
- \$500,001 - \$2,000,000 = \$450 plus .00025 over \$500,000;
- \$2,000,001 & above = \$825 plus .0004 over \$2,000,000;
- Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

Stat. Auth.: ORS 561 & ORS 571  
Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03

## 603-054-0020

### Fees for European Pine Shoot Moth Survey

The fee for licensed nurseries or Christmas tree growers requesting European pine shoot moth survey is established at \$85 per location (field) per year.

Stat. Auth.: ORS 561 & ORS 571  
Stats. Implemented: ORS 571.145  
Hist.: DOA 2-2003, f. & cert. ef. 1-7-03

## 603-054-0024

### Fees for Issuance of Phytosanitary and Other Certificates

The following fees and charges are established for inspections requested by nurseries in order to issue state or federal phytosanitary certificates and any other certificate that requires inspection prior to issuance of such certificates. The charge for the first certificate issued during a billing period will be \$20. The charge for each additional certificate issued during that billing period will be \$10 each.

Stat. Auth.: ORS 561 & ORS 571  
Stats. Implemented: ORS 571.145  
Hist.: DOA 2-2003, f. & cert. ef. 1-7-03

## 603-054-0030

### Inspection and Service Fees for Unlicensed Nursery Persons

The fees for inspection and special services performed for persons not required to be licensed pursuant to ORS Chapter 571 are as follows:

(1) Inspections required for issuance of phytosanitary or other certificates at locations or premises of persons requesting such service shall be \$60 per hour, chargeable to the nearest one-quarter hour, with a minimum of \$30 for each inspection.

(2) Inspections and issuance of phytosanitary certificates or other certificates at a State Department of Agriculture facility shall be \$18 for each such certificate for non-commercial shipments (less than \$1000 value) and \$30 per certificate for commercial shipments (greater than \$1000 value).

(3) Fees for laboratory services will be sufficient to recover the costs of such services.

Stat. Auth.: ORS 561 & ORS 571  
Stats. Implemented: ORS 561.020 & ORS 571.145

# ADMINISTRATIVE RULES

Hist.: AD 2-1978, f. & ef. 1-19-78; AD 4-1979, f. & ef. 4-22-79; AD 1-1983, f. & ef. 1-4-83; AD 14-1997, f. & cert. ef. 7-30-97; DOA 2-2003, f. & cert. ef. 1-7-03

## 603-054-0080

### License Requirement for Persons Doing Landscaping Business

The Department, as required by ORS 571.045(2), hereby establishes that any person doing landscaping business that stores plants for more than one year, operates as a grower, dealer or agent, keeps plants for propagation, advertises nursery stock for sale, or sells nursery stock, must obtain a nursery license.

Stat. Auth.: ORS 561 & ORS 571  
Stats. Implemented: ORS 571.045  
Hist.: DOA 2-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** DOA 3-2003

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**Certified to be Effective:** 1-7-03

**Notice Publication Date:** 8-1-02

**Rules Amended:** 603-095-0200, 603-095-0220, 603-095-0240, 603-095-0280

**Subject:** The rules effectuate the implementation of the Bear Creek Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et. seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-0200

### Purpose

(1) These rules have been developed to effectuate the implementation of a water quality management area plan for the Bear Creek subbasin pursuant to authorities vested in the department through ORS 568.900-568.933, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Bear Creek Subbasin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Bear Creek subbasin 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 in the Bear Creek subbasin.

[ED. NOTE: The Plan referenced in this rule is available from the agency.]  
Stat. Auth.: ORS 561.190-561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - ORS 568.933  
Hist.: DOA 6-1998, f. & cert. ef. 6-10-98; DOA 3-2003, f. & cert. ef. 1-7-03

## 603-095-0220

### Geographic and Programmatic Scope

(1) The Bear Creek subbasin includes the drainage area of Bear Creek upstream from the confluence with the Rogue River near Central Point, Oregon. The physical boundaries of the Bear Creek subbasin 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 Bear Creek subbasin in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of activities which are subject to the Forest Practices Act.

(3) Current productive agricultural use or profitability is not required for the provisions of these rules to apply.

(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 Bear Creek subbasin.

(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 does not occur.

[ED. NOTE: The Appendix referenced in this rule is available from the agency.]  
Stat. Auth.: ORS 561.190-561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - ORS 568.933  
Hist.: DOA 6-1998, f. & cert. ef. 6-10-98; DOA 3-2003, f. & cert. ef. 1-7-03

## 603-095-0240

### Prohibited Conditions

(1) Effective upon adoption of these rules, all landowners or operators conducting activities on lands in agricultural use shall be in compliance with the following criteria. A land occupier shall be responsible for only those prohibited conditions caused by activities conducted on land man-

aged by the landowner or occupier. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(2) No person conducting agricultural land management or land disturbing activities shall violate provisions of ORS 468B.025(1) or (2).

(3) Except as provided in ORS 468B.050, no person conducting agricultural land management or land disturbing activities shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to be carried into the waters of the state by any means.

(b) Discharge any wastes into any waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(4) No person shall violate the conditions of any waste discharge permit issued pursuant to ORS 468B.050 or 568.

(5) Agricultural management of riparian areas shall not impede the development or maintenance of adequate riparian vegetation to control water pollution.

(a) Effective four years after plan adoption, vegetation and stream-bank management in riparian areas shall not result in the following conditions:

(A) Sloughing of stream banks due to management practices which result in sediment entering a stream beyond what would be expected in that specific hydrologic regime; or

(B) Destabilization of stream banks beyond what would be expected in that specific hydrologic regime; or

(C) Damage to riparian vegetation that destroys its proper function and the vegetative recovery that is reasonably necessary to withstand a 25-year high flow event; or

(D) Absence of seasonally appropriate regeneration and recruitment, according to site capability.

(b) This condition is not intended to prohibit riparian grazing where it can be done while managing for proper functioning riparian condition.

(c) Exceptions:

(A) Written, limited duration exemptions to conditions described in OAR 603-095-0240(5)(a)(C) or (D) above will be considered for short-term activities included in a department (or its designee) approved plan intended to enhance the long-term function and quality of the riparian area.

(B) Constructed irrigation delivery and drainage ditches are exempt from conditions described in OAR 603-095-0240(5)(a)(C) or (D) above.

Stat. Auth.: ORS 561.190-561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - ORS 568.933

Hist.: DOA 6-1998, f. & cert. ef. 6-10-98 ; DOA 3-2003, f. & cert. ef. 1-7-03

## 603-095-0280

### Complaints and Investigations

(1) The department shall investigate apparent occurrences of agricultural pollution identified through its own observation or through notification by another agency.

(2) Formal complaints shall be evaluated by the department in accordance with the criteria in OAR 603-095-0240 to determine whether an investigation is warranted. The department may investigate apparent occurrences of agricultural pollution brought to its attention through a formal complaint.

(3) To be considered as a formal complaint, any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of OAR 603-095-0240 shall do so by filing a written complaint with the department. The complaint shall be signed and dated by the complainant and shall:

(a) Indicate the location and description of:

(A) The property and/or waters of the state allegedly being damaged or impacted; or

(B) The property allegedly being managed under conditions violating criteria described in OAR 603-095-0240.

(b) Indicate the nature and extent of damage; and

(c) Identify the alleged sources of pollution.

(4) When the department finds an apparent occurrence of agricultural pollution through its own observation, through notification by another agency, or through a formal complaint from an individual, the department shall inform the appropriate Local Management Agency in writing of:

(a) The location and nature of the occurrence;

(b) The location and description of the agricultural operation alleged to be causing the pollution occurrence or where prohibited conditions are alleged to have occurred; and

(c) The nature and extent of damage, if known.

(5) Action by a Local Management Agency

# ADMINISTRATIVE RULES

(a) Formal complaints.

(A) By written agreement with the department, the Local Management Agency may receive formal complaints and evaluate and investigate them on behalf of the department.

(B) A Local Management Agency, which is authorized by the department to evaluate and investigate formal complaints shall evaluate the formal complaint and investigate it in a timely manner, if warranted. Within 30 days of receipt of a formal complaint, the Local Management Agency also shall inform the department of the status of its investigation of the complaint and provide any information relevant to it.

(C) In the event the Local Management Agency is unable to investigate a formal complaint, the Local Management Agency shall request assistance from the department.

(b) Informal complaints.

(A) By written agreement with the department, the Local Management Agency may receive informal complaints and may investigate them on behalf of the department.

(B) Within 30 days of receipt of an informal complaint, the Local Management Agency also shall inform the department of the status of its investigation of the complaint and provide any relevant information to it.

(6) Actions based on investigation findings

(a) If the department determines that a violation of OAR 603-095-0240 has occurred and an approved Voluntary Water Quality Farm Plan exists and the operator is making a reasonable effort to comply with the voluntary plan:

(A) The department shall inform the landowner and the Local Management Agency of the noncompliance with OAR 603-095-0240; and

(B) The department shall acknowledge the existence of the Voluntary Water Quality Farm Plan and direct the landowner to seek appropriate technical assistance and revise the voluntary plan and its implementation in a manner necessary to eliminate the violation.

(b) If the department determines that a violation of OAR 603-095-0240 has occurred and an approved Voluntary Water Quality Farm Plan exists and the operator is not making a reasonable effort to comply with the voluntary plan; or

(c) If the department determines that a violation of OAR 603-095-0240 has occurred and an approved Voluntary Water Quality Farm Plan does not exist; or

(d) If the department determines that a landowner has not revised a voluntary plan per OAR 603-095-0280(6)(a)(B) within the time specified by the department:

(A) The landowner shall be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 0120; and

(B) The department shall inform the Local Management Agency of its determination that a violation has occurred.

Stat. Auth.: ORS 561.190-561.191

Stats. Implemented: ORS 568.900 - ORS 568.933

Hist.: DOA 6-1998, f. & cert. ef. 6-10-98; DOA 3-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** DOA 4-2003

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**Certified to be Effective:** 1-7-03

**Notice Publication Date:** 8-1-02

**Rules Amended:** 603-095-0600, 603-095-0640, 603-095-0660

**Subject:** The rules effectuate the implementation of the Lower Deschutes Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et. seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-0600

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Lower Deschutes Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and ORS 561.190 - 561.191, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Lower Deschutes Agricultural Water Quality Management Area Plan. After adoption of the TMDLs, these rules will be reviewed and modified as needed to provide reasonable assurance that the load allocations for agriculture will be met.

(2) The purpose of these rules is to outline requirements for landowners in the Lower 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 Lower Deschutes Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - ORS 561.191 & ORS 568.909

Stats. Implemented: ORS 568.900 - ORS 568.933

Hist.: DOA 16-2000, f. & cert. ef. 6-12-00; DOA 4-2003, f. & cert. ef. 1-7-03

## 603-095-0640

### Prohibited Conditions

(1) All landowners or operators conducting activities on lands in agricultural use will comply with the following criteria. Implementation of these rules will begin upon adoption and will be fully implemented by the dates listed below. A landowner is responsible for only those conditions caused by agricultural activities conducted on land controlled by the landowner. A landowner is not responsible for prohibited conditions resulting from actions by another landowner. Conditions resulting from unusual weather events or other exceptional circumstances are not the responsibility of the landowner.

(2) Soil Erosion on Uplands; effective on rule adoption, landowners must control soil erosion on uplands using practical and available methods.

(a) On croplands, a landowner may demonstrate compliance with OAR 603-095-0640(2) by:

(A) operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management System (RMS) quality criteria for soil and water resources; or

(B) operating in accordance with an SWCD-approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation; and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(b) On rangelands, a landowner may demonstrate compliance with OAR 603-095-0640(2) by:

(A) operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management System (RMS) quality criteria for soil and water resources; or

(B) maintaining sufficient live vegetation cover and plant litter to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

(c) Landowners must control active gully erosion to protect against sediment delivery to streams. 'Active Gully Erosion' means gullies or channels that at the largest dimension have a cross-sectional area of at least one square foot and that occur at the same location for two or more consecutive years of cropping or grazing.

(3) Active Stream Bank Erosion; by January 1, 2005, active stream-bank erosion is not allowed beyond the amount expected for the specific stream flow regime and channel type. Stream channel modification that extends well beyond the level anticipated from natural disturbance given stream characteristics is not allowed.

(4) Placement, Delivery or Sloughing of Wastes; effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(5) Riparian Vegetation; by January 1, 2005, agricultural management or soil-disturbing activities that preclude establishment and development of adequate riparian vegetation for streambank stability and shading, consistent with site capability, are not allowed.

Stat. Auth.: ORS 568.909

Stats. Implemented: ORS 568.900 - ORS 568.933

Hist.: DOA 16-2000, f. & cert. ef. 6-12-00; DOA 4-2003, f. & cert. ef. 1-7-03

## 603-095-0660

### 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



# ADMINISTRATIVE RULES

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 603-095-0660(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 603-095-0660(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0660, 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 568.915, ORS 568.918, - ORS 568.933  
Stats. Implemented: ORS 568.900 - ORS 568.933

Hist.: DOA 16-2000, f. & cert. ef. 6-12-00; DOA 4-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** DOA 5-2003

**Filed with Sec. of State:** 1-7-2003

**Certified to be Effective:** 1-7-03

**Notice Publication Date:** 8-1-02

**Rules Adopted:** 603-095-2000, 603-095-2020, 603-095-2040, 603-095-2060

**Subject:** The rules effectuate the implementation of the Upper John Day Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et. seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-2000

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Upper Mainstem and South Fork John Day River Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - 568.933 and ORS 561.190 - 561.191. The area plan is known as the Upper Mainstem and South Fork John Day Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Upper Mainstem and South Fork John Day River 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 Mainstem and South Fork John Day River Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 5-2003, f. & cert. ef. 1-7-03

## 603-095-2020

### Geographic and Programmatic Scope

(1) The Upper Mainstem and South Fork John Day River Management Area include the area that drains into the John Day River upstream of Picture Gorge. 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 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.

(3) Current productive agricultural use is not required for the provisions of these rules to apply.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in the 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 does not occur.

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

Stat. Auth.: ORS 561.190 - 561.191 & ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 5-2003, f. & cert. ef. 1-7-03

## 603-095-2040

### Prevention and Control Measures

(1) Limitations

(a) All landowners or operators conducting activities on agricultural lands are provided the following exemptions from the requirements of OAR 603-095-2040(2)-(6) (Prevention and Control Measures).

(A) A landowner or operator shall be responsible for water quality caused only by conditions on land managed by the landowner or operator.

(B) Criteria do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. 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.

(2) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provisions of ORS 468B.025 or 468B.050.

(3) Livestock Management: By January 1, 2006, livestock areas shall be managed to control direct discharge of pollutants.

(4) Uplands Management: By January 1, 2006, within the vegetative growth capability of the site, private land and access route management must foster sufficient vegetation to protect water quality by providing infiltration, filtering of sediment and animal wastes, and stabilization of soil.

(5) Streamside Management: By January 1, 2006, management of streamside areas must allow the establishment, growth and active recruitment of vegetation, consistent with the vegetative growth capability of the site, for protection of water quality by filtering sediment, stabilizing streambanks, and providing shade.

(6) Irrigation Management: By January 1, 2006, irrigation must be done in a manner that limits the amount of pollutants entering waters of the state.

Stat. Auth.: ORS 561.190 - 561.191 & ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 5-2003, f. & cert. ef. 1-7-03

## 603-095-2060

### 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 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 603-095-2060(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 603-095-2060(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2060(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 569.900 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

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 5-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** DOA 6-2003

**Filed with Sec. of State:** 1-7-2003

**Certified to be Effective:** 1-7-03

**Notice Publication Date:** 6-1-02

**Rules Adopted:** 603-095-2300, 603-095-2320, 603-095-2340, 603-095-2360

**Subject:** The rules effectuate the implementation of the Middle Willamette Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et. seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-2300

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Middle Willamette Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and ORS 561.190 - 561.191. The area plan is known as the Middle Willamette Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Middle Willamette 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 Middle Willamette Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 6-2003, f. & cert. ef. 1-7-03

## 603-095-2320

### Geographic and Programmatic Scope

(1) The Middle Willamette Agricultural Water Quality Management Area includes the drainage area of the Marys River, Luckiamute River, Ash Creek, Dixon Creek, Frazier Creek, Rickreall Creek, and Glen Creek, as well as several smaller streams that drain directly to the Willamette River. The physical boundaries of the Middle Willamette 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 Middle Willamette 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 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 Middle Willamette 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.

[ED. NOTE: Appendices referenced are available from the agency.]  
Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 6-2003, f. & cert. ef. 1-7-03

## 603-095-2340

### Prevention and Control Measures

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.

(1) Effective upon rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(2) By January 1, 2003, agricultural activities shall allow the growth and establishment of vegetation along perennial streams consistent with site capability to promote infiltration of overland flow, streambank stability and provide moderation of solar heating. Minimal breaks in shade vegetation for essential management activities are considered appropriate.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 6-2003, f. & cert. ef. 1-7-03

## 603-095-2360

### 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 603-095-2360(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 603-095-2360(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2360, 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 6-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** DOA 7-2003

**Filed with Sec. of State:** 1-7-2003

**Certified to be Effective:** 1-7-03

**Notice Publication Date:** 9-1-02

**Rules Adopted:** 603-095-2400, 603-095-2420, 603-095-2440, 603-095-2460

**Subject:** The rules effectuate the implementation of the South Santiam Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et. seq.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-095-2400

### Purpose

(1) These rules have been developed to implement a water quality management area plan for the South Santiam Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - 568.933 and ORS 561.190 - 561.191. The area plan is known as the South Santiam Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the South Santiam 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 South Santiam Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912  
Stats. Implemented: ORS 568.900 - 568.933  
Hist.: DOA 7-2003, f. & cert. ef. 1-7-03

# ADMINISTRATIVE RULES

## 603-095-2420

### Geographic and Programmatic Scope

(1) The South Santiam Agricultural Water Quality Management Area includes the drainage area of the South Santiam River, Calapoia River, and several smaller streams that drain directly to the Willamette River. The physical boundaries of the South Santiam 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 South Santiam 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 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 South Santiam 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.

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

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 7-2003, f. & cert. ef. 1-7-03

## 603-095-2440

### Prevention and Control Measures

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.

(1) Effective upon rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(2) By January 1, 2003, agricultural activities along perennial streams shall allow for the establishment and maintenance of riparian vegetation consistent with site capability that promotes infiltration of overland flows, moderation of solar heating, and streambank stability.

(a) Minimal breaks in shade vegetation for essential management activities are considered appropriate.

(b) Management within the riparian area is allowed provided it does not compromise achieving the conditions described in (1)(b).

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 7-2003, f. & cert. ef. 1-7-03

## 603-095-2460

### 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 603-095-2460(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 603-095-2460(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2460, 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 7-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** DOA 8-2003

**Filed with Sec. of State:** 1-14-2003

**Certified to be Effective:** 1-15-03

**Notice Publication Date:** 12-1-02

**Rules Amended:** 603-014-0095

**Subject:** This rule change increases the ownership inspection fee for horses sold through a livestock auction market. It also raises the fee for transportation books to cover the cost of printing and postage.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-014-0095

### Brand Inspection Fee

(1) The brand inspection fee for cattle and cattle hides, as provided by ORS 604.066(2), shall be 75¢ per head of cattle or per cattle hide, and the brand inspection fee for horses shall be \$3.75 per head.

(2) The charge for cattle transportation certificates, as authorized by ORS 561.180(4), shall be \$1.50 per book.

Stat. Auth.: ORS 561.180, ORS 604.027 & ORS 607.261

Stats. Implemented: ORS 604.066

Hist.: AD 15-1982, f. & ef. 11-1-82; AD 13-1983, f. 10-19-83, ef. 11-1-83; AD 3-1985, f. 1-23-85, ef. 2-1-85; AD 12-1989, f. & cert. ef. 9-1-89; AD 6-1992, f. & cert. ef. 6-3-92; DOA 8-2003, f. 1-14-03 cert. ef. 1-15-03

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**Adm. Order No.:** DOA 9-2003

**Filed with Sec. of State:** 1-14-2003

**Certified to be Effective:** 1-14-03

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 603-052-1150

**Rules Amended:** 603-056-0165

**Subject:** The rule adjusts fees for laboratory tests requested by exporters of seed lots and nursery stock. The basic fee for regulatory and service samples is \$70/hr. with a \$35.00 minimum. Fees for commonly requested tests have been raised to cover costs. Depending on required time and cost of supplies, fees for most commonly requested tests are between \$35 and \$85/sample.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-052-1150

### Laboratory Fees for Official, Regulatory and Service Samples

(1) The following fees and charges are established for laboratory or other testing services including sample processing, analysis and issuance of certificates or official reports. The basic fee for official, regulatory and service samples is established at \$70.00 per hour, with a minimum fee of \$35.00.

(2) The fees and charges for specific routine tests are:

(a) Spore wash and microscopic examination per fungal species — \$50;

(b) Fifty-seed stain and microscopic examination for endophyte — \$85;

(c) Seed, soil or tissue test for nematodes — \$35;

(d) Visual exam for regulated pests — \$50;

(e) Visual exam for regulated contaminants — \$45;

(f) Isolation on standard media — \$35;

(g) Growing media pH and conductivity — \$35.

Stat. Auth.: ORS 561, ORS 571 & ORS 632

Stats. Implemented: ORS 561.190, ORS 571.145 & ORS 632.940

Hist.: DOA 9-2003, f. & cert. ef. 1-14-03

# ADMINISTRATIVE RULES

## 603-056-0165

### Application and Fees for Endophyte Fungus Testing

(1) An application for endophyte fungus testing shall be made on a form prescribed by the Department, which shall include the consent of the applicant for the Department to enter premises in order to obtain seed samples for testing purposes.

(2) At the time seed samples are obtained, unless the Department specifies a later time, the applicant shall pay to the Department a fee as set forth in 603-052-1150. The fees specified in this rule are for the purpose of defraying expenses incurred by the Department, and any other cooperating agency, in carrying out the sampling and testing procedures to determine the existence of endophyte fungus in forage grass seed, and payment of the fee shall not be construed as granting any right or privilege to an applicant.

Stat. Auth.: ORS 561.190 & ORS 633.680

Stats. Implemented: ORS 633.680

Hist.: AD 12-1983, f. & ef. 9-20-83; AD 16-1991, f. & cert. ef. 9-10-91; DOA 9-2003, f. & cert. ef. 1-14-03

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## Department of Agriculture, Oregon Sheep Commission Chapter 644

**Adm. Order No.:** SHEEP 1-2003

**Filed with Sec. of State:** 1-6-2003

**Certified to be Effective:** 1-6-03

**Notice Publication Date:** 1-1-01

**Rules Amended:** 644-001-0000, 644-010-0015

**Rules Repealed:** 644-001-0005, 644-001-0010

**Subject:** The amendment to OAR 644-001-0000 will bring the Oregon Sheep Commission into compliance with the notice requirements that have been suggested by the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act, 2000 edition. The amendments to OAR Chapter 644-010-0015 clarify the reporting and payments of assessments.

The Repeal of OAR 644-001-0005 and OAR 644-001-0010 have been modified and adopted by the Oregon Department of Agriculture under OAR 603-042-0010(5)(7), to reflect the current practices and procedures followed by the Oregon Sheep Commission.

**Rules Coordinator:** Richard Kosesan—(503) 370-7024

## 644-001-0000

### Procedure for Notice of Intended Rulemaking

Before adopting, amending or repealing any permanent rule, the Oregon Sheep Commission will give notice of the intended action:

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

(2) By mailing a copy of the notice to persons on the Oregon Sheep Commission mailing list, established pursuant to ORS 183.335(7), at least 28 days prior to the effective date of the rule;

(3) By mailing a copy of the notice to legislators specified in ORS 183.335(14) at least 49 days before the effective date of the rule; and

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

(a) The Associated Press;

(b) Associations with an interest in Commission's rulemaking and publications whose readers have an interest in Commission's activities; and

(c) Newspapers in primary production regions of the commodities represented by the commission.

Stat. Auth.: ORS 183.335(1)(b)

Stats. Implemented: ORS 183.341(4) & ORS 577

Hist.: SC 1, f. & ef. 12-20-77; SC 1-1995, f. & cert. ef. 8-30-95; SHEEP 1-2003, f. & cert. ef. 1-6-03

## 644-010-0015

### Reports and Payment of Assessment Moneys

(1) First purchasers and handlers must submit completed and signed assessment reports on Commission approved forms. Assessment reports shall include all purchases by or deliveries to a first purchaser or handler of wool. Quarterly assessment reports are due in the commission office postmarked on or before the 30th day of the reporting month specified below. Quarterly assessments shall be reported as follows.

(a) January, February, March assessments report must be postmarked on or before April 30th;

(b) April, May, June assessments report must be postmarked on or before July 30th;

(c) July, August, September assessments report must be postmarked on or before October 30th;

(d) October, November, December assessments report must be postmarked on or before January 30th.

(2) If the first purchaser lives or has his principal office in another state, the producer shall make the reports and pay the assessments to the Commission as required under this section unless the first purchaser agrees in writing with the producer to voluntarily make such reports and pay such assessments.

(3) At the time that reports are due the Commission from the first purchaser as required in section (1) of this rule, the first purchaser shall attach and forward payment to the Commission for the assessment due as set forth in each such report. Reports shall be on forms provided by the Commission.

(4) Any producer who performs the handling or processing functions on all or part of his production of the commodity, which normally would be performed by another person as the first purchaser thereof, shall report his sales of such commodity of this own production on forms provided by, and pay the assessment moneys directly to the Commission, unless the first purchaser from such producer voluntarily makes proper deduction and remits the proceeds to the Commission

Stat. Auth.: ORS 577

Stats. Implemented: ORS 577

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2003, f. & cert. ef. 1-6-03

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## Department of Agriculture, Oregon Wheat Commission Chapter 678

**Adm. Order No.:** WHEAT 1-2002

**Filed with Sec. of State:** 12-30-2002

**Certified to be Effective:** 12-30-02

**Notice Publication Date:** 11-1-02

**Rules Amended:** 678-010-0040

**Subject:** The proposed amendment to Chapter 678, Division 10 clarifies that reporting time of the reports and payments of assessment moneys to the Oregon Wheat Commission especially as it relates to personal use.

**Rules Coordinator:** Tana Simpson—(503) 229-6665

## 678-010-0040

### Reports and Payment of Assessment Monies

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports shall include all purchases by or deliveries to a first purchaser or handler of wheat (net paid weight). Assessment collections that total \$100 or more per month must be reported monthly. Assessments of less than \$100 per month must be reported quarterly. Monthly assessment reports are due in the commission office postmarked on or before the 20th day of the month following the calendar month in which the reported wheat was sold. Quarterly assessment reports are due in the commission office postmarked on or before the 20th day of the reporting month specified below. Quarterly assessment s shall be reported as follows:

(a) January, February, March assessments of less than \$100 reported on or before April 20th;

(b) April, May, June assessments of less than \$100 reported on or before July 20th;

(c) July, August, September assessments of less than \$100 reported on or before October 20th ; and

(d) October, November, December assessments of less than \$100 reported on or before January 20th.

(2) When a first purchaser lives or has his/her office in another state, or is a federal or governmental agency, the grower shall report to this Commission all sales made to such purchaser as required by section (1) of this rule and shall pay the assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(3) At the time that reports are due the Commission from the first purchaser or first handler, as required in section (1) of this rule, the first purchaser or first handler shall attach and forward payment to the Commission for the assessment due as set forth in each such report. The forms shall be signed by the first purchaser or handler and completely filled out, and shall include, in addition to all other required information and figures, the name

# ADMINISTRATIVE RULES

and complete mailing address of each grower, the crop year, the bushels and amount of assessment deducted and withheld.

(4) Any grower who performs the handling or processing functions on all or part of his/her production of the wheat, which normally would be performed by another person as the first purchaser thereof, shall report his/her sales of such wheat of his/her own production on forms provided by, and pay the assessment monies directly to the Commission, unless the first purchaser from such grower voluntarily makes proper deduction and remits the proceeds to the Commission. Examples would be the sale by a grower direct to another grower or feed lot. The assessment does not apply where growers using their own production for personal use (ie. seeding, feeding livestock, destruction).

Stat. Auth.: ORS 576  
Stats. Implemented: ORS 578  
Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2001, f. & cert. ef. 3-1-01; WHEAT 1-2002, f. & cert. ef. 12-30-02

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## Department of Community Colleges and Workforce Development Chapter 589

**Adm. Order No.:** DCCWD 7-2002(Temp)

**Filed with Sec. of State:** 12-16-2002

**Certified to be Effective:** 12-16-02 thru 6-5-03

**Notice Publication Date:**

**Rules Amended:** 589-002-0100

**Subject:** House Bill 5100, passed during the fifth special session of the Legislative Assembly, reduced state funding for community college by \$2,978,049. The budget report accompanying the bill says "this reduces support for self-improvement classes (except those related to workforce and health) by half for the remainder of the academic year."

It is necessary to amend the administrative rule governing the funding formula to codify this reduction. Therefore, staff is proposing this temporary amendment to allow the reduction to be reflected in January 2003 payment.

**Rules Coordinator:** Bret West—(503) 378-8648, ext. 361

### 589-002-0100

#### Distribution of Community College Support Fund

(1) For purposes of this rule, the following definitions apply:

(a) "Community College Support Fund" is defined as those funds distributed by the state to the community colleges for the purpose of funding general educational programs.

(b) "Property tax revenues" is defined as the amount determined by the Department of Revenue to be imposed on local property following the application of limits imposed by sections 11(b)(1) through 11(b)(3), Article XI, of the Oregon Constitution, -and those limits imposed by legislation implementing Ballot Measure 50. Timber severance taxes are also included where applicable. This amount becomes the basis for operation of the funding formula without regard to uncollectible taxes, or taxes collected from previous years. Taxes levied or imposed by a community college district to provide a public library system established prior to January 1, 1995 shall be excluded from the definition of property taxes in this rule.

(2) The Community College Support Fund shall be distributed in equal quarterly payments on August 15, October 15, January 15, and April 15 of each year or upon the Monday following should these dates occur on a weekend. The August and October payments shall be based on the Department of Community Colleges and Workforce Development's best estimate of quarterly entitlement using enrollment and property tax revenue projections until actual figures are available. Payments shall be recalculated in December of each year as actual property tax revenues become available from the Oregon Department of Revenue and any adjustments will be made in the final two payments of the fiscal year.

(3) Colleges shall be required to submit enrollment reports in the format specified by the Commissioner, including numbers of clock hours realized for all coursework, in a term-end enrollment report by the Friday of the sixth week following the close of each term. If reports are outstanding at the time of the quarterly payments, payment to the college(s) not reporting may be delayed at the discretion of the Commissioner.

(4) Reimbursement from the Community College Support Fund shall be made for professional technical, lower division collegiate, developmental education and other courses approved by the State Board in accordance with OAR 589-006-0100 through 589-006-0400. State reimbursement is

not available for hobby and recreation courses as defined in OAR 589-006-0400.

(5) Residents of the state of Oregon and the states of Idaho, Washington, Nevada, and California shall be counted as part of each community college's reimbursable enrollment base.

(6) Distribution of funds to community colleges from the Community College Support Fund shall be accomplished through a formula, based on the following factors:

(a) Full-time equivalent students. The formula distributes funds based on a certain amount for each full-time equivalent (FTE) student. The amount per FTE is determined by dividing the total number of reimbursable FTE into the amount of revenues available after subtracting the base payments, contracted out-of-district payments, and any other payments directed by the State Board of Education or the Legislature;

(b) Three-year weighted average FTE count. FTE from the third year, the second year, and first year prior to the funding year are averaged. FTE from the first year prior to the funding year are weighted at .4 (four-tenths); FTE from the second and third years prior to the funding year are weighted at .3 (three-tenths);

(c) For purposes of the funding formula, 510 clock hours equals one FTE for all coursework. The Department of Community Colleges and Workforce Development shall make the calculation based on submission of FTE reports by the colleges and in accordance with established FTE principles;

(A) For the 2002-03 formula distribution, reimbursable FTE shall be calculated as follows:

(i) For each college, the average percentage of total yearly enrollments generated in Fall term over the four years prior to 2001-02 will be determined and used as the denominator;

(ii) Enrollments reported to the Oregon Community College Unified Reporting System (OCCURS) as final FTE for Fall term of 2001-02 will be used as the numerator;

(iii) The number resulting from the calculation in (i) and (ii) above shall be weighted at .4 (four-tenths), actual FTE for 2000-01 shall be weighted at .3 (three-tenths), and actual FTE for 1999-2000 shall be weighted at .3 (three-tenths).

(iv) The following actions shall be taken to implement the provisions of HB 5100, which was passed by the Fifth Special Session of the 2002 Legislative Assembly and reduced state support for self-improvement courses not related to workforce and health:

(I) Each course submitted to OCCURS for 2001-02 under the self-improvement category shall be evaluated and designated as workforce- or health-related;

(II) The total FTE designated as non-workforce- or health-related shall be calculated for each college;

(III) Each college's percentage share of the non-workforce or health-related FTE shall be determined by dividing this FTE by the total non-workforce- or health-related FTE;

(IV) The percentage determined for each college shall be applied to the total HB 5100 reduction of \$2,978,049 to determine each college's reduction amount;

(V) The prorated reduction will take place after the funding formula is run using the enrollment numbers calculated in section (6)(c)(A) (i) through (iii) of this rule.

(d) Fifty percent of local property tax revenues and fifty percent of timber severance taxes are included in the formula as part of the statewide resource base. The remaining fifty percent of local property tax revenues and timber severance taxes remain outside the formula and accrue to the local community college for its use. Property tax revenues raised through voter approval of any local option shall not be included as a resource to be distributed through the funding formula.

(e) Beginning in 2000-01 and due to changes in the method of taxing forest lands implemented by Chapter 1078, Oregon Laws 1999, timber severance taxes will come directly to the Department for distribution. Each college's share of revenue will be determined and distributed based on each college's average timber severance taxes for the last three years, applied to the total forest land taxes available in each fiscal year. Fifty percent of these funds shall be included in the formula for allocation purposes in the same manner as local property taxes.

(7) State funding for community college operations is appropriated by the legislature on a biennial basis to the Community College Support Fund. For each biennium the amount of state funds available for distribution through the funding formula shall be calculated based on the following:

(a) Funds to support contracted out-of-district (COD) programs and corrections programs shall be subtracted from the amount allocated to the

# ADMINISTRATIVE RULES

Community College Support Fund before the formula is calculated. The amount available for these programs shall equal the 2000-01 amount plus two percent per year. Each college having a COD contract shall receive a biennial appropriation equal to that amount it received in 2000-01 plus two percent per year; funding for corrections programs will be determined in consultation with the Department of Corrections.

(b) For 2001-02, \$800,000 shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated. These funds shall be distributed to provide transitional funding to support community college skill centers. The amount for each college shall be prorated based upon its percentage share of funds available for skill center funding for 1999-2001. This item shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated only if the final 2001-03 legislative appropriation is sufficiently above current service level to fund this amount.

(c) For 2001-02, \$200,000 shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated. These funds shall be distributed to provide transitional funding for support the Oregon Advanced Technology Consortium. This item shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated only if the final 2001-03 legislative appropriation is sufficiently above current service level to fund this amount.

(d) For 2001-02, \$269,259 shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated. These funds shall be used to support the implementation of an Oregon University System branch campus housed at Central Oregon Community College. This item shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated only if the final 2001-03 legislative appropriation is sufficiently above current service level to fund this amount.

(e) For 2001-03, \$602,565 shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated. These funds shall be used to support targeted investments in distributed learning activities.

(f) Funds remaining in the Community College Support Fund shall be divided equally between the two years of the biennium.

(8) The funds available for formula distribution are determined by adding the state funds calculated in (7)(f) of this rule to local funds as determined in (6)(d) of this rule and shall be distributed in the following manner:

(a) Each college shall receive a base payment of \$500 for each FTE up to and including 1,100 for fiscal year 2001-02 and \$589 for each FTE up to and including 1,100 for fiscal year 2002-03. The base payment for each college will be adjusted according to the size of the college. College size for purposes of this adjustment will be determined each year by the three-year weighted average enrollment described in (6)(b) of this rule. The base payment adjustments shall be:

- (i) 0 - 750 FTE 1.3513
- (ii) 751 - 1,250 FTE 1.2784
- (iii) 1,251 - 1,750 FTE 1.2062
- (iv) 1,751 - 2,250 FTE 1.1347
- (v) 2,251 - 2,750 FTE 1.0641
- (vi) 2,751 - 3,250 FTE 1.0108
- (vii) 3,251 - 3,750 FTE 1.0081
- (viii) 3,751 - 4,250 FTE 1.0054
- (ix) 4,251 - 4,999 FTE 1.0027
- (x) 5,000 or more FTE 1.000

(b) All remaining funds shall be distributed on a per FTE basis. The amount of funding for each FTE shall be determined by dividing the formula resources available by the total number of FTE included in the formula.

(c) The sum of (8)(a) and (8)(b) shall be the "full formula implementation" funding available to each community college.

(d) A second calculation shall be made based on each college's proportional share of the prior year's formula resources. This calculation shall apply that share to the formula resources available in the current year. This amount shall be the "proportional share" available to each community college.

(e) The full formula implementation amount shall be compared to the proportional share for each college; the difference between the two numbers will be the "gap".

(f) Each college's gap is then adjusted by the following percentages: twenty percent in 1999-2000; twenty-five percent in 2000-2001; thirty-three and one-third percent in 2001-2002; fifty percent in 2002-2003.

(g) The number resulting from the calculation in (8)(f) is applied to each college's proportional share; the result becomes each college's actual "formula distribution amount". Each college's state resources are then determined by subtracting out fifty percent of imposed taxes and fifty percent of timber severance taxes.

(h) Full implementation of the formula shall occur in 2003-2004. For that year and each year that follows, distribution shall be based upon the result of 8(a) and 8(b) of this rule.

(9) State general fund and local property taxes for territories annexed or formed effective June 1, 1996, or later shall not be included in the funding formula for the first three years of service. Additionally, the FTE generated in newly annexed territories shall not impact the funding formula during the first three years of service. Beginning in the fourth year, funding will be distributed through the formula as outlined in this rule with the following exceptions:

(a) For the fourth year of service, the three-year weighted average FTE count described in (6)(b) of this rule shall be comprised entirely of the enrollments realized in the third year of annexation;

(b) For the fifth year of service, the three year-weighted average FTE count described in (6)(b) of this rule shall be weighted at 70 percent of the fourth year enrollments and 30 percent of the third year enrollments;

(c) For the sixth year of service and every year thereafter, the three-year weighted average FTE count described in (6)(b) of this rule shall be used for formula distribution.

Stat. Auth.: ORS 326.051 & ORS 341.626

Stats. Implemented: ORS 341.015, ORS 341.022, ORS 341.317, ORS, 341.440, ORS 341.525, ORS 341.528, ORS 341.626 & ORS 341.665

Hist.: 1EB 9-1979, f. & ef. 6-11-79; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0260; ODE 27-2000, f. & cert. ef. 10-30-00; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0200; DCCWD 2-2001, f. & cert. ef. 5-7-01; DCCWD 3-2002, f. & cert. ef. 6-5-02; DCCWD 7-2002(Temp), f. & cert. ef. 12-16-02 thru 6-5-03

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**Adm. Order No.:** DCCWD 1-2003

**Filed with Sec. of State:** 1-9-2003

**Certified to be Effective:** 1-9-03

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 589-006-0050, 589-006-0150, 589-006-0350

**Rules Amended:** 589-001-0000, 589-002-0200, 589-002-0300, 589-002-0500, 589-002-0600, 589-002-0700, 589-002-0800, 589-003-0100, 589-005-0200, 589-005-0300, 589-005-0400, 589-005-0500, 589-006-0100, 589-006-0200, 589-006-0300, 589-006-0400, 589-007-0200, 589-007-0300, 589-008-0100, 589-008-0200, 589-009-0100

**Rules Repealed:** 589-002-0400

**Subject:** In 1999, the legislature established the Department of Community Colleges and Workforce Development. Along with this new status, the Department received its own rule chapter, Chapter 589. In February 2001, the department moved all the administrative rules related to community colleges from the Department of Education's rule chapter, Chapter 581, to its new chapter, Chapter 589. At that time, the Department renumbered the rules and made other small housekeeping changes.

Subsequent to moving the community college rules to Chapter 589, the Department conducted a comprehensive and substantive review of the majority of its administrative rules to determine if these rules were consistent with current law and practices. From this review, the Department has determined that a number of community college rules need to be amended, repealed or created. The purpose of this rulemaking is to enact these changes.

**Rules Coordinator:** Bret West—(503) 378-8648, ext. 361

**589-001-0000**

**Notice of Proposed Rule**

Prior to the adoption, amendments, or repeal of any rule the State Board of Education shall give notice of the intended action:

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

(2) By mailing a copy of the notice to persons on the State Board of Education's mailing list established pursuant to ORS 183.335(7) at least 28 days prior to the effective date of the rule

(3) By mailing a copy of the notice to legislators as provided by ORS 183.335(14) at least 49 days prior to the effective date of the rule.

(4) To the general public, by posting the notice on the Department's website at least 28 days prior to the effective date of the rule.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 326.051  
Stats. Implemented: ORS 183.335  
Hist.: EB 12-1991, f. & cert. ef. 7-19-91; DCCWD 1-2001, f. & cert. ef. 3-21-01,  
Renumbered from 581-041-0000; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-002-0200

### State Reimbursement and Student Residency

For the purposes of OAR 589-002-0100, Distribution of Community College Support Fund:

(1) "Permanent Residence" is defined as a person's home, to which one intends to return after any absence and in which one's dependents reside for an unlimited period of time. A permanent residence shall be verified by specific documentation. Such documentation may include, but is not limited to, copies of the Oregon Department of Revenue income tax statements; deeds, bills of sale or other papers indicating ownership by the student or a member of his or her family of the dwelling in which he or she resides; appropriate Department of Defense forms indicating that the student took residence in Oregon within one year of being released from active duty in the armed forces; possession of a driver's license issued by the State of Oregon; and evidence indicating that a parent or guardian of a dependent student qualifies as an Oregon resident under this rule.

(2) "Oregon Resident" is defined as a person who currently maintains a permanent residence in the state and whose permanent residence has been maintained in Oregon for no less than ninety continuous days immediately preceding the person's first instructional day of the term (quarter) for which residency is in question.

(3) Pursuant to ORS 341.528, and notwithstanding subsection (2) of this section, students who are residents of Idaho, Washington, California and Nevada and students admitted pursuant to ORS 351.647 shall be considered as residents of Oregon for the purpose of reimbursement.

(4) District policies regarding student residency for state reimbursement purposes may be subject to the periodic review and approval of the State Board of Education. In the event that approval is not granted, the State Board of Education may withhold reimbursement.

Stat. Auth.: ORS 326.051 & ORS 341.626  
Stats. Implemented: ORS 341.290(7), ORS 341.505, ORS 341.529 & ORS 341.626  
Hist.: IEB 9-1979, f. & cert. ef. 6-11-79; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0260; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0205; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-002-0300

### Advanced Payment to Newly Created Community College District or Service District

A newly created community college district, or community college service district, shall be assigned by the State Board of Education a base allocation level for its initial year of operation, based on the projected budget requirements as set in the feasibility study approved by the State Board of Education. Payments to the new district for its initial year shall be based on the assigned base allocation. From operating funds available to the new district, the Commissioner may advance reasonable sums for organizational expenses. Such an advance may be made only after the new district has formally adopted a budget. An advance will not serve to increase eligibility for state operating funds; it is a partial payment of the sum due the new district from its assigned base allocation in its initial year of operation.

Stat. Auth.: ORS 326.051 & ORS 341.626  
Stats. Implemented: ORS 341.626  
Hist.: EB 14-1987(Temp), f. & cert. ef. 7-30-87; EB 5-1988, f. & cert. ef. 1-14-88; EB 23-1989(Temp), f. & cert. ef. 6-12-89; EB 33-1989, f. & cert. ef. 11-28-89; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0266; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0210; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-002-0500

### Contracts with Agencies, Organizations, and Industries for Which State Reimbursement is Requested

(1) For the purposes of this rule, the following definitions apply:

(a) "Contract" is defined as an agreement between a community college and an agency, organization, individual, or industry to provide educational services, unless these services are prohibited by the Commissioner or state statute;

(b) "General fund revenue account" is defined as that account which includes all revenues related to the college's basic educational objectives. All revenues not included in some other specific fund accounts are included in the general fund revenue account. All revenues associated with the generation of reimbursable full-time equivalent students are included in the general fund revenue account;

(c) "Special revenue account" is defined as a fund used to account for the proceeds of specific revenue sources (other than special assessments, expendable trusts, or for major capital projects) that are legally restricted to expenditure for specific purposes, including revenues from specific proj-

ects, grants, contracted out-of-district programs, restricted federal projects, and other contracts for designated purposes;

(d) General education purposes" is defined as those purposes directly associated with the college's basic educational objectives.

(2) When community colleges provide educational services through contracts with agencies, organizations, or industries for their clients and employees, the colleges are entitled to compensation for reimbursable costs as defined by the Department and these rules. The community colleges are responsible for maintaining records that justify their requests for reimbursement from the Department.

(3) Full-time equivalent (FTE) attributable to contracts which are accounted for in a college's general fund revenue account can be added to a college's reimbursable full-time equivalent (RFTE) base and are subject to the reimbursement formula in OAR 589-002-0100. Any funds received under the contract from the contracting agency, business, or industry are to be placed into the college's general fund revenue account, or into the college's special revenue account with the Commissioner's approval and must be used for general education purposes.

Stat. Auth.: ORS 326.051 & ORS 341.626  
Stats. Implemented: ORS 341.626  
Hist.: IEB 11-1981, f. 5-6-81, ef. 5-7-81; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0255; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0220; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-002-0600

### Access by Unserved Areas to Community College Services; and Procedures for Contracted Out-of-District Areas

(1) For the purposes of this rule:

(a) "Nondistrict area" is defined as any geographic area of the state not within a community college district or community college service district;

(b) "Nondistrict student tuition" means tuition paid by residents of the nondistrict area;

(c) "Other nondistrict resources" means gifts, contributions, or grants from individuals, groups, organizations, businesses or industries. It may include financial support from school districts, education service districts, municipalities, counties or another public agency or private organization.

(2) Nothing in this rule is intended to refer to programs provided through contracts between community colleges and state correctional facilities. Those contracts are addressed in OAR 589-002-0700.

(3) Nothing in this rule is intended to refer to programs provided specifically for apprentices, including apprenticeship services as authorized in ORS 660.157(3). Those programs are addressed in division 11, chapter 589, of the Oregon Administrative Rules.

(4) The Department shall determine that sufficient interest exists in a nondistrict area for the formation of a local advisory committee to analyze and advocate community college services when it receives a petition signed by a minimum of 100 persons, or by five percent of the electors registered in each county or part of a county within the designated service area, whichever is less. The Department may ask the county clerk to verify valid petition signatures:

(a) The Department shall furnish the petition form and provide advice to the chief petitioner;

(b) In the event that more than one person seeks chief petitioner status, the Department shall select the party that, in its judgment, can best represent the diverse interests within the nondistrict area.

(5) Upon receipt of the petition, the Department and the chief petitioner shall jointly apply to the county governing body for the appointment of a local advisory committee. The application shall include the names of at least ten nominees agreed to by the Department and the chief petitioner along with brief statements as to the reasons they seek appointment.

(6) Upon application, the governing body of the county shall appoint a local advisory committee and shall insure that the committee is broadly representative of the nondistrict area.

(7) The advisory committee shall:

(a) Examine the educational needs of the residents;

(b) Identify financial and human resources necessary to meet the educational needs;

(c) Identify entities willing to contract with the community college provider;

(d) Promote the community college services desired;

(e) Periodically advise and consult with the designated staff of the contracting community college and the Department regarding services requested and provided; and

(f) Submit biennial evaluation reports to the county governing board, the Department, and the contracting community college. The Department may, at its discretion, require more frequent evaluation reports.

# ADMINISTRATIVE RULES

(8) Community college districts and community college service districts may submit proposals to the Department, to become service providers to a nondistrict area:

(a) The proposal shall address information sent by the Department to the colleges describing the boundaries of the nondistrict, the population base, and the services requested;

(b) The college district shall define the elements of its proposed contract including orientation, inservice, materials, recommended tuition and fees, registration and reporting procedures, transcription, advising, timelines, supervision, and budget;

(c) The Department shall select that college that, in its judgment, can best deliver the services requested:

(A) The Department shall make its judgment after considering geographic factors, prior service history, and local advisory committee preference;

(B) The community college district or community college service district selected to be the contractor shall enter into an agreement with the contracting entity;

(C) The agreement is subject to the approval of the State Board or its designee.

(9) The contract between the community college and the local contracting entity must include an annual budget setting forth both revenue and expenditures for services provided to the nondistrict area. The budget shall be based on the following conditions:

(a) The budget must be wholly supported by state funds, nondistrict student tuition, and other nondistrict resources;

(b) While the budget may contain some in-kind contribution from the nondistrict area, a cash contribution, exclusive of tuition, is required.

(10) State reimbursement of costs incurred in providing services subject to the contract will be made based on the formula described in OAR 589-002-0100. Contracts shall not imply any requirement on the part of the state for reimbursement beyond the amounts appropriated for such purposes or beyond the biennial period covered by any such appropriation.

(11) Nondistrict areas operating under contract to a community college district will be eligible for federal Adult Basic Education funds based on the distribution method described in the State Plan for Adult Education and adopted by the State Board.

(12) The cost of education (tuition and fees) to residents of the nondistrict shall be sufficiently low to enable students of low and middle income to attend.

(13) The local nondistrict financial effort shall be in cash:

(a) The contracting entities may exercise the option of increasing local effort in order to reduce tuition costs to students;

(b) The minimum cash contribution that will be required in the budget shall be determined in the following manner:

(A) For the initial contract year, not less than ten percent of the budgeted expenditures must be supported by a cash contribution;

(B) For the second contract year not less than 15 percent of the budgeted expenditures must be supported by a cash contribution;

(C) For the third contract year, and all subsequent years, not less than 20 percent of the budgeted expenditures must be supported by a cash contribution.

(c) Upon request from the college providing the contracted services, the Commissioner may recommend to the State Board a waiver or renegotiation of all or a portion of the matching requirement;

(d) A nondistrict area that contracts for not more than 12 FTE annually shall be subject to a separate cash contribution standard:

(A) Such areas may enter into contracts that provide for no cash contribution for the first three years of service;

(B) For the fourth, and all subsequent years, the cash contribution shall be ten percent of the budgeted expenditures.

(e) Cash may be from any source except that which is prohibited by rule or regulation.

(14) Contracts are subject to the review and approval of the Department:

(a) Contracts may be for one or two years and are renewable. Two-year contracts are subject to annual budget review and possible adjustment by the Department. The Department can choose to entertain bids from other potential contractors in the course of this review;

(b) Contracts will be submitted to the Department by July 1 of the contract year. The Department will determine that the contracting entity has met the cash requirement, that state-approved courses are offered, and that the district providing services provides adequate supervision of the contract;

(c) The Department will evaluate contracted out-of-district services biennially and submit a report to the State Board by May of even-numbered years. The evaluation will include number of individuals served, types of instructional services offered, extent to which the interest and needs of each area have been met, financial effort of each area, and projected service in the next biennium.

(15) The community college districts are responsible for developing the form of the contractual agreements and the method for recording them.

Stat. Auth.: ORS 326.051 & ORS 341.024

Stats. Implemented: ORS 341.019, ORS 341.021, ORS 341.022 & ORS 341.024

Hist.: 1EB 178, f. 10-18-74, ef. 11-11-74; 1EB 205, f. 8-20-75, ef. 9-11-75; 1EB 15-1985, f. 7-3-85, ef. 7-5-85; 1EB 178, f. 10-18-74, ef. 11-11-74; EB 21-1987(Temp), f. & ef. 10-7-87; EB 16-1988, f. & cert. ef. 3-15-88; EB 17-1988, f. & cert. ef. 3-15-88; EB 13-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0240 & 581-043-0250; EB 14-1992, f. & cert. ef. 5-13-92; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-042-0400; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-002-0700

### Community College Services for Inmates of State Penitentiary and Correctional Institutions

(1) Community colleges and the Department may contract with the Department of Corrections for instructional services to inmates of any Department-operated correctional facilities.

(2) Any contract between the Department and the Department of Corrections (State Contract) may include agreements relating to all statewide staff training and development, program transferability between correctional institutions, curriculum planning, instructional support, evaluation and assessment, instruction of the persons with disabilities, employee relations, and the range of administrative allowances.

(3) Contracts between a provider community college and an individual correctional institution (Local Contracts) shall include agreements relating to specific administrative allowances, financial aid administration, program mix, staffing and budget:

(a) Each Local Contract shall indicate as its primary objective a functional literacy program; and as its secondary objective professional and technical education that provides entry-level, marketable skills;

(b) State reimbursement of costs incurred in providing services subject to the Local Contracts will be made based on the formula described in OAR 589-002-0100. Contracts shall not imply any requirement on the part of the state for reimbursement beyond the amounts appropriated for such purposes or beyond the biennial period covered by any such appropriation;

(c) Local Contracts will be eligible for federal Adult Basic Education funds based on the distribution method described in the State Plan for Adult Education and adopted by the State Board of Education.

(4) All local contracts are subject to prior approval by the Department and must be submitted prior to August 1 of each year, unless the contract is for a biennial period in which the contract must be submitted prior to August 1 of the biennial year.

(5) The Department will advise the Department of Corrections and colleges annually of adjustments in the allocation of funds appropriated for services in correctional institutions.

(6) The State Board of Education shall review services to correctional institutions at least once biennially. To facilitate this review and approval, Department shall evaluate the contracts with the Department of Corrections biennially and submit a report to the State Board of Education by May 1 of even-numbered years. The evaluation shall include the number of individuals served, types of instructional services offered, extent to which the interest and needs of inmates have been met, financial effort, and projected service in the next biennium.

Stat. Auth.: ORS 326.051 & ORS 341.626

Stats. Implemented: ORS 341.317

Hist.: EB 27-1987, f. & ef. 11-17-87; EB 13-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0251; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-042-0500; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-002-0800

### Audit Procedures, Adjustments and Appeals

(1) Notwithstanding the required financial audit required under the Single Audit Act of 1984, P.L. 98-502, the Department and the State Board of Education have a statutory duty to manage public funds in a prudent manner. This duty includes the responsibility to take reasonable action to correct errors and to prevent the unauthorized use of public funds through the use of periodic audits.

(2) The Department may perform periodic on-site financial, performance and/or statistical audits of community colleges, community college service districts, other grantees, and contractors. The audits shall be conducted to determine compliance with applicable statutes and administrative rules, instructions, and grant and contract terms.



# ADMINISTRATIVE RULES

(3) Requests for audits may come from the State Board of Education, the Department, community colleges, contractors, or private citizens. Requests from anyone outside the Department must be routed through the Assistant Commissioner, be recommended by the Commissioner, and approved by the State Board of Education.

(4) The audit is to be performed by a person or persons with adequate technical training and proficiency as an auditor.

(5) The Auditor shall prepare a draft report of the audit and forward it to the audited agency with a letter of explanation. The letter will explain alternatives available to the agency in responding to the draft report. The audited agency's responses shall be forwarded within 60 days to the Auditor for evaluation in preparing the final audit report unless an alternative timeline is mutually agreed upon.

(6) After considering the responses, if any, from the agency on the draft audit report, the Auditor will prepare a final audit report. The Commissioner shall forward by letter the final audit report to the audited agency.

(7) Any exceptions involving overclaims (overpayments) or underclaims (underpayments) may be processed as follows unless the Commissioner agrees to an alternative method of adjustment:

(a) Overclaims: The agency will have the option of remitting the excess claim or reducing accordingly the subsequent year's entitlement;

(b) Underclaims: The subsequent year's claim may be adjusted by the amount underclaimed.

(8) The Auditor shall forward audit reports involving overpayment or underpayment to the Commissioner and to the audited agency.

(9) If the audited agency disputes the Department's determination of an audit exception, the audited agency may appeal to the State Board of Education in the manner provided for a contested case under ORS 183.413 to 183.470. During an appeal, no action will be taken by the Department to effect reimbursement until a decision on the audit under appeal has been reached.

Stat. Auth.: ORS 326.051, ORS 341.015 & ORS 341.626  
Stats. Implemented: ORS 291.200, ORS 341.015 & ORS 341.626;  
Hist.: EB 12-1991, f. & cert. ef. 7-19-91; DCCWD 1-2001, f. & cert. ef. 3-21-01,  
Renumbered from 581-041-0240; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-003-0100

### Community College Capital Construction and Acquisition

(1) For the purposes of this rule, the following definitions apply:

(a) "Capital construction and acquisition" is defined as new construction, the purchase of existing buildings, remodeling, maintenance, equipment and Americans with Disabilities Act (ADA) projects;

(b) "New construction" is defined as the building of a new facility within the community college district or some significant addition to an existing facility;

(c) "Remodeling" is defined as the renovation, restoration, or repair of an existing college district facility, the result of which places the facility in a position to provide increased access for persons who are disabled, to accommodate new uses, or house expanded activities;

(d) "Maintenance" is defined as the renovation, restoration, repair, or replacement of any college district facilities system, or component part of such a system. Maintenance is distinguished from remodeling by the fact that it does not add to the value of the property or prolong the life of the property, but merely keeps the property in an operating condition over the useful life for which the property was acquired. Facilities systems include, but are not limited to, water systems, sewer and drainage systems, HVAC systems, light systems, road systems, electrical systems, carpets, floors, roofs, walkways, and parking lots;

(e) "Equipment" is defined as tangible personal property of a non-consumable nature, with a useful life of more than one year and a cost exceeding a dollar amount to be specified by the Department;

(f) ADA projects is defined as new construction, remodeling, maintenance or equipment needed to meet the requirements of the American with Disabilities Act as defined in Public Law 101-336;

(g) "Eligible Projects" is defined as any construction, remodeling, maintenance, ADA project, or equipment request not prohibited by state statute or administrative rule. ORS 341.933(1) prohibits the use of state funds for the construction of student or faculty housing, facilities for spectators at athletic events, recreational facilities, student health facilities, and noninstructional portions of student centers; and

(h) "Instructional Purpose" is defined as those activities that directly support classroom, shop, or laboratory teaching, basic skills teaching, customized training, tutoring, student testing and assessment, student advising or counseling, and library services.

(2) Colleges shall prepare five-year capital plans documenting their new construction, remodeling, maintenance, equipment and ADA project needs, and the projected costs of meeting these needs. These plans shall be updated every two years. After consulting with college officials, the Commissioner or the Commissioner's designee shall prescribe forms and timelines for this planning process.

(3) The State Board of Education shall rely upon the submitted capital plans for the development of capital construction requests made to the Department of Administrative Services and Legislature. The State Board of Education shall approve all capital construction requests prior to submission to the Department of Administrative Services or Legislature.

(4) Unless directed otherwise by the Department of Administrative Services or the Legislature, the State Board of Education's new construction requests, remodeling requests, maintenance and equipment requests, and ADA projects that are new construction or remodeling projects as a package of prioritized eligible projects. Colleges shall have a right of appeal to the State Board before the new priorities are finally established.

(5) In its final budget request for new construction, remodeling, maintenance, equipment, and ADA projects, provided that the district has submitted an appropriate capital plan. Further, the State Board of Education shall list these projects in priority order and assign higher relative rank to those projects that:

(a) Clearly serve an instructional purpose (first priority);

(b) Clearly meet an important demonstrated service need of the college (second priority);

(c) Clearly meet a facilities need that cannot be adequately addressed through alternative, interim, or existing facilities (third priority);

(d) Clearly serve to complete a comprehensive community college facility (fourth priority);

(e) Clearly meet an important and articulated objective of the college (fifth priority); and

(f) Clearly reflect evidence of local planning and needs assessment (sixth priority).

(6) Pursuant to ORS 341.937, and notwithstanding section (5) of this rule, the State Board of Education shall include amounts for capital improvements in its budget request for each biennium that will be applied to the substantial reduction and eventual elimination of barriers to access by disabled persons. These capital improvements may include, but are not limited to, ADA projects. The State Board of Education shall identify the projects as separate items on the list of capital construction projects that it submits to the Executive Branch or Legislature. The inclusion of the budget requests for these projects shall be made after consultation with the community colleges and their representatives of the disabled community at the colleges. The State Board of Education may also include these projects on the prioritized list of projects referenced in section (5) of this rule.

(7) New construction, remodeling, and ADA projects that include new construction, maintenance, or remodeling shall be subject to the following special considerations:

(a) The cost of necessary initial equipment for a new or remodeled facility shall be an allowable expense within a new construction, remodeling or ADA project request;

(b) The acquisition of an existing facility shall be deemed a capital construction project within the meaning of this rule;

(c) The costs of acquiring land shall not be an allowable expense within a capital construction request in those cases where the capital construction project involves the acquisition of an existing facility. In those cases, the attendant land must represent the smallest practical parcel of land that will serve the acquired facility;

(d) Property subject to a leasehold interest by the college shall be eligible for remodeling funds provided the leasehold extends for at least five years beyond the date of any stated funded improvements;

(e) The value of district employee labor may be included as part of the district match requirement set out in section (9) of this rule provided:

(A) Accurate records are maintained to document the value of the contributed labor;

(B) Prevailing wage, licensing, and other applicable laws are observed;

(C) The contributed labor directly, and exclusively, serves the subject project for the claimed period; and

(D) The contributed labor involves work that is traditionally associated with the building trades.

(f) New construction projects must affect facilities within the boundaries of the requesting district. Remodeling projects in areas served under an existing contracted-out-of-district agreement shall be eligible projects provided such projects otherwise qualify under this rule.

# ADMINISTRATIVE RULES

Renumbered from 581-041-0040; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0230; DCCWD 1-2003, f. & cert. ef. 1-9-03

(8) In addition to requests for new construction, remodeling and ADA project funds, the State Board of Education may make requests to the Department of Administrative Services and the Legislature for equipment purchases. The State Board shall rely upon the submitted five-year capital plans for the development of such requests. The State Board shall consult with college officials prior to developing any proposed distribution methods for equipment funds. The State Board shall not request state funds for equipment purchases that would support programs associated with those ineligible facilities listed in ORS 341.933(1).

(9) State Board of Education requests for state funds for capital construction projects shall not be less than 65 percent of the total cost for each project or purchase, unless a lesser percentage is established by the Commissioner after consulting with the requesting college. The remaining amount of the total cost must come from tuition, local property tax revenues, bond issues, gifts, grants, or other sources. A community college district must provide an accounting of all funds expended for any project or purchase subject to this rule. The Commissioner shall prescribe an appropriate accounting method.

(10) The board of a community college district applying for state funds appropriated for new construction, remodeling, maintenance, or ADA new construction or remodeling project purposes shall submit plans of the proposed project to the Commissioner prior to receiving any appropriation for such project. These plans shall include pertinent construction or remodeling documents and cost estimates. Upon approval of the project plans by the Commissioner, and any legislatively designated body, the district may proceed to obtain bids and award construction or remodeling contracts.

(11) Notwithstanding section (12) of this rule, the Commissioner may waive the requirement that such plans be submitted if in the Commissioner's judgment the cost of developing such plans represents an unreasonable overextension of the college's resources. In such cases, the college will submit reasonable estimates.

(12) Upon award of the new construction, remodeling or ADA project funding, the Commissioner shall set aside those state funds appropriated for the project. The Department shall distribute project funds to the district in periodic payments related to the progress of construction or remodeling as determined by the Commissioner. The amount paid to the district may not exceed:

- (a) The state share of the capital construction and acquisition costs; or
- (b) The amount appropriated for capital construction and acquisition costs, whichever is less.

(13) If, prior to completion of the capital construction and acquisition project, it is found necessary or desirable to substantially modify the contract or specifications covering construction or remodeling, the district must submit such modifications to the Commissioner for approval.

(14) The community college district shall submit such records and reports during the construction or remodeling period and after completion thereof as the Commissioner may require.

(15) The board of a community college district applying for state funds appropriated for equipment purchases shall prepare detailed descriptions of the purchases or projects. These descriptions shall be submitted to the Commissioner along with pertinent specifications and cost estimates. Upon approval of the descriptions by the Commissioner, and any legislatively designated body, the district may proceed to obtain bids and award contracts.

(16) Upon award of the grant to the college, the Commissioner shall set aside those state funds appropriated for the equipment purchases. The Department shall distribute the equipment funds to the district on a schedule to be determined by the Commissioner after consulting with the affected district. The amount paid to the district may not exceed:

- (a) The state share of the equipment costs; or
- (b) The amount appropriated for the equipment costs, whichever is less.

(17) If, at any time, it is found necessary or desirable to modify substantially a planned equipment purchase, the district must submit such modifications to the Commissioner for approval.

(18) The community college district shall submit such records and reports during and after the equipment purchase as the Commissioner may require.

(19) Title to any real and/or personal property items acquired under this rule is vested with the individual college receiving state funding at the time the college acquires the real and personal property.

Stat. Auth.: ORS 294.356, ORS 326.051 & ORS 341.933  
Stats. Implemented: ORS 341.933 & ORS 341.937  
Hist.: 1 EB 25-1986, f. & ef. 7-17-86; EB 13-1987(Temp), f. & ef. 7-30-87; EB 4-1988, f. & cert. ef. 1-14-88; EB 21-1989, f. & cert. ef. 5-17-89; EB 12-1991, f. & cert. ef. 7-19-91;

## 589-005-0100

### Formation of a Community College District

(1) The petition submitted to the Oregon State Board of Education pursuant to ORS 341.025 for approval of the formation of a community college district shall include the following:

- (a) Total population within the proposed community college district;
- (b) True cash and assessed valuation of the proposed community college district and property tax rates in effect in the proposed college district;
- (c) High school enrollment within the proposed community college district;
- (d) Maps showing the location of high schools within the proposed community college district;
- (e) Employment trends in the proposed community college district.
- (f) The minimum number of required signatures of 500, or 10 percent, of the electors registered in each county or parts of counties within the designated territory, whichever is the lesser. The number of required signatures for each county or parts of counties shall be proportionate to the qualified voters of the entire proposed community college district.
- (g) The boundaries of the territory to be included in the proposed community college district which may include all or part of the territory lying within the boundaries of a school district and may be located in more than one county;
- (h) The method of nomination and election of the board of education of the proposed community college district from among the methods described in ORS 341.327.

(2) In addition to the criteria set forth under ORS 341.045, and in keeping with its responsibilities outlined under ORS 341.055 and 341.065, the State Board shall determine whether the formation of a community college district is warranted.

(3) In considering whether residents of an area will materially benefit from inclusion in a community college district, as described in ORS 341.055, the State Board shall consider:

- (a) The number of potential students living within 50 miles of the location of the proposed community college district's main campus;
- (b) Other indications that a community of interest exists that connects the area to the proposed community college district.

Stat. Auth.: ORS 326.051 & ORS 341.025  
Stats. Implemented: ORS 341.025 - ORS 341.185  
Hist.: 1 EB 131, f. 5-19-72, ef. 6-1-72; EB 13-1991, f. & cert. ef. 7-19-91; Renumbered from 581-041-0005, 581-41-010 & 581-041-0015; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-042-0150; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-005-0200

### Formation and Definition of a Community College Service District

(1) For the purposes of this rule, "community college service district" is defined as a district that is governed by the laws applicable to community college districts but which:

- (a) May not incur bonded indebtedness for any purpose; and
- (b) Must undergo an annual review by its board to determine which district services can most effectively and economically be delivered directly and which services can best be delivered through contracting arrangements.

(2) A petition for the formation of a community college service district shall contain the same information required for formation of a community college district set forth in OAR 589-005-0100.

(3) A petition affecting a territory that, in the judgment of the Commissioner, will not generate an annual enrollment in excess of 1,000 full-time equivalent students after three years of operation shall be considered to be a petition for the formation of a community college service district.

(4) In addition to the criteria set forth under ORS 341.045, and in keeping with its responsibilities outlined under ORS 341.055 and 341.065, the State Board shall use the following criteria in determining whether the formation of a community college service district is warranted:

- (a) The community college-type education services needed for the petitioning area can best be served by a community college service district which contracts for instructional services;
- (b) A community college service district can more effectively provide the needed educational services than other existing districts.

Stat. Auth.: ORS 326.051 & ORS 341.025  
Stats. Implemented: ORS 341.039  
Hist.: 1 EB 178, f. 10-18-74, ef. 11-11-74; EB 22-1989(Temp), f. & cert. ef. 6-12-89; EB 13-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0220 & 581-043-0230; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-042-0200; DCCWD 1-2003, f. & cert. ef. 1-9-03

# ADMINISTRATIVE RULES

## 589-005-0300

### Boundary Changes

(1) The State Board of Education shall constitute the boundary board for community college districts. The State Board on its own motion or on petition from a petitioning territory may propose changes in the boundaries of the community college district. The State Board must find that the proposed change will have no substantially adverse effect upon the ability of the affected districts to provide and continue their program and is not made solely for tax advantages to property owners in the district or area affected by the proposed change.

(2) Petitions for community college boundary changes shall contain the following information:

(a) A statement describing and map of the boundary change requested;

(b) A full and complete description of the area proposed to be included within or excluded from the community college district. The area description may be by counties, cities, school districts, metes and bounds, or by any combination of these methods;

(c) A statement whether or not an area proposed to be included is within the boundaries of another community college district;

(d) A maximum of three persons as chief petitioners setting forth their names and mailing addresses;

(e) Verification on the face of each sheet of the petition by the affidavit of the person who circulated the sheet, stating that every person who signed the sheet did so in his or her presence and that he or she believes that each signer stated his or her correct residence address and is a registered elector;

(f) The minimum number of signatures required under section (6) of this rule.

(3) The State Board may, at its discretion, reject the petitions if any of the conditions in subsections (2)(a) through (e) of this rule are not met.

(4) The State Board may, at its discretion, request the county clerk to verify all or a sampling of the names appearing on the petition. The State Board shall pay to the county clerk any appropriate charges for such verification. The State Board may at its discretion reject the petitions if a sufficient sampling of the names is not verifiable by the county clerk because the names on the petitions cannot be read or if a sampling indicates that sufficient signers are not registered electors.

(5) Petitions for community college boundary changes shall be substantially in the form provided by the State Board of Education.

(6) The minimum number of signatures required on a petition to change the boundary of a community college district shall be at least 10 percent of the qualified electors of the area seeking to be changed, or at least 500 signatures of qualified electors of the area seeking to be changed, whichever is less.

(7) Where all or part of two or more counties is in the area to be changed, the number of signatures from each of such counties shall be proportionate to the relative populations of the counties or parts thereof within the area proposed to be changed.

(8) Petitions must be delivered to the Department of Community Colleges and Workforce Development in the original. Faxed copies shall not be accepted.

(9) Following submission of a petition and its acceptance by the State Board, the State Board shall hold a public hearing in accordance with ORS Chapter 183, the Administrative Procedures Act, and issue an order as described in ORS 341.565.

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

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 341.565

Hist.: 1 EB 131, f. 5-19-72, ef. 6-1-72; 1 EB 139, f. 10-5-72, ef. 10-15-72; 1 EB 140, f. 10-5-72, ef. 10-15-72; EB 13-1991, f. & cert. ef. 7-19-91; Renumbered from 581-041-0025 & 581-041-0030; EB 30-1995, f. & cert. ef. 12-21-95; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-042-0300; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-005-0400

### Remonstrance Petitions

(1) A petition submitted in remonstrance to the annexation of territory to a community college district pursuant to ORS 341.569 shall be submitted no later than 20 days from the date and hour of adjournment of the last public hearing held on the question of annexation pursuant to ORS 341.565(3).

(2) Remonstrance petitions shall meet the following requirements:

(a) A maximum of three persons as chief petitioners shall provide their names and mailing addresses on the face of the petition;

(b) Each petition shall be verified on the face of each sheet by the affidavit of the person who circulated the sheet, stating that every person who signed the sheet did so in his or her presence and that he or she believes that

each signer stated his or her correct residence address and is a registered elector.

(3) The State Board may, at its discretion, reject the petitions if any of the conditions in subsections (2)(a) and (b) of this rule are not met.

(4) The State Board may, at its discretion, request the county clerk to verify all or a sampling of the names appearing on the petition. The State Board shall pay to the county clerk any appropriate charges for such verification. The State Board may at its discretion reject the petitions if a sufficient sampling of the names is not verifiable by the county clerk because the names on the petitions cannot be read or if a sampling indicates that sufficient signers are not registered electors.

(5) Petitions in remonstrance to a community college boundary changes shall be substantially in the form provided by the State Board of Education.

(6) The minimum number of signatures required on a petition in remonstrance to a change in the boundary of a community college district shall be at least five percent of the qualified electors of the area seeking to be changed, or at least 500 signatures of qualified electors of the area seeking to be changed, whichever is less.

(7) Where all or part of two or more counties is in the area to be changed, the number of signatures from each of such counties shall be proportionate to the relative populations of the counties or parts thereof within the area proposed to be changed.

(8) Petitions must be delivered to the Department of Community Colleges and Workforce Development in the original by the deadline described in section (1) of this rule. Faxed copies shall not be accepted.

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

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 341.569

Hist.: EB 31-1995, f. & cert. ef. 12-21-95; EB 9-1996, f. & cert. ef. 5-24-96; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-042-0310; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-005-0500

### Elections on the Question of Annexation

(1) Pursuant to ORS 341.569, the State Board of Education shall submit the question of a proposed boundary change to a vote only if:

(a) The state board enters the order to revise the boundaries of a community college district;

(b) A remonstrance signed by at least five percent or at least 500, whichever is less, of the electors either in an area to be included in the district or excluded from the district by the proposed boundary change or in the community college district is filed with the state board within 20 days after the date on which the hearing pursuant to ORS 341.565 is adjourned finally; and

(c) The area to be included in the district is not surrounded by the territory of a single community college district.

(2) If an election on the question of annexation is required, the State Board of Education, as designated boundary board, shall file the ballot title with the appropriate elections official.

(3) The ballot title is to be filed with the elections official in the county in which the host community college resides. That county official shall certify the election in the appropriate county or counties, whether or not an election is required in the host districts county.

(4) The State Board of Education, as designated boundary board, is responsible for filing the documentation described in ORS 308.225 with the county assessor and with the Department of Revenue and for meeting the necessary timelines.

(5) Unless otherwise directed by statute, the annexing community college district is responsible for the costs of any election on the question of annexation.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 341.569

Hist.: EB 32-1995, f. & cert. ef. 12-21-95; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-042-0320; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-006-0050

### Definitions for Division 006, Chapter 589

For the purposes of Division 006 of Chapter 589, the following definitions apply:

(1) "Academic standard of achievement" is defined as demonstrated achievement, proficiency, or measured learning acknowledged as meeting a predetermined academic standard. Normally noted through a record transcribed and maintained by the college.

(2) "Adverse intersegmental impact" is defined as the detriment of duplication that would fall on a school or its students in a segment other than that of the school proposing the new program or location, except that a publicly funded program or location proposed by a private school or other

## ADMINISTRATIVE RULES

organization has adverse intersegmental impact if it is detrimental to a school in any of the five segments.

(3) "Associate degree" is defined as a state-approved lower division undergraduate award issued by a community college that indicates satisfactory completion of a course of study approved by the community college board.

(4) "Associate of Applied Science" is defined as a state-approved associate degree that is intended to prepare graduates for direct entry into the workforce. AAS degrees may also help to prepare students for career advancement, occupational licensure, or further study at the baccalaureate level.

(5) "Associate of Applied Science degree option" is defined as a transcribed specialization within a state-approved associate degree that is intended to prepare graduates for direct entry into the workforce.

(6) "Associate of Arts — Oregon Transfer degree" is defined as a state approved associate degree that is intended to prepare students to transfer into upper division courses for a baccalaureate degree.

(7) "Associate of General Studies" is defined as a state-approved associate degree that is intended to meet the individual student need using a variety of collegiate level courses to meet degree requirements.

(8) "Associate of Science" is defined as a state-approved associate degree that is intended to prepare student to transfer into an upper division baccalaureate degree program in areas such as Business, Science, Mathematics, and Engineering. The Associate of Science degree is often designed to meet the requirements of a specific receiving institution.

(9) "Business and Industry Based program" is defined as an Associate of Applied Science degree and/or certificate of completion designed for employers to meet specific occupational and educational needs of their current employees.

(10) "Certificate of Completion" is defined as a form of recognition awarded by a community college for meeting minimum occupational course, curriculum or proficiency requirements. Certificates of completion must be state-approved, have a defined job entry point, represent collegiate-level work, and meet State Board of Education's standards and criteria.

(11) "Clock/contact hours" is defined as one clock (or contact) hour is 60 minutes long. No more than 10 minutes of each hour can be used for a regularly-scheduled break or passing period.

(12) "Collegiate level work" is defined as course and program content that provides skills and information beyond that which is normally gained before or during the secondary level. It is characterized by analysis, synthesis, and application in which students demonstrate an integration of skills and critical thinking. It is a term that denotes more than college/university transfer courses. It also includes professional technical education and other courses that exceed basic skills, workplace readiness, and fundamental basic skills. Courses must be collegiate level if used to fulfill a requirement in an associate degree, option or certificate of completion program.

(13) "Complementary courses in general education" are defined as courses that are designed to serve as supportive parts of the professional technical programs. They are designed to aid the students in attaining a higher degree of self-development and to assist the student to make a maximum contribution as a citizen in a democratic society.

(14) "Continuing Education Units (CEUs)" is defined as a form of recognition given for completion of a unit of training for selected occupational supplementary courses. CEUs are based on time attended and not on the assessment of learning.

(15) "Credit" is defined as an indication or certification by a school that a student has completed a unit of study, demonstrated achievement or proficiency, or manifested measured learning outside of school, so as to have satisfied a portion of the requirements for a degree or for any other academic recognition offered by the school.

(16) "Credit course" is defined as courses offered by the college as part of a lower-division transfer degree or approved professional technical program.

(17) "Degree" is defined as any academic or honorary title, rank, or status that may be used for any purpose whatsoever, which is designated by a symbol or series of letters or words such as, but not limited to, associate, bachelor, master, or doctor, and forms or abbreviations there of that signifies, purports, or may generally be taken to signify

(a) Completion of a course of instruction at the college or university level; or

(b) Demonstration of achievement or proficiency comparable to such completion; or

(c) Recognition for nonacademic learning, public service, or any other reason of distinction comparable to such completion.

(18) "Deleted program" is defined as the permanent elimination of a program previously approved by the local and State Boards of Education.

(19) "Detrimental Duplication" is defined as a situation that occurs when recruitment of students for a new program or location will tend to redirect prospects from a fixed pool concomitant with the application of publicly funded educational cost subsidies, thereby significantly reducing enrollment in existing similar programs for which student financial aid is available but the number of prospective enrollees is limited by non-financial factors such as interest, qualifications needed for admission, internship openings for students, and job openings for graduates.

(20) "Direct control" is defined as the community college maintains direct and sole responsibility for the academic quality of all aspects of all programs and courses through the management and supervision by faculty and institutional administrators.

(21) "Educational programs" are defined as state-approved certificate of completion and associate degree programs.

(22) "General education" is defined as the introduction to the content and methodology of the major areas of knowledge - the humanities and fine arts, the natural sciences, mathematics, and the social sciences and help students to develop the mental skills that will make them more effective learners and citizens in a democratic society.

(23) "Hobby course" is defined as any directed activity engaged in by individuals as an avocation resulting in a collection of objects or in the production of works.

(24) "Intersegmental" is defined as across segments of education. See "Segments of Education."

(25) "Laboratory (Lab)" is defined as an instructional setting in which students work independently with the instructor available and in the instructional area for assistance and supervision.

(26) "Lecture" is defined as an instructional setting in which the instructor delivers information.

(27) "Lecture/laboratory (Lecture/Lab)" is defined as an instructional setting in which the instructor gives short presentations and supervises student application of content. Instructional methods are integrated; lecture and lab are dependent upon each other for the student's educational success.

(28) "Local community college program approval" is defined as the approval by the local community college board of education or their designee indicating that a program has met or exceeded local community college program standards and processes prior to being submitted to the State Board of Education or their designee for review.

(29) "Lower Division Collegiate" (LDC) is defined as collegiate level work in areas of instruction that parallel the offerings of the first two years of Oregon's four-year institutions, and are generally accepted for transfer by Oregon's public higher education institutions.

(30) "New location of an approved program" is defined as a facility where students collectively may receive instruction in the program face-to-face or through telecommunications in a community not previously so served, including a non-Oregon location within 50 miles of where a comparable program is located in Oregon."

(31) "New program" is defined as any program not previously approved by the State Board of Education, Office of Degree Authorization of the Oregon Student Assistance Commission or by their predecessor review authorities, regardless of whether it comprises new instructional components or the reassembled components of existing programs.

(32) "Non-credit course" is defined as a course that does not offer college credit for completion and generally cannot be used as part of a credit based degree or certificate program. No assessment of learning generally takes place.

(33) "Occupational preparatory program" is defined as a state-approved professional technical program which is designed to prepare persons for employment in a specified occupation or cluster of closely related occupations.

(34) "Occupational supplementary program" is defined as a state-approved program designed for individuals who have already entered an occupation but seek to improve their occupational skills and knowledge in order to achieve employment stability or advancement.

(35) "Other Education Courses" are defined as general self-improvement courses intended primarily for adults and independent of professional technical or lower division curricula. These courses are not intended for programs that may lead toward a baccalaureate degree. These courses may be used as prerequisite and elective courses in professional technical degree and certificate programs. Other Education Courses include areas of instruction not otherwise included in the professional technical education and lower-division collegiate categories. Other Education course areas include

# ADMINISTRATIVE RULES

but are not limited to adult basic education (ABE), general education development (GED), adult high school completion (AHS), English as a second language (ESL), and self-improvement courses not fitting into previously listed categories.

(36) "Professional technical courses" are defined as the collegiate level occupational preparatory or occupational supplementary courses that are designed to prepare persons for entrance into and employment stability and advancement in specific occupations or clusters of closely related occupations. Professional technical courses include both occupational preparatory and occupational supplementary courses.

(37) "Professional technical program" is defined as collegiate level coursework that is designed to prepare persons for entrance into and employment stability and advancement in specific occupations or clusters of closely related occupations. Professional technical programs result in the achievement of a state-approved certificate of completion, associate of applied science degree or associate of applied science degree option.

(38) "Program" is defined as any organized teaching and learning activity in which successful completion qualifies a student for a degree, a certificate of substantial academic or vocational learning short of a degree, a certificate of preparation related to new or modified occupational licensure, or another academic or vocational certificate that represents a shorter period of activity but has value as a public credential.

(39) "Program amendment" is defined as a change in state-approved program submitted to the State Board of Education or their designee by a college to receive approval to revise the program. Revisions include minor changes in curriculum content, courses, program outcomes and titles.

(40) "Program approval" is defined as the process by which the local community college board and the State Board of Education acknowledge that a program has met the applicable program standards and requirements of the local and state boards or their designees. Program approval also includes the authorization of the program by the Office of Degree Authorization of the Student Assistance Commission.

(41) "Publicly funded" is defined as controlled by an agency of government or by a public corporation as occurs in Oregon community colleges, institutions of higher education, and the Oregon Health Sciences University, regardless of specific sources and applications of funds, or controlled by a private entity but subsidized with appropriated public funds received directly for program operation rather than indirectly in the form of student financial aid.

(42) "Recognition award" is defined as an award given to a student by a community college for completion of a state-approved course or courses or for attendance and participation in workshops or seminars. Recognition awards may not be called "certificates of completion" or "certificates" and may not be included on the official student transcript.

(43) "Recreational course" is defined as any directed activity in which individuals participate with the purpose of engaging in physical activity, except those activities which focus on physical fitness or which directly relate to the initial skill development of physical activities in which individuals could reasonably be expected to participate during most of their adult lives.

(44) "Related instruction" is defined as programs of study for which applied or specialized associate degrees are granted, or programs of an academic year or more in length for which certificates are granted. They must contain a recognizable body of instruction in program-related areas of:

(a) Communication;

(b) Computation; and

(c) Human relations. Additional topics which should be covered as appropriate include safety, industrial safety, and environmental awareness. Related instruction areas are either embedded within the program curriculum or taught in blocks of specialized instruction.

(45) "Segment of education" is defined as any one of the following:

(a) Oregon community colleges, community college districts, or service districts, together with every other postsecondary program or location ultimately sponsored by the State Board of Education;

(b) Oregon state-owned institutions of higher education and related organizational units, together with every other postsecondary program or location ultimately sponsored by the State Board of Higher Education;

(c) The Oregon Health Sciences University, any hereafter created public corporations for higher education, and any organizational units of such public corporations, together with every postsecondary program or location under their ultimate sponsorship;

(d) Private Oregon degree-granting institutions and organizations and all non-Oregon entities offering residential instruction in Oregon for credit toward full degrees approved by the Office of Degree Authorization, together with every postsecondary program or location they sponsor; and

(e) Private nondegree career schools offering instruction in Oregon and licensed under ORS 345, together with every postsecondary program or location they sponsor.

(46) "Stand alone occupational prep courses" are defined as courses designed for individuals seeking to build knowledge and skills for initial employment in an area not included in one or more of a community college's existing approved Associate of Applied Science degree or certificate of completion programs. Also see Occupational Preparatory Course.

(47) "Statewide or regional consortium program" is defined as an associate of applied science and/or certificate of completion program which is developed, applied for and continuously monitored by a partnership of colleges to address a specific program need through a cohesive and transferable curriculum among participating colleges.

(48) "State approved program" is defined as a community college certificate of completion or associate degree program that has met and continues to meet the standards and criteria of the State Board of Education and has received authorization by the Office of Degree Authorization of the Student Assistance Commission.

(49) "Suspended program" is defined as the temporary removal of a state-approved program from the overall curriculum of a community college by the local community college board of education or their designee.

Stat. Auth.: ORS 659.850

Stats. Implemented: ORS 659.850, ORS 855.860

Hist.: DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-006-0100

### General Community College Program Approval Requirements

(1) The State Board of Education has responsibility for approval of community college educational programs and locations.

(2) The State Board of Education shall provide community college district boards of education with the standards, criteria and procedures the State Board of Education will utilize to approve certificate of completion and associate degree programs and new locations for previously approved programs. Such standards shall be included in the *Certificate of Completion and Associate Degree Approval Procedures* identified by the Department.

(3) The State Board of Education shall assure that new community college educational programs have been authorized by the Office of Degree Authorization of the Oregon Student Assistance Commission prior to providing the local community college with final approval of new community college programs and locations.

(4) Requests for approval of new associate degree, associate degree option and certificate of completion programs must be submitted by the local community college district board of education to the State Board of Education prior to the commencement of the program.

(5) Associate degree programs offered by community colleges may include: Associate of Arts — Oregon Transfer degree, Associate of Science, Associate of Applied Science and Associate of General Studies. Each associate degree program shall conform to the specific degree requirements as identified in the *Certificate of Completion and Associate Degree Approval Procedures* identified by the Department.

(6) Certificate of completion programs offered by community colleges shall include: less than one-year, one-year, greater than one-year and two-year certificate of completion. Each certificate of completion shall conform to the specific certificate of completion requirements as identified in the *Certificate of Completion and Associate Degree Approval Procedures* identified by the Department.

(7) To meet the approval standards of the State Board of Education, associate degree and associate degree option programs must include:

(a) At least 90 total credits; and

(b) No more than 108 credits; and

(c) A recognizable core of general education and/or related instruction courses; and

(d) An established standard of academic achievement; and

(e) Meeting or exceeding the local community college board of education program approval standards; and

(f) Meeting or exceeding the State Board of Education program approval standards and criteria.

(8) To meet the approval standards by the State Board of Education, certificate of completion programs must include:

(a) At least 12 credits; and

(b) No more than 108 credits; and

(c) A recognizable core of general education and/or related instruction courses for programs one-year or more in length; and

(d) An established standard of academic achievement; and

(e) Demonstration of occupational content leading to employment; and

# ADMINISTRATIVE RULES

(f) Meeting or exceeding the local community college board of education program approval standards; and

(g) Meeting or exceeding the State Board of Education program approval standards and criteria.

(9) Certificate of completion and associate of applied science degree programs shall include a designation of the particular occupation, career or career area as a component of the award title.

(10) Associate of Arts — Oregon Transfer and Associate of General Studies degrees shall not include a designation of major or areas of study as a component of the award title. The Associate of Science degree may have this designation only if it conforms to a statewide degree approved by the State Board of Education.

(11) Options to constitute a variation in the state-approved degree are allowable only for associate of applied science degree programs. Associate of applied science degree options may be added to new or existing associate of applied science degree programs following the procedures in the *Certificate of Completion and Associate Degree Approval Procedures* identified by the Department.

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

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 341.425, ORS 341.465

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 166, f. 2-20-74, ef. 3-11-74; 1EB 263, f. & ef. 7-5-77; 1EB 9-1983, f. & ef. 10-13-83; EB 14-1991, f. & cert. ef. 7-19-91; Renumbered from 581-042-0005, 581-042-0010 & 581-042-0015; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-043-0000; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-006-0150

### Local Community College Responsibilities for Program Approval

(1) Local community college district boards will have local processes in place to assure that local and state program approval standards and criteria are implemented and maintained.

(2) Local community college district boards are responsible for approving their college's certificate of completion, associate degree and associate degree option requirements. These requirements must be included in the institution catalog.

(3) The local community college board of education has the responsibility to assure that state-approval standards are achieved for all programs offered by the local community college.

(4) New certificate of completion and associate degree programs shall follow the *Adverse Intersegmental Impact Detrimental Duplication Procedures* as identified by the Department and the Office of Degree Authorization as a component of the State Board of Education program approval process.

(5) Community colleges shall use the term "Certificate" or "Certificate of Completion" in college catalogs and college promotional documents and on transcripts only as an indication of an award by the college that has met the local and state program approval standards and criteria and have been approved by the State Board of Education and authorized by the Office of Degree Authorization.

(6) Local community college district board of education will submit programs using the *Certificate of Completion and Associate Degree Approval Procedures* identified by the Department.

(7) The board of education of a community college district is responsible for obtaining and maintaining the course approval requirements set by the State Board of Education.

(8) Community colleges may provide recognition awards to students for the completion of a state-approved course or courses. Recognition awards may not be called "certificates of completion" or "certificates" and may not be included on the official student transcript. Recognition awards may not be provided for coursework meeting the definition of "program" without state-approval.

(9) Upon approval by the State Board of Education, the Board authorizes the community college district boards of education, established under ORS 341.005 to 341.950, to issue certificates of completion and associate degrees as an indication of satisfactory completion of state-approved programs offered by the community colleges.

(10) The type of associate degree, associate degree option or certificate of completion to be awarded for completion of a program shall be clearly stated in the community college's catalog or supplement thereto.

(11) Only educational programs that have received program approval from the local community college district board, the State Board of Education and the Office of Degree Authorization of the Student Assistance Commission shall be included in a community college catalog or other materials.

(12) Prerequisites for associate degree, associate degree option, and certificate of completion programs and courses within the programs shall be clearly stated in the community college's catalog or supplement thereto.

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

Stat. Auth.: ORS 659.850

Stats. Implemented: ORS 659.850, ORS 855.860

Hist.: DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-006-0200

### Approval of Lower Division Collegiate Programs and Courses

(1) Under the authority of ORS 341.425, the State Board delegates to the Department the authority to approve Lower Division Collegiate courses.

(2) A community college that is accredited by the Northwest Association of Schools and of Colleges and Universities shall follow the Department's Lower Division Collegiate Course Approval procedure to request new courses.

(3) A community college that is not accredited by the Northwest Association of Schools and of Colleges and Universities shall apply for approval through their contracting college.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 341.425

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 166, f. 2-20-74, ef. 3-11-74; 1EB 172, f. 6-17-74, ef. 9-1-74; EB 14-1991, f. & cert. ef. 7-19-91; Renumbered from 581-042-0020, 581-042-0025, 581-042-0030 & 581-042-0035; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-043-0275; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-006-0300

### Approval of Professional Technical Courses, Certificate of Completion and Associate of Applied Science degree Programs

(1) Under the authority of ORS 341.425, the State Board delegates to the Department the authority to approve professional technical courses.

(2) Professional technical courses consist of either occupational preparatory courses or occupational supplementary courses.

(3) The Department will use the *Professional Technical Course Approval Procedure* and *Certificate of Completion and Associate Degree Approval Procedure* to approve professional technical courses and programs.

(4) Professional technical courses are approved by the State Board of Education or their designee, either as a component of the curriculum for a state approved certificate of completion, associate of applied science degree, or associate of applied science degree option program or through an individual course approval process as identified in the *Professional Technical Course Approval Procedure*.

(5) The State Board of Education standards for approval of occupational preparatory courses will be included in the *Professional Technical Course Approval Procedures* and will include but not be limited to:

(a) Courses are delivered under the direct control of the college and are either:

(A) Approved as part of a community college certificate of completion, associate of applied science degree program, or associate of applied science degree option; or

(B) Approved as a stand-alone occupational preparatory course.

(b) Courses are collegiate level and provide education and training directed to the development of abilities, skills, understanding and attitudes needed to enter into an occupation.

(c) Courses are designed for occupational employment and are not necessarily directed toward completion of baccalaureate degree requirements.

(d) Courses are developed and operated with the advice and counsel of employers, employees and other persons knowledgeable about the requirements of the occupations involved.

(e) Courses will not adversely impact or detrimentally duplicate similar intersegmental courses offered locally.

(6) The State Board of Education standards for approval of occupational supplementary courses will be included in the *Professional Technical Course Approval Procedures* and will include but not be limited to:

(a) Courses are delivered under the direct control of the college and may or may not be components of a community college certificate of completion or associate of applied science degree program.

(b) Courses are not necessarily directed toward the completion of requirements for a baccalaureate degree.

(c) Courses are collegiate level and provide education and training designed to develop or enhance abilities, skills, understandings and attitudes needed to improve the occupational skills in order to achieve employment stability or advancement.

(d) Courses are developed and operated with the advice and counsel of employers, employees, and other persons knowledgeable of the requirements of the occupation involved.

(e) Courses will not adversely impact or detrimentally duplicate similar intersegmental courses offered locally.

# ADMINISTRATIVE RULES

(7) Occupational preparatory courses may not be offered by the local community college prior to the approval of the State Board of Education or their designate.

(8) Occupational supplementary courses may be offered by the local community college prior to final approval by the Department as identified within the *Professional Technical Course Approval Procedure* under conditions that include the following:

(a) The local community college has a local course approval process in place and assures that the occupational supplementary standards have been met.

(b) The community college is willing to take the risk that the course may not be approved and may be nonreimbursable.

(9) Professional technical courses will be numbered using course numbering conventions as approved by the Department.

(10) Professional technical programs will be approved by the State Board of Education based on meeting the General Community College Program Requirements for Certificates of Completion, Associate of Applied Science degrees or Associate of Applied Science Options as identified in 589-006-0100.

(11) The State Board of Education standards and criteria for approval of professional technical programs will be included in the *Certificate of Completion and Associate Degree Approval Procedures* and will include but not be limited to:

(a) The program is developed and will be implemented, operated and evaluated as a joint venture with business, industry and labor; and

(b) The college demonstrates capacity to offer the program and will provide the necessary resources and services to assure that students can attain the skills and knowledge necessary to fulfill the stated objectives of the program, and

(c) The curriculum for the program demonstrates a cohesive instructional system that will lead to the attainment of the academic and professional technical exit proficiencies needed for success in the occupational field; and

(d) The instructional design for the program provides the appropriate access, flexibility and evaluation components to provide appropriate instruction for students within the program; and

(e) The program provides access to all students and provides the necessary additional and supplemental services for special populations and protected classes; and

(f) Program need is based on local, regional, state and national statistics and forecasts documenting that an employment demand for family wage occupations is not or cannot be met through existing programs; and

(g) The program provides direct connections to appropriate certificates of advanced mastery as well as other programs in the college, other institutions of postsecondary education, and future training opportunities; and

(h) The program has continuous improvement systems in place that provide for program input through evaluation based on instructor, employer and student satisfaction follow-up data.

(12) Professional technical programs will include the sequence of courses for the program including general education and related instruction, professional technical required, elective and specialization courses. Program approval materials will also include course numbers, credit/non-credit and clock/contact hours for the course.

(13) Provisions will be made within the *Certificate of Completion and Associate Degree Approval Procedures* to allow for the development, approval, implementation and evaluation of Certificate of Completion, Associate of Applied Science degree and Associate of Applied Science degree options for Statewide or Regional Consortium of community colleges. Statewide and Regional Consortium certificates and degrees will address a specific program need through a cohesive and transferable curriculum among and between participating colleges.

(14) Provisions will be made within the *Certificate of Completion and Associate Degree Approval Procedures* to allow for the development, approval, implementation and evaluation of Business & Industry Based programs that are designed for employers to meet specific occupational and educational needs of their current employees.

(15) New Professional technical programs will be submitted for approval following the processes within the *Certificate of Completion and Associate Degree Approval Procedures* identified by the Department. The procedures will include but not be limited to the following components:

(a) Local community college submission of a Notice of Intent to Apply for a New Program/Location to the Department at least three months prior to the planned implementation date of the proposed new program; and

(b) Department dissemination of the Notice of Intent to Apply for a New Program/Location to public and private institutions to identify potential adverse intersegmental impact or detrimental duplication; and

(c) Local community college completion of adverse intersegmental impact or detrimental duplication procedures as identified in the Adverse Intersegmental Impact and Detrimental Duplication Procedure by the Department; and through the administrative rules of the Office of Degree Authorization; and

(d) Local community college submission of the Planning Guide and Application for the new professional technical education program at least 60 days prior to the date approval is to be requested from the State Board of Education.

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

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 341.425

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 166, f. 2-20-74, ef. 3-11-74; EB 14-1991, f. & cert. ef. 7-19-91; Renumbered from 581-042-0040, 581-042-0045, 581-042-0050, 581-042-0055 & 581-042-0060; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-043-0290; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-006-0350

### Maintaining Approval of Certificate of Completion and Associate of Applied Science degree Programs

(1) The approval of community college professional technical programs by the State Board of Education will continue to be in effect until the program is amended, suspended or deleted from the college's program offerings. The State Board of Education or their designee may disqualify an approved professional technical program if it no longer meets State Board of Education program approval standards and criteria.

(2) Once a program has been approved by the State Board of Education, course additions, deletions, or changes within these programs must be approved by the State Board of Education or their designee prior to implementation of the revised program.

(3) Associate of Applied Science degree, Associate of Applied Science degree options and Certificate of Completion programs offered by community college shall be considered to be active as long as the *Annual Program Review Procedure* has been followed for the program and the college has not provided notification to the Department of program suspension or program deletion.

(4) Community colleges may request that a program be suspended for a period of three years. The program suspension period will begin on the date the college notifies the Department of its intent to suspend a program. The Department will notify colleges prior to the deletion of suspended programs. After three years suspended programs will require re-approval utilizing the *Certificate of Completion and Associate Degree Approval Procedure* identified by the Department.

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

Stat. Auth.: ORS 659.850

Stats. Implemented: ORS 659.850, ORS 855.860

Hist.: DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-006-0400

### Approval of Other Education Courses

(1) Under the authority of ORS 341.425, the State Board delegates authority to the Department to approve Other Education Courses. Such approval authorizes the community college to receive state funding to support those courses.

(2) The Department uses the following standards for approval of Other Education Courses:

(a) The course is primarily intended for adults;

(b) The course may be developmental in nature and offered for:

(A) Adults with less than an eighth grade education through adult basic education classes;

(B) Adults with less than a high school diploma through adult high school completion programs;

(C) Persons who lack sufficient background in subject-matter areas to make satisfactory progress in the lower-division collegiate or professional technical programs of the institution; or

(D) Persons who lack English language skills needed to make satisfactory progress in the lower-division collegiate or professional technical programs of the institution or to enter the workforce.

(c) The course must include at least six contact hours of instruction focused on a single topic.

(3) Approval of Other Education Courses must follow the Department's Other Reimbursable Course Approval procedure.

(4) State reimbursement shall not be available for hobby or recreation courses; however, such courses may be provided on a self-sustaining basis.

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

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 326.051 & ORS 341.626  
Stats. Implemented: ORS 341.425 & ORS 341.626  
Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 166, f. 2-20-74, ef. 3-11-74; EB 14-1991, f. & cert. ef. 7-19-91; Renumbered from 581-042-0065, 581-042-0070, 581-042-0075 & 581-042-0085; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-043-0300; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-007-0200

### Two Plus Two and Dual Credit Programs

(1) For purposes of this rule, the following definitions apply:

(a) "Two Plus Two" is defined as planned professional technical programs articulated between high schools and community colleges.

(b) "Dual Credit" is defined as awarding secondary and postsecondary credit for a course offered in a high school during regular school hours, as determined by local school board and community college board policy.

(2) Before developing programs with high schools, each college shall file with the Department a policy for governing Two Plus Two and Dual Credit programs. Policies must include the following:

(a) Requirements for instructors equivalent to that of other college instructors in the discipline, including:

(A) Masters degree for instructors of Lower Division Collegiate courses; and

(B) An appropriate combination of education and experience for instructors of professional technical courses.

(b) Methods for selecting student participants, including limiting classes to seniors and qualified juniors, and in exceptional cases other qualified students. Qualifications must be defined;

(c) Assurances that classes will be transcribed by the college;

(d) Assurances that materials and subject matter are college level.

(3) On or before October 1 of each year, colleges shall submit an annual evaluation of the previous school year's Two Plus Two and Dual Credit programs, including but not limited to description of:

(a) Programs and courses offered;

(b) Student outcomes;

(c) Instructors' qualifications; and

(d) Program costs.

(4) Participating school districts and post-secondary institutions shall develop written agreements based on the policies described in this rule regarding Two Plus Two and Dual Credit programs, which include:

(a) Criteria regarding approval of courses, selection and approval of instructors, admissions, procedures, counseling, monitoring, and evaluation; and

(b) The provision that all agreements and policies shall be available to all staff members involved in the programs and to parents and students.

(5) Participating school districts and post-secondary institutions shall, in consultation with appropriate staff members, determine that course content and instructional quality are consistent with that offered by the community colleges.

(6) The Commissioner shall require an accounting of FTE consistent with these rules.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.475, ORS 329.855, ORS 341.42, ORS 341.450, ORS 341.525(3) & ORS 341.535

Hist.: 1EB 10-1981, f. 5-6-81, ef. 5-7-81; EB 14-1991, f. & cert. ef. 7-19-91; Renumbered from 581-042-0088; DCCWD 1-2001, f. & cert. ef. 3-21-01,

## 589-007-0300

### Veterans Programs

Each community college requesting approval for the training of veterans and other eligible persons will contact the State Approving Agency (SAA) for veterans' administration.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 341.425

Hist.: 1EB 223, f. 3-22-76, ef. 4-1-76; EB 14-1991, f. & cert. ef. 7-19-91; Renumbered from 581-046-0001; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-043-0530; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-008-0100

### Guidelines for Formation of Community College Personnel Policies

(1) Each community college Board of Education shall establish a personnel policy statement, including a policy on instructor selection and development that must include, but need not be limited to, the following:

(a) Definitions of the main terms used in the policy;

(b) Institutional standards for instructor qualifications (standards for teachers of lower division collegiate courses must include a masters degree in a subject area closely related to that in which the instructor will be teaching; however in subject areas in which individuals have demonstrated their competencies and served in professional fields and in cases in which docu-

mentation to support the individual's proficiency and high level of competency can be assembled, the master's degree requirement may be waived at the discretion of the college president);

(c) Position descriptions;

(d) Procedures for instructor approval, including period of instructor approval;

(e) Procedures for providing individual, written notice of reasonable assurance of continued employment to all employees who are to perform services in the same or a similar capacity during a subsequent academic year or term or in the period immediately following a recess period. Such notice shall be given by May 30 of each year for employees employed as of that date and as of the date of hire for employees employed subsequent to May 30. Pursuant to ORS 341.547, faculty members on annual or indefinite tenure, classified staff members on regular status and management service employees are considered to have been given notice for the purposes of this section;

(f) A statement regarding academic freedom and responsibility;

(g) Procedures for staff development for full-time and part-time instructors;

(h) Procedures for staff evaluation;

(i) Grievance and appeals procedures;

(j) Affirmative action and nondiscrimination practices;

(k) College organization; and

(l) Methods of policy development and review.

(2) Personnel policies adopted by community college boards shall be filed with the Commissioner within one year following establishment of the community college district. Thereafter, each college shall file annually, between December 1 and January 1, either any policy revisions made or a statement that policies currently on file are being continued. In the event the governing board of the community college fails to enact the personnel policies as required by subsection (1) of this rule, the Commissioner may withhold the next scheduled Community College Support Fund payment until such personnel policies are enacted and submitted to the Department.

(3) Each community college board shall develop a policy outlining the procedure for faculty selection. The policy shall include procedures by which the college will maintain records documenting the faculty member's credentials, professional development activities and other information supporting the faculty member's instructional assignment. In no case shall the standards for faculty selection fall below those set forth in the most recent *Accreditation Handbook* published by the Commission on Colleges and Universities of the Northwest Association of Schools and Colleges.

(4) Each community college board shall develop policies for professional development for full and part-time instructors consistent with the standards as required by the most recent *Accreditation Handbook* published by the Commission on Colleges and Universities of the Northwest Association of Schools and Colleges.

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

Stat. Auth.: ORS 326.051 & ORS 341.015

Stats. Implemented: ORS 341.015 & ORS 341.547

Hist.: 1EB 131, f. 5-19-72, ef. 6-1-72; 1EB 135, f. 7-11-72, ef. 8-1-72; 1EB 153, f. 7-20-73, ef. 8-1-73; 1EB 167, f. 2-20-74, ef. 3-11-74; EB 14-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0005, 581-043-0010, 581-043-0015, 581-043-0020, 581-043-0025, 581-043-0030, 581-043-0035, 581-043-0100, 581-043-0105 & 581-043-0110; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-043-0700; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-008-0200

### Use of Community College Instructors in High Schools

(1) A school district may contract with a community college accredited by the Northwest Association of Schools and Colleges or a community college contracting for delivery of instructional and curriculum services with an accredited community college for instruction at a high school site by a faculty member who does not hold a current Teacher Standards and Practices Commission license if the following conditions are met:

(a) The faculty member is employed by a community college accredited by the Northwest Association of Schools and Colleges or the faculty member is employed by a community college under contract with an accredited community college for delivery of instructional and curriculum services.

(b) The faculty member's teaching qualifications are verified by formal preparation and/or work experience, including:

(A) Evidence of academic and/or professional technical training sufficient to demonstrate competency in the subject-matter area;

(B) Successful postsecondary teaching experience in the discipline and/or program area; or

(C) Resume of work experience sufficient to demonstrate competency in the discipline and/or program.



# ADMINISTRATIVE RULES

(c) The faculty member meets current board-adopted personnel policies of both the school district and community college.

(d) The faculty member presents evidence of good moral character, mental and physical health, and such other evidence as the school district board may deem necessary to establish the applicant's fitness to serve as a teacher;

(e) The person has not been convicted of any crime listed in ORS 342.143;

(f) The school district does not have appropriately licensed personnel available for the specific teaching assignment without mis-assignment and was not able to identify and attain such staff after conducting a reasonably diligent search; and

(g) The assignment includes no more than two high school units of credit or equivalent per year.

(2) A school district shall not contract for unlicensed staff under ORS 342.173(1) during school closures, strikes and summer sessions.

(3) Governing boards of the school district and community college shall annually review each contract to ensure that the requisites of this rule have been met:

(a) Contracts approved by both boards shall be forwarded to the State Board of Education for annual review and approval. Such contracts may be submitted to the State Board for approval after a teacher has been assigned to teach. However, the State Board reserves the right to find any contract in violation of current statutes or administrative rules notwithstanding the teacher's starting date;

(b) The State Board shall report to the Teacher Standards and Practices Commission violations of these rules that could result in forfeiture of State School Funds as stated in ORS 342.173 and OARs 584-050-0060, 584-050-0065 and 584-050-0067.

Stat. Auth.: ORS 326.051; ORS 341.015; ORS 342.173

Stats. Implemented: ORS 341.535; ORS 342.173

Hist.: EB 25-1987(Temp), f. & ef. 10-20-87; EB 28-1988, f. & cert. ef. 6-9-88; EB 14-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0256; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-043-0750; DCCWD 1-2003, f. & cert. ef. 1-9-03

## 589-009-0100

### Immunizations Requirements for Certain Community College Students

(1) Pursuant to ORS 433.283(2) and Health Division OAR 333-019-0090, the following definitions are set forth:

(a) "Clinical Experiences" means a student is required to complete practical work experience with patients in a public or private health facility.

(b) "Practicum Experiences in Education and Child Care Programs" means a student is required to complete practical work experience in a public or private child care or education setting.

(c) "Membership on an Intercollegiate Sports Team" means a college-sponsored team that engages in competition with other intercollegiate teams.

(2) Community college students born on or after January 1, 1957, must have two doses of measles vaccine prior to any participation in clinical experiences in allied health programs; or practicum experiences in education and child care programs; or membership on intercollegiate sports teams.

(3) Each community college shall develop procedures to implement and maintain this requirement.

(4) Each community college shall include a medical exemption and religious exemption.

(5) Acceptable records to document proof of two doses of measles vaccines are contained in OAR 333-050-0140.

(6) The Oregon Health Division may conduct validation surveys to insure compliance with the vaccination requirements.

Stat. Auth.: ORS 326.051 & ORS 433.283

Stats. Implemented: ORS 433.283

Hist.: EB 25-1992(Temp), f. & cert. ef. 7-27-92; EB 32-1992, f. & cert. ef. 10-14-92; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-043-0800; DCCWD 1-2003, f. & cert. ef. 1-9-03

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

**Adm. Order No.:** BCD 31-2002

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 10-1-02

**Rules Amended:** 918-225-0610

**Rules Repealed:** 918-225-0610(T)

**Subject:** Corrects fee calculation error contained in rule filed effective July 1, 2002, implementing 2001 House Bill 2245.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 918-225-0610

### Fees for Permits and Inspections

(1) Purpose and Scope of Rules. This rule sets permit and inspection fees.

(2) Authority for Action:

(a) ORS 480.595 authorizes the Board to establish boiler permit fees. ORS 480.607 additionally authorizes establishment of fees and increases up to ten percent on fees set by ORS 480.595(3) and (4), 480.600(2), 480.630(4) and (6);

(b) Other fees are authorized by ORS 480.630.

(3) Permit Fees Generally Under ORS 480.595 are established:

(a) Effective January 1, 2002, under ORS 480.595(3) and 480.607 permit fees, including inspection fees shall be:

(A) Boilers of 15 horsepower or less, \$71.50;

(B) Boilers greater than 15 horsepower to 100 horsepower, \$93.50;

(C) Boilers greater than 100 horsepower to 500 horsepower, \$110;

(D) Boilers greater than 500 horsepower, \$121;

(E) Cast iron boilers, \$71.50;

(F) Pressure vessels having a product volume of 20 cubic feet or less, \$60.50;

(G) Pressure vessels having a product volume greater than 20 cubic feet, \$82.50.

(b) The fee for a reinspection provided in ORS 480.595(4) shall be charged at the rate of \$66 per hour for travel and inspection time to defray the cost of a re-inspection when deviations from the minimum safety standards are found during any inspection.

(4) The fee for the special permit set out in ORS 480.600(2) is \$27.50.

(5) In addition to the fees shown in sections (3) and (4) of this rule, there is a statutory surcharge of six percent on permit fees due to ORS 455.210.

(6) Miscellaneous fees under ORS 480.605:

(a) The fees for shop inspection service provided in ORS 480.605(1) and witnessing hydrostatic or other test under ORS 480.605(3) are:

(A) Hourly charges for travel and inspection, \$66;

(B) Hourly charge for travel and inspections before 8 a.m., after 5 p.m., on weekends and holidays, \$99.

(b) In addition to the hourly charge the actual cost of meals and lodging are also charged.

Stat. Auth.: ORS 480.595, ORS 480.600, ORS 480.605, ORS 480.607 & 480.630

Stats. Implemented: ORS 580.595, ORS 480.600, 480.605, 480.607 & 480.630

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 19, f. 6-21-73, ef. 7-1-73; DC 8-1980, f. & ef. 7-1-80; DC 1-1981, f. & ef. 1-22-81; Renumbered from 814-025-0025; BCA 8-1990, f. 4-18-90, cert. ef. 5-1-90; BCA 13-1990, f. & cert. ef. 6-6-90; BCA 20-1991(Temp), f. & cert. ef. 6-14-91; BCA 30-1991, f. & cert. ef. 9-9-91; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0050; BCD 10-1996(Temp), f. & cert. ef. 7-1-96; BCD 28-1996, f. & cert. ef. 12-6-96; BCD 16-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 17-2002(Temp), f. & cert. ef. 7-19-02 thru 1-14-03; BCD 31-2002, f. 12-20-02 cert. ef. 1-1-03

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**Adm. Order No.:** BCD 32-2002

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:**

**Rules Amended:** 918-001-0010

**Subject:** Adopts the October 3, 2001 Model Rules of Procedure.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 918-001-0010

### Model Rules of Procedure

The Attorney General's Model Rules of Procedure effective October 3, 2001, are adopted as the rules of procedure of the Building Codes Division except as a Board, with independent rulemaking authority, adopts other procedural rules for itself.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Building Codes Division.]

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Hist.: BCA 20-1989, f. & cert. ef. 8-1-89; BCA 32-1993, f. 12-14-93, cert. ef. 1-1-94; BCD 12-1994, f. & cert. ef. 4-29-94; BCD 5-1996, f. & cert. ef. 3-29-96; BCD 8-1998, f. & cert. ef. 6-2-98; BCD 21-2000, f. & cert. ef. 9-19-00; BCD 32-2002, f. 12-20-02 cert. ef. 1-1-03

# ADMINISTRATIVE RULES

**Adm. Order No.:** BCD 33-2002  
**Filed with Sec. of State:** 12-20-2002  
**Certified to be Effective:** 4-1-03  
**Notice Publication Date:** 9-1-02  
**Rules Amended:** 918-480-0005, 918-480-0010, 918-480-0020  
**Subject:** adopts the 2000 international Residential Code for One- and Two-Family Dwellings with Oregon amendments to be effective April 1, 2003.  
**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 918-480-0005

### Minimum Safety Standards for the Design and Construction of One and Two Family Dwellings

(1) Effective April 1, 2003, the **2000 Edition of the International Residential Code for One- and Two-Family Dwellings**, as published by the International Code Council, Inc. with errata through March 31, 2003, and as further amended by the Building Codes Division, is adopted as the **Oregon 2003 One- and Two-Family Dwelling Specialty Code**.

(2) Applicability of code changes to pending applications. Code requirements in effect at the time a plan review or permit application is filed shall control the construction under the application unless the applicant agrees to be controlled by subsequent changes.

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

Stat. Auth.: ORS 455.030, ORS 455.525 & ORS 455.380

Stats. Implemented: ORS 455.610

Hist.: DC 11-1986, f. 6-30-86, ef. 7-1-86; DC 6-1987(Temp), f. & ef. 4-3-87; Renumbered from 814-031-0005; BCA 3-1990, f. 1-30-90, cert. ef. 4-1-90; BCA 7-1990(Temp), f. 3-23-90, cert. ef. 4-1-90; BCA 21-1990, f. 8-28-90, cert. ef. 9-24-90; BCA 30-1990, f. 12-21-90, cert. ef. 1-1-92; BCA 8-1991, f. 4-10-91, cert. ef. 7-1-91; BCA 32-1991(Temp), f. & cert. ef. 9-30-91; BCA 1-1992, f. & cert. ef. 2-6-91; BCA 4-1992(Temp), f. 3-4-92, cert. ef. 3-5-92; BCA 6-1992, f. 3-24-92, cert. ef. 3-27-92; BCA 13-1992, f. 6-29-92, cert. ef. 7-1-92; BCA 28-1992(Temp), f. 12-30-92, cert. ef. 1-1-93; BCA 3-1993(Temp), f. & cert. ef. 3-3-93; BCA 7-1993, f. 4-28-93, cert. ef. 5-1-93; BCA 10-1993(Temp), f. & cert. ef. 6-11-93; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98, Renumbered from 918-480-0000; BCD 3-2000, f. 1-14-00 cert. ef. 4-1-00; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03

## 918-480-0010

### Amendments to the One and Two Family Dwelling Specialty Code

(1) The **One- and Two-Family Dwelling Specialty Code** is generally readopted every three years coinciding with the national adoption of a nationally recognized dwelling code and other referenced supporting nationally recognized codes pursuant to OAR chapter 918, division 8. Amendments adopted are placed in this rule, showing the division reference, a descriptive caption and a short description of the amendment. When the code is readopted, these amendments will be physically integrated into the new code and removed from rule.

(2) Effective April 1, 2003:

(a) The **1997 Edition of the Dwelling Requirements of the Uniform Plumbing Code** as published by the International Association of Plumbing and Mechanical Officials and amended by the division are adopted as the plumbing provisions of the **2003 One- and Two-Family Dwelling Specialty Code**; and

(b) The electrical provisions in **Chapters 33 through 42 of the 2000 International Residential Code for One- and Two-Family Dwellings** are amended to be consistent with the **2002 Electrical Specialty Code**. [Publication not included. See Publications note.]

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

Stat. Auth.: ORS 455.020, ORS 455.110, ORS 455.525 & ORS 455.610

Stats. Implemented: ORS 455.610

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCA 29-1993, f. 11-24-93, cert. ef. 12-1-93; BCD 6-1995, f. 3-31-95, cert. ef. 4-1-95; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 22-1996(Temp), f. 10-1-96, cert. ef. 10-4-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; Administrative Reformating 1-19-98; BCD 3-1998, f. 1-29-98, cert. ef. 4-1-98; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2000, f. 1-14-00 cert. ef. 4-1-00; BCD 19-2000(Temp), f. & cert. ef. 8-15-00 thru 2-10-01; BCD 32-2000, f. 12-27-00, cert. ef. 1-1-01; BCD 3-2001, f. 2-9-01, cert. ef. 3-1-01; BCD 2-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 22-2002(Temp), f. 9-13-02 cert. ef. 10-1-02 thru 3-29-03; BCD 30-2002, f. 12-6-02, cert. ef. 1-1-03; BCD 1-2003(Temp), f. & cert. ef. 1-10-03 thru 3-31-03; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03

## 918-480-0020

### One- and Two-Family Dwelling Permit Fees

(1) Effective July 1, 1999, the Building Codes Division fees for administration of the **Oregon One- and Two-Family Dwelling Specialty Code** are found in **Table 1-A of the Oregon Structural Specialty Code** and **Table 1-A of the Oregon Mechanical Specialty Code** as reprinted in the **One- and Two-Family Dwelling Specialty Code** as adopted in OAR 918-480-0005. These fees are based on 130 percent of the **Uniform Building Code** and **Uniform Mechanical Code** as published by the

International Conference of Building Officials, as authorized in ORS 455.210.

(2) Amend **Table 1-A Structural Permit Fees** as follows: [Table not included. See ED. NOTE.]

(3) Amend **Table 1-A Mechanical Permit Fees** as follows: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 455.020 & ORS 455.210

Stats. Implemented: ORS 455.210

Hist.: BCD 8-1999(Temp), f. & cert. ef. 7-1-99 thru 12-27-99; BCD 11-1999, f. 9-7-99, cert. ef. 10-1-99; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03

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## Adm. Order No.:

BCD 34-2002

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 10-1-02

**Rules Adopted:** 918-282-0017, 918-282-0185, 918-400-0333, 918-400-0380, 918-400-0385, 918-400-0390, 918-400-0395

**Rules Amended:** 918-251-0090, 918-282-0290, 918-400-0280, 918-400-0340, 918-400-0800

**Rules Repealed:** 918-400-0335, 918-400-0345, 918-400-0350, 918-400-0355, 918-400-0360, 918-400-0365, 918-400-0370, 918-400-0375, 918-251-0090(T), 918-282-0017(T), 918-282-0185(T), 918-282-0290(T), 918-400-0280(T), 918-400-0333(T), 918-400-0340(T), 918-400-0380(T), 918-400-0385(T), 918-400-0390(T), 918-400-0395(T), 918-400-0800(T)

**Subject:** Creates an elevator contractor electrical license, a limited elevator journeyman license, an elevator contractor license, a limited elevator mechanic license and an elevator apprentice license. To be effective January 1, 2003.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 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) "Approved" when referring to electrical product standards, testing laboratory or field evaluation firm means approved in Oregon or for Oregon by the Electrical and Elevator Board.

(3) "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.

(4) "Board" means Electrical and Elevator Board.

(5) "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.

(6) "Certification Mark" is identification on the product indicating an electrical product was manufactured according to approved standards or tested for specific end uses or both.

(7) "Certified Electrical Product" is an electrical product certified under ORS 479.760 to which a label, symbol or other identifying mark of an approved testing laboratory or the division is attached indicating the manufacturer produced the product in compliance with appropriate standards or performance in a specified manner.

(8) "Classification Service" is a system whereby the laboratory determines a manufacturer has demonstrated the ability to produce a product that complies with the laboratory's requirements for classification or evaluation.

(9) "Conditions of Acceptability" are conditions imposed on a part or subassembly that is not listed, to establish its suitability for application in an electrical product.

(10) "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 installa-

# ADMINISTRATIVE RULES

tions for the electrical contractor for which the supervisor is registered as signing supervisor.

(11) "Custom Made" means electrical products that are designed for a specific purpose and location.

(12) "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.

(13) "Electrical Specialty Code" means the **National Electrical Code** with Oregon amendments.

(14) "Electrical Specialty Code Inspector," formerly referred to as "A-Level Electrical Inspector," is a person certified to inspect under the **Electrical Specialty Code**.

(15) "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.

(16) "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.

(17) "Field Evaluation" means the evaluation provided by an approved field evaluation firm on electrical products authorized to be field evaluated under OAR 918-306-0310 following evaluation procedures authorized under OAR 918-306-0320.

(18) "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.

(19) "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.

(20) "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.

(21) "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.

(22) "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.

(23) "Inverter", as it relates to renewable electrical energy generation equipment, is a product, equipment or system that converts direct current into alternating current.

(24) "Jurisdictional Inspector" is a state or municipal inspector having inspection responsibility within their jurisdiction over electrical products or their installation, or both.

(25) "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.

(26) "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.

(27) "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**.

(28) "Limited Produced" means industrial electrical equipment that is not certified, has a unique feature specified by the customer and is not readily available for general distribution.

(29) "Listed Product" means a product was examined and accepted by an Oregon approved testing laboratory as meeting a particular standard

under a laboratory listing and follow-up service agreement. The label attached to the product is the manufacturer's declaration that the product complies with the approved standard, and laboratory's requirements in accordance with the terms of the agreement between the laboratory and manufacturer.

(30) "Maintain" means to preserve electrical equipment in a good sound condition.

(31) "Maintenance". Compare with repair, replacement, and maintain for definition.

(32) "NEMA" means the National Electrical Manufacturers Association.

(33) "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.

(34) "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.

(35) "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.

(36) "Power Circuitry" means that portion of the system, other than control, that provides electrical power to utilization equipment.

(37) "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.

(38) "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.

(39) "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.

(40) "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, photo-voltaic energy or fuel cell energy into electrical energy suitable for connection to a utilization load.

(41) "Repair" means to restore worn or damaged parts to a good, sound condition by means other than replacement.

(42) "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.

(43) "Signing Supervising Electrician" or "Signing Supervisor" is a licensed supervising electrician who has been authorized by the electrical contractor to sign permits.

(44) "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.

(45) "Stand-alone system" is a renewable electrical energy system that supplies power independently of an electrical production and distribution network.

(46) "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 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-282-0017

### Elevator Contractor Electrical License

An elevator contractor licensed under this section:

(1) Shall continuously employ at least one full-time general supervising electrician or limited elevator journeyman to act as a signing supervisor to obtain and sign elevator plan approval permits;

(2) Is limited to electrical work associated with the installation, alteration, repair and maintenance of elevators. This work is limited to the

# ADMINISTRATIVE RULES

wiring from the load side of the main disconnecting means for the elevator; and

(3) Is authorized to make, supervise, direct or control the making of an electrical installation only if properly licensed.

Stat. Auth.: ORS 479.630 & ORS 479.840

Stats. Implemented: ORS 479.630

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-282-0185

### Limited Elevator Journeyman License

(1) A limited elevator journeyman:

(a) Shall be employed by an appropriately licensed electrical contractor under ORS Chapter 479;

(b) Is limited to electrical and mechanical work on elevators. This work is limited to the wiring from the load side of the main disconnecting means for the elevator; and

(c) Shall not exceed the scope of work authorized by the employer's license.

(2) License Requirements. Applicants shall:

(a) Have a minimum of 8,000 aggregate hours of lawfully obtained on-the-job training in the elevator industry installing, repairing, altering and maintaining elevator mechanical and electrical equipment; and

(b) Complete a Board approved limited elevator journeyman apprenticeship program.

(3) Applicants are required to provide notarized documentation of work categories and minimum hours in:

(a) Basic construction and maintenance safety and tools — 250 hours;

(b) Blue print reading — 250 hours;

(c) Material handling — hoisting and rigging — 500 hours;

(d) Guide rail systems installation and maintenance — 400 hours;

(e) Drive machines and systems; overhead equipment including beams and sheaves — 800 hours;

(f) Hydraulic systems and control valves — 800 hours;

(g) Car frames, platforms and enclosures — 500 hours;

(h) Doors, entrances and operators — 500 hours;

(i) Construction wiring and practices — 800 hours; and

(j) Adjusting elevator systems — 200 hours;

(k) Maintenance, circuit tracing, trouble-shooting, test equipment, periodic testing requirements — 1,000 hours;

(l) Alteration of existing equipment — 1,000 hours;

(m) Structure and operation of escalators and moving walks — 500 hours; and

(n) Related industry equipment — 500 hours.

(4) Additionally applicants shall submit transcripts with passing grade of 70-percent or better in graded classes and a "pass" in non-graded classes in the following related training classes;

(a) Basic construction and maintenance safety;

(b) Blueprint reading;

(c) Code-related requirements;

(d) Equipment testing procedures;

(e) Guide rail systems installation and maintenance;

(f) Pit equipment and maintenance;

(g) Car frames, platforms and enclosures;

(h) Hoisting and rigging;

(i) Overhead equipment including beams and sheaves;

(j) Hoist ropes and roping procedures;

(k) Structure and operation of escalators and moving walks;

(l) Drive machines and components;

(m) Hydraulic systems and control valves;

(n) Traction machines and components;

(o) Basic electrical theory;

(p) Circuit tracing;

(q) Basic electronics and solid state theory;

(r) Construction wiring and practices; and

(s) Electrical code and safety training.

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.630

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-282-0290

### Elevator Apprenticeship Program

The National Elevator Industry Educational Program (NEIEP) approved by the Elevator Safety Board, now the Electrical and Elevator Board, is approved as an elevator apprenticeship program referred to in ORS 479.630 as a prerequisite for a limited journeyman elevator license.

Stat. Auth.: ORS 460.085 & ORS 479.730

Stats. Implemented: ORS 460.085

Hist.: DC 13-1983, f. & ef. 6-17-83; Renumbered from 814-022-0030; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-250-0040; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-400-0280

### Board-Created Definitions

For the purposes of OAR chapter 918, division 400, unless the context requires otherwise, the following definitions are adopted:

(1) "Alteration" is a change of original design or operation through modernization; replacement of components or assemblies, or upgrade to existing equipment.

(2) "ANSI" means the American National Standards Institute.

(3) "Apprentice" means any person who is enrolled in an approved elevator apprenticeship program.

(4) "ASME" means the American Society of Mechanical Engineers.

(5) "Board" means the Electrical and Elevator Board.

(6) "BOLI" means the Bureau of Labor and Industries Apprenticeship Division.

(7) "Conveyance" is the industry term for elevator and includes, but is not limited to, escalator, man-lift, inclined elevator, dumbwaiter, lowerator, platform hoist, material lift, moving walk, platform or wheelchair lift and chair lift.

(8) "Electrical equipment" means any device or group of components that is connected to a source of electrical power. Such devices include, but are not limited to, electro-mechanical switches, controllers, motors, car and hall fixtures, lighting fixtures or any other component that has exposed electrical parts or connections either by design or when protective covers are removed.

(9) "Elevator Lobby" is the area in front of an elevator for waiting, boarding, disembarking, loading and unloading.

(10) "Equipment testing" means safety tests required by the adopted safety standard and required to be performed by properly licensed elevator technicians.

(11) "Industrial plant" means a facility engaged in a manufacturing endeavor to make a finished product using raw materials, especially on a large industrial scale wherein elevators are located and maintained by authorized plant personnel.

(12) "License" means a document that signifies competency to install, repair, alter or maintain elevator mechanical equipment within a particular field in the elevator industry.

(13) "Maintenance" is the renewal of operating parts, cleaning, lubricating and adjusting existing elevator equipment to ensure proper and safe operation as required by code.

(14) "Material Lift Elevator" is a power driven, isolated, self contained, stationary lift that meets the requirements of the Oregon Elevator Specialty Code, Material Lift Code.

(15) "Mitigating Circumstances" are caused by a lack of materials or labor and are beyond the reasonable control of a building owner or contractor.

(16) "Operator" is an individual employed by a general contractor, elevator contractor or owner to operate an elevator under a construction use permit.

(17) "Repair" is the restoration of an elevator to its original intended design, but not changing its operation or intended use.

(18) "Term" means a set period for each phase of training within an approved apprenticeship program.

(19) "Transferable experience" means experience, knowledge and aptitude gained on equipment not governed by the Elevator Safety Law but is similar in construct and application to the types of equipment associated with the licensing requirements herein.

(20) "Waiver" or "Variance" is a trade term referring to a site-specific exception from code requirement granted under ORS 460.085.

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0003; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-005; BCD 13-1999, f. & cert. ef. 10-1-99; BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-400-0333

### Scope of Elevator Licensing

Persons not licensed under ORS 479.630(6) or authorized by ORS 460.047, who perform any mechanical work on elevator equipment, shall obtain one of the following licenses as required herein. Possession of one of these licenses does not waive the licensing requirements established

# ADMINISTRATIVE RULES

under ORS Chapter 479 to perform electrical installations, maintenance and repairs on elevator equipment.

(1) Limited Elevator Mechanic. Pursuant to ORS 460.057 a person possessing this type of license is restricted to the installation, alteration, repair and maintenance of a specific type, or types, of elevator mechanical equipment, in accordance with OAR 918-400-0380.

(2) Elevator Apprentice. Pursuant to ORS 460.059 a person possessing this type of license assists a journey level elevator mechanic in performing mechanical work on elevators, in accordance with OAR 918-400-0390.

Stat. Auth.: ORS 460.047, ORS 460.057 & ORS 460.059  
Stats. Implemented: ORS 460.005 - 460.175 & 479.630  
Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-400-0340

### Elevator Contractor License

(1) A person seeking issuance or renewal of an elevator contractor license shall:

(a) Provide a list of the company's employees and their license numbers issued under ORS 460.057, 460.059 or 479.630(6), who will be performing the installation, alteration, repair and maintenance of elevator mechanical equipment; or

(b) Provide a list of employees who have made application and qualify for licensure under ORS 460.057 or 479.630(6);

(c) Provide written documentation from the company's insurance carrier that the applicant is insured as an elevator contractor. The certificate of insurance, or its equivalent, required by this section shall:

(A) Be a certified copy or original on the standard form issued by the insurance carrier;

(B) Include the insurance policy number, the insured's name and the insurance company's, name, address and telephone number;

(C) Have clear information that the insurance company recognizes the insured as an elevator contractor and that the policy will cover the scope of elevator-related work in which the contractor is engaged; and

(D) Show proof of authorization from the insurance carrier that the division will be given notice upon any change to or cancellation of the insurance policy.

(d) Provide verification of the State Construction Contractors Board registration as an elevator company; and

(e) Pay applicable fees as required by OAR 918-400-0800.  
Stat. Auth. ORS 460.085  
Stats. Implemented: ORS 460.005 - ORS 460.175 & ORS 479.630  
Hist.: BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-400-0380

### Limited Elevator Mechanic License

(1) Pursuant to ORS 460.057, any person installing, altering, repairing or maintaining elevator mechanical equipment prior to October 23, 1999, and who does not otherwise qualify for licensure herein, shall be issued a limited elevator mechanic's license commensurate with their prior, verifiable work experience if they comply with the following:

(a) Makes appropriate application; and  
(b) Pays applicable fees as prescribed under OAR 918-400-0800.

(2) The following shall not be used to determine prior experience;

(a) Work on equipment not regulated by the Elevator Safety Law unless such prior experience is considered to be transferable experience gained prior to October 23, 1999;

(b) The installation, alteration, repair or maintenance of equipment installed in Oregon that was not lawfully permitted as required by the Elevator Safety Law;

(c) Work in Oregon while employed by a company not lawfully licensed as an elevator contractor in Oregon, or not lawfully registered with the Construction Contractors Board; or

(d) Experience gained in violation of any other state law.

(3) Experience gained shall be considered based on the following. Applicants must have been regularly engaged in the installation, alteration, repair or maintenance on the type, or types, of equipment commensurate with the license being sought based on:

(a) Minimum of 4,000 hours "substantial experience" lawfully obtained on equipment covered by a limited elevator mechanic's license;

(b) "Substantial experience," for purposes of this rule, must be verified evidence in the form of two separate notarized affidavits. One from an Oregon business attesting the person has been involved in 40 or more elevator projects and one from a CPA attesting that the business had at least \$75,000 of gross business prior to October 23, 1999.

(4) A license under this rule shall be limited to the scope of work for which the person has provided work experience acceptable to the division.

(5) This license expires on October 1 no later than three years after the date of issuance.

Stat. Auth.: ORS 460.057 & ORS 460.085  
Stats. Implemented: ORS 460.005 - ORS 460.175  
Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-400-0385

### Elevator Apprentice License

(1) Apprentices shall meet the following minimum requirements:

(a) Be 17 years of age to apply, 18 years of age to indenture;  
(b) Have a high school diploma, GED or international equivalency;

and

(c) Shall be licensed;

(2) Apprentice license:

(a) Shall be issued to individuals enrolled in registered apprenticeship programs approved by the board and the Oregon State Apprenticeship and Training Council under ORS chapter 660;

(b) Will be suspended upon completion or termination from an approved apprentice program.

Stat. Auth.: ORS 460.057 & ORS 460.085  
Stats. Implemented: ORS 460.005 - ORS 460.175  
Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-400-0390

### Apprentice Scope of Work

A person with an apprentice license issued under OAR 918-400-0385 shall:

(1) Work consistent with the committee's requirements under ORS chapter 660 and these rules; and

(2) Engage only in cleaning, lubrication, painting, relamping fixtures and replacing of comb plate teeth of existing installations with limited supervision after completing:

(a) At least 2,000 hours (12 months) of work experience;  
(b) The appropriate related instruction for two periods; and  
(c) Is evaluated and authorized to do this type of work by the apprenticeship committee; or

(3) The apprentice engages only in installation, alteration, maintenance and repair with limited supervision after completing:

(a) 4,000 hours of work experience;  
(b) The appropriate related classroom instruction; and  
(c) Is evaluated and authorized by the committee.

(4) As apprentices progress through each phase, they may be authorized to participate in work processes of the preceding phase provided they have been evaluated and authorized by the apprenticeship committee to do the specific type of work.

(5) A person enrolled in a board-approved apprenticeship program, who has been issued an apprentice card by BOLI, shall be considered licensed under ORS 460.059.

Stat. Auth.: ORS 460.059 & ORS 660  
Stats. Implemented: ORS 460.005 - ORS 460.175 & ORS 479.630  
Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-400-0395

### Apprenticeship Program Requirements

In order to obtain board approval of an individual elevator apprentice program, the following requirements must be met:

(1) On-the-job training installing, repairing, altering and maintaining elevator mechanical equipment in the following work categories and minimum hours:

(a) Basic construction and maintenance safety and tools — 150 hours;  
(b) Blue print reading — 150 hours;  
(c) Material handling — hoisting and rigging — 150 hours;  
(d) Guide rail systems installation and maintenance — 150 hours;  
(e) Drive machines and systems; overhead equipment including beams and sheaves — 150 hours;  
(f) Hydraulic systems and control valves — 150 hours;  
(g) Car frames, platforms and enclosures — 150 hours;  
(h) Doors, entrances and operators — 150 hours;  
(i) Adjusting elevator systems — 150 hours;  
(j) Maintenance and periodic testing requirements — 150 hours;  
(k) Alteration of existing equipment — 150 hours;

(l) Structure and operation of escalators and moving walks — 150 hours; and

# ADMINISTRATIVE RULES

(m) Installing related equipment such as dumbwaiters, wheelchair lifts and material lifts — 150 hours; and

(n) Total Hours Required. Total work experience shall be at least 4,000 hours. No more than 300 percent credit shall be allowed under subjects (a) through (m) for any one subject.

(2) Required Educational Training. 144 hours of classroom instruction must be provided each year covering the following subjects. Individuals are required to obtain grades of “C” or better in graded classes and a “pass” in non-graded classes.

- (a) Basic construction and maintenance safety;
- (b) Blueprint reading;
- (c) Code-related requirements;
- (d) Equipment testing procedures;
- (e) Guide rail systems installation and maintenance;
- (f) Pit equipment and maintenance;
- (g) Car frames, platforms and enclosures;
- (h) Hoisting and rigging;
- (i) Overhead equipment including beams and sheaves;
- (j) Hoist ropes and roping procedures;
- (k) Structure and operation of escalators and moving walks;
- (l) Drive machines and components;
- (m) Hydraulic systems and control valves; and
- (n) Traction machines and components.

Stat. Auth.: ORS 460.059

Stats. Implemented: ORS 460.005 - ORS 460.175 & ORS 479.630

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

## 918-400-0800

### Fees

(1) Subject to section (2) of this rule, the following elevator fees are adopted under ORS 460.165:

- (a) Elevator contractor's license, \$195;
- (b) Plan reviews, \$78;
- (c) Inspections of:

(A) Dumbwaiters, sidewalk elevators, residential elevators, residential incliners or subveyors, \$52;

(B) Escalators, lowerators, manlifts, stagelifts, inclined elevators, platform hoists or moving walks, \$78;

(C) Power-driven elevators with a four-floor rise or under, \$78;

(D) Power-driven elevators with over a four-floor rise, but under a 10-floor rise, \$98;

(E) Power-driven elevators with over 10-floor rise, but under 20-floor rise, \$124;

(F) Power-driven elevators with a 20-floor rise or over, \$147;

(d) Call-back inspections on a mechanism in section (3)(a) through (f) of this rule made by request or in continued existence of a defect, \$52;

(e) Special inspections, \$55 per hour;

(f) Report processing fee, \$20;

(g) Installation or alteration of an elevator, if the total cost of the installation or alteration, other than the inspection fee, is:

(A) \$1,000 or under — \$98;

(B) \$1,001 to \$14,999 — \$98, plus \$13 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$1,000;

(C) \$15,000 to \$49,999 — \$280, plus \$8 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$15,000;

(D) \$50,000 or over — \$553, plus \$3 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$50,000.

(2) Elevator alterations.

(a) No fee shall be charged when an alteration is limited to fixture upgrades to meet state-adopted accessibility standards;

(b) No fee shall be charged where the alteration is limited to the car interior upgrades that do not alter the gross weight of the car more than five percent;

(c) When a group of elevators under common group control is proposed for an upgrade, and the same upgrade is proposed for all cars in the group, the inspection fee shall be the contract valuation for the entire elevator upgrade project rather than the higher separate inspection fee for each elevator in the group; and

(d) Where the upgrade for a group of elevators is not identical for each elevator, the fees shall be calculated separately based on the contract valuation for each elevator.

(3) Plan Review Fees. Where a complete set of drawings shows all elevators affected by the proposed installation or alteration, only one plan review fee shall be required rather than a separate fee for each elevator.

(4) The following fees shall apply to licenses issued under OAR 918-400-0333 and 918-400-0380:

(a) License application, \$15;

(b) Limited Elevator Mechanic's license, \$60;

(c) The fees for the licenses issued herein shall be prorated to the nearest \$20 amount based on the date of issue with respect to the date of expiration: 0-12 months \$20; 12-24 months \$40; 24-36 months \$60.

(5) All fees required by section (1) of this rule shall double if not paid within 90 days as provided for in ORS 460.165(7).

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.165

Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0030; BCA 21-1991(Temp), f. 6-14-91, cert. ef. 7-1-91 thru 12-27-91; BCA 29-1991, f. & cert. ef. 8-30-91; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0050; BCD 11-1996(Temp), f. & cert. ef. 7-1-96; BCD 27-1996, f. & cert. ef. 12-4-96; BCD 10-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 25-1998, f. 12-22-98, cert. ef. 12-27-98; BCD 13-1999, f. & cert. ef. 10-1-99; BCD 14-2000(Temp), f. 7-20-00, cert. ef. 8-1-00 thru 1-27-01; BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03

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**Adm. Order No.:** BCD 35-2002

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 10-1-02

**Rules Adopted:** 918-001-0036

**Rules Repealed:** 918-008-0100, 918-090-0900, 918-225-0760, 918-307-0000, 918-400-0780, 918-650-0085, 918-785-0030

**Subject:** Implements House Bill 2153, which created consistent compliance provisions for all specialty codes.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 918-001-0036

### Guidelines for Civil Penalties

(1) Scope and Authority. This rule sets guidelines for assessing a civil penalty under ORS 455.895.

(2) Definitions. For the purposes of this rule:

(a) “Continuing offense” or “continuing violation” means violation of a code, rule or law on one or more additional days after having been notified that the act in question, or failure to act, is a violation. An additional day is any day, other than the first day, an offense takes place.

(b) “Pattern of violation” means two or more prior violations during any three-year period of any provision of ORS Chapter 446, 447, 455, 460, 479, 480 or 693, or the state building code as defined in ORS 455.010, whether or not a penalty was assessed.

(c) “Egregious Act,” for purposes other than plumbing violations found by the State Plumbing Board, means:

(A) An act resulting in an unsafe installation and/or imminent health and safety hazard, structural or financial damage;

(B) A violation of a previous order;

(C) Directly employing, allowing or permitting an unlicensed individual to perform work; or

(D) Performing or engaging in work that requires a license.

(d) “Egregious Act,” for the purposes of plumbing violations found by the State Plumbing Board, means:

(A) An act resulting in an unsafe installation and/or imminent health and safety hazard, structural or financial damage;

(B) A violation of a previous order;

(C) Allowing or permitting an unlicensed individual to perform work; or

(D) Performing or engaging in work that requires a license.

(e) A licensed person or contractor who has committed an egregious act may have their license, registration or certificate suspended or revoked. For the purposes of civil penalty assessments, there is no time limit on egregious acts.

(3) A board or the administrator may take into account any appropriate factors in determining the penalty amount or conditions within an order.

(4) Civil penalties may be assessed in addition to, or in lieu of, the suspension or revocation of a license, certificate of competency or similar authority issued by the division.

(5) Procedures:

(a) Civil penalties shall be assessed by a board, the administrator or a board's designee acting as agent for a board.

(b) The division shall, subject to approval of a board, adopt a penalty matrix to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

# ADMINISTRATIVE RULES

(c) If a dispute concerning the application of the state building code as defined in ORS 455.010 is appealed to a local appeals board, to a board under ORS 455.690 or to the program chief under ORS 455.475:

(A) No civil penalty shall be sought or assessed for violation of the code provision that was appealed, until after the appeal or interpretation is resolved, and if corrections are necessary, they are made within 30 calendar days or the time frame established in the appeal or in the interpretation process.

(B) Notwithstanding an administrative appeal, civil penalties can be brought or assessed for failure to obtain a permit if the issues on appeal do not involve the question of whether a permit was necessary.

(C) The obligation is on the person charged, or about to be charged, with a violation to advise of an appeal under this subsection.

(D) The division shall adopt and review the division's operating procedures with a board to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

(6) Violations of ORS Chapters 446, 447 and 479 and ORS 455.020(2) and 455.610, wherein defects are noted by an inspector in an element of assembly or construction, shall not be considered a violation of this section if the violation is corrected and an inspection request made in 20 calendar days unless extended in writing by the building official.

(7) The Building Codes Division shall forward a copy of final orders to the Construction Contractors Board.

Stat. Auth.: ORS 455.895

Stats. Implemented: ORS 455.895

Hist.: BCD 35-2002, f. 12-31-02, cert. ef. 1-1-03

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**Adm. Order No.:** BCD 36-2002

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**Rules Amended:** 918-308-0020, 918-308-0060, 918-308-0200, 918-308-0210

**Rules Repealed:** 918-308-0020(T), 918-308-0060(T), 918-308-0200(T), 918-308-0210(T)

**Subject:** Amends municipal administration delegation and oversight rules to remove date conflicts with the building inspection program administration rules.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 918-308-0020

### Check List for Application for Delegation of Electrical Program

A municipality seeking delegation or renewal of delegation of the electrical program shall:

(1) Comply with ORS 455.148 and 455.150; and

(2) If the municipality is applying for delegation for the first time, it shall file an application for delegation of the electrical program under the Electrical Delegation Rules. The application shall:

(a) Be filed by the governing body of the municipality by October 1 prior to the year for which delegation is sought;

(b) Be based on a resolution of the municipality formally authorizing the application, and representing if the application is granted, the municipality and all persons under it will comply with and be bound by the Electrical Delegation Rules;

(c) Include a proposed ordinance for administration and enforcement of the electrical program;

(d) Include an operating plan showing it meets the minimum standards for delegation in the Electrical Delegation Rules; and

(e) Note any differences in service or inspections from present services and inspections to be provided on delegation.

(3) If the municipality is requesting its first renewal, it shall file relevant amendments or updates to its initial application and note this is its first renewal application.

Stat. Auth.: ORS 479.855

Stats. Implemented: ORS 479.855

Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96;

Renumbered from 918-300-0130; BCD 28-2002(Temp), f. & cert. ef. 10-1-02 thru 3-29-03;

BCD 36-2002, f. 12-31-02, cert. ef. 1-1-03

## 918-308-0060

### Review and Approval Process

(1) The division shall, after review of the application, submit the application to the board for comments and recommendations and grant or deny the application, or seek clarification or corrections. If additional infor-

mation or technical corrections are necessary, comments may be provided and the municipality may be allowed to submit changes.

(2) If a complete and acceptable plan is not on file by January 1, the request for delegation shall be denied for that year. An extension may be granted if agreed to by the municipality, division and county involved, if the municipality is a city.

(3) If a municipality whose authority was previously revoked reapplies for delegation of the electrical program, it shall, in addition to its application, show how past deficiencies were corrected and how they will be prevented in the future.

(4) A new delegation of authority shall be provisional for a year. A municipality receiving a provisional delegation shall amend its application, if necessary, to reflect desired changes. If no amendments are filed by January 1, the prior application shall be used. The division shall make site visitations as necessary to inform itself of how the electrical program is being administered and how the operating plan is being followed and file its report with the application. Once the application is renewed no new applications are necessary unless the delegation is revoked or yielded by the municipality.

Stat. Auth.: ORS 479.855

Stats. Implemented: ORS 479.855

Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96;

Renumbered from 918-300-0170; BCD 28-2002(Temp), f. & cert. ef. 10-1-02 thru 3-29-03;

BCD 36-2002, f. 12-31-02, cert. ef. 1-1-03

## 918-308-0200

### Amendment of Plans by All Municipalities with Electrical Programs

All municipalities providing electrical inspections shall submit:

(1) Ordinance amendments and intended effective dates and change of electrical fees, regardless of whether fees are adopted by ordinance, at least 45 days prior to the adoptive date.

(2) Amendments and intended effective dates regarding the operating plan at least 30 days prior to implementation.

Stat. Auth.: ORS 479.855

Stats. Implemented: ORS 479.855

Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96;

Renumbered from 918-300-0410; BCD 28-2002(Temp), f. & cert. ef. 10-1-02 thru 3-29-03;

BCD 36-2002, f. 12-31-02, cert. ef. 1-1-03

## 918-308-0210

### Automatic Renewal

(1) A municipality finishing its first term of operations under its delegation must reapply for delegation the second term as provided in the Electrical Delegation Rules.

(2) Subject to OAR 918-020-0070 through 918-020-0220, once a municipality receives a renewal of delegation when it provides subsequent timely notice prior to January 1 as required by ORS 455.148 and 455.150, the electrical delegation is continued without further action by the division, unless during the interim the division revokes the delegation.

Stat. Auth.: ORS 479.855

Stats. Implemented: ORS 479.855

Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96;

Renumbered from 918-300-0420; BCD 28-2002(Temp), f. & cert. ef. 10-1-02 thru 3-29-03;

BCD 36-2002, f. 12-31-02, cert. ef. 1-1-03

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**Adm. Order No.:** BCD 1-2003(Temp)

**Filed with Sec. of State:** 1-10-2003

**Certified to be Effective:** 1-10-03 thru 3-31-03

**Notice Publication Date:**

**Rules Amended:** 918-480-0010

**Subject:** Reinstates code sections adopted April 1, 2002, inadvertently deleted with the filing of rule amendment effective January 1, 2003.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

## 918-480-0010

### Amendments to the One and Two Family Dwelling Specialty Code

(1) The **One and Two Family Dwelling Specialty Code** is generally readopted every three years coinciding with the national adoption of a nationally recognized **Dwelling Code** and other referenced supporting nationally recognized codes pursuant to chapter 918, division 8. Amendments adopted are placed in this rule, showing the division reference, the date the board took formal action, a descriptive caption and a short description of the amendment. When the code is readopted, these amendments will be physically integrated into the new code and removed from rule.

(2) Effective April 1, 2000:

# ADMINISTRATIVE RULES

(a) The **1997 Edition of the Dwelling Requirements of the Uniform Plumbing Code** as published by the International Association of Plumbing and Mechanical Officials and amended by the division are adopted as the plumbing provisions of the **2000 One and Two Family Dwelling Specialty Code**; and

(b) The electrical provisions in **Chapters 39, 40, 41, 42, 44, 45, 46 and 48** are amended to be consistent with the **2000 Electrical Specialty Code**.

(3) Effective January 1, 2001, **Section 403.1.5** is amended to clarify the placement of bolts in a sill plate.

(4) Effective April 1, 2001, the following sections are amended:

(a) **Section 104.1**, to clarify building officials' authority;

(b) **Section 111.1**, adding exceptions for frame-covered accessory buildings and mechanical equipment;

(c) **Section 117.2**, deleting duplicated language and allowing that seismic upgrades to existing buildings do not have to meet current code;

(d) **Section 202**, adding a definition for "membrane;"

(e) **Section 302.1**, clarifying fire separation requirements;

(f) **Section 302.3**, clarifying floodproofing requirements;

(g) **Section 314.2**, clarifying tread depth limitations;

(h) **Section 502.1.2**, clarifying use of tongue and groove lumber;

(i) **Section 602.10.1.4**, clarifying use of alternate braced panels;

(j) **Appendix Section C704.1 and C704.3**, updating references; and

(k) **Section E102.1**, limiting straw bale prescriptive requirements to single-family structures.

(5) Effective April 1, 2002, the following sections are amended:

(a) **Section 202**, amending definitions of "basement" and "story above grade" and adding new definitions for "cripple wall" and "story, first;"

(b) **Section 404.1.4**, adding language on reinforcement horizontal bars;

(c) **Table 602.3(1)**, amending braced wall panel sill plate fastening requirements;

(d) **Sections 602.9 and 602.9.1**, explaining limitations for cripple wall construction in three-story buildings;

(e) **Sections 602.10.1 and 602.10.2.1**, clarifying provisions pertaining to prescriptive wall bracing;

(f) **Section 602.10.2.2**, adding language on connection of interior braced wall to roof/ceiling assemblies;

(g) **Table 602.10**, clarifying prescriptive lateral bracing requirements;

(h) **Appendix Chapter C, Section C201**, adding definition of "vaulted ceiling;" and

(i) **Appendix Chapter C, Table C401.1(1)**, adding Path 10 and renumbering footnotes to put in logical order.

(6) Effective October 1, 2002, the installation of arc-fault circuit-interrupters in one- and two-family dwellings are required in accordance with the **2002 Oregon Electrical Specialty Code**. Adoption of the **International Residential Code** effective April 1, 2003, will nullify this section of rule.

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

Stat. Auth.: ORS 455.020, ORS 455.110, ORS 455.525 & ORS 455.610

Stats. Implemented: ORS 455.610

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCA 29-1993, f. 11-24-93, cert. ef. 12-1-93; BCD 6-1995, f. 3-31-95, cert. ef. 4-1-95; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 22-1996(Temp), f. 10-1-96, cert. ef. 10-4-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; Administrative Reformatting 1-19-98; BCD 3-1998, f. 1-29-98, cert. ef. 4-1-98; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2000, f. 1-14-00, cert. ef. 4-1-00; BCD 19-2000(Temp), f. & cert. ef. 8-15-00 thru 2-10-01; BCD 32-2000, f. 12-27-00, cert. ef. 1-1-01; BCD 3-2001, f. 2-9-01, cert. ef. 3-1-01; BCD 2-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 22-2002(Temp), f. 9-13-02, cert. ef. 10-1-02 thru 3-29-03; BCD 30-2002, f. 12-6-02, cert. ef. 1-1-03; BCD 1-2003(Temp), f. & cert. ef. 1-10-03 thru 3-31-03

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## Department of Consumer and Business Services, Insurance Division Chapter 836

**Adm. Order No.:** ID 25-2002

**Filed with Sec. of State:** 12-17-2002

**Certified to be Effective:** 6-1-03

**Notice Publication Date:** 8-1-02

**Rules Adopted:** 836-080-0425, 836-080-0430, 836-080-0432, 836-080-0435, 836-080-0440

**Subject:** These rules establish requirements for and restrictions on insurer's use of credit history and credit factors in insurance scores in connection with underwriting and rating for purposes of personal property and casualty insurance. The rules address required disclosures and notices, adverse actions based on use of credit history

or insurance scores, recalculation of scores, development of policies governing credit information, correction and review of credit information and other matters.

**Rules Coordinator:** Sue Munson—(503) 947-7272

### 836-080-0425

#### Applicability; Definitions

(1) OAR 836-080-0425 to 836-080-0440 apply to the following kinds of personal insurance:

(a) Private passenger automobile coverage;

(b) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners and renters coverage;

(b) Personal dwelling property coverage;

(c) Personal liability and theft coverage, including excess coverage; and

(d) Personal inland marine coverage.

(2) OAR 836-080-0425 to 836-080-0440 are effective on and after June 1, 2003.

(3) As used in OAR 836-080-0425 to 836-080-0440:

(a) "Adverse action" means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance.

(b) "Application" means an action by a prospective insured that, if accepted by the insurer, would establish a contract of insurance.

(c) "Consumer" means an individual policyholder or applicant for insurance.

(d) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on individuals for the purpose of furnishing consumer reports to third parties.

(e) "Credit history" means any written or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of serving as a factor in determining insurance premiums or eligibility for coverage.

(f) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model or other process that is based in whole or part on credit history.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.015 and 746.240

Hist.: ID 25-2002, f. 12-17-02, cert. ef. 6-1-03

### 836-080-0430

#### Disclosure of use of Credit History or Insurance Scores

(1) Before an insurer or its agent may obtain the credit history or insurance score of a consumer in response to a request by the consumer relating to insurance coverage, the insurer or agent shall notify the consumer that the insurer or agent will check the credit history or insurance score of the consumer. The notice may be oral, in writing or in the same medium as the medium in which communication between the consumer and the insurer or agent is conducted.

(2) An agent need provide only one notice under section (1) of this rule to a consumer for the inquiry or inquiries that the agent makes to one or more insurers in response to the request by the consumer.

(3) An insurer who uses credit histories or insurance scores for underwriting or rating coverage shall instruct each of its agents that before an agent may obtain a consumer's credit history or insurance score, the agent must notify the consumer that the consumer's credit history or insurance score of the consumer will be checked.

(4) An insurer that uses the credit history or insurance score of a consumer when considering the consumer's application for insurance must notify the consumer during the application process that the consumer may request a written statement describing its use of credit histories or insurance scores. The notice to the consumer may be either in writing or in the same medium as the medium in which the application is made. The statement must address the following items:

(a) Why the insurer uses credit history or insurance scores.

(b) How the insurer uses credit histories or insurance scores.

(c) How often the insurer reviews a consumer's credit information.

(d) What kinds of credit information are used by the insurer.

(e) Whether a consumer's lack of credit history will affect the insurer's consideration of an application.

(f) Where the consumer may go with questions.



# ADMINISTRATIVE RULES

(5) An insurer that uses a credit history or insurance score of a consumer in connection with renewal of the consumer's policy shall notify the consumer of that use when the insurer makes a renewal offer to the consumer. The notice shall also inform the consumer that the consumer may request a statement referred to in section (4) of this rule, describing the insurer's use of credit histories or insurance scores, prior to renewal of the insurance. If the insurer does not at least annually update the credit information in its renewal process, the insurer shall also inform the consumer in the notice that the consumer has a right annually to request that the insurer use current credit information in the renewal process and that the insurer, upon receiving such a request, will update the credit information used. This section does not apply when an insurer uses a credit history or insurance score of a consumer only at the inception of a policy.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 746.015 and 746.240  
Hist.: ID 25-2002, f. 12-17-02, cert. ef. 6-1-03

## 836-080-0432

### Adverse Action Grounded on use of Credit History or Insurance Score; Remedy

(1) When an insurer takes an adverse action against a consumer that is based in whole or in part upon a credit history or insurance score, the insurer shall provide the following to the consumer orally, in writing or electronically:

(a) A notice of the adverse action that summarizes the most significant reasons for the adverse action. The most significant reasons for purposes of this subsection need not exceed four, shall be in the order of decreasing importance and shall be specific. The notice shall be sufficiently clear and specific so that a consumer of reasonable intelligence can identify the basis for the insurer's decision. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary.

(b) A notice that gives the name, address and telephone number of the consumer reporting agency, including a toll-free telephone number established by the consumer reporting agency that gathered the information for the consumer's credit report.

(c) A statement that the consumer reporting agency referred to in subsection (b) of this section did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken.

(d) A notice of the consumer's right:

(A) To obtain a free copy of a consumer report on the consumer from the consumer reporting agency referred to in subsection (b) of this section, including the deadline, if any, for obtaining the copy; and

(B) To dispute with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the consumer reporting agency.

(2) The requirement under section (1) of this rule with respect to an adverse action:

(a) Needs to be satisfied when the adverse action is initially taken; and

(b) Must be satisfied for any subsequent adverse action owing to a change in the credit history or insurance score of the consumer.

(3) When a consumer disputes the accuracy or completeness of information in a consumer report and the dispute results in a change in the credit history or insurance score of the consumer that determined eligibility for coverage or resulted in higher premiums for the consumer:

(a) The insurer, upon request of the consumer, shall re-rate or reissue the policy retroactive to the effective date of the current policy term; and

(b) The policy as re-rated or reissued shall provide premiums and policy terms the consumer would have been eligible for if an accurate credit history or insurance score had been used.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 746.015 and 746.240  
Hist.: ID 25-2002, f. 12-17-02, cert. ef. 6-1-03

## 836-080-0435

### Policies Governing Credit Histories and Insurance Scores

(1) Each insurer that uses credit histories or insurance scores in the rating or underwriting, or both, of prospective applicants, applicants or policyholders shall establish a written policy that includes at least the following:

(a) An explanation of credit histories or insurance scores, or an explanation of both if the insurer uses both, and the insurer's standards governing their use.

(b) Rating and underwriting protocols, rules and instructions relating to credit histories or insurance scores. The protocols, rules and instructions

shall include an explanation of the insurer's consideration and treatment, for underwriting purposes and for rating purposes, of:

(A) A consumer for whom the insurer or provider of credit scoring information has found no credit records (a "no hit"), and whether the insurer may make exceptions.

(B) A consumer for whom the insurer or provider of credit history or insurance score information has found a credit record but insufficient credit activity for creating a credit score (a "no score"), and whether the insurer may make exceptions.

(2) Except as provided in this section, an insurer may not cancel or refuse to renew a policy on the basis, in whole or part, of the credit history of the consumer or the credit factors of the insurance score of the consumer. The prohibition in this section:

(a) Does not preclude an insurer's consideration of credit history as part of its cancellation or renewal process as long as the reason for the cancellation or refusal to renew is a valid underwriting standard that is independent of credit history;

(b) Does not apply with respect to the authority of an insurer to cancel:

(A) An automobile insurance policy or coverage when cancellation of the policy or coverage is allowed under ORS 742.562(2); or

(B) Insurance other than insurance to which subsection (a) of this section applies, if the insurance is issued pursuant to a binder, if the underwriting occurs after issuance and if the insurer cancels the insurance not later than the 60th day after the date of the binder; and

(c) Does not apply to an offer of placement with an affiliate insurer.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 746.015 and 746.240  
Hist.: ID 25-2002, f. 12-17-02, cert. ef. 6-1-03

## 836-080-0440

### Unfair Insurance Trade Practice

Violation of any provision of OAR 836-080-0425 to 836-080-0440 is an unfair trade practice for purposes of ORS 746.240.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 746.240  
Hist.: ID 25-2002, f. 12-17-02, cert. ef. 6-1-03

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

**Adm. Order No.:** WCD 1-2003(Temp)

**Filed with Sec. of State:** 1-15-2003

**Certified to be Effective:** 1-15-03 thru 7-13-03

**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 BAD-0991, DAC-2018, EAE-0535, FAA 9983, G93-5860 and IAC-5199.

**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).

A94-9455 As a result of the accepted left thumb laceration and reflex sympathetic dystrophy, the worker experiences a loss of function due to mild hypersensitivity and cold intolerance. The Director finds the loss of function, due to the cold intolerance in the left hand, similar to the loss associated with a Class 2 vascular impairment and assigns an impairment value of 15% of the left hand. See OAR 436-035-0110(6). The Director finds the loss of function, due to hypersensitivity in the left hand/forearm, similar to the loss of function experienced with less than normal sensation and assigns an impairment value of 19% of the left hand/forearm. See OAR

# ADMINISTRATIVE RULES

436-035-0110(1)(c). These values shall be combined with any other applicable impairment values for the involved left hand/forearm. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. A94-9455.

A98-1082 The worker suffered a transverse fracture of the left little finger which healed with shortening similar in length to an amputation at the DIP joint. The Director finds the loss of function, due to shortening in the left little finger, similar to an amputation resulting in a proportional loss of length and assigns a value of 50% for loss of length in the left little finger. This value shall be combined with any other applicable impairment values for the involved left little finger. The Director finds the loss of function, due to effective loss of opposition in the left thumb, similar to the loss of function in the thumb experienced with an amputation resulting in a proportional loss of length in the opposing digit and assigns an impairment value of 5% of the left thumb. This value shall be combined with any other applicable impairment values for the left thumb. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. A98-1082.

BAA-4505 Following a crush injury resulting in a fracture which healed with deformity, laceration and scarring of the right ring finger, the worker experiences severe hypersensitivity. The Director assigns a value of 50% for hypersensitivity for the right ring finger. This value shall be combined with any other applicable impairment values for the involved right ring finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. BAA-4505.

EAA-6555 The worker experiences a loss of function from cold intolerance resulting from the abrasion/contusion. The Director finds the loss of use and function of the hands due to cold intolerance similar to the loss associated with a Class 3 vascular impairment and assigns an impairment value of 35% of the left hand and 35% of the right hand. See OAR 436-035-0110(6). These values shall be combined with any other applicable impairment values for each hand. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. EAA-6555.

G97-5865 This worker has an accepted diastasis of the sacroiliac joint which is not addressed by the Standards. The Director adopts a 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. G97-5865.

H98-7207 The worker sustained an open left tibia fibular fracture resulting in multiple surgeries and the inability to reach neutral or zero subtalar position. This results in a reduction in subtalar inversion, equal to 26 degrees of retained inversion. The Director assigns an impairment value of 0.8% for inversion of the left subtalar joint. See OAR 436-035-0190(8). This value shall be added to any other ankle or subtalar range of motion loss and combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003 this rule applies only to WCD file no. H98-7207.

I92-7557 The worker sustained an osteochondral lesion of the left talus resulting in multiple surgeries and 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. The Director assigns an impairment value of 2.8% for plantar flexion of the left ankle. See OAR 436-035-0190(8). This value shall be added to any other ankle or subtalar range of motion loss and combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003 this rule applies only to WCD file no. I92-7557.

I95-6917 As a result of the accepted right long finger fracture/laceration, the worker developed right long finger sensation loss in the middle phalanx between the DIP joint and the PIP joint and cold intolerance. The Director finds the loss of function in the long finger, due to the sensation loss in the middle phalanx, to be similar to the loss of function experienced with less than normal sensation in the distal phalanx and assigns an impairment value of 13% of the right long finger. See OAR 436-035-0110(1)(c) The Director finds the loss of function, due to the cold intolerance, to be similar to the loss of function experienced with Raynaud's syndrome and assigns an impairment value of 35% of the right long finger. See OAR 436-035-0110(6). These values shall be combined with any other applicable impairment values for the right long finger. Notwithstanding OAR 436-035-0003 this rule applies only to WCD file no. I95-6917.

BAD-0991 Prior to becoming medically stationary in regards to his accepted conditions, this worker's claim qualified for closure. The worker was not medically stationary at the time of the medical arbiter examination. No major contributing cause denial had been issued and the parties did not consent to postpone the reconsideration proceeding. Similar to OAR 436-035-0007(5)(e), the Director assigns a value of zero for the unscheduled permanent partial disability award of 0% for the accepted low back strain.

Notwithstanding OAR 436-035-0003 this rule applies only to WCD file no. BAD-0991.

DAC-2018 As a result of the accepted amputation of the distal phalanx of the right index finger, the worker experiences a loss of function due to mild hypersensitivity. The Director finds the loss of function, due to hypersensitivity in half the distal phalanx of the right index finger, similar to the loss of function experienced with less than normal sensation and assigns an impairment value of 8% of the right index finger. See OAR 436-035-0110(1). This value shall be combined with any other applicable impairment values for the involved right index finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. DAC-2018.

EAE-0535 This worker has residual moderate instability of the metacarpal phalangeal joint of the left thumb due to a fracture and ulnar collateral ligament dysfunction. This impairment is not addressed by the Standards. The Director assigns a total value of 4.0% for moderate metacarpal phalangeal joint instability of the left thumb. This value shall be combined with any other applicable impairment values for the left thumb. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. EAE-0535.

FAA-9983 The worker sustained a significant right ankle sprain resulting in the inability to reach neutral or zero ankle position. This results in a reduction in plantar flexion, equal to 25 degrees of retained plantar flexion. The Director assigns an impairment value of 5.5% for plantar flexion of the right ankle. See OAR 436-035-0190(8). 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. FAA-9983.

G93-5860 The worker experiences a loss of function from temperature sensitivity, particularly cold intolerance resulting from burns and full thickness skin grafting on the dorsum of the fingers. The Director finds the loss of use and function of the fingers due to temperature sensitivity similar to the loss associated with a Class 3 vascular impairment and assigns an impairment value of 35% of the right index finger, 35% of the right middle finger, 35% of the right ring finger and 35% of the right little finger. See OAR 436-035-0110(6). These values shall be combined with any other applicable impairment values for each finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G93-5860.

IAC-5199 The worker experiences a loss of function from cold intolerance due to the fracture and laceration resulting in a near amputation of the left little finger. The Director finds the loss of use and function of the left little finger due to cold intolerance similar to the loss associated with a Class 3 vascular impairment and assigns an impairment value of 35% of the left little finger. See OAR 436-035-0110(6). These values shall be combined with any other applicable impairment values for the left little finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. IAC-5199.

Stat Auth.: ORS 656.726(4)

Stats Implemented: ORS 656.268(6) & ORS 656.726(4)(f)(C)

Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & ef. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & ef. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. ef. 6-29-93; WCD 5-1993(Temp), Case #164-3064, f. & cert. ef. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #164-3064, f. & cert. ef. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. ef. 5-26-94; WCD 6-1994(Temp), f. & cert. ef. 7-15-94; WCD 8-1994(Temp), f. & cert. ef. 8-31-94; WCD 11-1994(Temp), f. & cert. ef. 11-10-94; WCD 1-1995(Temp), f. & cert. ef. 1-26-95; WCD 2-1995(Temp), f. & cert. ef. 3-2-95; WCD 3-1995(Temp), f. & cert. ef. 4-13-95; WCD 4-1995(Temp), f. & cert. ef. 5-31-95; WCD 5-1995(Temp), f. & cert. ef. 7-11-95; WCD 14-1995(Temp), f. & cert. ef. 10-5-95; WCD 16-1995(Temp), f. & cert. ef. 11-2-95; WCD 19-1995(Temp), f. & cert. ef. 12-7-95; WCD 4-1996(Temp), f. & cert. ef. 2-1-96; WCD 11-1996(Temp), f. & cert. ef. 3-20-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996, f. 8-6-96, cert. ef. 8-7-96; WCD 22-1996(Temp), f. & cert. ef. 10-31-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-1997(Temp), f. & cert. ef. 1-15-97; WCD 3-1997(Temp), f. 3-12-97, cert. ef. 3-13-97; WCD 6-1997(Temp), f. & cert. ef. 5-14-97; WCD 12-1997(Temp), f. & cert. ef. 9-9-97; WCD 4-1998(Temp), f. & cert. ef. 3-31-98 thru 9-26-98; WCD 7-1998(Temp), f. 7-13-98, cert. ef. 7-15-98 thru 1-11-99; WCD 9-1998(Temp), f. & cert. ef. 10-15-98 thru 4-12-99; WCD 1-1999(Temp), f. 1-12-99, cert. ef. 1-15-99 thru 7-13-99; WCD 5-1999(Temp), f. & cert. ef. 4-15-99 thru 10-12-99; WCD 10-1999(Temp), f. & cert. ef. 7-15-99 thru 1-10-2000; WCD 12-1999(Temp), f. 10-14-99, cert. ef. 10-15-99 thru 4-12-00; WCD 1-2000(Temp), f. 1-12-00, cert. ef. 1-14-00 thru 7-12-00; WCD 5-2000(Temp), f. 4-13-00, cert. ef. 4-14-00 thru 10-10-00; WCD 7-2000(Temp), f. 7-14-00, cert. ef. 7-14-00 thru 1-9-01; WCD 8-2000(Temp), f. & cert. ef. 10-13-00 thru 4-10-01; WCD 1-2001(Temp), f. & cert. ef. 1-12-01 thru 7-10-01; WCD 3-2001(Temp), f. & cert. ef. 4-13-01 thru 10-9-01; WCD 6-2001(Temp), f. & cert. ef. 7-13-01 thru 1-8-02; WCD 9-2001(Temp), f. & cert. ef. 10-12-01 thru 4-9-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 5-2002(Temp), f. 4-12-02, cert. ef. 4-15-02 thru 10-11-02; WCD 8-2002(Temp), f. 7-12-02, cert. ef. 7-15-02 thru 1-10-03; WCD 11-2002(Temp), f. 10-11-02, cert. ef. 10-15-02 thru 4-12-03; WCD 1-2003(Temp), f. & cert. ef. 1-15-03 thru 7-13-03

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**Adm. Order No.:** WCD 2-2003  
**Filed with Sec. of State:** 1-15-2003

# ADMINISTRATIVE RULES

**Certified to be Effective:** 2-1-03

**Notice Publication Date:** 12-1-02

**Rules Amended:** 436-035-0001, 436-035-0003, 436-035-0005, 436-035-0007, 436-035-0010, 436-035-0030, 436-035-0040, 436-035-0050, 436-035-0060, 436-035-0070, 436-035-0075, 436-035-0080, 436-035-0100, 436-035-0110, 436-035-0150, 436-035-0160, 436-035-0170, 436-035-0190, 436-035-0200, 436-035-0220, 436-035-0230, 436-035-0250, 436-035-0260, 436-035-0270, 436-035-0280, 436-035-0300, 436-035-0310, 436-035-0320, 436-035-0330, 436-035-0340, 436-035-0360, 436-035-0370, 436-035-0390, 436-035-0395, 436-035-0420, 436-035-0430, 436-035-0440, 436-035-0500

**Subject:** These rules have been substantively amended following a periodic review to be more closely aligned with ORS Chapter 656 and to address some types of injury-caused permanent impairment not addressed by the existing disability rating standards. The amended rules:

- Define “regular work” as it is described in ORS 656.726(4)(f)(D)(i);
- Clarify the procedure for rating new or omitted conditions;
- Require findings of impairment by the attending physician for the purpose of claim closure;
- Clarify how to rate loss of strength;
- Require the physician to estimate impairment findings due to the compensable condition if the worker dies from causes unrelated to the illness or injury;
- Provide the straight leg raising validity test shall not be solely used to invalidate lumbar range of motion findings;
- Limits rating to the amputation or resection value of specified portions of the finger or thumb; no value is granted for loss of range of motion of the associated joint;
- Provide a value for dorsal or palmar deformity of the thumb;
- Require that multiple sensation losses in the hand, fingers, or thumb first be combined to obtain an overall sensation loss prior to combining with other impairment values;
- Provide criteria for rating hypersensitivity that results in loss of use in the hand (fingers, thumb, hand) and foot (foot, toes);
- Provide criteria for rating joint instability in the fingers, thumb, or hand;
- Provide criteria for rating lateral deviation or malalignment of the upper extremity;
- Provide for the rating of cold intolerance (in addition to Raynaud’s phenomenon);
- Require use of the largest ankylosis value for rating loss when the ankle joint is ankylosed in plantar flexion and dorsiflexion or when the subtalar joint is ankylosed in inversion and eversion; when both joints are ankylosed, rules require that values be summed;
- Provide for the rating of ankle injury that results in angulation (varus or valgus deformity);
- Provide a value for the foot/ankle if there is a diagnosis of Grade IV chondromalacia, extensive arthritis, or extensive degenerative joint disease if these conditions are accompanied by secondary strength loss, chronic effusion, or varus or valgus ankle deformity;
- Provide a value for rocker bottom deformity of the foot;
- Provide criteria for rating malalignment (rotational deformity) that affects the function of the entire leg;
- Provide a value for full thickness skin loss of the heel;
- Provide a value for strength loss to muscle(s) supplied by the L-2 spinal nerve root;
- Provide for the rating of loss of visual depth perception (stereopsis) consistent with *AMA Guides to the Evaluation of Permanent Impairment*;
- Allow use of a specific job analysis in lieu of the Dictionary of Occupational Titles for determining the specific vocational preparation value and base functional capacity;
- Emphasize the authority of the attending physician to describe the residual functional capacity;
- Clarify that the adaptability value in certain claims is determined by comparing the worker’s extent of overall unscheduled impairment

found in OAR 436-035-0320 through 436-035-0450 to the adaptability scale in OAR 436-035-0310;

- Provide a value for a repeat total shoulder replacement;
- Provide a value for diastasis of the sternum;
- Eliminate charts for the rating of spinal ranges of motion based on goniometer measurements;
- Provide a value for sacroiliac joint diastasis;
- Provide a value for alteration of taste perception;
- Require rating of partial motor loss on one or both sides of the face (in addition to complete loss);
- Require rating for disequilibrium, whether or not related to the vestibular mechanism;
- Provide for the rating of sexual dysfunction or impairment to reproductive organs consistent with the *AMA Guides to the Evaluation of Permanent Impairment*;
- Provide a value for anatomic loss or alteration of the gonads that results in a loss or alteration in the ability to produce and regulate the gonadal hormones.

Questions can be directed to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us

Rules are available on the Internet at [www.oregonwcd.org/docs/rules/rules.html](http://www.oregonwcd.org/docs/rules/rules.html)

For a copy of the rules, contact Workers’ Compensation Division, Publications at 503-947-7627, Fax 503-947-7630.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-035-0001

### Authority for Rules

These rules are promulgated under the Director’s authority contained in ORS 656.726(4).

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0003

### Applicability of Rules

(1) These rules apply to the rating of permanent disability pursuant to Chapter 656 and shall be applied to all claims closed on or after the effective date of these rules for workers medically stationary on or after June 7, 1995. Except for provisions in 1995 Or. Law, Chapter 332, for workers medically stationary prior to June 7, 1995, but on or after July 1, 1990, Administrative Order 93-056 shall apply to the rating of permanent disability. Except for provisions in 1995 Or. Law, Chapter 332, for workers medically stationary prior to July 1, 1990, Administrative Order 6-1988 shall apply to the rating of permanent disability.

(2) Except for provisions in 1995 Or. Law, Chapter 332, for workers medically stationary after July 1, 1990 and a request for reconsideration has been made pursuant to ORS 656.268, disability rating standards in effect on the date of issuance of the Determination Order or Notice of Closure and any relevant temporary rules adopted pursuant to ORS 656.726(4)(f)(C) shall apply.

(3) The provisions of OAR 436-035-0007(25)(b)(B), 436-035-0270(4) and 436-035-0310(6) and (8) apply to all claims closed on or after March 13, 1992, for workers medically stationary on or after June 1, 1990, where the rating for permanent disability is not final by operation of law.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268, ORS 656.273

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 1-1989(Temp), f. & cert. ef. 1-24-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1991(Temp), f. 9-13-91, cert. ef. 10-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 10-1992(Temp), f. & cert. ef. 6-1-92; WCD 15-1992, f. 11-20-92, cert. ef. 11-27-92; WCD 3-1993(Temp), f. & cert. ef. 6-17-93; WCD 13-1995(Temp), f. & cert. ef. 9-21-95; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 19-1996(Temp), f. & cert. ef. 8-19-1996; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0005

### Definitions

As used in OAR 436-035-0001 through 436-035-0500, unless the context requires otherwise:

(1) “Activities of Daily Living (ADL)” include, but are not limited to, the following personal activities required by an individual for continued well-being: eating/nutrition; self-care and personal hygiene; communica-

# ADMINISTRATIVE RULES

tion and cognitive functions; and physical activity, e.g., standing, walking, kneeling, hand functions, etc.

(2) "Ankylosis" means a bony fusion, fibrous union or arthrodesis of a joint. Ankylosis does not include pseudarthrosis or articular arthropathies.

(3) "Combined condition" means a preexisting condition and a compensable condition contribute to the worker's overall disability or need for treatment.

(4) "Date of Issuance", for purposes of these rules, means the mailing date of a Notice of Closure, Determination Order or Order on Reconsideration pursuant to ORS 656.268 and 656.283(7).

(5) "Direct medical sequela" means a condition which originates or stems from the compensable injury or disease that is clearly established medically. Disability from direct medical sequelae is rated in accordance with these rules and ORS 656.268(14). For example: The accepted condition is low back strain with herniated disc at L4-5. The worker develops permanent weakness in the leg and foot due to radiculopathy. The weakness is considered a "direct medical sequela" of the herniated disc.

(6) "Earning Capacity" means impairment as modified by age, education and adaptability.

(7) "Impairment" means a compensable, permanent loss of use or function of a body part/system related to the compensable condition, determined in accordance with these rules, OAR 436-010-0280 and ORS 656.726(4)(f)(C).

(8) "Irreversible findings" for the purposes of these rules are:

ARM  
Arm angulation  
Radial head resection  
Shortening  
EYE  
Enucleation  
Lens implant  
Lensectomy  
GONADAL  
Loss of gonads resulting in absence of, or an abnormally high, hormone level  
HAND  
Carpal bone fusion  
Carpal bone removal  
KIDNEY  
Nephrectomy  
LEG  
Knee angulation  
Length discrepancy  
Meniscectomy  
Patellectomy  
LUNG  
Lobectomy  
SHOULDER  
Acromioclavicular joint resection  
Clavicle resection  
SPINE  
Compression fractures  
Discectomy  
Laminectomy  
SPLEEN  
Splenectomy  
URINARY TRACT DIVERSION  
Cutaneous ureterostomy without intubation  
Nephrostomy or intubated ureterostomy  
Uretero-Intestinal  
OTHER  
Amputations/resections  
Ankylosed/fused joints  
Displaced pelvic fracture ("healed" with displacement)  
Loss of opposition  
Organ transplants (heart, lung, liver, kidney)  
Prosthetic joint replacements

(9) "Medical arbiter" means a physician(s) pursuant to ORS 656.005(12)(b)(A) appointed by the Director pursuant to OAR 436-010-0330.

(10) "Offset" means to reduce a current permanent partial disability award, or portions thereof, by a prior Oregon workers' compensation permanent partial disability award from a different claim.

(11) "Preponderance of medical evidence" or "opinion" does not necessarily mean the opinion supported by the greater number of documents or greater number of concurrences; rather it means the more probative and more reliable medical opinion based upon factors including, but not limited to, one or more of the following:

- (a) The most accurate history,
- (b) The most objective findings,
- (c) Sound medical principles or
- (d) Clear and concise reasoning.

(12) "Redetermination" means a reevaluation of disability pursuant to ORS 656.268(9), 656.273 and 656.325.

(13) "Scheduled disability" means a compensable permanent loss of use or function which results from injuries to those body parts listed in ORS 656.214(2)(a) through (4).

(14) "Social-vocational factors" means age, education and adaptability factors pursuant to ORS 656.726(4)(f)(A).

(15) "Superimposed condition" means a condition that arises after the compensable injury or disease which contributes to the worker's overall disability or need for treatment but is not the result of the original injury or disease. Disability from a superimposed condition is not rated. For example: The accepted condition is a low back strain. Two months after the injury, the worker becomes pregnant (non-work related). The pregnancy is considered a "superimposed condition."

(16) "Unscheduled disability" means the permanent loss of earning capacity due to a compensable condition as described in these rules, arising from those losses contemplated by ORS 656.214(5).

(17) As used in OAR 436-035-0270 through 436-035-0310, the following definitions shall apply unless the context requires otherwise:

(a) "Dictionary of Occupational Titles" or (DOT) means the publication of the same name by the U.S. Department of Labor, *Fourth Edition Revised 1991*.

(b) "Physician's release" means written notification, provided by the attending physician to the worker and the worker's employer or insurer, releasing the worker to work and describing any limitations the worker has.

(c) "Regular work" means the job the worker held at the time of injury.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0007

### General Principles

(1) Except for sections (4) and (5) of this rule, a worker is entitled to a value under these rules only for those findings of impairment that are permanent and were caused by the accepted compensable condition and direct medical sequel. Unrelated or noncompensable impairment findings shall be excluded and shall not be valued under these rules. Permanent total disability shall be determined pursuant to OAR 436-030-0055.

(2) Where a worker has a superimposed or unrelated condition, only disability due to the compensable condition shall be rated, provided the compensable condition is medically stationary and remains the major contributing cause of the overall condition. Then, apportionment is appropriate. Disability shall be determined as follows:

(a) The physician shall describe the current total overall findings of impairment. The physician shall describe the portion of those findings that are due to the compensable condition. Only the portion of those impairment findings that are due to the compensable condition shall receive a value.

Example: Compensable condition: Low back strain

Noncompensable condition: pregnancy (mid-term). The worker is released to regular work. In the closing examination, the physician describes range of motion findings and states that 60% of the range of motion loss is due to the compensable condition. Pursuant to these rules, the range of motion loss is valued at 10%.  $10\% \times .60$  equals 6% impairment due to the compensable condition.

(b) In claims for the hip, shoulder, spine, pelvis or abdomen, where a worker's adaptability factor (residual functional capacity) is affected by the compensable condition, the physician shall describe any loss of residual functional capacity due only to the compensable condition and only that portion shall receive a value.

(c) For unscheduled conditions other than those noted in subsection (2)(b) of this rule, adaptability shall be determined pursuant to OAR 436-035-0310(8) and (9) based on the physician's description of the portion of impairment due only to the compensable condition.

(d) Workers with an irreversible finding of impairment due to the compensable condition shall receive the full value awarded in these rules for the irreversible finding. This value is combined with impairment noted in subsection (a) of this section.

Example: Compensable condition: Low back strain with herniated disk at L5-S1 and discectomy.

Noncompensable condition: pregnancy (mid-term). The worker is released to regular work. In the closing examination, the physician describes range of motion findings and states that 60% of the range of motion loss is due to the compensable condition. Pursuant to these rules, the range of motion loss is valued at 10%.  $10\% \times .60$  equals 6%.

Discectomy at L5-S1 (irreversible finding) = 9% per these rules.

Combine 9% with 6% for a value of 14% impairment for the compensable condition.

(3) Where a worker has a prior award of permanent disability under Oregon workers' compensation law, disability shall be determined pursuant

# ADMINISTRATIVE RULES

to OAR 436-035-0007(6) (offset), rather than section (2) of this rule, for purposes of determining disability only as it pertains to multiple Oregon workers' compensation claims.

(4) Where a worker has a preexisting condition, the following applies:

(a) For purposes of these rules only, a prior Oregon workers' compensation claim is not considered a preexisting condition.

(b) In accordance with ORS 656.225, disability caused solely by a worker's preexisting condition shall be rated completely if work conditions or events were the major contributing cause of a pathological worsening of the preexisting physical condition or an actual worsening of the preexisting mental disorder. Apportionment of disability is not appropriate.

(c) Where a worker's compensable condition combines with a preexisting condition, pursuant to ORS 656.005(7), the current disability resulting from the total accepted combined condition shall be rated in accordance with these rules as long as the compensable condition remains the major contributing cause of the accepted combined condition, e.g., a major contributing cause denial has not been issued pursuant to ORS 656.262(7)(b). Apportionment of disability is not appropriate.

Example: (No apportionment):

Compensable condition (remains major contributing cause): Herniated disk L5-S1/diskectomy.

Preexisting condition: degenerative joint disease (spine).

Closing Exam ROM = 10%, (pursuant to these rules).

Surgery (Lumbar diskectomy) = 9%

Combine: 10% and 9% which equals 18% low back impairment due to this injury.

The worker is released to regular work. (Social/Vocational factoring equals zero.)

(5) If the compensable condition is no longer the major contributing cause of the combined or superimposed condition, and a major contributing cause denial has been issued, the following applies:

(a) When the worker's compensable condition is medically stationary and, upon examination, the findings of impairment related to the compensable condition would not overlap the findings of impairment related to the combined or superimposed condition, impairment shall be determined pursuant to the method in section (1) of this rule.

(b) When the worker's compensable and overall conditions are medically stationary, and upon examination, the findings of impairment related to the compensable condition would overlap the findings of impairment related to the combined or superimposed conditions, impairment shall be determined pursuant to the apportionment method in section (2) of this rule.

(c) When the worker's compensable condition is not medically stationary and, upon examination, the findings of impairment related to the compensable condition would not overlap the findings of impairment related to the combined or superimposed condition, the following applies:

(A) Impairment shall be established based on an examination in which the physician first describes the current findings regarding impairment due to the worker's compensable condition. Then the physician shall estimate the future likely portion of those findings that would be present at the anticipated time the worker's condition would become medically stationary. The value of the current findings shall be adjusted accordingly and only the portion of those current findings that are anticipated at the time of medically stationary status shall receive a value.

(B) When the compensable condition is to the shoulder, hip, spine, pelvis or abdomen, the physician shall estimate the worker's future likely residual functional capacity, pursuant to OAR 436-035-0310(3)(c) through (o), that would be due only to the compensable condition at the anticipated time the condition would become medically stationary. Only the portion due to the compensable condition at the time of medically stationary status shall receive a value.

(C) For an unscheduled compensable condition, other than those noted in paragraph (5)(c)(B) of this rule, adaptability shall be determined pursuant to OAR 436-035-0310(8) and (9) based on the physician's estimated likely impairment.

(d) When the worker's overall condition is not medically stationary and, upon examination, the findings of impairment related to the compensable condition would overlap the findings of impairment related to the combined or superimposed condition, the following applies:

(A) Impairment shall be established based on an examination in which the physician describes current overall findings regarding impairment considering the worker's overall condition. The physician shall then estimate the future likely portion of those findings that would be present at the anticipated time the worker's condition would become medically stationary. Next, the physician shall estimate the portion of those findings that would be due only to the compensable condition. The current overall value of the findings of impairment shall be adjusted accordingly and only the portion of those impairment findings that are anticipated at the time of medically stationary status and are due to the compensable condition shall receive a value.

Example: Accepted condition: Chronic lumbar strain.

Preexisting condition: Degenerative lumbar disk disease.

Major contributing cause denial has been issued for the pre-existing condition.

The compensable condition is not yet medically stationary.

In the closing examination, the physician describes the overall range of motion findings for the lumbar spine considering compensable and noncompensable conditions.

Pursuant to these rules, the overall range of motion loss is valued at 10%. The physician estimates the portion of impairment findings anticipated to be evident when the worker becomes medically stationary is 50% of the findings. Then the physician estimates the likely impairment findings that would be due only to the compensable condition as 60% (at the projected time of medically stationary status).

10% (total impairment findings) x .5 = 5% likely impairment due at anticipated time of medically stationary status. 5% likely impairment (at med. stat.) x 0.6 (due to the compensable injury) = 3% likely impairment due to the compensable condition at the time of medically stationary status.

(B) To estimate an adaptability factor when the unscheduled compensable condition is to the shoulder, hip, spine, pelvis or abdomen, the physician shall estimate the worker's future likely residual functional capacity pursuant to OAR 436-035-0310(3)(c) through (o), that would be due only to the compensable condition at the anticipated time of medically stationary status. Only the portion due to the compensable condition at the time of medically stationary status shall receive a value.

(C) For an unscheduled condition, other than those noted in paragraph (5)(d)(B) of this rule, adaptability shall be determined pursuant to OAR 436-035-0310(8) and (9) based on the physician's estimated likely impairment.

Example: The physician describes the impairment findings at the closing examination. The impairment findings are determined to equal an impairment value of 31% pursuant to paragraph (5)(d)(A) of this rule. A corresponding adaptability factor of 4 is determined in accordance with OAR 436-035-0310(8).

(e) Workers with an irreversible finding of impairment, due to the compensable condition, shall receive the full value awarded in these rules for the irreversible finding. This value shall then be combined with the portion of impairment findings that are anticipated at the time of medically stationary status and due to the compensable condition which shall be rated in accordance with subsection (2)(d) of this rule.

Example: Compensable Condition: Herniated disk with diskectomy L5-S1

Preexisting/noncompensable condition: Degenerative lumbar disk disease and chronic lumbar strain.

A major contributing cause denial has been issued for the preexisting conditions. The compensable condition is not yet medically stationary.

In the closing examination, the physician describes range of motion findings for the lumbar spine considering the compensable and noncompensable conditions. Pursuant to these rules, the range of motion loss is valued at 10%. The physician's estimated portion of the findings due at the anticipated time of medically stationary status is 50%. Then the physician's estimated likely impairment due to the compensable condition is 60%.

10% x .50 = 5% likely range of motion loss due at anticipated time of medically stationary status. 5% x .6 = 3% likely range of motion loss due to the compensable injury. Irreversible finding value: diskectomy L5-S1 = 9% (per these rules). Combine 9% and 3% = 12% likely permanent impairment due to the compensable condition at anticipated time of medically stationary status.

(6) If a worker has a prior award of permanent disability under Oregon Workers' Compensation Law, the award shall be considered in subsequent claims pursuant to ORS 656.222 and 656.214. For purposes of these rules only, a prior Oregon workers' compensation claim is not considered a preexisting condition.

(a) Before actually offsetting the prior award, a determination shall be made as to whether or not there is a preponderance of medical evidence or opinion establishing that disability from the prior injury or disease was still present on the date of the injury or disease of the claim being determined.

(A) If disability from the prior injury or disease was still present, an offset shall be applied consistent with subsections (b) and/or (c) of this section.

(B) If disability from the prior injury or disease was not still present, an offset shall not be applied.

(b) A worker is not entitled to be doubly compensated for a permanent loss of use or function for a scheduled body part which would have resulted from the current injury or disease but which has already been produced by an earlier injury or disease and had been compensated by a prior award. Only like body parts are to be offset, e.g., left leg to left leg, etc. A more distal body part award may be offset against a more proximal body part award (or vice versa) if there is a combined effect of impairment, e.g., a right forearm award may be offset against a right arm award. Only that portion of such loss which was not present prior to the current injury or disease shall be awarded. The following factors shall be considered when determining the extent of the current disability award:

(A) The worker's loss of use or function for the current disability under the standards;

(B) The conditions or findings of impairment from the prior awards which were still present just prior to the current claim; and

(C) The combined effect of the prior and current injuries (the overall impairment to a given body part).

## ADMINISTRATIVE RULES

(D) The prior disability award as compared to the current disability award.

(E) The award cannot exceed the amount due to the current injury prior to offset consideration.

(c) For unscheduled disability, a worker is not entitled to be doubly compensated for a permanent loss of earning capacity in an unscheduled body part which would have resulted from the current injury or disease but which had already been produced by an earlier injury or disease and had been compensated by a prior award. When considering impairment, awards for like body parts, systems or medical conditions are to be offset, e.g., low back to low back, psychological to psychological, etc. Social-vocational factors may be offset for different unscheduled body parts, systems or conditions. Only that portion of lost earning capacity not present prior to the current injury or disease shall be awarded. The following factors shall be considered when determining the extent of the current disability award:

(A) The worker's total loss of earning capacity for the current disability under the standards;

(B) The conditions or findings of impairment from prior awards which were still present just prior to the current claim;

(C) The worker's social-vocational factors which were still present just prior to the current claim; and

(D) The extent to which the current loss of earning capacity includes impairment and social-vocational factors from a prior injury or disease which were still present at the time of the current injury or disease. After considering and comparing the claims, any ratable permanent partial disability in the current claim for loss of earning capacity caused by the current injury or disease, (which would not have been present at the time of the current injury or disease) shall be granted.

(7) Except as otherwise required by these rules, methods used by the examiner for making findings of impairment shall be the methods described in the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Rev. 1990**, and shall be reported by the physician in the form and format required by these rules.

(8) Range of motion shall be measured using the goniometer as described in the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Edition (Revised), 1990**, except when measuring spinal range of motion; then an inclinometer must be used.

(9) When a claim has been reopened pursuant to ORS 656.273, the worker's compensable condition at the time of claim closure or reconsideration is compared with the worker's compensable condition as it existed at the time of the last award or arrangement of compensation for the compensable condition as it existed at the time of the last closure or reconsideration, whichever occurred most recently, to determine if there is an actual worsening of the worker's compensable condition.

(a) For purposes of this section, actual worsening shall be established by physician opinion substantiated by objective clinical findings, demonstrating a worsened medical condition at the time of the current claim closure compared with the worker's medical condition at the last award or arrangement of compensation for the compensable condition as it existed at the last claim closure or reconsideration, whichever occurred most recently.

(b) When an actual worsening of the worker's compensable condition occurs, the extent of permanent disability shall be redetermined. When an actual worsening of the worker's compensable condition does not occur, the extent of permanent disability shall not be redetermined, but shall remain unchanged.

(c) If a claim has compensable conditions which have actually worsened, the extent of permanent disability shall be redetermined. There shall be no redetermination for those conditions which are either unchanged or improved. In any case, the impairment value for those conditions not actually worsened shall continue to be the same impairment values that were established at the last arrangement of compensation.

(10) If newly accepted or omitted conditions have been included in the accepted conditions since the last arrangement of compensation, the extent of permanent disability shall be redetermined. There shall be no redetermination for those conditions which are either unchanged or improved. In any case, the impairment values for those conditions not actually worsened shall continue to be the same impairment values that were established at the last arrangement of compensation.

(11) When a worker ceases to be enrolled and actively engaged in training pursuant to ORS 656.268(9) and there is no accepted aggravation in the current open period, the worker is entitled to have the amount of unscheduled permanent disability for a compensable condition reevaluated under these rules. The reevaluation may increase, decrease or affirm the worker's unscheduled permanent disability award.

(12) When a worker ceases to be enrolled and actively engaged in training pursuant to ORS 656.268(9) and there is an accepted aggravation in the same open period, actual worsening shall be considered pursuant to these rules. If there is no actual worsening, the prior award may be reduced or affirmed.

(13) Except as provided by ORS 656.325 and 656.268(9), where a redetermination of permanent disability pursuant to ORS 656.273 results in an award that is less than the cumulative total of the worker's prior arrangements of compensation in the claim, the award shall not be reduced.

(14) Impairment findings made by a consulting physician or other medical providers (e.g. occupational or physical therapists) at the time of closure may be used to determine impairment if the worker's attending physician concurs with the findings as prescribed in OAR 436-010-0280.

(15) Impairment is established by the attending physician in accordance with ORS 656.245(2)(b)(B) and OAR 436-010-0280. On reconsideration, where a medical arbiter is used, impairment is established by the medical arbiter, except where a preponderance of the medical evidence demonstrates that different findings by the attending physician are more accurate and should be used.

(16) When rating disability, specific impairment findings, e.g., weakness, reduced range of motion, etc., are awarded in whole number increments. This may require rounding non-whole number percentages and contralateral comparison degrees of motion for given impairment findings before combining with any other applicable impairment value. The exception is for hearing and vision. Hearing and vision values are awarded in increments of hundredths.

(a) Except for subsection (b) of this section, before combining, the sum of the impairment values is rounded to the nearest whole number. For the decimal portion of the number, point 5 and above is rounded up, below point 5 is rounded down.

Example: [Example not included. See ED. NOTE.]

(17) When a joint is ankylosed in more than one direction or plane, use only the largest ankylosis value for rating the loss or only one of the values if they are identical. This value shall be granted in lieu of all other range of motion or ankylosis values for that joint.

(18) If there are impairment findings in two or more body parts in an extremity, the total impairment findings in the distal body part shall be converted to a value in the most proximal body part pursuant to the applicable conversion chart in these rules. This conversion shall be done prior to combining impairment values for the most proximal body part.

Example: [Example not included. See ED. NOTE.]

(19) Except as otherwise noted in these rules, impairment values to a given body part, area or system are combined according to the method outlined on pages 254-256 by the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. (Revised), 1990**, as follows:

(a) The combined value is obtained by inserting the values for A and B into the formula  $A + B (1.0 - A)$ . The larger of the two numbers is A and the smaller is B. The whole number percentages of impairment are converted to their decimal equivalents (e.g. 12% converts to .12; 3% converts to .03). The resulting percentage is rounded to a whole number (in accordance with 436-035-0007(16)). Upon combining the largest two percentages, the resulting percentage is combined with any lesser percentage(s) in descending order using the same formula until all percentages have been combined prior to performing further computations. After the calculations are completed, the decimal result is then converted back to a percentage equivalent.

Example:  $.12 + .03(1.0 - .12) = .12 + .03(.88) = .12 + .0264 = .1464 = 14.6 = 15$ .

Example: Impairment of the Wrist/Hand [Example not included. See ED. NOTE.]

(b) For unscheduled values, combining impairment values for a given body part, area or system must be done before combining with other unscheduled values.

Example: Low Back Impairment [Example not included. See ED. NOTE.]

(20) To determine impairment due to loss of strength, the 0 to 5 international grading system and 0 to 5 method as noted in the **AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. Revised, 1990** shall be used. The grade of strength shall be reported by the physician and assigned a percentage value from the table in subsection (a) of this section. The impairment value of the involved nerve shall be multiplied by this value. Grades identified as "++" or "--" shall be considered either a "+" or "--", respectively.

(a) The grading shall be valued as follows: [Example not included. See ED. NOTE.]

(b) When a physician reports a loss of strength with muscle action (e.g. flexion, extension, etc.) or when only the affected muscle(s) is identi-

# ADMINISTRATIVE RULES

fied, current anatomy texts or the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. (Revised), 1990, the 4th Ed., 1993, or the 5th Ed., 2001, may be referenced to identify the specific muscle(s), peripheral nerve(s) or spinal nerve root(s) involved.

(21) For muscles supplied (innervated) by the same nerve, the loss of strength shall be determined by averaging the percentages of impairment for each involved muscle to arrive at a single percentage of impairment for the involved nerve.

Example: Forearm [Example not included. See ED. NOTE.]

(22) When multiple nerves have impairment findings found pursuant to these rules, these impairment values shall first be combined for an overall loss of strength value before combining with other impairment values.

(23) The movement in a joint is measured in active degrees of motion. Impairment findings describing ranges of motion shall describe the maximum degree of motion for each direction of movement.

(a) Range of motion values for each direction in a single joint are first added, then combined with other impairment findings.

Example: Range of motion of elbow/Arm Impairment [Example not included. See ED. NOTE.]

(b) Range of motion values for multiple joints in a single body part (e.g. of a finger) are determined by finding the range of motion values for each joint (e.g. MCP, PIP, DIP) and combining those values for an overall loss of range of motion value. This value is then combined with other impairment values. Converting impairment values of digits to hand values shall be calculated in accordance with OAR 436-035-0070.

(24) The range of motion or laxity (instability) of an injured joint shall be compared to and valued proportionately to the contralateral body part except when the contralateral body part has a history of injury or disease or when either joint's range of motion is zero degrees or is ankylosed. The strength of an injured extremity, shoulder or hip shall be compared to and valued proportionately to the contralateral body part except when the contralateral body part has a history of injury or disease.

**Instability Example:**

The injured knee is reported to have severe instability of the anterior cruciate ligament. The standards grant an impairment value of 15% for severe instability of the anterior cruciate ligament.

The contralateral knee is reported to have mild instability of the anterior cruciate ligament. The standards grant an impairment value of 5% for mild instability of the anterior cruciate ligament.

A proportion is established by subtracting the contralateral instability of 5% from the 15% for the injured joint which = 10% impairment for the instability.

**Strength Example:**

The injured deltoid muscle is reported to have 3/5 strength. The Standards note 3/5 strength = 50%.

The contralateral deltoid muscle is reported to have 4+5 strength. The standards note 4+5 strength = 10%.

A proportion is established by subtracting the contralateral strength of 10% from the 50% for the injured arm which = 40%. This percentage is then used to determine the loss of strength for the injured deltoid.

**Range of Motion Examples:**

Flexion (knee): 80° retained on injured side, the contralateral joint flexes to 140°.

A proportion is established to determine the expected degrees of flexion since 140° has been established as normal for this worker.

One method of determining this proportion is:  $80/140 = X/150$ .

X = expected retained range of motion compared to the established norm of 150° upon which flexion is determined under these rules. X, in this case, equals 86°.

86° of retained flexion of the knee is calculated under these rules, after rounding, to 23% impairment.

Extension (knee): 35° retained on injured side, the contralateral joint extends to 15°. First, find the complement, i.e.,  $150 - 15 = 135$  (uninjured) and  $150 - 35 = 115$  (injured). Next, using the same method as for flexion,  $115/135 = X/150$ , or,  $X = 127.77$ . Then, revert back, so,  $150 - 127.77 = 22.23$  rounded to 22° for an impairment value of 9%.

(a) If the motion of the injured or contralateral joint exceeds the values for ranges of motion established under these rules, the values established under these rules shall be used to establish impairment.

(b) When the contralateral joint has a history of injury or disease, the findings of the injured joint shall be valued based upon the values established under these rules.

(25) If the worker dies due to causes unrelated to the accepted compensable conditions of the claim, the following applies:

(a) When all compensable conditions are medically stationary pursuant to OAR 436-030-0035 at the time of death, the following applies:

(A) Impairment findings, reported in accordance with OAR 436-010-0280, shall be rated pursuant to these rules.

(B) Impairment findings not reported according to the OAR 436-010-0280 shall be determined based on the physician's estimation of those findings regarding impairment due to the worker's compensable condition.

(C) For unscheduled disability, age, education and adaptability shall be determined pursuant to OAR 436-035-0270 through 035-0310 if the findings are documented. If findings for determining adaptability are not documented, the physician shall estimate the likely residual functional

capacity, pursuant to OAR 436-035-0310(3)(c) through (o), due to the compensable condition, if the compensable condition is to the shoulder, hip, spine, pelvis or abdomen. If the compensable condition is other than the shoulder, hip, spine, pelvis or abdomen, adaptability shall be determined pursuant to OAR 436-035-0310(8) and (9) based on the physician's estimated likely impairment.

(b) When all compensable conditions are not medically stationary pursuant to OAR 436-030-0035 at the time of death, the following applies:

(A) Impairment shall be established based on the physician's estimation of those findings regarding impairment due to the worker's compensable condition that would still be present when the worker's condition would have become medically stationary. Those findings that are anticipated to have remained at the time of medically stationary status shall receive a value.

(B) For unscheduled disability, age and education factors shall be determined pursuant to OAR 436-035-0270 through 035-0310. Unless the worker is released to regular work and impairment only is rated pursuant to OAR 436-035-0270(3), the physician shall estimate the likely residual functional capacity, pursuant to OAR 436-035-0310(3)(c) through (o), due to the compensable condition, that would remain due to the compensable condition, if the compensable condition is to the shoulder, hip, spine, pelvis or abdomen. The estimated portion due to the compensable condition shall receive an adaptability value. If the compensable condition is other than the shoulder, hip, spine, pelvis or abdomen, adaptability shall be determined pursuant to OAR 436-035-0310(8) and (9) based on the physician's estimated likely impairment.

(c) In claims where there is a compensable unscheduled condition that is medically stationary AND a compensable unscheduled condition that is not medically stationary, the conditions shall be rated according to subsections (a) and (b) of this section, respectively. The adaptability factor shall be determined by comparing the adaptability values from subsections (a) and (b) of this section, and using the higher of the values for adaptability.

(d) Note: If the worker dies due to causes related to the accepted compensable conditions of the claim, the death benefits are due pursuant to ORS 656.204 and 656.208.

(26) Except for contralateral comparison determinations pursuant to OAR 436-035-0007(24), loss of opposition determination pursuant to OAR 436-035-0040, averaging muscle values pursuant to OAR 436-035-0007(21), and impairment determined under ORS 656.726(4)(f)(C), only impairment values listed in these rules are to be used in determining impairment. Prorating or interpolating between the listed values is not allowed. For findings that fall between the listed impairment values, the next higher appropriate value shall be used for rating.

(27) Values found in these rules consider the loss of use or function and/or loss of earning capacity directly associated with the compensable condition. When a worker's impairment findings do not meet the threshold (minimum) findings established in these rules, no value is granted.

(a) Not all surgical procedures result in loss of use or function and/or loss of earning capacity. Some surgical procedures improve the use and function of body parts, areas or systems or ultimately may contribute to an increase in earning capacity. Accordingly, not all surgical procedures receive a value under these rules.

(b) Not all medical conditions or diagnoses result in loss of use or function and/or loss of earning capacity. Accordingly, not all medical conditions or diagnoses receive a value under these rules.

(28) Waxing and waning of signs and/or symptoms related to a worker's compensable medical condition is already contemplated in the values provided in these rules. There is no additional value granted for the varying extent of waxing and waning of the condition. Waxing and waning means there is not an actual worsening of the condition pursuant to ORS 656.273.

(29) Validity shall be established for findings of impairment according to the criterion noted in the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Rev., 1990, unless the validity criterion for a particular finding is not addressed in this reference, is not pertinent to these rules, or is determined by physician opinion to be medically inappropriate for a particular worker. Upon examination, findings of impairment which are determined to be ratable pursuant to these rules shall be rated unless the physician determines the findings are invalid and provides a written opinion, based on sound medical principles, explaining why the findings are invalid. When findings are determined invalid, the findings shall receive a value of zero. If the validity criterion are not met but the physician determines the findings are valid, the physician must provide a written rationale, based on sound medical principles, explaining why the findings are valid. For purposes of this rule, the straight leg raising validity

# ADMINISTRATIVE RULES

ty test (SLR) shall not be the sole criteria used to invalidate lumbar range of motion findings.

(30) ORS 656.214 provides the degree values to be given for permanent partial disability awarded pursuant to ORS 656.268. For injuries sustained prior to January 1, 1992, the dollar values per degree established in ORS 656.214, Section 17, Chapter 332, Oregon Laws 1995 shall apply to any initial or additional permanent partial disability awarded on or after June 7, 1995. The dollar values per degree do not apply to any portion of a permanent partial disability award that is final by operation of law.

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

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

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, ORS 656.214, ORS 656.268, ORS 656.273 & ORS 656.726, Sec. 3

Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0010

### Standards for Rating Scheduled Permanent Disability

(1) OAR 436-035-0010 through 436-035-0260 describe the rating of permanent scheduled disability. All disability ratings in these rules shall be established on the basis of medical evidence that is supported by objective findings from the attending physician or as provided in OAR 436-035-0007.

(2) Scheduled disability is rated on the permanent loss of use or function of a body part due to an accepted compensable, consequential, combined condition (pursuant to these rules) and any direct medical sequelae. Except for impairment determined pursuant to ORS 656.726(4)(f)(C), these losses, as defined and used in these standards, shall be the sole criteria for the rating of permanent scheduled disability under these rules.

(3) Pain is valued in these rules to the extent it results in objective measurable impairment. If there is no measurable impairment under these rules, no award of scheduled permanent partial disability is allowed.

(4) The total disability rating for a body part cannot be more than 100% of the body part which has impairment.

(5) A worker is entitled to a 5% scheduled chronic condition impairment value for each applicable body part, stated in this section, when a preponderance of medical opinion establishes that, due to a chronic and permanent medical condition, the worker is significantly limited in the repetitive use of one or more of the following four body parts:

- (a) Lower leg (below knee/foot/ankle);
- (b) Upper leg (knee and above);
- (c) Forearm (below elbow/hand/wrist); and/or
- (d) Arm (elbow and above).

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0030

### Amputations Involving the Thumb, Fingers, Hand, or Arm

(1) Loss of the arm at or proximal to the elbow joint is 100% loss of the arm.

(2) Loss of the forearm at or proximal to the wrist joint is 100% loss of the forearm.

(3) Loss of the hand at the carpal bones is 100% loss of the hand.

(4) Loss of all or part of a metacarpal is rated at 10% of the hand

(5) Amputation or resection (without reattachment) proximal to the head of the proximal phalanx is 100% loss of the thumb. The ratings for other amputation(s) or resection(s) (without reattachment) of the thumb are as follows: Thumb Diagram

(6) Amputation or resection (without reattachment) proximal to the head of the proximal phalanx is 100% loss of the finger. The ratings for other amputation(s) or resection(s) (without reattachment) of the finger are as follows: Finger Diagram

(7) Oblique (angled) amputations shall be rated at the most proximal loss of bone.

(8) When a value is granted pursuant to sections (5) and (6) of this rule which includes a joint, no value for range of motion of this joint is granted in addition to the amputation value.

(9) Loss of length in a digit other than amputation or resection without reattachment (e.g. fractures, loss of soft tissue from infection, amputation or resection with reattachment, etc.) shall be rated by comparing the remaining overall length of the digit to the applicable amputation chart pursuant to these rules and rating the overall length equivalency.

[ED NOTE: Diagrams referenced in this rule are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCB 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0010, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0140; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0040

### Loss of Opposition in Thumb/Finger Amputations

(1) Loss of opposition is rated as a proportionate loss of use of the uninjured digits which can no longer be effectively opposed.

(a) For amputations which are not exactly at the joints, adjust the ratings in steps of 5%, increasing as the amputation gets closer to the attachment to the hand, decreasing to zero as it gets closer to the tip.

(b) When the value for loss of opposition is less than 5%, no value is granted.

(2) The following ratings apply to thumb amputations for loss of opposition:

(a) For thumb amputations at the interphalangeal level: [Rating not included. See ED. NOTE]

(b) For thumb amputations at the metacarpophalangeal level: [Rating not included. See ED. NOTE]

(3) The following ratings apply to finger amputations for loss of opposition. In every case, the opposing digit is the thumb: [Rating not included. See ED. NOTE]

(4) When determining loss of opposition due to loss of length in a digit, other than amputation or resection without reattachment, the value shall be established by comparing the remaining overall length of the digit to the applicable amputation chart pursuant to these rules and rated according to the overall length equivalency.

(5) If the injury is to one digit only and opposition loss is awarded for a second digit, do not convert the two digits to loss in the hand. Conversion to hand can take place only when more than one digit has impairment without considering opposition.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0150; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0050

### Thumb

(1) The following ratings are for loss of flexion at the interphalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(2) The following ratings are for loss of extension at the interphalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(3) The following ratings are for ankylosis of the interphalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(4) The following ratings are for loss of flexion at the metacarpophalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(5) The following ratings are for loss of extension at the metacarpophalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(6) The following ratings are for ankylosis of the metacarpophalangeal joint of the thumb: [Rating not included. See ED. NOTE]

(7) Rotational, lateral, dorsal, or palmar deformity of the thumb shall receive a value of 10% of the thumb.

(8) For losses in the carpometacarpal joint refer to OAR 436-035-0007.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0100, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0160; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996(Temp), f. 8-6-96, cert. ef. 8-7-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03



# ADMINISTRATIVE RULES

## 436-035-0060

### Finger

- (1) The following ratings are for loss of flexion at the distal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (2) The following ratings are for loss of extension at the distal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (3) The following ratings are for ankylosis in the distal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (4) The following ratings are for loss of flexion at the proximal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (5) The following ratings are for loss of extension at the proximal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (6) The following ratings are for ankylosis in the proximal interphalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (7) The following ratings are for loss of flexion at the metacarpophalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (8) The following ratings are for loss of extension at the metacarpophalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (9) The following ratings are for ankylosis in the metacarpophalangeal joint of any finger: [Rating not included. See ED. NOTE]
- (10) Rotational, lateral, dorsal, or palmar deformity of a finger shall receive a value of 10% for the finger.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0170; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0070

### Conversion of Thumb/Finger Values to Hand Value

(1) Loss of use of two or more digits shall be converted to a value for loss in the hand if the worker will receive more money for the conversion. At least two digits must have impairment other than loss of opposition to qualify for conversion to hand.

(2) When converting impairment values of digits to hand values, the applicable hand impairment is determined by rating the total impairment value in each digit in accordance with OAR 436-035-0007(23)(b), then converting the digit values to hand values, and then adding the converted values. Digit values between zero and one shall be rounded to one prior to conversion.

(3) The following table shall be used to convert loss in the thumb to loss in the hand: [Table not included. See ED. NOTE.]

(4) The following table shall be used to convert loss in the index finger to loss in the hand: [Table not included. See ED. NOTE.]

(5) The following table shall be used to convert loss in the middle finger to loss in the hand: [Table not included. See ED. NOTE.]

(6) The following table shall be used to convert loss in the ring finger to loss in the hand: [Table not included. See ED. NOTE.]

(7) The following table shall be used to convert loss in the little finger to loss in the hand: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0180; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0075

### Hand

(1) Pursuant to OAR 436-035-0020(3), the ratings in this section are hand values. Abduction and adduction of the carpometacarpal joint of the thumb are associated with the ability to extend and flex. This association has been taken into consideration in establishing the percentages of impairment.

(2) The following ratings are for loss of flexion (adduction) of the carpometacarpal joint of the thumb: [Rating not included. See ED. NOTE]

(3) The following ratings are for loss of extension (abduction) of the carpometacarpal joint of the thumb: [Rating not included. See ED. NOTE]

(4) The following ratings are for ankylosis of the carpometacarpal joint in flexion (adduction) of the thumb: [Rating not included. See ED. NOTE]

(5) The following ratings are for ankylosis of the carpometacarpal joint in extension (abduction) of the thumb: [Rating not included. See ED. NOTE]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0080

### Wrist

(1) The following ratings are for loss of (dorsiflexion) extension at the wrist joint: [Rating not included. See ED. NOTE]

(2) The following ratings are for (dorsiflexion) extension ankylosis in the wrist joint: [Rating not included. See ED. NOTE]

(3) The following ratings are for loss of (palmar) flexion in the wrist joint: [Rating not included. See ED. NOTE]

(4) The following ratings are for (palmar) flexion ankylosis in the wrist joint: [Rating not included. See ED. NOTE]

(5) The following ratings are for loss of radial deviation in the wrist joint: [Rating not included. See ED. NOTE]

(6) The following ratings are for radial deviation ankylosis in the wrist joint: [Rating not included. See ED. NOTE]

(7) The following ratings are for loss of ulnar deviation in the wrist joint: [Rating not included. See ED. NOTE]

(8) The following ratings are for ulnar deviation ankylosis in the wrist joint: [Rating not included. See ED. NOTE]

(9) Injuries which result in a loss of pronation or supination in the wrist joint shall be valued pursuant to OAR 436-035-0100(4).

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0520, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Amended 12-21-88 as WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0190; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0100

### Arm

(1) The following ratings are for loss of flexion in the elbow joint (150° describes the arm in full flexion): [Rating not included. See ED. NOTE]

(2) The following ratings are for loss of extension in the elbow joint (0° describes the arm in full extension): [Rating not included. See ED. NOTE]

(3) Ankylosis of the elbow in flexion or extension shall be rated as follows: [Rating not included. See ED. NOTE]

(4) The following ratings are for loss of pronation or supination in the elbow joint. If there are losses in both pronation and supination, rate each separately and add the values: [Rating not included. See ED. NOTE]

(5) Ankylosis of the elbow in pronation or supination will be rated as follows: [Rating not included. See ED. NOTE]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0525, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0210; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0110

### Other Upper Extremity Findings

(1) Loss of palmar sensation in the hand, finger(s), or thumb is rated according to the location and quality of the loss, and shall be measured by the two point discrimination method, as noted by the **AMA Guides, 3rd Ed. Rev., 1990**.

(a) If enough sensitivity remains to distinguish two pin pricks applied at the same time (two point), the following shall apply: [Rating not included. See ED. NOTE]

(b) In determining sensation findings for a digit which has been resected or amputated, the value shall be established by comparing the remaining overall length of the digit to the table in subsection (1)(c) of this rule and rating the length equivalency.

For Example: Amputation of 1/2 the middle phalanx of the index finger with total sensory loss extending from the level of amputation to the metacarpophalangeal joint, results in a value for 1/2 the digit or 33%.

(c) Loss of sensation in the finger(s) or thumb is rated as follows: [Rating not included. See ED. NOTE]

(d) If the level of the loss is less than 1/2 the distal phalanx or falls between the levels in subsection (c) of this section, rate at the next highest (or more proximal) level.

(e) Any portion of palmar sensation loss is rated as follows: [Rating not included. See ED. NOTE]

# ADMINISTRATIVE RULES

(f) Loss of sensation on the dorsal side of the hand, fingers or thumb is not considered a loss of function, so no value is allowed.

(g) Sensory loss in the forearm and/or arm is not considered a loss of function, therefore no value is allowed.

(h) When there are multiple losses of palmar sensation in a single body part (e.g. hand, finger(s), or thumb), the impairment values shall first be combined for an overall loss of sensation value for the individual digit or hand. This value is then combined with other impairment values for that digit or hand prior to conversion.

(i) Hypersensitivity resulting in a loss of use in the digits or palm, shall be valued utilizing the above loss of sensation tables. Mild hypersensitivity shall be valued at the equivalent impairment level as less than normal sensation, moderate hypersensitivity the equivalent of protective sensation loss, and severe hypersensitivity the equivalent of a total loss of sensation.

(2) When surgery or an injury results in arm length discrepancies involving the injured arm, the following values shall be allowed on the affected arm for the length discrepancy: [Values not included. See ED. NOTE]

(3) Joint instability in the finger(s), thumb, or hand shall be rated according to the body part affected: [Rating not included. See ED. NOTE]

(4) Lateral deviation or malalignment of the upper extremity is valued as follows:

(a) Increased lateral deviation at or above the elbow shall be determined as follows: [Rating not included. See ED. NOTE]

(b) Fracture resulting in malalignment, other than at or above the elbow, shall be determined as follows: [Rating not included. See ED. NOTE]

(5) Surgery on the upper extremity is valued as follows:

(a) Finger/Thumb Surgery. Finger Impairment [Rating not included. See ED. NOTE]

(b) Forearm/Hand Surgery. Forearm/Hand Impairment [Rating not included. See ED. NOTE]

(c) Arm Surgery. Arm Impairment [Rating not included. See ED. NOTE]

(6) Dermatological conditions, including burns, which are limited to the arm, forearm, hand, fingers, or thumb are rated according to the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g. a Class 1 dermatological condition of the thumb is 3% of the thumb, or a Class 1 dermatological condition of the hand is 3% of the hand, or a Class 1 dermatological condition of the arm is 3% of the arm. Contact dermatitis of an upper extremity is rated in this section unless it is an allergic systemic reaction, which is also rated pursuant to OAR 436-035-0450. Contact dermatitis for an unscheduled body part is rated pursuant to OAR 436-035-0440. Impairment is based on the following criteria:

(a) Class 1: 3% for the affected body part if there are signs and symptoms of a skin disorder and treatment results in no more than minimal limitation in the performance of activities of daily living, although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the affected body part if there are signs and symptoms of a skin disorder requiring intermittent treatment and prescribed examinations and the worker has some limitations in the performance of activities of daily living.

(c) Class 3: 38% for the affected body part if there are signs and symptoms of a skin disorder requiring regularly prescribed examinations, continuous treatments are required and the worker has many limitations in the performance of activities of daily living.

(d) Class 4: 68% for the affected body part if there are signs and symptoms of a skin disorder and continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of activities of daily living.

(e) Class 5: 90% for the affected body part if there are signs and symptoms of a skin disorder and continuous prescribed treatment is required. The treatment necessitates having the worker stay home or being permanently admitted to a care facility, and the worker has severe limitations in the performance of activities of daily living.

(7) Vascular dysfunction of the upper extremity is valued according to the affected body part, using the following classification table:

(a) Class 1: 3% for the affected body part if the worker experiences only transient edema; and on physical examination, the findings are limited to the following: loss of pulses, minimal loss of subcutaneous tissue of fingertips, calcification of arteries as detected by radiographic examination, asymptomatic dilation of arteries or veins (not requiring surgery and

resulting in curtailment of activity), or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs with exposure to temperatures below freezing (0° Centigrade).

(b) Class 2: 15% for the affected body part if the worker experiences intermittent pain with repetitive exertional activity; or there is persistent moderate edema incompletely controlled by elastic supports; or there are signs of vascular damage such as a healed stump of an amputated digit, with evidence of persistent vascular disease, or a healed ulcer; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 4° Centigrade.

(c) Class 3: 35% for the affected body part if the worker experiences intermittent pain with moderate upper extremity usage; or there is marked edema incompletely controlled by elastic supports; or there are signs of vascular damage such as a healed amputation of two or more digits, with evidence of persistent vascular disease, or superficial ulceration; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 10° Centigrade.

(d) Class 4: 63% for the affected body part if the worker experiences intermittent pain upon mild upper extremity usage; or there is marked edema that cannot be controlled by elastic supports; or there are signs of vascular damage such as an amputation at or above the wrist, with evidence of persistent vascular disease, or persistent widespread or deep ulceration involving one extremity; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 15° Centigrade.

(e) Class 5: 88% for the affected body part if the worker experiences constant and severe pain at rest; or there are signs of vascular damage involving more than one extremity such as amputation at or above the wrist, or amputation of all digits involving more than one extremity with evidence of persistent vascular disease, or persistent widespread deep ulceration involving more than one extremity; or cold intolerance such as Raynaud's phenomenon which results in a loss of use or function that occurs on exposure to temperatures below 20° Centigrade.

(f) If partial amputation of the affected body part occurs as a result of vascular disease, the impairment values shall be rated separately.

(8) Injuries to unilateral spinal nerve roots with resultant loss of strength in the arm, forearm or hand shall be determined according to the specific nerve root which supplies (innervates) the weakened muscle(s), as described in the following table and modified pursuant to OAR 436-035-0007(20):

(a) SPINAL NERVE ROOT Arm Impairment [Rating not included. See ED. NOTE]

(b) For loss of strength in bilateral extremities, each extremity shall be rated separately.

(9) Loss of strength in the arm, forearm or hand due to a peripheral nerve injury is rated based upon the specific peripheral nerve, which supplies (innervates) the weakened muscle(s), as described in the following table and as modified pursuant to OAR 436-035-0007(20).

Peripheral Nerve — Forearm Impairment
Median (above mid-forearm below elbow) 69%
Median (below mid-forearm) 44%
Radial (Musculospiral) 50%
(forearm with sparing of triceps)
Ulnar (above mid-forearm) 44%
Ulnar (below mid-forearm) 31%
Arm Impairment
Radial (upper arm with loss of triceps) 55%
Radial (triceps only) 25%
Musculocutaneous 25%

Example 1: A worker suffers a rupture of the biceps tendon. Upon recovery, the attending physician reports 4/5 strength of the biceps. The biceps is innervated by the musculocutaneous nerve which has a 25% impairment value. 4/5 strength, pursuant to OAR 436-035-0007(20), is 20%. Final impairment is determined by multiplying 25% by 20% for a final value of 5% impairment of the arm.

Example 2: A worker suffers a laceration of the median nerve below the mid-forearm. Upon recovery, the attending physician reports 3/5 strength in the forearm. The median nerve below the mid-forearm has a 44% impairment value. 3/5 strength, pursuant to OAR 436-035-0007(20), is 50%. Final impairment is determined by multiplying 44% by 50% for a final value of 22% impairment of the forearm.

(a) Valid loss of strength in the arm, forearm or hand, substantiated by clinical findings, shall be valued as if the peripheral nerve supplying (innervating) the affected muscle(s) was impaired, pursuant to this section. Loss of strength in a finger or thumb receives a value of zero.

(b) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(c) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

(10) Injuries to the brachial plexus which result in loss of strength in the upper extremity shall be determined according to the specific spinal nerve root supplying (innervating) the weakened muscle(s) as described in

# ADMINISTRATIVE RULES

OAR 436-035-0110(8) and as modified pursuant to OAR 436-035-0007(20).

(11) When loss of strength is present in an unscheduled body part, e.g. shoulder, refer to OAR 436-035-0330 for determination of the impairment of the unscheduled body part.

(12) For motor loss in any part of an arm which is due to brain or spinal cord damage, impairment shall be valued as follows:

(a) **Severity of Motor Loss — Arm Impairment**

Can use the involved extremity for self care, grasping, and holding but has difficulty with digital dexterity. 14%

Can use the involved extremity for self care, can grasp and hold objects with difficulty, but has no digital dexterity. 34%

Can use the involved extremity but has difficulty with self care activities. 55%

Cannot use the involved extremity for self care. 100%

(b) When a value is granted pursuant to subsection (a) of this section, additional impairment values are not allowed for weakness, chronic condition, or reduced range of motion in the same extremity.

(c) For bilateral extremity loss, each extremity shall be rated separately.

[ED. NOTE: Ratings and Values referenced are available from the agency.]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0530, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-1-9-88; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0220; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0150

### Great Toe

(1) The following ratings are for loss of plantarflexion in the interphalangeal joint of the great toe: [Rating not included. See ED. NOTE]

(2) The following ratings are for plantarflexion ankylosis of the interphalangeal joint of the great toe: [Rating not included. See ED. NOTE]

(3) The following ratings are for loss of dorsiflexion (extension) in the metatarsophalangeal joint of the great toe: [Rating not included. See ED. NOTE]

(4) The following ratings are for dorsiflexion (extension) ankylosis of the metatarsophalangeal joint of the great toe: [Rating not included. See ED. NOTE]

(5) The following ratings are for loss of plantarflexion in the metatarsophalangeal joint of the great toe: [Rating not included. See ED. NOTE]

(6) The following ratings are for plantar flexion ankylosis of the metatarsophalangeal joint of the great toe: [Rating not included. See ED. NOTE]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0537, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0260; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0160

### Second through Fifth Toes

(1) No rating is given for loss of motion in the distal interphalangeal joint of the second through fifth toes (to be referred to as toes), except in the case of ankylosis.

(2) Ankylosis in the distal interphalangeal joint of the toes is rated as follows: [Rating not included. See ED. NOTE]

(3) No rating is given for loss of motion in the proximal interphalangeal joint of the toes, except in the case of ankylosis.

(4) Ankylosis in the proximal interphalangeal joint of the toes is rated as follows: [Rating not included. See ED. NOTE]

(5) The following ratings are for loss of dorsiflexion (extension) in the metatarsophalangeal joints of the toes: [Rating not included. See ED. NOTE]

(6) The following ratings are for dorsiflexion (extension) ankylosis in the metatarsophalangeal joints of the toes: [Rating not included. See ED. NOTE]

(7) The following ratings are for loss of (plantar) flexion in the metatarsophalangeal joints of the toes: [Rating not included. See ED. NOTE]

(8) Plantarflexion ankylosis in the metatarsophalangeal joints of the toes is rated as follows: [Rating not included. See ED. NOTE]

(9) It is not possible to combine or add impairments affecting more than one toe. Each toe is rated individually.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0510, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0280; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0170

### Other Toe Findings

(1) Loss or alteration (e.g. hypersensitivity) of plantar sensation in the toes, including the great toe, is rated as follows:

(a) Toe Impairment. [Rating not included. See ED. NOTE]

(b) Loss or alteration of sensation in the toes in addition to loss or alteration of sensation in the foot is rated for the foot only, under OAR 436-035-0200(1); no additional value is allowed for loss or alteration of sensation in the toes.

(2) Toe joint surgery is rated as follows:

(a) In the great toe: [Rating not included. See ED. NOTE]

(b) In the second through fifth toes: [Rating not included. See ED. NOTE]

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0510, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0280; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0190

### Foot

(1) Ankylosis at the tarsometatarsal joints receives a rating of 10% of the foot for each of the tarsometatarsal joints ankylosed.

(2) The following ratings are for loss of subtalar inversion in the foot: [Rating not included. See ED. NOTE]

(3) The following ratings are for subtalar inversion (varus) ankylosis in the foot: [Rating not included. See ED. NOTE]

(4) The following ratings are for loss of subtalar eversion in the foot: [Rating not included. See ED. NOTE]

(5) The following ratings are for subtalar eversion (valgus) ankylosis in the foot: [Rating not included. See ED. NOTE]

(6) The following ratings are for loss of dorsiflexion (extension) in the ankle joint: [Rating not included. See ED. NOTE]

(7) The following ratings are for dorsiflexion (extension) ankylosis in the ankle joint: [Rating not included. See ED. NOTE]

(8) The following ratings are for loss of plantarflexion in the ankle joint: [Rating not included. See ED. NOTE]

(9) The following ratings are for plantarflexion ankylosis in the ankle joint: [Rating not included. See ED. NOTE]

(10) The following applies to determining impairment for loss of motion and/or ankylosis in the ankle and/or subtalar joint:

(a) If there is loss of motion only (no ankylosis in either joint) in the subtalar joint and/or the ankle joint, the following applies:

(A) The values for loss of motion in the subtalar joint are added;

(B) The values for loss of motion in the ankle joint are added;

(C) The value for loss of motion in the subtalar joint is added to the value for loss of motion in the ankle joint.

(b) If there is ankylosis in the ankle and/or subtalar joint, the following applies:

(A) When there is ankylosis in one joint only with no loss of motion or ankylosis in the other joint, that ankylosis value is granted.

(B) When there is loss of motion in one joint and ankylosis in the other joint, add the ankylosis value to the value for loss of motion in the non-ankylosed joint.

(C) When the ankle joint is ankylosed in plantar flexion and dorsiflexion, use only the largest ankylosis value for rating the loss or only one of the values if they are identical. Pursuant to OAR 436-035-0007(17), this ankylosis value shall be granted in lieu of all other range of motion or ankylosis values for the ankle joint.

(D) When the subtalar joint is ankylosed in inversion and eversion, use only the largest ankylosis value for rating the loss or only one of the values if they are identical. Pursuant to OAR 436-035-0007(17), this ankylosis value shall be granted in lieu of all other range of motion or ankylosis values for the subtalar joint.

# ADMINISTRATIVE RULES

(E) When both joints are ankylosed, add the ankle joint value to the subtalar joint value.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0524, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0310; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0200

### Other Foot Findings

(1) Loss or alteration (e.g. hypersensitivity) of plantar sensation in the foot is rated as follows: [Rating not included. See ED. NOTE]

(2) Loss or alteration of plantar sensation in the toes is rated pursuant to OAR 436-035-0170(1).

(3) Ankle joint instability due to a ligamentous injury shall be valued as follows:

(a) Ankle joint instability due to lateral collateral ligament damage:

[Rating not included. See ED. NOTE]

(b) Ankle joint instability due to medial collateral ligament damage:

[Rating not included. See ED. NOTE]

(c) Ankle joint instability with additional anterior and/or posterior instability shall receive an additional 10%.

(4) When injury in the ankle results in angulation, impairment values shall be determined according to the following:

(a) Varus deformity of the ankle greater than 15° is rated at 10% of the foot.

(b) Valgus deformity of the ankle greater than 20° is rated at 10% of the foot.

(5) A value of 5% of the foot shall be granted if there is a diagnosis of Grade IV chondromalacia, extensive arthritis or extensive degenerative joint disease and one or more of the following:

(a) Secondary strength loss;

(b) Chronic effusion;

(c) Varus or valgus deformity less than that specified in section (4) of this rule.

(6) Injury resulting in a rocker bottom deformity of the foot shall be valued at 14%.

(7) Where the objective medical evidence indicates severe injury to the foot/ankle has occurred (e.g. severe soft tissue crush injuries, calcaneal fractures, or post-traumatic avascular necrosis), the following applies:

(a) When objective medical evidence establishes the worker cannot walk and/or stand for a cumulative total of more than two hours in an 8-hour period, the award shall be 15% of the foot/ankle, except for (b) of this section.

(b) A worker who has a dermatological or vascular impairment value, Class II or higher, pursuant to OAR 436-035-0230(6) or (7) shall not be allowed an additional value pursuant to this section.

(c) When a worker qualifies to receive a value pursuant to OAR 436-035-0230(16) and a value pursuant to this section, only one of the two values is granted; the higher monetary value.

[ED. NOTE: Ratings referenced in this rule are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0524, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0310; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0220

### Leg

(1) The following ratings are for loss of flexion in the knee (150° describes the knee in full flexion): [Rating not included. See ED. NOTE]

(2) The following ratings are for loss of extension in the knee (0° describes the knee in full extension): [Rating not included. See ED. NOTE]

(3) Ankylosis of the knee in flexion or extension shall be rated as follows: [Rating not included. See ED. NOTE]

(4) The determination of loss of range of motion in the hip is valued in this section when there is no pelvic bone involvement. Loss associated with pelvic bone involvement is determined pursuant to OAR 436-035-0340.

(5) The following ratings are for loss of forward flexion in the hip: [Rating not included. See ED. NOTE]

(6) The following ratings are for loss of backward extension in the hip joint: [Rating not included. See ED. NOTE]

(7) The following ratings are for loss of abduction in the hip joint: [Rating not included. See ED. NOTE]

(8) The following ratings are for loss of adduction in the hip joint: [Rating not included. See ED. NOTE]

(9) The following ratings are for loss of internal rotation in the hip joint: [Rating not included. See ED. NOTE]

(10) The following ratings are for loss of external rotation in the hip joint: [Rating not included. See ED. NOTE]

(11) If there is an ankylosis in the hip joint, it must be rated as an unscheduled impairment, refer to OAR 436-035-0340.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0530, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0330; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0230

### Other Losses in the Leg or Foot

(1) Loss of sensation in the leg is not considered disabling except for the plantar surface of the foot. To determine this impairment value, refer to OAR 436-035-0200(1).

(2) The following ratings are for length discrepancies of the injured leg. However, loss of length due to flexion/extension deformities are excluded. The rating is the same whether the length change is a result of an injury to the foot or to the upper leg: [Ratings not included. See ED. NOTE.]

(3) Knee joint instability is valued utilizing the following table: [Table not included. See ED. NOTE.]

(a) Valid instability in the knee substantiated by clinical findings shall be valued pursuant to this section as if the ligament stabilizing the knee were injured.

(b) Values for more than one ligamentous injury are combined.

(c) Rotary instability is included in the impairment value(s) of this section.

(d) When there is a prosthetic knee replacement, instability of the knee shall not be rated unless the severity of the instability is equivalent to Grade 2 or greater.

(4) When injury in the knee results in angulation or malalignment, impairment values shall be determined according to the following:

(a) Varus deformity of the knee greater than 15° is rated at 10% of the leg.

(b) Valgus deformity of the knee greater than 20° is rated at 10% of the leg.

(c) Tibial shaft fracture resulting in malalignment (rotational deformity) affects the function of the entire leg and is rated as follows: [Ratings not included. See ED. NOTE.]

(5) The following values are for surgery of the leg and/or foot:

(a) Foot Surgery Foot/Ankle Impairment: [Values not included. See ED. NOTE.]

(b) Leg Surgery Leg Impairment: [Values not included. See ED. NOTE.]

(c) When rating a prosthetic knee replacement, a separate value for meniscectomy(s) and/or patellectomy for the same knee shall not be granted.

(d) In a meniscectomy where only the meniscal "rim" remains, the value shall be the same as a total meniscectomy.

(6) Dermatological conditions including burns which are limited to the leg or foot are rated according to the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g. a Class 1 dermatological condition of the foot is 3% of the foot, or a Class 1 dermatological condition of the leg is 3% of the leg. Contact dermatitis is determined under this section unless it is caused by an allergic systemic reaction which is also determined under OAR 436-035-0450. Contact dermatitis for an unscheduled body part is rated pursuant to OAR 436-035-0440. Impairment is determined based on the following criteria:

(a) Class 1: 3% for the leg or foot if there are signs and symptoms of a skin disorder and treatment results in no more than minimal limitations in the performance of the activities of daily living, although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the leg or foot if there are signs and symptoms of a skin disorder and treatments and prescribed examinations are required intermittently, and the worker has some limitations in the performance of activities of daily living.

# ADMINISTRATIVE RULES

(c) Class 3: 38% for the leg or foot if there are signs and symptoms of a skin disorder and regularly prescribed examinations and continuous treatments are required, and the worker has many limitations in the performance of activities of daily living.

(d) Class 4: 68% for the leg or foot if there are signs and symptoms of a skin disorder and continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of activities of daily living.

(e) Class 5: 90% for the leg or foot if there are signs and symptoms of a skin disorder and continuous prescribed treatment is required. The treatment necessitates having the worker stay home or permanently admitting the worker to a care facility, and the worker has severe limitations in the performance of activities of daily living.

(f) Full thickness skin loss of the heel shall be valued at 10% of the foot, even when the area is successfully covered with an appropriate skin graft.

(7) The following ratings are for vascular dysfunction of the leg. The impairment values are determined according to the following classifications:

(a) Class 1: 3% for the leg. Workers belong in Class 1 when any of the following exist:

- (A) Loss of pulses in the foot.
- (B) Minimal loss of subcutaneous tissue.
- (C) Calcification of the arteries (as revealed by x-ray).
- (D) Transient edema.

(b) Class 2: 15% for the leg. Workers belong in Class 2 when they suffer from any of the following:

(A) Limping due to intermittent claudication that occurs when walking at least 100 yards.

(B) Vascular damage, as evidenced by a healed painless stump of a single amputated toe, with evidence of chronic vascular dysfunction or a healed ulcer.

(C) Persistent moderate edema which is only partially controlled by support hose.

(c) Class 3: 35% for the leg. Workers belong in Class 3 when they suffer from any of the following:

(A) Limping due to intermittent claudication when walking as little as 25 yards and no more than 100 yards.

(B) Vascular damage, as evidenced by healed amputation stumps of two or more toes on one foot, with evidence of chronic vascular dysfunction or persistent superficial ulcers on one leg.

(C) Obvious severe edema which is only partially controlled by support hose.

(d) Class 4: 63% for the leg. Workers belong in Class 4 when they suffer from any of the following:

(A) Limping due to intermittent claudication after walking less than 25 yards.

(B) Intermittent Pain in the legs due to intermittent claudication when at rest.

(C) Vascular damage, as evidenced by amputation at or above the ankle on one leg, or amputation of two or more toes on both feet, with evidence of chronic vascular dysfunction or widespread or deep ulcers on one leg.

(D) Obvious severe edema which cannot be controlled with support hose.

(e) Class 5: 88% for the leg. Workers belong in Class 5 when they suffer from either of the following:

- (A) Constant severe pain due to claudication at rest.
- (B) Vascular damage, as evidenced by amputations at or above the ankles of both legs, or amputation of all toes on both feet, with evidence of persistent vascular dysfunction or of persistent, widespread, or deep ulcerations on both legs.

(f) If partial amputation of the lower extremity occurs as a result of vascular dysfunction, the impairment values shall be rated separately. The amputation value shall then be combined with the impairment value for the vascular dysfunction.

(8) Injuries to unilateral spinal nerve roots with resultant loss of strength in the leg or foot shall be determined according to the specific nerve root supplying (innervating) the weakened muscle(s), as described in the following table and modified pursuant to OAR 436-035-0007(20).

(a) SPINAL NERVE ROOT LEG IMPAIRMENT [Table not included. See ED. NOTE.]

(b) Loss of strength in bilateral extremities shall result in each extremity being rated separately.

(9) Loss of strength in the leg or foot due to peripheral nerve injury is determined according to the specific peripheral nerve supplying (innervating) the weakened muscle(s) as described in the following table and as modified pursuant to OAR 436-035-0007(20). [Table not included. See ED. NOTE.]

Example 1: A worker suffers a knee injury requiring surgery. Upon recovery, the attending physician reports 4/5 strength of the quadriceps femoris. The quadriceps femoris is innervated by the femoral nerve which has a 30% impairment value. 4/5 strength, pursuant to OAR 436-035-0007(20), is 20%. Final impairment is determined by multiplying 30% by 20% for a final value of 6% impairment of the leg.

Example 2: A worker suffers a laceration of the deep branch of the common peroneal nerve above mid-shin. Upon recovery, the attending physician reports 3/5 strength of the calf. The deep common peroneal above mid-shin has a 28% impairment value. Pursuant to OAR 436-035-0007(20), 3/5 strength is 50%. Impairment is determined by multiplying 28% by 50% for a final value of 14% impairment of the foot.

(10) Valid loss of strength in the leg or foot, substantiated by clinical findings, shall be valued pursuant to section (9) of this rule as if the nerve supplying (innervating) the affected muscle(s) was impaired. Loss of strength in a toe receives a value of zero.

(a) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(b) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

(11) Injuries to the lumbosacral plexus resulting in loss of strength shall be determined according to the specific spinal nerve root supplying (innervating) the weakened muscle as described in section (8) of this rule and as modified pursuant to OAR 436-035-0007(20).

(12) For motor loss to any part of a leg which is due to brain or spinal cord damage, impairment shall be valued as follows:

(a) Severity of Motor Loss Leg Impairment;

Worker can rise to a standing position and can walk but has difficulty with elevations, grades, steps and distances. 23%

Worker can rise to a standing position and can walk with difficulty but is limited to level surfaces. There is variability as to the distance the worker can walk. 48%

Worker can rise to a standing position and can maintain it with difficulty but cannot walk without assistance. 76%

Worker cannot stand without a prosthesis, the help of others, or mechanical support. 100%

(b) When a value is granted pursuant to subsection (a) of this section, additional impairment values in the same extremity are not allowed for weakness, reduced range of motion or limited ability to walk/stand for two hours or less.

(c) For bilateral extremity loss, each extremity shall be rated separately.

(13) A value of 5% of the leg shall be granted if there is a diagnosis of Grade IV chondromalacia, extensive arthritis or extensive degenerative joint disease and one or more of the following:

(a) Secondary strength loss;

(b) Chronic effusion;

(c) Varus or valgus deformity less than that specified in section (4) of this rule.

(14) For a diagnosis of degenerative joint disease, chondromalacia, or arthritis which does not meet the criteria noted in section (13) of this rule, the impairment shall be determined pursuant to the chronic condition rule (OAR 436-035-0010(5)) if the criteria in that rule is met.

(15) Other impairment values, e.g., weakness, chronic condition, reduced range of motion, etc., shall be combined with the value granted in section (13) of this rule.

(16) When there is an injury to the knee/leg and objective medical evidence establishes the worker cannot walk and/or stand for a cumulative total of more than two hours in an 8-hour period, the award shall be 15% of the knee/leg, except for:

(a) A worker who is entitled to receive an impairment value under section (13) of this rule (degenerative joint disease, arthritis or chondromalacia) shall be awarded 10% of the knee/leg, in lieu of the 15%.

(b) A worker who is entitled to receive a dermatological or vascular impairment value, Class II or higher, under section (6) or (7) of this rule shall not be allowed an additional value pursuant to this section.

(c) When a worker qualifies to receive a value pursuant to OAR 436-035-0200(7) and a value pursuant to this section, only one of the values is granted for limited standing or walking; the higher monetary value.

[ED. NOTE: Tables, Ratings & Values referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80.; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0532, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0340; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 10-1992(Temp), f. & cert. ef. 6-1-92; WCD 15-1992, f. 11-20-92, cert. ef. 11-27-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

# ADMINISTRATIVE RULES

## 436-035-0250

### Hearing Loss

(1) The following information shall be provided by the attending physician or reviewed and commented on by the attending physician, pursuant to OAR 436-035-0007(14) and (15), to value work-related hearing loss:

(a) A written record, history, examination, diagnosis, opinion, interpretation and a statement noting if further material improvement would reasonably be expected from medical treatment or the passage of time by a medical provider with specialty training or experience in evaluating hearing loss.

(b) The complete audiometric testing.

(2) Compensation may be given only for loss of normal hearing which results from an on-the-job injury or exposure. Unless the conditions have combined pursuant to OAR 436-035-0007(4), hearing loss which existed before this injury or exposure will be offset against hearing loss in the claim, if adequately documented by a baseline audiogram obtained within 180 days of assignment to a high noise environment.

(a) The offset will be done at the monaural percentage of impairment level.

(b) Determine the monaural percentage of impairment for the baseline audiogram pursuant to section (4) of this rule.

(c) Subtract the baseline audiogram impairment from the current audiogram impairment to obtain the impairment value due to this injury.

(3) Hearing loss shall be based on an audiogram which must report on air conduction frequencies at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz.

(a) Audiograms should be based on American National Standards Institute S3.6 (1989) standards.

(b) Test results will be accepted only if they come from a test conducted at least 14 consecutive hours after the worker has been removed from significant exposure to noise.

(4) Monaural hearing loss is calculated as follows:

(a) Add the audiogram findings at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz.

(b) Hearing loss due to presbycusis shall be based on the worker's age at the time of the audiogram. Consult the Presbycusis Correction Values Table below. Find the figure for presbycusis hearing loss. Subtract this figure from the sum of the audiogram entries. These values represent the total decibels of hearing loss in the six standard frequencies which normally results from aging. [Table not included. See ED. NOTE.]

(c) Consult the Monaural Hearing Loss Table below, using the figure found in subsection (b) of this section. This table will give you the percent of monaural hearing loss to be compensated. [Table not included. See ED. NOTE.]

(d) No value is allowed for db totals of 150 or less. The value for db totals of 550 or more is 100%.

(5) Binaural hearing loss is calculated as follows:

(a) Find the percent of monaural hearing loss for each ear by using the method listed in (4)(a)-(c) above.

(b) Multiply the percent of loss in the better ear by seven.

(c) Add to that result the percent of loss in the other ear.

(d) Divide this sum by eight. This is the percent of binaural hearing loss to be compensated.

(e) This method is expressed by the formula:

$$\frac{7(A) + B}{8}$$

"A" is the percent of hearing loss in the better ear.

"B" is the percent of hearing loss in the other ear.

(6) Use the method (monaural or binaural) which results in the greater disability.

(7) Tinnitus and other auditory losses may be determined as unscheduled losses, refer to OAR 436-035-0390.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

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

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0536, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0360; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 1-1997, f. & cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0260

### Visual Loss

(1) Visual loss due to a work-related illness or injury is rated for central visual acuity, integrity of the peripheral visual fields, and ocular motility.

For ocular disturbances which cause visual impairment that is not reflected in visual acuity, visual fields or ocular motility refer to section (5) of this rule. For lacrimal system disturbances refer to OAR 436-035-0440.

(2) Ratings for loss in central visual acuity are calculated for each eye as follows:

(a) Reports for central visual acuity must be for distance and near acuity. Both acuities shall be measured with best correction, utilizing the lenses recommended by the worker's physician.

(b) The ratings for loss of distance acuity are as follows, reported in standard increments of Snellen notation for English and Metric 6: [Ratings not included. See ED. NOTE.]

(c) The ratings for loss of near acuity are as follows: reported in standard increments of Snellen 14/14 notation, Revised Jaeger Standard, or American Point-type notation: [Ratings not included. See ED. NOTE.]

(d) Once the ratings for near and distance acuity are found, add them and divide by two. The value which results is the rating for lost central visual acuity.

(e) If a lens has been removed and a prosthetic lens implanted, an additional 25%, is to be combined (not added) with the percent loss for central visual acuity to determine total central visual acuity, as shown in table (g).

(f) If a lens has been removed and there is no prosthetic lens implanted, an additional 50% is to be combined (not added) with the percent loss for central visual acuity to determine total central visual acuity, as shown in table (g).

(g) The table below may be substituted for combining central visual acuity and the loss of a lens for a total central visual acuity. The table displays the percent loss of central vision for the range of near and distance acuity combined with lens removal for a total central visual acuity. The upper figure is to be used when the lens is present (as found in (d)), the middle figure is to be used when the lens is absent and a prosthetic lens has been implanted (as found in (e)), and the lower figure is to be used when the lens is absent with no implant (as found in (f)). If near acuity is reported in Revised Jaeger Standard or American Point-type, convert these findings to Near Snellen for rating purposes pursuant to (2)(c) of this rule when using this table. [Table not included. See ED. NOTE.]

(3) Ratings for loss of visual field shall be based upon the results of field measurements of each eye separately using the Goldmann perimeter with a III/4e stimulus. The results may be scored in either one of the two following methods:

(a) Using the monocular Esterman Grid, count all the printed dots outside or falling on the line marking the extent of the visual field. The number of dots counted is the percentage of visual field loss; or

(b) A perimetric chart may be used which indicates the extent of retained vision for each of the eight standard 45° meridians out to 90°. The directions and normal extent of each meridian are as follows: [Table not included. See ED. NOTE.]

(A) Record the extent of retained peripheral visual field along each of the eight meridians. Add (do not combine) these eight figures. Find the corresponding percentage for the total retained degrees by use of the table below.

(B) For loss of a quarter or half field, first find half the sum of the normal extent of the two boundary meridians. Then add to this figure the extent of each meridian included within the retained field. This results in a figure which may be applied in the chart below.

(C) Visual field loss due to scotoma in areas other than the central visual field is rated by adding the degrees lost within the scotoma along affected meridians and subtracting that amount from the retained peripheral field. That figure is then applied to the chart below. [Table not included. See ED. NOTE.]

(4) Ratings for ocular motility impairment resulting in binocular diplopia are determined as follows:

(a) Determine the single highest value of loss for diplopia noted on each of the standard 45° meridians as scheduled in the following table.

(b) Add the values obtained for each meridian to obtain the total impairment for loss of ocular motility. A total of 100% or more shall be rated as 100% of the eye. As an example: Diplopia on looking horizontally off center from 30 degrees in a left direction is valued at 10%. Diplopia in the same eye when looking horizontally off center from 21 to 30 degrees in a right direction is valued at 20%. The impairments for diplopia in both ranges are added, so the impairment rating would be 10% plus 20% resulting in a total loss of ocular motility of 30%: [Table not included. See ED. NOTE.]

(5) To the extent that stereopsis (depth perception), glare disturbances or monocular diplopia causes visual impairment are not reflected in visual

# ADMINISTRATIVE RULES

acuity, visual field or ocular motility, the losses for visual acuity, visual fields or ocular motility will be combined with an additional 5% when in the opinion of the physician the impairment is moderate, 10% if the impairment is severe.

(6) The total rating for monocular loss is found by combining (not adding) the ratings for loss of central vision, loss of visual field, and loss of ocular motility and loss for other conditions specified in section (5) of this rule.

(7) The total rating for binocular loss is figured as follows:

- (a) Find the percent of monocular loss for each eye.
- (b) Multiply the percent of loss in the better eye by three.
- (c) Add to that result the percent of loss in the other eye.
- (d) Divide this sum by four. The result is the total percentage of binocular loss.

(e) This method is expressed by the formula:

$$\frac{3(A) + B}{4}$$

"A" is the percent of loss in the better eye;

"B" is the percent of loss in the other eye.

(8) Use the method (monocular or binocular) which results in the greater disability rating .

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0575, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0370; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0270

### Standards for the Rating of Unscheduled Permanent Disability

(1) OAR 436-035-0270 through 436-035-0450 apply to the rating of unscheduled permanent partial disability under the Workers' Compensation Act.

(2) If there is no measurable impairment under these rules, no award of unscheduled permanent partial disability shall be allowed.

(3) In unscheduled claims, only impairment shall be rated for those workers who:

(a) Return to and are working at their regular work on the date of issuance; or

(b) The attending physician releases the worker to regular work and the work is available, but the worker fails or refuses to return to that job; or

(c) The attending physician releases the worker to regular work, but the worker's employment is terminated for cause unrelated to the injury.

(4) The factor for adaptability will be given a value of one when the criteria in (3) above are not met, and:

(a) A worker's residual functional capacity, as determined pursuant to OAR 436-035-0310(5), is equal to or greater than the worker's base functional capacity as determined pursuant to OAR 436-035-0310(4); or

(b) A worker with ratable impairment found in OAR 436-035-0380 through 436-035-0450 is granted one through nine percent impairment.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0600, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0380; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 7-1993, f. 11-29-93, cert. ef. 12-14-93; WCD 19-1996(Temp), f. & cert. ef. 8-19-1996; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0280

### Assembling the Factors Relating to Unscheduled Disability

(1) Determine the basic value which represents impairment, using OAR 436-035-0320 through 436-035-0450.

(2) Determine the appropriate value for the age factor using OAR 436-035-0290.

(3) Determine the appropriate value for the education factor using OAR 436-035-0300.

(4) Add age and education values together.

(5) Determine the appropriate value for the adaptability factor using OAR 436-035-0310.

(6) Multiply the result from step four by the value from step five.

(7) Add the result from step six to the impairment value and round off the resulting value pursuant to OAR 436-035-0007(16). This represents the percentage of permanent unscheduled disability to be awarded.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0601, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0390; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1993(Temp), f. & cert. ef. 6-17-93; WCD 7-1993, f. 11-29-93, cert. ef. 12-14-93; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0300

### Education

(1) The range of impact for the factor of education shall be from 0 to +5.

(2) A value of a worker's formal education is allowed as follows:

(a) For workers who have earned or acquired a high school diploma or GED certificate by the date of issuance, a neutral value of 0 shall be allowed. For purposes of this section, a GED is a certificate issued by any certifying authority or its equivalent.

(b) For workers who have not earned or acquired a high school diploma or a GED certificate by the date of issuance, a value of +1 shall be allowed.

(3) A value for a worker's Specific Vocational Preparation (SVP) time is allowed based on the job(s) successfully performed by the worker in the five (5) years prior to the date of issuance. The SVP value is determined by identifying these jobs and locating their SVP in the Dictionary of Occupational Titles (DOT) or a specific job analysis. The job with the highest SVP the worker has met is used to assign a value according to the following table: [Table not included. See ED. NOTE.]

(a) For the purposes of this rule, SVP is defined as the amount of time required by a typical worker to acquire the knowledge, skills and abilities needed to perform a specific job.

(b) When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT description(s), a specific job analysis which includes the SVP time requirement may be substituted for the DOT description(s) if it most accurately describes the job.

(c) A worker is presumed to have met the SVP training time after completing employment with one or more employers in that job classification for the time period specified in the table.

(d) A worker has also met the SVP for a job after successfully completing an authorized training program, on-the-job training, vocational training or apprentice training for that job classification. College training organized around a specific vocational objective is considered specific vocational training.

(e) For those workers who have not met the specific vocational preparation training time for any job, a value of +4 shall be granted.

(4) The values obtained in sections (2) and (3) of this rule shall be added to arrive at a final value for the education factor.

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

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0603, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0410; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1993(Temp), f. & cert. ef. 6-17-93; WCD 7-1993, f. 11-29-93, cert. ef. 12-14-93; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0310

### Adaptability to Perform a Given Job

(1) The range of impact for this factor is from 1 to +7.

(2) For those workers who have ratable unscheduled impairment found in rules OAR 436-035-0320 through 436-035-0375, the adaptability value is determined according to sections (3) through (7) of this rule. Adaptability is measured by comparing Base Functional Capacity to the worker's maximum Residual Functional Capacity.

(3) For purposes of applying this rule the following definitions shall apply:

(a) "Base Functional Capacity" (BFC) means an individual's demonstrated physical capacity before the injury or disease.

(b) "Residual Functional Capacity" (RFC) means an individual's remaining ability to perform work-related activities despite medically determinable impairment resulting from the accepted compensable condition.

(c) "Sedentary restricted" means the worker only has the ability to carry or lift dockets, ledgers, small tools and other items weighing less than

# ADMINISTRATIVE RULES

10 pounds. A worker is also sedentary restricted if the worker can perform the full range of sedentary activities, but with restrictions.

(d) "Sedentary (S)" means the worker has the ability to occasionally lift or carry docket, ledgers, small tools and other items weighing 10 pounds.

(e) "Sedentary/Light (S/L)" means the worker has the ability to do more than sedentary activities, but less than the full range of light activities. A worker is also sedentary/light if the worker can perform the full range of light activities, but with restrictions.

(f) "Light (L)" means the worker has the ability to occasionally lift 20 pounds and can frequently lift or carry objects weighing up to 10 pounds.

(g) "Medium/Light (M/L)" means the worker has the ability to do more than light activities, but less than the full range of medium activities. A worker is also medium/light if the worker can perform the full range of medium activities, but with restrictions.

(h) "Medium (M)" means the worker can occasionally lift 50 pounds and can lift or carry objects weighing up to 25 pounds frequently.

(i) "Medium/Heavy (M/H)" means the worker has the ability to do more than medium activities, but less than the full range of heavy activities. A worker is also medium/heavy if the worker can perform the full range of heavy activities, but with restrictions.

(j) "Heavy (H)" means the worker has the ability to occasionally lift 100 pounds and the ability to frequently lift or carry objects weighing 50 pounds.

(k) "Very Heavy (V/H)" means the worker has the ability to occasionally lift in excess of 100 pounds and the ability to frequently lift or carry objects weighing more than 50 pounds.

(l) "Restrictions" means that, by a preponderance of medical opinion, the worker is permanently limited by:

(A) Sitting, standing, or walking less than two hours at a time; or

(B) Precluded from working the same number of hours as were worked at the time of injury or eight hours per day, whichever is less; or

(C) From frequently performing at least one of the following activities: stooping/bending, crouching, crawling, kneeling, twisting, climbing, balancing, reaching, or pushing/pulling.

(m) "Occasionally" means the activity or condition exists up to 1/3 of the time.

(n) "Frequently" means the activity or condition exists up to 2/3 of the time.

(o) "Constantly" means the activity or condition exists 2/3 or more of the time.

(4) Base Functional Capacity (BFC) shall be established by utilizing the following classifications: sedentary (S), light (L), medium (M), heavy (H) and very heavy (VH) as defined in section (3) of this rule. Base Functional Capacity is the most current of:

(a) The highest strength category of the job(s) successfully performed by the worker in the five (5) years prior to the date of injury. The strength categories are found in the Dictionary of Occupational Titles (DOT). When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT descriptions, a specific job analysis which includes the strength requirements may be substituted for the DOT description(s) if it most accurately describes the job; or

(b) A second-level physical capacity evaluation as defined in OAR 436-010-0005 and 436-009-0070(4)(b) performed prior to the date of the on-the-job injury; or

(c) For those workers who do not meet the requirements pursuant to OAR 436-035-0300(3), and who have not had a second-level physical capacity evaluation performed prior to the on-the-job injury or disease, their prior strength shall be based on the worker's job at the time of injury.

(d) Where a worker's highest prior strength has been reduced as a result of an injury or condition which is not an accepted Oregon workers' compensation claim the Base Functional Capacity shall be the highest of:

(A) The job at injury; or

(B) A second-level physical capacities evaluation as defined in OAR 436-010-0005 and 436-009-0070(4)(b) performed after the injury or condition which was not an accepted Oregon workers' compensation claim but before the current work related injury.

(5) Residual functional capacity shall be established by utilizing the following classification(s): restricted sedentary (RS), sedentary (S), sedentary/light (S/L), light (L), medium/light (M/L), medium (M), medium/heavy (M/H), heavy (H) and very heavy (VH) and restrictions as defined in section (3) of this rule. Residual functional capacity is evidenced by the attending physician's release unless a preponderance of medical opinion describes a different RFC. For the purposes of this rule, the other

medical opinion must include at least a second-level PCE or WCE as defined in OAR 436-010-0005 and 436-009-0070(4) or a medical evaluation which addresses the worker's capability for lifting, carrying, pushing/pulling, standing, walking, sitting, climbing, balancing, stooping, kneeling, crouching, crawling and reaching. If multiple levels of lifting and carrying are measured, an overall analysis of the worker's lifting and carrying abilities should be provided in order to allow an accurate determination of these abilities. Where a worker fails to cooperate or use maximal effort in the evaluation, the medical opinion of the evaluator may establish the worker's likely RFC had the worker cooperated and used maximal effort.

(6) In comparing the worker's Base Functional Capacity (BFC) to the Residual Functional Capacity (RFC), the values for adaptability to perform a given job are as follows: [Table not included. See ED. NOTE.]

(7) For those workers determined by these rules to have a RFC established between the two categories and also have restrictions, the next lower classification shall be used. (For example, if a worker's RFC is established at S/L but also has restrictions, use S).

(8) For those workers who have ratable unscheduled impairment found in rules OAR 436-035-0380 through 436-035-0450, adaptability is determined by comparing the worker's extent of overall unscheduled impairment found in OAR 436-035-0320 through 436-035-0450 to the following Adaptability Scale: [Table not included. See ED. NOTE.]

(9) For those workers who have ratable unscheduled impairment found in rules OAR 436-035-0320 through 436-035-0375 and also unscheduled impairments in rules OAR 436-035-0380 through 436-035-0450 in the same claim, adaptability shall be determined by comparing both the adaptability scale in section (8) of this rule and the residual functional capacity scale in section (6) of this rule and using the higher of the two values for adaptability.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0605, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0430; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91 WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1993(Temp), f. & cert. ef. 6-17-93; WCD 7-1993, f. 11-29-93, cert. ef. 12-14-93; WCD 19-1996(Temp), f. & cert. ef. 8-19-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0320

### Impairments Rated as Unscheduled Disability

(1) OAR 436-035-0320 through 436-035-0450 give standards for rating permanent unscheduled disability. All disability ratings in these rules shall be established on the basis of medical evidence that is supported by objective findings from the attending physician or as provided in OAR 436-035-0007(14) and(15).

(2) Unscheduled disability is rated on the permanent loss of use or function of a body part, area or system and due to a compensable, consequential and/or combined condition and any direct medical sequelae, as modified by age, education and adaptability. Except impairment determined pursuant to ORS 656.726(4)(f)(C), the losses, as defined and used in these standards, shall be the sole criteria for the rating of permanent unscheduled disability under these rules.

(3) Pain is considered in the impairment values in these rules to the extent that it results in measurable impairment. If there is no measurable impairment, no award of unscheduled permanent partial disability shall be allowed. To the extent that pain results in disability greater than that evidenced by the measurable impairment, including the disability due to expected waxing and waning of the worker's condition, this loss of earning capacity is considered and valued under OAR 436-035-0310 and is included in the adaptability factor.

(4) If the impairment results from injury to more than one body part or system listed in these rules, the values shall be combined (not added) to arrive at a final impairment value.

(5) A worker may be entitled to unscheduled chronic condition impairment where a preponderance of medical opinion establishes that the worker is unable to repetitively use a body area due to a chronic and permanent medical condition. "Body area" means the cervical/upper thoracic spine (T1-T6)/shoulders area and the lower thoracic spine (T7-T12) low back/hips area. Chronic conditions in the middle back are considered a part of the low back/hips body area.

(a) Unscheduled chronic condition impairment is considered after all other unscheduled impairment within a body area, if any, has been rated and combined under these rules. Where the total unscheduled impairment



# ADMINISTRATIVE RULES

within a body area is equal to or in excess of 5%, the worker is not entitled to any unscheduled chronic condition impairment.

(b) Where the worker has less than 5% total unscheduled ratable impairment in a body area, the worker is entitled to 5% unscheduled chronic condition impairment in lieu of all other unscheduled impairment in that body area.

(c) A worker may receive unscheduled chronic condition impairment to more than one body area. Unscheduled chronic condition impairments are combined, not added.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0609, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0470; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0330

### Shoulder Joint

(1) The following ratings are for loss of forward elevation (flexion) in the shoulder joint: [Ratings not included. See ED. NOTE.]

(2) The following ratings are for forward elevation (flexion) ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for loss of backward elevation (extension) in the shoulder joint: [Ratings not included. See ED. NOTE.]

(4) The following ratings are for backward elevation (extension) ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for loss of abduction in the shoulder joint: [Ratings not included. See ED. NOTE.]

(6) The following ratings are for abduction ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for loss of adduction in the shoulder joint: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for adduction ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for loss of internal rotation in the shoulder joint: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for internal rotation ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(11) The following ratings are for loss of external rotation in the shoulder joint: [Ratings not included. See ED. NOTE.]

(12) The following ratings are for external rotation ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(13) Shoulder surgery is rated as follows: [Ratings not included. See ED. NOTE.]

(14) Chronic dislocations of the shoulder joint or diastasis of a sternal joint, are valued at 15% unscheduled impairment when a preponderance of medical opinion places permanent new restrictions on the worker which necessitate a reduction in the strength lifting category pursuant to OAR 436-035-0270 and 436-035-0310.

(15) When two or more ranges of motion are restricted, add the impairment values for decreased range of motion.

(16) When two or more ankylosis positions are documented, select the one direction representing the largest impairment. That will be the impairment value for the shoulder represented by ankylosis.

(17) Loss of strength in the shoulder or back due to a unilateral peripheral nerve injury is rated based upon the specific peripheral nerve involved, as described in the following table and as modified pursuant to OAR 436-035-0007(20): [Table not included. See ED. NOTE.]

Example 1: A worker suffers a dislocation of the shoulder. Upon recovery, the attending physician reports 4/5 strength of the deltoid muscle. The axillary nerve innervates the deltoid muscle. Complete loss of the axillary nerve is a 21% impairment value. 4/5 strength, pursuant to OAR 436-035-0007(20), is a 20% loss of strength. Final impairment is determined by multiplying 21% by 20% for a final value of 4.2% impairment of the shoulder.

Example 2: A worker suffers a laceration of the long thoracic nerve. Upon recovery, the attending physician reports 0/5 strength of the upper back. The long thoracic nerve has a 9% impairment value. 0/5 strength, pursuant to OAR 436-035-0007(20), is 100% loss of strength. Final impairment is determined by multiplying 9% by 100% for a final value of 9% impairment of the upper back.

(18) Multiple or bilateral impairment of specific named nerves shall be determined by combining the values in OAR 436-035-0330(17).

(19) Valid loss of strength to an unscheduled body part or area, substantiated by clinical findings shall be valued pursuant to section (17) of this rule as if the nerve supplying (innervating) the affected muscle was impaired.

[ED. NOTE: Tables & Ratings referenced in this rule are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0610, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0480; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 10-1998(Temp), f. & cert. ef. 10-28-98 thru 4-25-99; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0340

### Hip

(1) When a preponderance of objective medical evidence supports findings that reduced ranges of motion of the hip do not involve the pelvis and/or acetabulum, the impairment determination shall be valued according to OAR 436-035-0220. If the reduced ranges of motion are a residual of pelvic and/or acetabular involvement, the impairment is determined pursuant to this rule.

(2) The following ratings are for loss of forward flexion in the hip joint: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for forward flexion ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(4) The following ratings are for loss of backward extension in the hip joint: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for backward extension ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(6) The following ratings are for loss of abduction in the hip joint: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for abduction ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for loss of adduction in the hip joint: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for adduction ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for loss of internal rotation of the hip joint: [Ratings not included. See ED. NOTE.]

(11) The following ratings are for internal rotation ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(12) The following ratings are for loss of external rotation of the hip joint: [Ratings not included. See ED. NOTE.]

(13) The following ratings are for external rotation ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(14) When two or more ankylosis positions are documented, select the one direction representing the largest impairment. That will be the impairment value for the hip represented by ankylosis.

(15) A value of 13% shall be determined for a total hip replacement (both femoral and acetabular components involved). If a total hip replacement surgery occurs following an earlier femoral head replacement surgery pursuant to 436-035-0230(5), both impairment values shall be rated.

(16) A value of 5% shall be awarded for a repeat total hip replacement surgery.

(17) Total value for loss of range of motion is obtained by adding (not combining) the values for each range of motion.

(18) The final value for the hip is obtained by combining (not adding) the values in sections (15), (16) and (17) of this rule.

(19) Healed displaced fractures in the hip may cause leg length discrepancies. Impairment shall be determined pursuant to OAR 436-035-0230.

[ED. NOTE: Ratings referenced in this rule are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0481; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0360

### Spinal Ranges of Motion

(1) For the purpose of determining impairment due to loss of spinal range of motion, sections (2) through (12) of this rule shall apply when the physician uses an inclinometer to measure impairment.

(2) The following ratings are for loss of flexion in the cervical region: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for loss of extension in the cervical region: [Ratings not included. See ED. NOTE.]

(4) The following ratings are for loss of right and/or left lateral flexion in the cervical region: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for loss of right and/or left rotation in the cervical region: [Ratings not included. See ED. NOTE.]

# ADMINISTRATIVE RULES

(6) The following ratings are for loss of flexion in the thoracic region: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for loss of right and/or left rotation in the thoracic region: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for loss of flexion in the lumbosacral region: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for loss of extension in the lumbosacral region: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for loss of right and/or left lateral flexion of the lumbosacral region: [Ratings not included. See ED. NOTE.]

(11) For a total impairment value due to loss of motion, as measured by inclinometer, in any of the cervical, thoracic or lumbosacral regions, add (do not combine) values for loss of motion for each region.

(12) In order to rate range of motion loss and surgery in one region, combine (do not add) the total range of motion loss in that region with the appropriate total surgical impairment value of the corresponding region. Combine the value from each region to find the total impairment of the spine.

[ED. NOTE: Ratings referenced in this rule are available from the agency.]  
Stat. Auth.: ORS 656.726  
Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726  
Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0620, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0500; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1991(Temp), f. 9-13-91, cert. ef. 10-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0370

### Pelvis

(1) A fractured pelvis which heals well, leaving no displacement, receives no rating.

(2) The following ratings are for a fractured pelvis which heals with displacement and deformity: [Ratings not included. See ED. NOTE.]

[ED. NOTE: Ratings referenced are available from the agency.]  
Stat. Auth.: ORS 656.726  
Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726  
Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0610, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0510; WCD 2-1991, f. 3-26-91 & cert. ef. 4-1-91; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0390

### Cranial Nerves/Brain

(1) Impairment of the First Cranial Nerve (Olfactory) resulting in either complete inability to detect odors or alteration of the sense of smell is 3% unscheduled impairment.

(2) Ratings given for impairment of the Second Cranial Nerve (Optic) are figured according to their effects on vision pursuant to OAR 436-035-0260.

(3) Ratings given for impairment in the Third Cranial Nerve (Oculomotor), Fourth Cranial Nerve (Trochlear), and Sixth Cranial Nerve (Abducens) are determined according to their effects on ocular motility pursuant to OAR 436-035-0260.

(4) Ratings given for impairment of the Fifth Cranial Nerve (Trigeminal) are as follows:

(a) For loss or alteration of sensation in the Trigeminal distribution on one side: 10%; on both sides: 35%

(b) The rating given for loss of motor function in one Trigeminal Nerve is 5%.

(c) The rating given for loss of motor function of both Trigeminal Nerves is determined pursuant to OAR 436-035-0385 and 436-035-0420.

(5) Ratings given for impairment of the Sixth Cranial Nerve (Abducens) are described in section (3) of this rule.

(6) Ratings given for impairment of the Seventh Cranial Nerve (Facial) are as follows:

(a) No rating is given for loss of sensation from impairment of one or both Facial Nerves.

(b) If impairment of one or both Facial Nerves results in loss or alteration of the sense of taste, the rating is 3%.

(c) Motor loss on one side of the face due to impairment of the Facial Nerve is rated at 15% for a complete loss, or 5% for a partial loss.

(d) Motor loss on both sides of the face due to impairment of the Facial Nerve is rated at 45% for a complete loss, or 20% for a partial loss.

(7) Ratings given for impairment of the Eighth Cranial Nerve (Auditory) are determined according to their effects on hearing pursuant to OAR 436-035-0250. Other ratings for loss of function most commonly associated with this nerve include the following:

(a) For permanent disturbances resulting in disequilibrium which limits activities the impairment shall be rated according to the following:

(A) 8% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living are performed without assistance.

(B) 23% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living can be performed without assistance, and the worker is unable to operate a motor vehicle.

(C) 48% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living cannot be performed without assistance.

(D) 80% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living cannot be performed without assistance, and confinement to the home or other facility is necessary.

(b) Tinnitus which by a preponderance of medical opinion requires job modification is valued at 5%. No additional impairment value is allowed for "bilateral" tinnitus.

(8) Ratings given for impairment of the Ninth Cranial Nerve (Glossopharyngeal), Tenth Cranial Nerve (Vagus), and Eleventh Cranial Nerve (Cranial Accessory) are as follows:

(a) Impairment of swallowing due to damage to the Ninth, Tenth, and/or Eleventh Cranial Nerves is determined pursuant to OAR 436-035-0420.

(b) Speech impairment due to damage to the Ninth, Tenth, and/or Eleventh Cranial Nerves shall be rated according to the classifications in OAR 436-035-0385(8).

(9) Ratings given for impairment of the Twelfth Cranial Nerve (Hypoglossal) are as follows:

(a) No rating is allowed for loss on one side.

(b) Bilateral loss is rated as in section (8) of this rule.

(10) Impairment for injuries that have resulted in damage to the brain shall be determined based upon a preponderance of medical opinion which applies and/or describes the following criteria. Where the residuals from the industrial accident place the worker between one or more classes, the worker is entitled to be placed in the highest class that describes the worker's impairment. There is no averaging of impairment values when a worker falls between classes.

#### CLASS I: 10% Impairment

The worker functions at a Rancho Los Amigos Scale of 8; (e.g. the worker is alert and oriented; behavior is appropriate and the worker is able to recall and integrate past and recent events) and the worker is independent in activities of daily living. If there is a language deficit, it is no more than minimal (e.g. language comprehension or production might be less than normal, but it is adequate for daily living). If there are emotional disturbances or personality changes, they are minimal and occur only during stressful situations and events. If there are episodic sleep disturbances and/or lethargy, they are minimal (e.g. any sleeping irregularity or lethargy does not interfere with daily living). If there is an episodic neurologic disorder, it is controlled and does not interfere with daily living.

#### CLASS II: 30% impairment

The worker functions at a Rancho Los Amigos Scale of 8 (e.g. the worker is alert and oriented; behavior is appropriate and the worker is able to recall and integrate past and recent events) and the worker can perform most activities of daily living. Language deficit is mild (e.g. language comprehension or production might occasionally interfere with daily living). Emotional disturbances or personality changes are mild (while they may be disproportionate to the stress or situation, they do not significantly impair the worker's ability to relate to others or to live with others). Episodic sleep disturbances and/or lethargy are mild (e.g. any sleeping irregularity or lethargy only occasionally interferes with daily living). Any episodic neurologic disorder is not completely controlled. For example, it may interfere with daily living and cause the worker to have driving restrictions, limit the worker's ability to operate industrial machinery and/or cause the worker to avoid heights.

#### CLASS III: 50% impairment

The worker functions at a Rancho Los Amigos Scale of 7 (e.g. the worker is alert and oriented, behavior is appropriate but the worker has impaired judgment and/or mild memory deficit) and the worker may require assistance or supervision in order to perform some activities of daily living. Language deficit is mildly-moderate (e.g. language comprehension or production is often not adequate for daily living). Emotional disturbances or personality changes are moderate, disproportionate to the stress or situation, are present at all times and significantly impair the worker's ability to relate to others or to live with others. Episodic sleep disturbances and/or lethargy are moderate (e.g. they frequently interfere with daily living). If there is an episodic neurologic disorder, it is not completely controlled. It markedly interferes with daily living. The worker cannot operate industrial machinery.

#### CLASS IV: 75% impairment

The worker functions at a Rancho Los Amigos Scale of 6-7 (e.g. the worker is consistently oriented to time and place but the worker has impaired judgement and/or moderate memory deficit), and the worker needs assistance and supervision to perform most activities of daily living and can work only in a sheltered setting. Language deficit is moderate (e.g. language comprehension or production is often inappropriate or unintelligible). Emotional disturbances or personality changes are moderate to severe, disproportionate to the stress or situation, are present at all times, require the worker to be supervised and do not allow the worker to live with others. Episodic sleep disturbances and/or lethargy are moderate-severe (e.g. they require supervision for daily living). If there is episodic neurologic disorder, it is of such severity and constancy that activities have to be limited and supervised. The worker needs to be pro-

# ADMINISTRATIVE RULES

tected and be placed in confined care.

CLASS V: 85% impairment

The worker functions at a Rancho Los Amigos Scale of 4-5 (e.g. the worker is inappropiate, confused, not oriented to time and place; the worker may be agitated and has a severe memory deficit) and the worker requires assistance and supervision to perform all activities of daily living. Total supervision is required.

CLASS VI: 95% impairment

The worker functions at a Rancho Los Amigos Scale of 1-3. The worker is comatose or the worker's responses to stimuli are localized, inconsistent or delayed.

(11) For the purpose of section (10) of this rule, the Rancho Los Amigos levels are based upon the **Eight States of Cognitive Recovery** developed at the Rancho Los Amigos Hospital and co-authored by Chris Hagen, PhD, Danese Malkumus, M.A., and Patricia Durham, M.S., in 1972. These levels were revised by Danese Malkumus, M.A., and Kathryn Standenip, O.T.R., in 1974.

(12) If a value of impairment is determined pursuant to section (10) of this rule, no additional value for speech or psychiatric impairment is allowed.

(13) For brain damage that has resulted in the loss of use or function of any scheduled body part(s), a value may be allowed for the affected body part(s). Refer to the appropriate section of these standards for that determination.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0645, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0530; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0395

### Spinal Cord

(1) The spinal cord is concerned with sensory, motor, and visceral functions. Permanent impairment can result from various disorders affecting these functions. Injuries that result in damage to the spinal cord shall be determined based on a preponderance of objective medical opinion and the following classes:

(a) Class 1 (15% Impairment): The worker has spinal cord damage but is able to carry out the activities of daily living independently.

(b) Class 2 (35% Impairment): The worker is a paraplegic and requires assistive measures and/or devices for any of the activities of daily living.

(c) Class 3 (50% Impairment): The worker is a quadriplegic and requires assistive measures and/or devices for any of the activities of daily living.

(d) Class 4 (75% Impairment): The worker is a paraplegic or quadriplegic and requires the assistance of another person for any of the activities of daily living.

(e) Class 5 (95% Impairment): The worker is a paraplegic or quadriplegic and is dependent in all of the activities of daily living.

(2) When a value is granted pursuant to section (1) of this rule, no additional impairment value shall be allowed for reduced range of motion in the spine.

(3) For spinal cord damage that has resulted in the loss of use or function of other unscheduled body part(s) a value shall be allowed for other affected body part(s) or organ system(s). Refer to the appropriate section of these standards for that determination and combine with impairment valued under this rule.

(4) For spinal cord damage that has resulted in the loss of use or function of any scheduled body part(s), a value may be allowed for the affected body part(s). Refer to the appropriate section of these standards for that determination.

(5) Episodic neurological disorders are determined pursuant to OAR 436-035-0390(10).

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0420

### Gastrointestinal and Genitourinary Systems

(1) Impairments in mastication (chewing) and deglutition (swallowing) shall be determined based on the following criteria:

(a) Diet limited to semi-solid or soft foods — 8%

(b) Diet limited to liquid foods — 25%

(c) Eating requires tube feeding or gastrostomy — 50%

(2) Impairment of the upper digestive tract (esophagus, stomach and duodenum, small intestine, pancreas) shall be valued according to the following classes: [Classes not included. See ED. NOTE.]

(3) Colonic and rectal impairment shall be rated according to the following classes: [Classes not included. See ED. NOTE.]

(4) Anal impairment shall be rated according to the following classes: [Classes not included. See ED. NOTE.]

(5) Liver impairment shall be determined according to the following classes: [Classes not included. See ED. NOTE.]

(6) Biliary tract impairment shall be determined according to the following classes: [Classes not included. See ED. NOTE.]

(7) Impairment of the Upper Urinary Tract shall be determined according to the following classes: [Classes not included. See ED. NOTE.]

(8) Impairment of the Bladder: When evaluating permanent impairment of the bladder, the status of the upper urinary tract must also be considered. The appropriate impairment values for both shall be combined pursuant to OAR 436-035-0007(19). Impairment of the bladder shall be determined according to the following classes: [Classes not included. See ED. NOTE.]

(9) Urethra: When evaluating permanent impairment of the urethra, one must also consider the status of the upper urinary tract and bladder. The values for all parts of the urinary system shall be combined pursuant to OAR 436-035-0007(19). Impairment of the urethra shall be determined according to the following classes: [Classes not included. See ED. NOTE.]

(10) Penile Sexual Dysfunction: When evaluating permanent impairment due to sexual dysfunction of the penis, one must also consider the status of the urethra upper urinary tract and bladder. The values for all parts of the system shall be combined pursuant to OAR 436-035-0430. Impairment due to sexual dysfunction of the penis shall be determined according to the following classes for men 40 to 65 years of age. [Classes not included. See ED. NOTE.]

(11) Cervix/Uterus: When evaluating permanent impairment of the cervix/uterus, one must also consider the status of the urethra, upper urinary tract and bladder. The values for all parts of the system shall be combined pursuant to OAR 436-035-0007(19). Loss or alteration of the gonads shall be valued pursuant to OAR 436-035-0430. Impairment of the cervix/uterus shall be determined according to the following classes: [Classes not included. See ED. NOTE.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988(Temp), f. 8-22-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0430

### Endocrine System

(1) The assessment of permanent impairment from disorders of the hypothalamic-pituitary axis requires evaluation of:

(a) primary abnormalities related to growth hormone, prolactin, or ADH;

(b) secondary abnormalities in other endocrine glands, such as thyroid, adrenal, and gonads, and

(c) structural and functional disorders of the central nervous system caused by anatomic abnormalities of the pituitary. Each disorder must be evaluated separately, using the standards for rating the nervous system, visual system, and mental and behavioral disorders, and the impairments combined.

(d) Impairment of the hypothalamic-pituitary axis shall be determined according to the following classes:

(A) Class 1 — 5%: hypothalamic-pituitary disease controlled effectively with continuous treatment.

(B) Class 2 — 18%: hypothalamic-pituitary disease inadequately controlled by treatment.

(C) Class 3 — 38%: hypothalamic-pituitary disease with severe symptoms and signs despite treatment.

(2)(a) Impairment of Thyroid function results in either hyperthyroidism or hypothyroidism. Hyperthyroidism is not considered to be a cause of permanent impairment, because the hypermetabolic state in practically all patients can be corrected permanently by treatment. After remission of hyperthyroidism, there may be permanent impairment of the visual or cardiovascular systems, which should be evaluated using the appropriate standards for those systems.

(b) Hypothyroidism in most instances can be satisfactorily controlled by the administration of thyroid medication. Occasionally, because of associated disease in other organ systems, full hormone replacement may not be

# ADMINISTRATIVE RULES

possible. Impairment of thyroid function shall be determined according to the following classes:

(A) Class 1 — 5%: (a) continuous thyroid therapy is required for correction of the thyroid insufficiency or for maintenance of normal thyroid anatomy; AND (b) the replacement therapy appears adequate based on objective physical or laboratory evidence.

(B) Class 2 — 18%: (a) symptoms and signs of thyroid disease are present, or there is anatomic loss or alteration; AND (b) continuous thyroid hormone replacement therapy is required for correction of the confirmed thyroid insufficiency; BUT (c) the presence of a disease process in another body system or systems permits only partial replacement of the thyroid hormone.

(3)(a) Parathyroid: Impairment of Parathyroid function results in either hyperparathyroidism or hypoparathyroidism. In most cases of hyperparathyroidism, surgical treatment results in correction of the primary abnormality, although secondary symptoms and signs may persist, such as renal calculi or renal failure, which should be evaluated according to the appropriate standards. If surgery fails, or cannot be done, the patient may require long-term therapy, in which case the permanent impairment may be classified according to the following: [Ratings not included. See ED. NOTE.]

(b) Hypoparathyroidism is a chronic condition of variable severity that requires long-term medical therapy in most cases. The severity determines the degree of permanent impairment according to the following: [Ratings not included. See ED. NOTE.]

(4) Adrenal Cortex: Impairment of the Adrenal Cortex results in either hypoadrenalism or hyperadrenocorticism.

(a) Hypoadrenalism is a lifelong condition that requires long-term replacement therapy with glucocorticoids and/or mineralocorticoids for proven hormonal deficiencies. Impairments shall be rated as follows: [Ratings not included. See ED. NOTE.]

(b) Hyperadrenocorticism due to the chronic side effects of nonphysiologic doses of glucocorticoids (iatrogenic Cushing's syndrome) is related to dosage and duration of treatment and includes osteoporosis, hypertension, diabetes mellitus and the effects involving catabolism that result in protein myopathy, striae, and easy bruising. Permanent impairment ranges from 5% to 78%, depending on the severity and chronicity of the disease process for which the steroids are given. On the other hand, with diseases of the pituitary-adrenal axis, impairment may be classified according to severity: [Ratings not included. See ED. NOTE.]

(5) Adrenal Medulla: Impairment of the Adrenal Medulla results from pheochromocytoma and shall be classified as follows: [Ratings not included. See ED. NOTE.]

(6) Pancreas: Impairment of the pancreas results in either diabetes mellitus or in hypoglycemia.

(a) Diabetes mellitus shall be rated according to the following classes:

(A) Class 1 — 3%: non-insulin dependent (Type II) diabetes mellitus that can be controlled by diet; there may or may not be evidence of diabetic microangiopathy, as indicated by the presence of retinopathy and/or albuminuria greater than 30 mg/100 ml.

(B) Class 2 — 8%: non-insulin dependent (Type II) diabetes mellitus; and when satisfactory control of the plasma glucose requires both a restricted diet and hypoglycemic medication, either an oral agent or insulin. Evidence of microangiopathy, as indicated by retinopathy or by albuminuria of greater than 30 mg/100 ml, may or may not be present.

(C) Class 3 — 18%: insulin dependent (Type I) diabetes mellitus is present with or without evidence of microangiopathy.

(D) Class 4 — 33%: insulin dependent (Type I) diabetes mellitus, and hyperglycemic and/or hypoglycemic episodes occur frequently in spite of conscientious efforts of both the patient and the attending physician.

(b) Hypoglycemia shall be rated according to the following classes:

(A) Class 1 — 0%: surgical removal of an islet-cell adenoma results in complete remission of the symptoms and signs of hypoglycemia, and there are no post-operative sequelae.

(B) Class 2 — 28%: signs and symptoms of hypoglycemia are present, with controlled diet and medications and with effects on the performance of activities of daily living.

(7) Gonadal Hormones: A patient with anatomic loss or alteration of the gonads that results in a loss or alteration in the ability to produce and regulate the gonadal hormones receives a value of 3% impairment for unilateral loss or alteration and 5% for bilateral loss or alteration. Loss of the cervix/uterus or penile sexual function shall be valued pursuant to OAR 436-035-0420.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 436-035-0440

### Integument and Lacrimal System

(1) If the worker has developed an immunologic reaction to physical, chemical or biological agents, impairment will also be valued pursuant to OAR 436-035-0450.

(2) Impairments of the integumentary system shall be rated according to the following classes:

(a) Class 1 (3% Impairment):

(A) Signs or symptoms of skin disorder are present; and

(B) With treatment, there is no limitation, or minimal limitation, in the performance of work related activities, although exposure to certain physical or chemical agents might increase limitation temporarily.

(b) Class 2 (15% Impairment)

(A) Signs and symptoms of skin disorder are present; and

(B) Intermittent treatment is required; and

(C) There is mild limitation in the performance of some work related activities.

(c) Class 3 (38% Impairment)

(A) Signs and symptoms of skin disorder are present; and

(B) Continuous treatment is required; and

(C) There is moderate limitation in the performance of many work related activities.

(d) Class 4 (68% Impairment)

(A) Signs and symptoms of skin disorder are present; and

(B) Continuous treatment is required, which may include periodic confinement at home or other domicile; and

(C) There is moderate to severe limitation in the performance of many work related activities.

(e) Class 5 (90% Impairment)

(A) Signs and symptoms of skin disorder are present; and

(B) Continuous treatment is required, which necessitates confinement at home or other domicile; and

(C) There is severe limitation in the performance of work related activities.

(3) If either too little or too much tearing results in a worker's being restricted from regular work, and the condition is not an immunological reaction, a value shall be assigned as follows:

(a) 3% when the reaction is a nuisance but does not prevent most regular work-related activities; or

(b) 8% when the reaction prevents some regular work-related activities; or

(c) 13% when the reaction prevents most regular work-related activities.

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.005, ORS 656.214, ORS 656.268 & ORS 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03

## 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 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).

Stat. Auth.: ORS 656.726(3)

Stats Implemented: ORS 656.005, 656.214, 656.268, 656.726

Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & ef. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & I59-2031, f. & ef. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. ef. 6-29-93; WCD 5-1993(Temp), Case #164-3064, f. & cert. ef. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #164-3064, f. & cert. ef. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. ef. 5-26-94; WCD 6-1994(Temp), f. & cert. ef. 7-15-94; WCD 8-1994(Temp), f. & cert. ef. 8-31-94; WCD 11-1994(Temp), f. & cert. ef. 11-10-94; WCD 1-1995(Temp), f. & cert. ef. 1-26-95; WCD 2-1995(Temp), f. & cert. ef. 3-2-95; WCD 3-1995(Temp), f. & cert. ef. 4-13-95; WCD 4-1995(Temp), f. & cert. ef. 5-31-95; WCD 5-1995(Temp), f. & cert. ef. 7-11-95; WCD 14-1995(Temp), f. & cert. ef. 10-5-95;

# ADMINISTRATIVE RULES

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

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## Department of Environmental Quality Chapter 340

**Adm. Order No.:** DEQ 18-2002

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 12-20-02

**Notice Publication Date:** 6-1-02

**Rules Adopted:** 340-042-0025, 340-042-0030, 340-042-0040, 340-042-0050, 340-042-0060, 340-042-0070, 340-042-0080

**Subject:** The Environmental Quality Commission adopted procedures for establishing and implementing Total Maximum Daily Loads (TMDLs) for waterbodies that do not meet water quality standards, including: Procedures and criteria for establishing TMDLs; Opportunities for local advisory group and public participation in developing and revising TMDLs; A process for issuing TMDLs as orders and for requesting reconsideration and judicial review of those orders; and Responsibilities for implementing TMDLs through point source permits and through non point source implementation plans adopted by federal, state, or local governmental agencies with authority over contributing sources.

**Rules Coordinator:** Rachel Sakata—(503) 229-5659

### 340-042-0025

#### Policy, Purpose and Effect

(1) The public policy of the State of Oregon is to protect, maintain and improve the quality of waters of the state for beneficial uses and to provide for prevention, abatement and control of water pollution. To achieve and maintain water quality standards, the Environmental Quality Commission may impose limitations and controls including Total Maximum Daily Loads (TMDLs), wasteload allocations for point sources and load allocations for nonpoint sources.

(2) The policy of the Environmental Quality Commission is to have the Department of Environmental Quality establish TMDLs, including wasteload and load allocations, and have responsible sources meet these allocations through compliance with discharge permits or other strategies developed in sector or source-specific implementation plans. These measures must achieve and maintain water quality standards and restore waters of the state that are water quality limited.

(3) These rules establish procedures for developing, issuing and implementing TMDLs as required by the **Federal Water Pollution Control Act Section 303(d) (33 USC Section 1313(d))** and authorized by Oregon statutes to ensure that state water quality standards are met and beneficial uses protected.

(4) The Department of Environmental Quality will review any changes to Federal Water Pollution Control Act Section 303(d) or implementing regulations in **40 CFR Part 130** promulgated after the effective date of these rules. The Department may subsequently recommend that the Environmental Quality Commission amend, repeal or adopt new rules. Rules adopted by the Commission remain in effect until the Commission takes action on the recommendations.

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

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110  
Stats. Implemented: ORS 468B.020, ORS 468B.110

Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02

### 340-042-0030

#### Definitions

In addition to the definitions provided in ORS 468.005, 468B.005, OAR 340-041-0006 and 340-045-0010, unless otherwise required by context, the following definitions apply to OAR chapter 340, division 42.

(1) "Background Sources" include all sources of pollution or pollutants not originating from human activities. In the context of a TMDL, background sources may also include anthropogenic sources of a pollutant that the Department or another Oregon state agency does not have authority to regulate, such as pollutants emanating from another state, tribal lands or sources otherwise beyond the jurisdiction of the state.

(2) "Designated Management Agency (DMA)" means a federal, state or local governmental agency that has legal authority over a sector or source contributing pollutants, and is identified as such by the Department of Environmental Quality in a TMDL.

(3) "Director" means the Director of the Department of Environmental Quality or the Director's authorized designee.

(4) "Hydrologic Unit Code (HUC)" means a multi-scale numeric code used by the U.S. Geological Survey to classify major areas of surface drainage in the United States. The code includes fields for geographic regions, geographic subregions, major river basins and subbasins. The third field of the code generally corresponds to the major river basins named in OAR chapter 340, division 41. The fourth field generally corresponds to the subbasins typically addressed in TMDLs.

(5) "Local Advisory Group" means a group of people with experience and interest in a specific watershed or subbasin that is designated by the Department to provide local input during TMDL development.

(6) "Management Strategies" means measures to control the addition of pollutants to waters of the state and includes application of pollutant control practices, technologies, processes, siting criteria, operating methods, best management practices or other alternatives.

(7) "Performance Monitoring" means monitoring implementation of management strategies, including sector-specific and source-specific implementation plans, and resulting water quality changes.

(8) "Pollutant" has the meaning provided in the **Federal Water Pollution Control Act Section 502 (33 USC Section 1362)**.

(9) "Reasonable Assurance" means a demonstration that a TMDL will be implemented by federal, state or local governments or individuals through regulatory or voluntary actions including management strategies or other controls.

(10) "Sector" means a category or group of similar nonpoint source activities such as forestry, agriculture, recreation, urban development or mining.

(11) "Sector-Specific Implementation Plan" or "Source-Specific Implementation Plan" in the context of a TMDL means a plan for implementing a Water Quality Management Plan for a specific sector or source not subject to permit requirements in ORS 486.050. The elements of an implementation plan are described in OAR 340-042-0080.

(12) "Source" means any process, practice, activity or resulting condition that causes or may cause pollution or the introduction of pollutants to a waterbody.

(13) "Subbasin" means the designation in the fourth field of the U.S. Geological Survey Hydrologic Unit Code.

(14) "Surrogate Measures" means substitute methods or parameters used in a TMDL to represent pollutants.

(15) "Total Maximum Daily Load (TMDL)" means a written quantitative plan and analysis for attaining and maintaining water quality standards and includes the elements described in OAR 340-042-0040. These elements include a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet state water quality standards, allocations of portions of that amount to the pollutant sources or sectors, and a Water Quality Management Plan to achieve water quality standards.

(16) "Waterbody" means any surface waters of the state.

(17) "Water Quality Management Plan (WQMP)" means the element of a TMDL describing strategies to achieve allocations identified in the TMDL to attain water quality standards. The elements of a WQMP are described in OAR 340-042-0040(4)(1).

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

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110  
Stats. Implemented: ORS 468B.020, ORS 468B.110

Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02

# ADMINISTRATIVE RULES

## 340-042-0040

### Establishing Total Maximum Daily Loads (TMDLs)

(1) The Department will establish TMDLs for pollutants in waters of the state that are listed in accordance with the **Federal Water Pollution Control Act Section 303(d) (33 USC Section 1313(d))**.

(2) The Department will group stream segments and other waterbodies geographically by subbasin and develop TMDLs for those subbasins, unless it determines another approach is warranted.

(3) The Department will prioritize and schedule TMDLs for completion considering the following factors:

- (a) Severity of the pollution,
- (b) Uses of the water,
- (c) Availability of resources to develop TMDLs,
- (d) Specific judicial requirements, and
- (e) Any other relevant information.

(4) A TMDL will include the following elements:

(a) Name and location. This element describes the geographic area for which the TMDL is developed and includes maps as appropriate.

(b) Pollutant identification. This element identifies the pollutants causing impairment of water quality that are addressed in the TMDL.

(c) Water quality standards and beneficial uses. This element identifies the beneficial uses in the basin and the relevant water quality standards, including specific basin standards established in OAR 340-041-0202 through 340-041-0975. The beneficial use that is most sensitive to impairment by the pollutant or pollutants addressed in the TMDL will be specified.

(d) Loading capacity. This element specifies the amount of a pollutant or pollutants that a waterbody can receive and still meet water quality standards. The TMDL will be set at a level to ensure that loading capacity is not exceeded. Flow assumptions used in the TMDL will be specified.

(e) Excess load. This element evaluates, to the extent existing data allow, the difference between the actual pollutant load in a waterbody and the loading capacity of that waterbody.

(f) Sources or source categories. This element identifies the pollutant sources and estimates, to the extent existing data allow, the amount of actual pollutant loading from these sources. The TMDL will establish wasteload allocations and load allocations for these sources. The Department will use available information and analyses to identify and document sources.

(g) Wasteload allocations. This element determines the portions of the receiving water's loading capacity that are allocated to existing point sources of pollution, including all point source discharges regulated under the **Federal Water Pollution Control Act Section 402 (33 USC Section 1342)**.

(h) Load allocations. This element determines the portions of the receiving water's loading capacity that are allocated to existing nonpoint sources of pollution or to background sources. Load allocations are best estimates of loading, and may range from reasonably accurate estimates to gross allotments depending on the availability of data and appropriate techniques for predicting loading. Whenever reasonably feasible, natural background and anthropogenic nonpoint source loads will be distinguished from each other.

(i) Margin of safety. This element accounts for uncertainty related to the TMDL and, where feasible, quantifies uncertainties associated with estimating pollutant loads, modeling water quality and monitoring water quality. The TMDL will explain how the margin of safety was derived and incorporated into the TMDL.

(j) Seasonal variation. This element accounts for seasonal variation and critical conditions in stream flow, sensitive beneficial uses, pollutant loading and water quality parameters so that water quality standards will be attained and maintained during all seasons of the year.

(k) Reserve capacity. This element is an allocation for increases in pollutant loads from future growth and new or expanded sources. The TMDL may allocate no reserve capacity and explain that decision.

(l) Water quality management plan (WQMP). This element provides the framework of management strategies to attain and maintain water quality standards. The framework is designed to work in conjunction with detailed plans and analyses provided in sector-specific or source-specific implementation plans. The WQMP will address the following:

- (A) Condition assessment and problem description.
- (B) Goals and objectives.

(C) Proposed management strategies designed to meet the wasteload allocations and load allocations in the TMDL. This will include a categorization of sources and a description of the management strategies proposed for each source category.

(D) Timeline for implementing management strategies including:

- (i) Schedule for revising permits,

(ii) Schedule for achieving appropriate incremental and measurable water quality targets,

(iii) Schedule for implementing control actions, and

(iv) Schedule for completing other measurable milestones.

(E) Explanation of how implementing the management strategies will result in attainment of water quality standards.

(F) Timeline for attainment of water quality standards.

(G) Identification of persons, including Designated Management Agencies (DMAs), responsible for implementing the management strategies and developing and revising sector-specific or source-specific implementation plans.

(H) Identification of sector-specific or source-specific implementation plans that are available at the time the TMDL is issued.

(I) Schedule for preparation and submission of sector-specific or source-specific implementation plans by responsible persons, including DMAs, and processes that trigger revisions to these implementation plans.

(J) Description of reasonable assurance that management strategies and sector-specific or source-specific implementation plans will be carried out through regulatory or voluntary actions.

(K) Plan to monitor and evaluate progress toward achieving TMDL allocations and water quality standards including:

(i) Identification of persons responsible for monitoring, and

(ii) Plan and schedule for reviewing monitoring information and revising the TMDL.

(L) Plan for public involvement in implementing management strategies.

(M) Description of planned efforts to maintain management strategies over time.

(N) General discussion of costs and funding for implementing management strategies. Sector-specific or source-specific implementation plans may provide more detailed analyses of costs and funding for specific management strategies.

(O) Citation of legal authorities relating to implementation of management strategies.

(5) To determine allocations for sources identified in the TMDL, the Department:

(a) Will use water quality data analyses, which may include statistical analyses or mathematical models.

(b) May use surrogate measures to estimate allocations for pollutants addressed in the TMDL. The Department may use one or more surrogate measures for a pollutant that is difficult to measure or highly variable. A surrogate measure will be closely related to the pollutant, and may be easier to monitor and track. The TMDL will establish the correlation between the surrogate measure and pollutant.

(6) The Department will distribute wasteload and load allocations among identified sources and in doing so, may consider the following factors:

(a) Contributions from sources;

(b) Costs of implementing measures;

(c) Ease of implementation;

(d) Timelines for attainment of water quality standards;

(e) Environmental impacts of allocations;

(f) Unintended consequences;

(g) Reasonable assurances of implementation; and

(h) Any other relevant factor.

(7) After issuing the TMDL, the Department may revise the loading capacity and allocations to accommodate changed needs or new information. In making these revisions, the Department will comply with the public notice provisions in OAR 340-042-0050(2) and procedures for issuing TMDL orders in OAR 340-042-0060.

(8) If the Environmental Protection Agency establishes a TMDL addressing waterbodies in Oregon, the Department may prepare a WQMP to implement that TMDL

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

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110

Stats. Implemented: ORS 468B.020, ORS 468B.110

Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02

## 340-042-0050

### Public Participation

(1) The Department will establish a local advisory group or identify an existing group or forum to assist in developing a TMDL.

(2) The Department will provide an opportunity for persons to review and comment on a draft TMDL and on proposals to revise loading capacity or allocations in a TMDL as follows:

- (a) The Department will maintain a mailing list for each TMDL.

# ADMINISTRATIVE RULES

(b) The Department will provide notice and an opportunity for public comment on a proposed TMDL or revision to loading capacity or allocations in a TMDL. The public comment period will generally be 60 days.

(c) The Department will respond to public comments received during the public comment period and will prepare a written summary of responses.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110  
Stats. Implemented: ORS 468B.020, ORS 468B.110  
Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02

## 340-042-0060

### Issuing a Total Maximum Daily Load

(1) The Director will issue a TMDL as an order. If the Environmental Protection Agency establishes a TMDL addressing waterbodies in Oregon, the Director may issue as an order a WQMP to implement that TMDL.

(2) The order will be effective and final on the date signed by the Director.

(3) Following issuance, the Department will submit the TMDL to the Environmental Protection Agency.

(4) Within 20 business days after the Director signs the order, the Department will notify all affected NPDES permittees, nonpoint source DMAs identified in the TMDL and persons who provided formal public comment on the draft TMDL that the order has been issued and the summary of responses to comments is available.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110  
Stats. Implemented: ORS 468B.020, ORS 468B.110  
Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02

## 340-042-0070

### Requesting Reconsideration or Appealing a Total Maximum Daily Load

(1) Any person who participated in establishing a TMDL, including those who submitted comments, and any other person entitled to seek judicial review of an order issuing a TMDL may request reconsideration by the Director in accordance with OAR 137-004-0080.

(2) A person may file a petition for judicial review of a final TMDL order as allowed by ORS 183.484.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110  
Stats. Implemented: ORS 468B.020, ORS 468B.110  
Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02

## 340-042-0080

### Implementing a Total Maximum Daily Load

(1) Management strategies identified in a WQMP to achieve wasteload and load allocations in a TMDL will be implemented through water quality permits for those sources subject to permit requirements in ORS 468B.050 and through sector-specific or source-specific implementation plans for other sources. WQMPs will identify the sector and source-specific implementation plans required and the persons, including DMAs, responsible for developing and revising those plans.

(2) The Oregon Department of Forestry will develop and enforce implementation plans addressing state and private forestry sources as authorized by ORS 527.610 through 527.992 and according to OAR chapter 629, divisions 600 through 665. The Oregon Department of Agriculture will develop implementation plans for agricultural activities and soil erosion and enforce associated rules as authorized by ORS 568.900 through 568.933 and according to OAR chapter 603, divisions 90 and 95.

(3) Persons, including DMAs other than the Oregon Department of Forestry or the Oregon Department of Agriculture, identified in a WQMP as responsible for developing and revising sector-specific or source-specific implementation plans must:

(a) Prepare an implementation plan and submit the plan to the Department for review and approval according to the schedule specified in the WQMP. The implementation plan must:

(A) Identify the management strategies the DMA or other responsible person will use to achieve load allocations and reduce pollutant loading;

(B) Provide a timeline for implementing management strategies and a schedule for completing measurable milestones;

(C) Provide for performance monitoring with a plan for periodic review and revision of the implementation plan;

(D) To the extent required by ORS 197.180 and OAR chapter 340, division 18, provide evidence of compliance with applicable statewide land use requirements; and

(E) Provide any other analyses or information specified in the WQMP.

(b) Implement and revise the plan as needed.

(4) For sources subject to permit requirements in ORS 468B.050, wasteload allocations and other management strategies will be incorporated into permit requirements.

Stat. Auth.: ORS 468.020, ORS 468B.020, ORS 468B.030, ORS 468B.035 & ORS 468B.110  
Stats. Implemented: ORS 468B.020, ORS 468B.110  
Hist.: DEQ 18-2002, f. & cert. ef. 12-20-02

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**Adm. Order No.:** DEQ 19-2002(Temp)

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**Notice Publication Date:**

**Rules Amended:** 340-248-0010, 340-248-0100, 340-248-0120, 340-248-0130, 340-248-0140, 340-248-0150, 340-248-0180, 340-248-0205, 340-248-0210, 340-248-0220, 340-248-0240, 340-248-0250, 340-248-0260, 340-248-0270, 340-248-0275, 340-248-0280, 340-248-0290

**Subject:** The rule is necessary to provide immediate relief from asbestos requirements that are causing implementation problems for some Oregon businesses. While developing amendments to the asbestos rules that were adopted in January 2002, the Department inadvertently neglected to involve the Oregon Refuse and Recycling Association, the Oregon Building Industry Association and the Oregon Remodelers Association. These associations were not on mailing lists maintained by the Air Quality Program and did not learn of the rulemaking in time to comment. These associations identified a number of concerns with the recent rule changes that the Department agrees should be carefully considered.

The temporary rule makes the following changes:

1) Delete or clarify definitions that are perceived as too broad and unenforceable. The temporary rule will delete the definition of “shattered” and restore the definitions of “friable asbestos material” and “nonfriable asbestos material” that were used before the 2002 amendments.

2) In OAR 340-248-0290, delete the new nonfriable asbestos waste packaging and disposal requirements, and restore the original rule language on nonfriable waste handling and disposal. The temporary rule will still protect the public from exposure to airborne asbestos fibers, but will repeal the detailed procedures adopted in January 2002.

3) Asbestos survey: Change the asbestos survey requirement so that residential buildings with four or fewer units are exempt from surveying. This change will make the asbestos survey requirement the same as the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. The rules adopted in January 2002 applied the survey requirements to all residential units built earlier than 1987 except for work done by homeowners on their own homes or vacation homes.

4) Ensure statutorily defined definitions are the same in rule, correct errors, punctuation, typographical errors, citations and references. The temporary rule ensures that statutorily defined terms reflect statutory language. The rule replaces all “shalls” with “musts” or “wills,” and corrects typographical errors and inaccurate citations. The rule makes a few other clarifying corrections.

**Rules Coordinator:** Rachel Sakata—(503) 229-5659

## 340-248-0010

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) “Accredited inspector” means a person that has completed training and received accreditation under 40 CFR Part 763 Subpart E, Appendix C (Model Accreditation Plan), Section B (Initial Training), Subsection 3 (Inspector), (1994).

(2) “Accredited trainer” means a provider of asbestos abatement training courses authorized by the Department to offer training courses that satisfy requirements for worker training.

(3) “Adequately wet” means to sufficiently mix or penetrate asbestos-containing material with liquid to prevent the release of particulate asbestos materials. An asbestos-containing material is not adequately wetted if visi-

# ADMINISTRATIVE RULES

ble emissions originate from that material. Precipitation is not an appropriate method for wetting asbestos-containing material.

(4) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employee of the contractor.

(5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.

(6) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling, or disposal of any asbestos-containing material with the potential of releasing asbestos fibers from asbestos-containing material into the air.

(7) "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in OAR 340-248-0210(3).

(8) "Asbestos-containing material" means any material containing more than one-percent asbestos by weight.

(9) "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.

(10) "Asbestos tailings" mean any solid waste product of asbestos mining or milling operations that contains asbestos.

(11) "Asbestos waste generator" means any person performing an asbestos abatement project or any owner or operator of a source subject to OAR 340-248-0005 through 248-0290 whose act or process generates asbestos-containing waste material.

(12) "Asbestos-containing waste material" means any waste that contains asbestos tailings or any commercial asbestos, and is generated by a source subject to OAR 340-248-0205 through 340-248-0290. This term includes, but is not limited to, filters from control devices, asbestos abatement project waste, and bags or containers that previously contained commercial asbestos.

(13) "Asbestos waste shipment record" means the shipment document, required to be originated and signed by the asbestos waste generator; used to track and substantiate the disposition of asbestos-containing waste material.

(14) "Certified supervisor" means a person who has a current Oregon supervisor certification card.

(15) "Certified worker" means a person who has a current Oregon worker certification card.

(16) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person. As used in this Division, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.

(17) "Commercial asbestos" means asbestos that is produced by extracting asbestos from asbestos ore.

(18) "Commission" means the Environmental Quality Commission.

(19) "Demolition" means the wrecking or removal of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

(20) "Department" means the Department of Environmental Quality.

(21) "Director" means the Director of the Department of Environmental Quality.

(22) "EPA" means the U.S. Environmental Protection Agency.

(23) "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

(24) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including but not limited to ships.

(25) "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.

(26) "HEPA filter" means a high efficiency particulate air filter capable of filtering 0.3 micron particles with 99.97 percent efficiency.

(27) "Inactive asbestos-containing waste disposal site" means any disposal site for asbestos-containing waste where the operator has allowed the Department's solid waste permit to lapse, has gone out of business, or no longer receives asbestos-containing waste.

(28) "Interim storage of asbestos-containing material" means the storage of asbestos-containing waste material that has been placed in a container outside a regulated area until transported to an authorized landfill.

(29) "Licensed" means a contracting entity has met the Department's training and experience requirements to offer and perform asbestos abatement projects and has a current asbestos abatement contractor license. For purposes of this definition, a license is not a permit subject to OAR chapter 340, division 216 or 218.

(30) "Negative pressure enclosure" means any enclosure of an asbestos abatement project area where the air pressure outside the enclosure is greater than the air pressure inside the enclosure and the air inside the enclosure is changed at least four times an hour by exhausting it through a HEPA filter.

(31) "Nonfriable asbestos material" means any asbestos-containing material that cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(32) "Open accumulation" means any accumulation, including interim storage, of friable asbestos material or asbestos-containing waste material other than material securely enclosed and stored as required by this division.

(33) "Owner or operator" means any person who owns, leases, operates, controls or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

(34) "Particulate asbestos material" means any finely divided particles of asbestos material.

(35) "Person" means an individual, public or private corporation, nonprofit corporation, association, firm, partnership, joint venture, business trust, joint stock company, municipal corporation, political sub-division, the state and any agency of the state or any other entity, public or private, however organized.

(36) "Renovation" means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.

(37) "Small-scale, short-duration activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:

(a) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(b) Replacement of an asbestos-containing gasket on a valve;

(c) Installation or removal of a small section of wallboard;

(d) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those that can be contained in a single glove bag;

(e) Minor repairs to damaged thermal system insulation that do not require removal;

(f) Repairs to asbestos-containing wallboard;

(g) Installation of electrical conduits through or proximate to asbestos-containing materials;

(h) Repairs, involving encapsulation, enclosure, or removal, of small amounts of friable asbestos material in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those that can be contained in a single prefabricated mini-enclosure. Such an enclosure must conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

(38) "Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.

(39) "Survey" means to conduct a detailed inspection of a building, structure, or facility for the presence of asbestos-containing material. The survey must be conducted by an accredited inspector and include sampling of materials suspected to contain asbestos, analysis of those samples to determine asbestos content, and evaluation of the materials in order to assess their condition.

(40) "Training Day" means a day of classroom instruction that consists of at least seven hours of actual classroom instruction and hands-on practice.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.700

Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88, cert. ef. 6-1-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93;



# ADMINISTRATIVE RULES

Renumbered from 340-025-0455; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0020, 340-032-5590; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0100

### Applicability

(1) OAR 340-248-0005 through 340-248-0180:

(a) Apply to asbestos contractor licensing, worker and supervisor certification, asbestos abatement trainer accreditation, and the Department's administration and enforcement;

(b) Apply to any asbestos abatement project; and

(c) Provide training, licensing, and certification standards for implementation of OAR 340-248-0205 through 340-248-0280, Emission Standards and Procedural Requirements for Asbestos.

(2) OAR 340-248-0100 through 340-248-0180 do not apply to:

(a) An asbestos abatement project exempted by OAR 340-248-0250(2)(a); and

(b) Persons performing vehicle brake and clutch maintenance or repair.

Stat. Auth.: ORS 468.065, ORS 468A.745 & ORS 468A.750

Stats. Implemented: ORS 468A.745

Hist.: DEQ 10-1988, f. 5-19-88, cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0010; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0120

### Contractor Licensing

(1) Any contractor performing an asbestos abatement project must be licensed by the Department.

(2) Application for licenses must be submitted on forms prescribed by the Department and must be accompanied by the following:

(a) Documentation that the contractor, or the contractor's employee representative, is a certified supervisor;

(b) Certification that the contractor has read and understands the applicable Oregon and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations;

(c) A list of all certificates or licenses, issued to the contractor by any other jurisdiction, that have been suspended or revoked during the past year, and a list of any asbestos-related enforcement actions taken against the contractor during the past year;

(d) A list of additional project supervisors for asbestos abatement projects and their certification numbers;

(e) A summary of all asbestos abatement projects conducted by the contractor during the past 12 months; and

(f) A license application fee.

(3) The Department will review the application for completeness. If the application is incomplete, the Department will notify the applicant in writing of the deficiencies.

(4) The Department will deny, in writing, a license to a contractor who has not satisfied the license application requirements.

(5) The Department will issue a license to the applicant after the license is approved.

(6) A license is valid for a period of 12 months but will be extended pending the Department's review of a renewal application provided the renewal application is filed before the expiration date of the contractor's license.

(7) Renewals:

(a) License renewals must be applied for in the same manner as required for the initial license;

(b) For renewal, the contractor or employee representative must have a valid certified supervisor card; and

(c) The complete renewal application must be submitted no later than 60 days before the license expiration date.

(8) The Department may suspend or revoke a license if the licensee:

(a) Fraudulently obtains or attempts to obtain a license; or

(b) Fails at any time to satisfy the qualifications for a license; or

(c) Fails to meet any applicable state or federal standard relating to asbestos abatement; or

(d) Permits an untrained or uncertified worker to work on an asbestos abatement project; or

(e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement; or

(f) Fails to make current certification cards readily available at work-sites for inspection by the Department; or

(g) Fails to pay delinquent application fees, notification fees, or civil penalty assessments.

(9) A contractor whose license has been revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.707

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0040; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0130

### Certification

(1) Any persons working on an asbestos abatement project must be either an Oregon certified supervisor or certified worker. A certified supervisor may work as a certified worker without having separate certification as a worker.

(2) Application for Certification — General Requirements:

(a) Any person wishing to become a certified supervisor or relying on prior training, as provided in OAR 340-248-0160 must apply to the Department, through the training provider, for certification.

(b) Any person applying for worker certification without prior training and any certified worker taking a refresher course must apply directly to the accredited training provider using Department-approved forms.

(3) An application to be a certified supervisor must include:

(a) Documentation that the applicant has successfully completed the supervisor-level training and examination as specified in OAR 340-248-0150 and the Department's **Asbestos Training Guidance Document**; and

(b) Documentation that the applicant has:

(A) Been certified as a worker and has at least three months of asbestos abatement experience, including time on powered air purifying respirators and experience on at least five separate asbestos abatement projects; or

(B) Successfully completed certified worker training and six months of general construction, environmental or maintenance supervisory experience demonstrating skills to independently plan, organize and direct personnel in conducting an asbestos abatement project. The Department will determine if an applicant's experience satisfies those requirements.

(4) An application to be a certified worker must include documentation that the applicant has successfully completed the level of training and examination as specified in OAR 340-248-0150 and the Department's **Asbestos Training Guidance Document**.

(5) A typed certification card and a certificate of course completion will be issued by the training course provider to an applicant who has fulfilled the requirements of certification.

(6) Certification at all levels is valid for one year after the date of issue.

(7) Annual Recertification:

(a) Previously certified Oregon workers and supervisors must apply through the training provider to take recertification refresher courses;

(b) Applicants for re-certification must possess a valid certification card in order to take the refresher course;

(c) All certified supervisors and workers must complete an annual recertification course during the three months before the expiration date of their certification card. A certified supervisor or worker may reinstate certification by taking the appropriate refresher course up to one year after the expiration date of the current Oregon certification card. After that time, such persons must take the initial course to be recertified.

(8) A current worker certification card must be readily available for inspection by the Department at each asbestos abatement project for each worker or supervisor engaged in asbestos abatement activities.

(9) Suspensions and Revocations: The Department may suspend or revoke a person's certification if the person:

(a) Fails to comply with state or federal asbestos abatement regulations; or

(b) Performs asbestos removal without having physical possession of a current certification card; or

(c) Permits the use or duplication of one's certification card or certificate by another; or

(d) Obtains certification from a training provider that does not have the Department's or the EPA's approval to offer training for the particular discipline; or

(e) Fails to pay delinquent application fees, or civil penalties.

(10) A person whose certification has been revoked may not apply for recertification until 12 months after the revocation date.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

# ADMINISTRATIVE RULES

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 9-1989(Temp), f. & cert. ef. 6-7-89; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0050; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0140

### Training Provider Accreditation

#### (1) General:

(a) Any person may apply to become an Oregon accredited asbestos training provider under this Division.

(b) Only training providers accredited by the Department may offer training in Oregon to satisfy the certification requirements contained in this Division.

(c) The Department will accredit each individual training course.

(d) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles.

(e) Training course providers must permit representatives of the Department or its designee to attend, evaluate and monitor any training course without charge. The Department is not required to give advance notice of its inspection. The Department may suspend or withdraw approval of a training course based upon the grounds specified in OAR 340-248-0140(4).

(f) All initial worker and supervisor certification training, or refresher training involving persons wishing to be certified in Oregon using prior training from an EPA approved accreditation or certification course, must take place in Oregon.

(g) The Department may require accredited training providers to pay a fee to cover the reasonable travel expenses for one Department representative to audit for compliance with this Division any accredited refresher course that is not offered in the State of Oregon. This fee is an addition to the standard accreditation application fee.

#### (2) Application for Accreditation:

(a) Applications for accreditation must be submitted to the Department in writing on forms provided by the Department and include the information required by this section:

(A) Name, address, telephone number of the firm, individual(s), or sponsors conducting the course, including the name under which the training provider intends to conduct the training;

(B) The type of course(s) for which approval is requested;

(C) A detailed course outline showing topics covered and the amount of time given to each topic, and includes working with asbestos-substitute materials, fitting and using respirators, use of glove-bag, donning protective clothing and constructing a decontamination unit, the number of students to be accommodated; the number of instructors; and the amount of time for hands-on skill training;

(D) A copy of the course manual, instructor notebooks and all printed material to be distributed in the course;

(E) A description of teaching methods to be employed, including description of audio-visual materials to be used. Upon the Department's request the applicant must provide copies of the materials. Any audio-visual materials provided to the Department will be returned to the applicant;

(F) A description of the hands-on facility to be utilized including protocol for instruction;

(G) A description of the equipment that will be used during classroom lectures and hands-on training;

(H) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualification of each, as well as the subject matter covered by each;

(I) A copy of each written examination to be given including the scoring methodology to be used in grading the examination; and a detailed statement about the development and validation of the examination;

(J) A list of the tuition or other fees required;

(K) A sample of the certificate of completion;

(L) A description of the procedures and policies for re-examination of students who do not successfully complete the training course examination;

(M) A list of any states or accrediting systems that approve the training course;

(N) A description of student evaluation methods (other than written examination to be used) associated with the hands-on skill training and course evaluation methods used by students;

(O) Any restriction on attendance such as class size, language, affiliation, or target audience of class;

(P) A description of the procedure for issuing replacement certification cards to workers who were issued a certification card by the training

provider within the previous 12 months and whose cards have been lost or destroyed;

(Q) Any additional information or documentation the Department may require in order to evaluate the adequacy of the application; and

(R) The accreditation application fee.

(b) The training provider must retain a copy of the application materials listed above for at least three years. Such applications must be made available for inspection by the Department or its designees upon request.

(c) Application for initial training course accreditation and course materials must be submitted to the Department at least 45 days before the requested approval date.

(d) Upon approval of an initial or refresher asbestos training course, the Department will issue a certificate of accreditation. The certificate is valid for one year from the date of issuance.

(e) Application for renewal of accreditation must follow the procedures described for the initial accreditation. In addition, course instructors must demonstrate that they have maintained proficiency in their instructional specialty and adult training methods during the 12 months before renewal.

(3) Training Provider Administrative Tasks. Accredited training providers must perform the following as a condition of accreditation:

(a) Administer the training course only to those persons who have been approved by the Department, or have surrendered their expired certification cards to the trainer and others who are otherwise qualified according to these rules. Such persons may take the examination to complete the training course.

(b) Issue a numbered certificate and a photo certification card to each student who successfully passes the training course examination and meets all other requirements for certification. Each certificate and photo certification card must include:

(A) A unique certificate number;

(B) Name of certified person;

(C) Training course completed;

(D) Dates of the training course;

(E) Date of the examination;

(F) An expiration date of one year after the date upon which the person successfully completed the course and examination;

(G) The name, address, and telephone number of the training provider that issued the certificate; and

(H) A statement that the person receiving the certificate has completed the requisite training for asbestos certification as specified in OAR-340-248-0130.

(c) Provide the Department with advance payment for each certificate to be issued.

(d) Utilize and distribute as part of the course information or training aides furnished by the Department.

(e) Provide the Department with a monthly class schedule at least one week before the schedule begins. Notification must include time and location of each course. Training providers must obtain approval from the Department before any class taking place that is not on their monthly schedule, and if the trainer wishes to hold a class with less than one week advanced notice.

(f) Training Providers must comply with the following recordkeeping requirements:

(A) Maintain the training records required by this subsection for a minimum of three years and make them readily available for inspection by the Department or its designee.

(B) Retain copies of all instructional materials used during each classroom course.

(C) Retain copies of all instructor resumes and instructor approvals issued by either the Department or US EPA.

(D) Document the following information for each accredited course:

(i) The date the exam was given;

(ii) Training course for which the exam was given;

(iii) The name of the exam proctor;

(iv) The name and score of each person taking the exam and a single copy of the exam;

(v) Attendance record;

(vi) Course evaluation form; and

(vii) The names of the instructors for each part of the course offered.

(E) Maintain records of certificates issued to students, including the following information:

(i) Name, address, telephone number, social security number of person receiving the certificate;

(ii) Certificate number given to each person;

# ADMINISTRATIVE RULES

- (iii) Photograph of each person;
- (iv) Discipline for which the certificate was given; and
- (v) Dates of training and certificate expiration.

(F) If a training provider is not accredited or ceases to give asbestos worker certification training, the training provider must notify and allow the Department to take possession of the records for lawful disposition.

(G) Submit certification class information to the Department within 30 days after the end of each training class or as directed by the Department.

(g) Notify the Department before issuing a replacement certification card.

(h) Have a current accreditation certificate at the training location.

(4) Denial, Suspension or Revocation of Accreditation. The Director may deny, suspend, or revoke an application or current accreditation for any of the reasons contained in this section. The Department will issue a notice of denial, suspension, or revocation specifying the reasons for the action and any conditions that must be met before the certificate will be issued or reinstated. Applicants may appeal the Director's determination by requesting a contested case hearing pursuant to the provisions of OAR chapter 340 division 11. The following are considered grounds for denial, revocation or suspension:

(a) Misrepresenting the extent of a training course's approval by a State or the EPA; or

(b) Failing to submit required information or notifications in a timely manner; or

(c) Failing to report to the Department any change in staff or program which substantially deviates from the information contained in the application; or

(d) Failing to maintain requisite records; or

(e) Falsifying accreditation records, instructor qualifications, or other accreditation information; or

(f) Failing to adhere to the training standards and requirements of this Division; or

(g) Failing to comply with the administrative tasks and any other requirement of this Division; or

(h) Providing concurrent training for either initial or refresher courses for supervisors and asbestos workers; or

(i) Failing to pay delinquent application fees, notification fees, or civil penalties; or

(j) The Department may suspend or withdraw a training course's approval if an approved training course instructor or other person with supervisory authority over the delivery of training violates any other asbestos regulations administered by the Department or other agencies.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0060; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0150

### General Training Standards

(1) The training provider must limit each class to a maximum of 25 participants unless the Department grants an exception in writing. The student to instructor ratio for hands-on training must be equal to or less than ten to one (10:1). To apply for an exception allowing class size to exceed 25, the course sponsor must submit the following information in writing to the Department and receive approval before expanding the class size:

(a) The new class size limit;

(b) The teaching methods and techniques for training the proposed larger class;

(c) The protocol for conducting the written examination; and

(d) Justification for a larger class size.

(2) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles.

(3) The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider.

(4) Courses of instruction required for certification must be specific for each of the certificate categories and must be in accordance with the Department's requirements. The course instruction must be presented through a combination of lectures, demonstrations, and hands-on practice.

(5) Courses requiring hands-on training must provide participants actual experience performing tasks associated with asbestos abatement. Demonstrations not involving individual participation are unacceptable as a substitute for hands-on training.

(6) Any person seeking certification as a supervisor must successfully complete an accredited training course of at least five training days that satisfies the elements contained in the Department **Asbestos Training Guidance Document**. The training course must include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit testing, course review, and a written examination consisting of multiple choice questions. To successfully complete the course, the candidate must attend the lectures and demonstrations, fully participate in the hands-on training, and achieve a passing score on the closed book examination.

(7) Any person seeking certification as a worker must successfully complete an accredited training course of at least four training days as outlined in the Department **Asbestos Training Guidance Document**. The training course must include lectures, demonstrations, at least 14 hours of actual hands-on training, individual respirator fit testing, course review, and an examination of multiple choice questions. To successfully complete the course, the candidate must attend the lectures and demonstrations, fully participate in the hands-on training, and achieve a passing score on the closed book examination.

(8) Refresher training consists of one training day for certified supervisors and workers. The refresher courses must include a review of key areas of initial training, updates, and an examination of multiple choice questions as outlined in the Department **Asbestos Training Guidance Document**. To successfully complete the course, the candidate must attend the course, fully participate in any hands-on training, and achieve a passing score on the closed book examination.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0070; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0180

### Fees

(1) The Department may assess the following fees to provide revenues to operate the asbestos control program.

(a) Contractor Licenses: A non-refundable license application fee of \$1000 for a one-year Asbestos Abatement Contractor license;

(b) Worker and Supervisor Certifications: A non-refundable fee of \$65 for a one-year certification as an asbestos supervisor and \$45 for a one-year certification as an asbestos worker;

(c) Training Provider Accreditation: A non-refundable accreditation application fee of:

(A) \$320 for a one-year accreditation to provide a course for training asbestos supervisors;

(B) \$320 for a one-year accreditation to provide a course for training asbestos workers; and

(C) \$320 each for a one-year accreditation to provide a course for refresher training for any level of Oregon asbestos certification.

(d) Asbestos Abatement Project Notifications as required in OAR 340-248-0260.

(2) Requests for waiver of fees must be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. 6-16-95, cert. ef. 7-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-033-0100; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0205

### General Provisions

(1) No person may openly accumulate friable asbestos material or asbestos-containing waste material.

(2) Contractors working on asbestos abatement projects at secure facilities must ensure that all security clearance requirements are completed before asbestos abatement projects at secure facilities start so Department inspectors may gain immediate access to perform required asbestos project inspections.

(3) Any asbestos-containing material that is subjected to sanding, grinding, sawing, or abrading must be handled and disposed of as friable asbestos material.

(4) The content of asbestos in any asbestos-containing material must be determined using the method specified in 40 CFR Part 763 Appendix E,

# ADMINISTRATIVE RULES

Subpart E, Section 1, Polarized Light Microscopy or another method approved by the Department.

Stat. Auth.: ORS 468.020, ORS 468A.025, ORS 468A.135 & ORS 468A.745  
Stats. Implemented: ORS 468A.700 - ORS 468A.760  
Hist.: DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0210

### Asbestos Requirements for Mills, Roadways and Parking lots, and Manufacturing Operations

(1) Emission standard for asbestos mills. No person may cause or allow to be discharged into the atmosphere any visible emissions, including fugitive emissions, from any asbestos milling operation except as provided under OAR 340-248-0275(2) Air Cleaning. For purposes of this rule, the presence of uncombined water in the emission plume is not a violation of the visible emission requirement. Outside storage of asbestos materials is not part of an asbestos mill operation. The owner or operator of an asbestos mill must meet the following requirements:

(a) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operations. The monitoring must be by visual observation of at least 15 seconds duration per source of emissions.

(b) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, a maintenance schedule and recordkeeping plan.

(c) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a format approved by the Department and including the following information:

- (A) Date and time of each inspection;
- (B) Presence or absence of visible emissions;
- (C) Condition of fabric filters, including presence of any tears, holes, and abrasions;
- (D) Presence of dust deposits on clean side of fabric filters;
- (E) Brief description of corrective actions taken, including date and time; and
- (F) Daily hours of operation for each air cleaning device.

(d) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.

(e) Retain a copy of all monitoring and inspection records for at least two years.

(f) Submit a copy of visible emission monitoring records to the Department quarterly. The quarterly reports must be postmarked by the 30th day following the end of the calendar quarter.

(g) Asbestos-containing waste material produced by any asbestos milling operation must be disposed of according to OAR 340-248-0280 and -0290.

(2) Roadways and Parking Lots. No person may construct or maintain, or allow to be constructed or maintained a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless (for asbestos tailings):

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or

(b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at least once per calendar year or within 12 months of road construction to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in **Section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985**, or their equivalent.

(3) Manufacturing. No person may cause or allow to be discharged into the atmosphere any visible emissions, except as provided in OAR 340-248-0275(2), from any building or structure in which manufacturing operations utilizing commercial asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures, or from any other fugitive emissions. All asbestos-containing waste material produced by any manufacturing operation must be disposed of according to OAR 340-248-0280 and -0290. Visible emissions from boilers

or other points not producing emissions directly from the manufacturing operation and having no possible asbestos material in the exhaust gases are not a violation of this rule. The presence of uncombined water in the exhaust plume is not a violation of the visible emission requirements:

(a) Applicability. Manufacturing operations subject to this rule are as follows:

- (A) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials;
- (B) The manufacture of cement products;
- (C) The manufacture of fire proofing and insulating materials;
- (D) The manufacture of friction products;
- (E) The manufacture of paper, millboard, and felt;
- (F) The manufacture of floor tile;
- (G) The manufacture of paints, coatings, caulks, adhesives, or sealants;
- (H) The manufacture of plastics and rubber materials;
- (I) The manufacture of chlorine, using asbestos diaphragm technology;

- (J) The manufacture of shotgun shell wads;
- (K) The manufacture of asphalt concrete; and
- (L) Any other manufacturing operation that results or may result in the release of asbestos material to the ambient air.

(b) The owner or operator of the manufacturing operation must monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment. Monitoring must be done at least once each day during daylight hours for visible emissions to the outside air during periods of operation and be by visual observation of at least 15 seconds duration per source of emissions.

(c) The owner or operator of the manufacturing operation must inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, a maintenance schedule and recordkeeping plan.

(d) The owner or operator of a manufacturing operation must maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department and including the following information:

- (A) Date and time of each inspection;
- (B) Presence or absence of visible emissions;
- (C) Condition of fabric filters, including presence of any tears, holes and abrasions;
- (D) Presence of dust deposits on clean side of fabric filters;
- (E) Brief description of corrective actions taken, including date and time; and
- (F) Daily hours of operation for each air cleaning device.

(e) The owner or operator of a manufacturing operation must furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.

(f) The owner or operator of a manufacturing operation must retain a copy of all monitoring and inspection records for at least two years.

(g) The owner or operator of a manufacturing operation must submit quarterly a copy of the visible emission monitoring records to the Department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the 30th day following the end of the calendar quarter.

(h) Asbestos-containing waste material produced by any asbestos manufacturing operation must be disposed of according to OAR 340-248-0280 or 340-248-0290.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91; Section (4)(a) - (d) renumbered to 340-025-0466; Section (5)(a-d) renumbered to 340-025-0467; Sections (6) - (12) renumbered to 340-025-0468; Sections (13) - (15) renumbered to 340-025-0469; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0465; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5600; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

# ADMINISTRATIVE RULES

## 340-248-0220

### Reporting Requirements for Asbestos Sources Using Air Cleaning Devices

(1) New sources covered by this rule must submit the requested information 90 days before initial startup. Existing sources covered by this rule must comply by March 1, 1996. Changes in the information provided to the Department must be submitted within 30 days after the change.

(2) Sources covered by OAR 340-248-0210(1) Mills, 340-248-0210(3) Manufacturing, 340-248-0275(4) Fabricating, and 340-248-0230 Asbestos to Nonasbestos Conversion Operations, must provide the following information to the Department:

(a) A description of the emission control equipment used for each process; and

(b) If a fabric filter device is used to control emissions:

(A) The airflow permeability in m<sup>3</sup>/min/m<sup>2</sup> (ft<sup>3</sup>/min/ft<sup>2</sup>) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(B) If the fabric filter device uses a felted fabric, the density in g/m<sup>2</sup> (oz/yd<sup>2</sup>), the minimum thickness in millimeters (inches), and the airflow permeability in m<sup>3</sup>/min/m<sup>2</sup> (ft<sup>3</sup>/min/ft<sup>2</sup>).

(c) If a HEPA filter is used to control emissions, the certified efficiency.

(3) Sources covered by this rule and subject to OAR 340-248-0280(1) through 340-248-0280(9) or 340-248-0290 must submit the following information:

(a) A brief description of each process that generates asbestos-containing waste material;

(b) The average volume of asbestos-containing waste material disposed of, measured in m<sup>3</sup>/day (yd<sup>3</sup>/day);

(c) The emission control methods used in all stages of waste disposal; and

(d) The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(4) Sources covered by this rule and subject to OAR 340-248-0280(10), 340-248-0280(11) or 340-248-0290 must provide the following information:

(a) A brief description of the site; and

(b) The method or methods used to comply with the standards, or alternative procedures used.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99,

Renumbered from 340-032-5604; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp),

f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0240

### Asbestos Inspection Requirements for Oregon Title V Operating Permit Program Sources

This rule applies to renovation and demolition activities at major sources subject to the Oregon Title V Operating Permit program as defined in OAR 340-200-0020.

(1) To determine applicability of the Department's asbestos regulations, the owner or operator of a renovation or demolition project must thoroughly survey, using an accredited inspector, the affected area for the presence of asbestos, including nonfriable asbestos. A copy of that survey report must remain on site during any demolition or renovation activity.

(2) For demolition projects where no asbestos-containing material is present, written notification must be submitted to the Department on an approved form. The notification must be submitted by the owner or operator or by the demolition contractor as follows:

(a) Submit the notification, as specified in section (3) of this rule, to the Department at least ten days before beginning any demolition project.

(b) Failure to notify the Department before any changes in the scheduled starting or completion dates or other substantial changes renders the notification of demolition void.

(3) The following information must be provided for each notification of demolition:

(a) Name, address, and telephone number of the person conducting the demolition.

(b) Contractor's Oregon demolition license number, if applicable.

(c) Certification that no asbestos was found during the predemolition asbestos survey and that if asbestos-containing material is uncovered during demolition the procedures found in OAR 340-248-0250 through 340-248-0290 will be followed.

(d) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including:

(A) The age and present and prior use of the facility; and

(B) Address or location of the scheduled demolition project.

(C) Major source owner or operator name, address and phone number.

(f) Scheduled starting and completion dates of demolition work.

(g) Any other information requested on the Department form.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ

24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. &

cert. ef. 10-14-99, Renumbered from 340-032-5610; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ

19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0250

### Asbestos Abatement Project Exemptions

(1) Any person who conducts or provides for the conduct of an asbestos abatement project must comply with the provisions of OAR 340 division 248 except as provided in this rule.

(2) The following asbestos abatement projects are exempt from certain provisions of this Division as listed in this Section:

(a) Asbestos abatement conducted inside a single private residence is exempt from OAR 340-248-0110 through 340-248-180, 340-248-0210 through 340-248-240 and 340-248-0260 through 340-248-0270 if the residence is occupied by the owner and the owner occupant is performing the asbestos abatement work.

(b) Asbestos abatement conducted outside of a single private residence by the owner is exempt from the notification requirements contained in OAR 340-248-0260, if the residence is not a rental property, a commercial business, or intended to be demolished.

(c) Residential buildings with four or fewer dwelling units are exempt from the provisions of OAR 340-248-0270(1).

(d) Projects involving the removal of mastics and roofing products that are fully encapsulated with a petroleum-based binder and are not hard, dry, or brittle are exempt from OAR 340-248-0110 through 340-248-0280 provided the materials are not made friable.

(e) Projects involving the removal of less than three square feet or three linear feet of asbestos-containing material are exempt from OAR 340-248-0110 through 340-248-0180 and the notification requirements in 340-248-0260 provided that the removal of asbestos is not the primary objective, is part of a needed repair operation, and the methods of removal are in compliance with OAR 437 Division 3 "Construction" subsection Z and 29 CFR 1926, 1101(g)(i) through (iii) (1998). Asbestos abatement projects may not be subdivided into smaller sized units in order to qualify for this exemption.

(f) Projects involving the removal of asbestos-containing materials that are sealed from the atmosphere by a rigid casing are exempt from OAR 340-248-0110 through 340-248-0280, provided the casing is not broken or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.

(3) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-248-0250(2) must comply with the following:

(a) Submit asbestos removal notification and the appropriate fee to the Department Business Office on a Department form in accordance with OAR 340-248-0260.

(b) Remove nonfriable asbestos materials in a manner that ensures the material remains nonfriable.

(c) A nonfriable asbestos abatement project is exempt from the asbestos licensing and certification requirements under OAR 340-248-0100 through 340-248-0180. The exemption ends whenever the asbestos-containing material becomes friable.

(4) Emergency fire fighting is not subject to this division.

(5) Asbestos containing waste material that is handled and disposed of in compliance with a solid waste permit issued pursuant to ORS 459 is not subject to OAR 340-248-0205(1).

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-

19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-

21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-

7-91; Section (1)(a) - (d) renumbered from 340-025-0465(4)(a) - (d); DEQ 4-1993, f. & cert.

ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0466; DEQ 19-

1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 22-1995, f. &

cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5620;

DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

# ADMINISTRATIVE RULES

## 340-248-0260

### Asbestos Abatement Notifications Requirements

Except as provided for in OAR 340-248-0250, written notification of any asbestos abatement project must be provided to the Department on a form prepared by and available from the Department, accompanied by the appropriate fee. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in sections (1), (2), or (3) of this rule except as provided in sections (5), (6), or (7).

(1) Submit the notifications as specified in section (4) of this rule and the project notification fee to the Department at least ten days before beginning any friable asbestos abatement project and at least five days before beginning any non-friable asbestos abatement project.

(a) The project notification fee is:

(A) \$35 for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.

(B) \$70 for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.

(C) \$275 for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.

(D) \$375 for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.

(E) \$650 for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.

(F) \$750 for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.

(G) \$1,200 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.

(H) \$2,000 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.

(I) \$2,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.

(J) \$260 for annual notifications for friable asbestos abatement projects involving removal of 40 linear feet or 80 square feet or less of asbestos-containing material.

(K) \$350 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.

(b) Project notification fees must accompany the project notification form. Notification has not occurred until the completed notification form and appropriate notification fee is received by the Department.

(c) The Department may waive the ten-day notification requirement in section (1) of this rule in emergencies that directly affect human life, health, and property. This includes:

(A) Emergencies where there is an imminent threat of loss of life or severe injury;

(B) Emergencies where the public is exposed to air-borne asbestos fibers; or

(C) Emergencies where significant property damage will occur if repairs are not made immediately.

(d) The Department may waive the ten-day notification requirement in section (1) of this rule for asbestos abatement projects that were not planned, resulted from unexpected events, and will cause damage to equipment or impose unreasonable financial burden if not performed immediately. This includes the non-routine failure of equipment.

(e) In either subsection (c) or (d) of this section persons responsible for such asbestos abatement projects must notify the Department by telephone before commencing work or by 9:00 am of the next working day if the work was performed on a weekend or holiday. In any case notification as specified in section (4) of this rule and the appropriate fee must be submitted to the Department within three days of commencing emergency or unexpected event asbestos abatement projects.

(f) Failure to notify the Department before any changes in the scheduled starting or completion dates or other substantial changes will render the notification void.

(g) If an asbestos project equal to or greater than 2,600 linear feet or 1,600 square feet continues for more than one year from the original start

date of the project a new notification and fee must be submitted annually thereafter until the project is complete.

(h) Residential buildings include: site built homes, modular homes constructed off site, mobile homes, condominiums, and duplexes or other multi unit residential buildings consisting of four units or less.

(2) Annual notification for small-scale friable asbestos abatement projects. This notification may be used only for projects where no more than 40 linear or 80 square feet of asbestos-containing material is removed. The small-scale friable asbestos projects may be conducted at multiple facilities by a single licensed asbestos contractor, or at a facility that has a centrally controlled asbestos operation and maintenance program where the facility owner uses appropriately trained and certified personnel to remove asbestos.

(a) Establish eligibility for use of this notification procedure with the Department prior to use.

(b) Maintain on file with the Department a general asbestos abatement plan. The plan must contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible.

(c) Provide to the Department a summary report of all asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report must include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter when possible.

(d) Provide to the Department, upon request, a list of asbestos abatement projects that are scheduled or are being conducted at the time of the request.

(e) Submit project notification and fee prior to use of this notification procedure.

(f) Failure to provide payment for use of this notification procedure will void the general asbestos abatement plan and each subsequent abatement project will be individually assessed a project notification fee.

(3) Annual non-friable asbestos abatement projects may only be performed at schools, colleges, and facilities where the removal work is done by certified asbestos abatement workers. Submit the notification as follows:

(a) Establish eligibility for use of this notification procedure with the Department prior to use.

(b) Maintain on file with the Department a general non-friable asbestos abatement plan. The plan must contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible.

(c) Provide to the Department a summary report of all non-friable asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report must include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan, and a list describing the non-friable asbestos abatement projects anticipated for the next quarter, when possible.

(d) Submit project notification and fee prior to use of this notification procedure.

(e) Failure to provide payment for use of this notification procedure will void the general non-friable asbestos abatement plan and each subsequent non-friable abatement project will be individually assessed a project notification fee.

(4) The following information must be provided for each notification:

(a) Name and address of person conducting asbestos abatement.

(b) The Oregon asbestos abatement contractor's license number and certification number of the supervisor for the asbestos abatement project or, for nonfriable asbestos abatement projects, the name of the supervising person that meets Oregon OSHA's competent person qualifications as required in OAR 437, division 3 "Construction", subdivision Z, 1926.1101(b) "Competent person", (2/10/1994).

(c) Method of asbestos abatement to be employed.

(d) Procedures to be employed to insure compliance with OAR 340-248-0270 through 340-248-0290.

(e) Names, addresses, and phone numbers of waste transporters.

(f) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.

(g) Description of asbestos disposal procedure.

(h) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including:

(A) The age, present and prior use of the facility;

(B) Address or location where the asbestos abatement project is to be accomplished, including building, floor, and room numbers.

(i) Facility owner or operator name, address and phone number.

# ADMINISTRATIVE RULES

(j) Scheduled starting and completion dates of asbestos abatement work.

(k) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.

(l) Amount of asbestos to be abated: linear feet, square feet, thickness.

(m) For facilities described in OAR 340-248-0270(8) provide the name, title and authority of the State or local government official who ordered the demolition, date the order was issued, and the date demolition is to begin.

(n) Any other information requested on the Department form.

(5) The project notification fees specified in this section will be increased by 50% when an asbestos abatement project is commenced without filing of a project notification or submittal of a notification fee or when notification of less than ten days is provided under subsections (1)(c) and (d) of this rule.

(6) The Director may waive part or all of a project notification fee. Requests for waiver of fees must be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.

(7) Pursuant to ORS 468A.135, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees will be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91; Renumbered from 340-025-0465(5)(a) - (d); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0467; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5630; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0270

### Asbestos Abatement Work Practices and Procedures

Except as provided for in OAR 340-248-0250, the following procedures must be employed by any person who conducts or provides for the conduct of an asbestos abatement project.

(1) Prior to performing a demolition or renovation activity on a facility the owner or operator of a facility must have an accredited inspector thoroughly survey the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos-containing material, including nonfriable asbestos material.

(2) The owner or operator of a facility that requires a survey pursuant to OAR 340-248-0270(1) must keep a copy of the survey report onsite at the facility during any demolition or renovation activity.

(3) Remove all asbestos-containing materials before any activity begins that would break up, dislodge, or disturb the materials or preclude access to the materials for subsequent removal. Asbestos-containing materials need not be removed before demolition if:

(a) They are on a facility component that is encased in concrete or other similar material and are adequately wetted whenever exposed during demolition;

(b) They were not discovered before demolition and cannot be removed because of unsafe conditions as a result of the demolition.

(4) Upon discovery of asbestos-containing materials found during demolition the owner or operator performing the demolition must:

(a) Stop demolition work immediately;

(b) Notify the Department immediately of the occurrence;

(c) Keep the exposed asbestos-containing materials and any asbestos-contaminated waste material adequately wet at all times until a licensed asbestos abatement contractor begins removal activities;

(d) Have the licensed asbestos abatement contractor remove and dispose of the asbestos-containing waste material.

(5) Asbestos-containing materials must be adequately wetted when they are being removed. In renovation, maintenance, repair, and construction operations, where wetting would unavoidably damage equipment or is incompatible with specialized work practices, or presents a safety hazard, adequate wetting is not required if the owner or operator:

(a) Obtains prior written approval from the Department for dry removal of asbestos-containing material;

(b) Keeps a copy of the Department's written approval available for inspection at the work site;

(c) Adequately wraps or encloses any asbestos-containing material during handling to avoid releasing fibers;

(d) Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.

(6) When a facility component covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:

(a) Adequately wet any asbestos-containing materials exposed during cutting or disjoining operation;

(b) Carefully lower the units or sections to ground level, not dropping them or throwing them;

(c) Asbestos-containing materials do not need to be removed from large facility components such as reactor vessels, large tanks, steam generators, but excluding beams if the following requirements are met:

(A) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material; and

(B) The component is encased in leak-tight wrapping; and

(C) The leak-tight wrapping is labeled according to OAR 340-248-0280(2)(b) during all loading and unloading operations and during storage.

(7) For friable asbestos materials being removed or stripped:

(a) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with OAR 340-248-0280;

(b) Carefully lower the materials to the floor, not dropping or throwing them;

(c) With prior written approval from the Department, transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.

(d) Enclose the area where friable asbestos materials are to be removed with a negative pressure enclosure prior to abatement unless written approval for an alternative is granted by the Department.

(e) A minimum of one viewing window will be installed in all enclosures, including negative pressure enclosures, in accordance with the following:

(A) Each viewing window must be a minimum of two feet by two feet and be made of a material that will allow a clear view inside the enclosure.

(B) For large enclosures, including negative pressure enclosures, install one viewing window for every 5,000 square feet of area when spatially feasible.

(8) Any person that demolishes a facility under an order of the State of Oregon or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse must comply with the following:

(a) Obtain written approval from the Department for an ordered demolition procedure before that demolition takes place; and

(b) Send a copy of the order and an asbestos abatement project notification (as described in OAR 340-248-0260) to the Department before commencing demolition work; and

(c) Keep a copy of the order, Department's approval, and the notification form at the demolition site during all phases of demolition until final disposal of the project waste at an authorized landfill; and

(d) Keep asbestos-containing materials and asbestos contaminated debris adequately wet during demolition and comply with the disposal requirements set forth in OAR 340-248-0280 or 340-248-0290.

(9) Persons performing asbestos abatement outside full negative pressure containment must obtain written approval from the Department before using mechanical equipment to remove asbestos-containing material.

(10) Before a facility is demolished by intentional burning, all asbestos-containing material must be removed and disposed of in accordance with OAR 340-248-0010 through 340-248-0290.

(11) None of the operations in section (1) through (4) of this rule may cause any visible emissions. Any local exhaust ventilation and collection system or vacuuming equipment used during an asbestos abatement project, must be equipped with a HEPA filter or other filter of equal or greater collection efficiency.

(12) The Director may approve, on a case-by-case basis, requests to use an alternative to the requirements contained in this rule. The contractor or facility owner or operator must submit a written description of the proposed alternative and demonstrate to the Director's satisfaction that the proposed alternative provides public health protection equivalent to the protection that would be provided by the specific requirement, or that such level of protection cannot be obtained for the asbestos abatement project.

(13) Final Air Clearance Sampling Requirements apply to projects involving more than 160 square feet or 260 linear feet of asbestos-contain-

# ADMINISTRATIVE RULES

ing material. Before containment around such an area is removed, the person performing the abatement must have at least one air sample collected that documents that the air inside the containment has no more than 0.01 fibers per cubic centimeter of air. The air sample(s) collected may not exceed 0.01 fibers per cubic centimeter of air. The Department may grant a waiver to this section or exceptions to the following requirements upon receiving an advanced written request:

(a) The air clearance samples must be performed and analyzed by a party who is National Institute of Occupational Safety and Health (NIOSH) 582 certified and financially independent from the person(s) conducting the asbestos abatement project;

(b) Before final air clearance sampling is performed the following must be completed:

(A) All visible asbestos-containing material and asbestos-containing waste material must be removed according to the requirements of this section;

(B) The air and surfaces within the containment must be sprayed with an encapsulant;

(C) Air sampling may commence when the encapsulant has settled sufficiently so that the filter of the sample is not clogged by airborne encapsulant;

(D) Air filtration units must remain on during the air-monitoring period.

(c) Air clearance sampling inside containment areas must be aggressive and comply with the following procedures:

(A) Immediately before starting the sampling pumps, direct exhaust from a minimum one horse power forced air blower against all walls, ceilings, floors, ledges, and other surfaces in the containment;

(B) Then place stationary fans in locations that will not interfere with air monitoring equipment and then directed toward the ceiling. Use one fan per 10,000 cubic feet of room space;

(C) Start sampling pumps and sample an adequate volume of air to detect concentrations of 0.01 fibers of asbestos per cubic centimeter according to NIOSH 7400 method;

(D) When sampling is completed turn off the pump and then the fan(s);

(E) As an alternative to meeting the requirements of paragraphs (A) through (D) of this subsection, air clearance sample analysis may be performed according to Transmission Electron Microscopy Analytical Methods prescribed by **40 CFR 763, Appendix A to Subpart E** (Interim Transmission Electron Microscopy Analytical Methods).

(d) The person performing asbestos abatement projects requiring air clearance sampling must submit the clearance results to the Department on a Department form. The clearance results must be received by the Department within 30 days after the completion date of the asbestos abatement project.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88, ef. 6-1-88 (and corrected 6-3-88); DEQ 18-1991, f. & cert. ef. 10-7-91; Renumbered from 340-025-0465(6) - (12); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0468; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5640; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0275

### Asbestos Standards for Air Cleaning, Spraying, Molded Insulation, and Fabricating

The following methods must be employed for air cleaning, fabricating, and sprayed-on and molded insulation applications:

(1) Options for Air Cleaning. Rather than meet the no visible emissions requirements of OAR 340-248-0210(1) and (3), owners and operators may elect to use methods specified in Section (2).

(2) Air Cleaning. All persons electing to use air cleaning methods rather than comply with the no visible emission requirements must meet one of the provisions of subsections (a) through (d) of this section and all of the requirements specified in subsections (e) and (f) of this section:

(a) Fabric filter collection devices must be used, except as provided in subsections (b) and (c) of this section. Such devices must be operated at a pressure drop of no more than four inches (10.16 cm) water gauge as measured across the filter fabric. The air flow permeability, as determined by ASTM Method D737-75, must not exceed 30 ft.3/min./ft.2 (9 m3/min./m2) for woven fabrics or 35 ft.3/min./ft.2 (11 m3/min./m2) for felted fabrics with the exception that airflow permeability of 40 ft.3/min./ft.2 (12 m3/min./m2) for woven and 45 ft.3/min./ft.2 (14 m3/min./m2) for felted fabrics must be allowed for filtering air emissions from asbestos ore dryers. Each square yard of felted fabric must weigh at least 14 ounces (475 grams per square

meter) and be at least 1/16 inch (1.6 mm) thick throughout. Any synthetic fabrics used must not contain fill yarn other than that which is spun;

(b) If the use of fabric filters creates a fire or explosion hazard, the department may authorize the use of wet collectors designed to operate with a unit contacting energy of at least 40 inches (101.6 cm) of water gauge pressure;

(c) If High Efficiency Particulate Air (HEPA) filters are used to control emissions the certified efficiency must be at least 99.97 percent for particles 0.3 microns or greater;

(d) The Department may authorize the use of filtering equipment other than that described in subsection (a), (b), or (c) of this rule if such filtering equipment is satisfactorily demonstrated to provide filtering of asbestos material equivalent to that of the described equipment;

(e) All air cleaning devices authorized by this section must be properly installed, operated, and maintained. Devices to bypass the air cleaning equipment may be used only during upset and emergency conditions, and then only for such time as is necessary to shut down the operation generating the particulate asbestos material;

(f) Fabric filters collection devices installed after January 10, 1989 must be easily inspected for faulty bags.

#### (3) Spraying:

(a) No person may cause or allow to be discharged into the atmosphere any visible emissions from any spray-on application of materials containing more than one percent asbestos on a dry weight basis used to insulate or fire-proof equipment or machinery, except as provided in section (2) of this rule. Spray-on materials used to insulate or fireproof buildings, structures, pipes, and conduits must contain less than one-percent asbestos on a dry weight basis. If any city or area of local jurisdiction has ordinances or regulations for spray application materials more stringent than those in this section, the provisions of such ordinances or regulations apply;

(b) Any person intending to spray asbestos materials to insulate or fire-proof buildings, structures, pipes, conduits, equipment, or machinery must notify the Department in writing 20 days before the spraying operation begins. The notification must contain the following:

(A) Name and address of person intending to conduct the spraying operation;

(B) Address or location of the spraying operation;

(C) The name and address of the owner of the facility being sprayed.

(c) The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of subsections (a) and (b) of this section.

(4) Fabricating. Except as provided in section (2) of this rule no person may cause or allow to be discharged into the atmosphere any visible emissions, including fugitive emissions, from fabricating operations including the following:

(a) Applicability. This section applies to fabricating operations using commercial asbestos:

(A) The fabrication of cement building products;

(B) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles;

(C) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.

(b) The owner or operator of a fabricating operation must monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices and process equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring must be by visual observation of at least 15 seconds duration per source of emissions.

(c) The owner or operator of a fabricating operation must inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this subsection, submit to the department, revise as necessary, and implement a written maintenance plan to include, at a minimum, a maintenance schedule and recordkeeping plan.

(d) The owner or operator of a fabricating operation must maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department that includes the following information:



# ADMINISTRATIVE RULES

- (A) Date and time of each inspection;
  - (B) Presence or absence of visible emissions;
  - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions;
  - (D) Presence of dust deposits on clean side of fabric filters;
  - (E) Brief description of corrective actions taken, including date and time;
  - (F) Daily hours of operation for each air cleaning device.
- (e) The owner or operator of a fabricating operation must furnish upon request and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.

(f) The owner or operator of a fabricating operation must retain a copy of all monitoring and inspection records for at least two years.

(g) The owner or operator of a fabricating operation must submit a copy of the visible emission monitoring records to the Department quarterly. The quarterly report must be postmarked by the 30th day following the end of the calendar quarter.

(5) Insulation. No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this section do not apply to insulating materials regulated under section (3) of this rule.

Stat. Auth.: ORS 468.020, ORS 468A.025, ORS 468A.135 & ORS 468A.745  
Stats. Implemented: ORS 468A.700 - ORS 468A.760  
Hist.: DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0280

### Friable Asbestos Disposal Requirements

Work practices and procedures for packaging, storing, transporting, and disposing of friable asbestos-containing waste material: The owner or operator of a facility or an activity covered under the provisions of OAR 340-248-0205 through 340-248-0280 or any other source of friable asbestos-containing waste material must meet the following standards:

(1) There may be no visible emissions to the atmosphere during the collection; processing; packaging; transporting; or deposition of any asbestos-containing waste material that is generated by a facility.

(2) All asbestos-containing waste materials must be adequately wetted to ensure that they remain wet until delivered to an authorized landfill, and:

- (a) Processed into nonfriable pellets or other shapes; or
- (b) Packaged in leak-tight containers such as two plastic bags each with a minimum thickness of 6 mil., or fiber or metal drum. Containers must be labeled as follows:

(A) The name of the asbestos waste generator and the location where the waste was generated; and

(B)(i) A warning label that states:

**DANGER**  
Contains Asbestos Fibers  
Avoid Creating Dust  
Cancer and Lung Disease Hazard  
Avoid Breathing Airborne  
Asbestos Fibers

(ii) Alternatively, warning labels specified by 29 CFR 1926.1101(k)(7) (1994) may be used.

(3) If the asbestos-containing materials are not removed from a facility before demolition as described in OAR 340-248-0270(5), adequately wet the asbestos-containing waste material at all times after demolition and keep it wet during handling and loading for transport to a disposal site. Such asbestos-containing waste materials must be transported in lined and covered containers for bulk disposal.

(4) The interim storage of asbestos-containing waste material must protect the waste from dispersal into the environment and provide physical security from tampering by unauthorized persons. The interim storage of asbestos-containing waste material is the sole responsibility of the contractor, owner or operator performing the asbestos abatement project.

(5) All asbestos-containing waste material must be deposited as soon as possible by the asbestos waste generator at:

(a) A waste disposal site authorized by the Department and operated in accordance with this rule; or

(b) A Department approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of OAR 340-248-0230 Asbestos to Nonasbestos Conversion Operations.

(6) Persons disposing of asbestos-containing waste material must notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator before bringing the waste to the disposal site.

(7) For each waste shipment the following information must be recorded on a Department form:

(a) Waste Generation:

(A) The name, address, and telephone number of the asbestos waste generator.

(B) The number and type of asbestos-containing waste material containers and volume in cubic yards.

(C) A certification that the contents of this consignment are carefully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highways according to applicable regulations.

(b) Waste Transportation:

(A) The date transported.

(B) The name, address, and telephone number of the transporter(s).

(c) Waste Disposal:

(A) The name and telephone number of the disposal site operator.

(B) The name and address or location of the waste disposal site.

(C) The quantity of the asbestos-containing waste material in cubic yards.

(D) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.

(E) The date asbestos-containing waste is received at disposal site.

(8) For the transportation of asbestos-containing waste material:

(a) The asbestos waste generator must:

(A) Maintain the asbestos waste shipment records for at least two years and ensure that all the information requested on the Department form regarding waste generation and transportation has been supplied.

(B) Limit access into loading and unloading area to authorized personnel.

(C)(i) Mark vehicles, while loading and unloading asbestos-containing waste, with signs (20 in. x 14 in.) that state:

**DANGER**  
ASBESTOS DUST HAZARD  
CANCER AND LUNG DISEASE HAZARD  
Authorized Personnel Only

(ii) Alternatively, language that conforms to the requirements of 29 CFR 1926.1101(k)(6) (1994) may be used.

(b) The waste transporter must:

(A) Immediately notify the landfill operator upon arrival of the waste at the disposal site.

(B) Provide a copy of the asbestos waste shipment record to the disposal site owners or operators when the asbestos-containing waste material is delivered to the disposal site.

(9) After initial transport of asbestos-containing waste material the asbestos waste generator must:

(a) Receive a copy of the completed asbestos waste shipment record within 35 days, or determine the status of the waste shipment. A completed asbestos waste shipment record must include the signature of the owner or operator of the designated disposal site.

(b) Receive a copy of the completed asbestos waste shipment record within 45 days, or submit to the Department a written report including:

(A) A copy of the asbestos waste shipment record when a confirmation of delivery was not received; and

(B) A cover letter signed by the asbestos waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(c) Keep asbestos waste shipment records, including a copy signed by the owner or operator of the designated waste disposal site, for at least three years. Make all disposal records available upon request to the Department. For an asbestos abatement project conducted by a contractor licensed under OAR 340-248-0120, the records must be retained by the licensed contractor. For any other asbestos abatement project, the records must be retained by the facility owner.

(10) Each owner or operator of an active asbestos-containing waste disposal site must meet the following standards:

(a) For all asbestos-containing waste material received:

(A) Ensure that off-loading of asbestos-containing waste material is done under the direction and supervision of the landfill operator or their authorized agent, and that it is accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents the release of visible emissions to the air.

(B) Ensure that off-loading of asbestos-containing waste material occurs at the immediate location where the waste will be buried and restrict public access to off-loading area until waste is covered in accordance with paragraph (H), of this subsection.

# ADMINISTRATIVE RULES

(C) Maintain asbestos waste shipment records for at least two years and ensure that all information requested on the Department form regarding waste disposal has been supplied.

(D) Immediately notify the Department by telephone, followed by a written report to the Department the following working day, of the presence of improperly enclosed or uncovered waste. Submit a copy of the asbestos waste shipment record along with the report.

(E) As soon as possible, and no more than 30 days after receiving the waste, send a copy of the signed asbestos waste shipment record to the asbestos waste generator.

(F) Upon discovering a discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the asbestos waste generator. Report in writing to the Department any discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received that cannot be reconciled between the asbestos waste generator and the waste disposal site within 15 days after receiving the waste. Describe the discrepancy and attempts to reconcile it, and submit a copy of the asbestos waste shipment record along with the report. Include the Department assigned asbestos project number in the discrepancy report.

(G) Select the waste burial site in an area of minimal work activity that is not subject to future excavation.

(H) Cover all asbestos-containing waste material deposited at the disposal site with at least 12 inches of soil or six inches of soil plus 12 inches of other waste before running compacting equipment over it but no later than the end of the operating day.

(b) Maintain, until site closure, record of the location, depth and area, and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(c) Excavation or disturbance of asbestos-containing waste material that has been deposited at a waste disposal site and is covered is considered an asbestos abatement project. The notification for any such project must be submitted as specified in OAR 340-248-0260 except as follows:

(A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.

(B) State the reason for disturbing the waste.

(C) Explain the procedures for controlling emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. The Department may require changes in the proposed emission control procedures.

(D) State the location of any temporary storage site and the final disposal site.

(d) Upon closure of an active asbestos-containing waste disposal site, each owner or operator must:

(A) Comply with all the provisions for inactive asbestos-containing waste disposal sites.

(B) Submit to the Department a copy of records of asbestos waste disposal locations and quantities.

(C) Make available during normal business hours and furnish upon request all records required under this section for inspection by the Department.

(11) The owner or operator of an inactive asbestos-containing waste disposal site must meet the following standards:

(a) Maintain a cover of at least two feet of soil or one foot of soil plus one foot of other waste.

(b) Grow and maintain a cover of vegetation on the area to prevent erosion of the non asbestos-containing cover of soil or other waste materials. In desert areas where vegetation would be difficult to maintain, a layer of at least three inches of well-graded, nonasbestos crushed rock may be placed and maintained on top of the final cover instead of vegetation.

(c) For inactive asbestos waste disposal sites for asbestos-containing tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used and maintained to achieve the requirements of subsections (a) and (b) of this section, provided prior written approval of the Department is obtained.

(d) Excavation or disturbance at any inactive asbestos-containing waste disposal site is an asbestos abatement project. The notification for any such project must be submitted as specified in OAR 340-248-0260, except as follows:

(A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.

(B) State the reason for disturbing the waste.

(C) Explain the procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. The Department may require changes in the proposed emission control procedures to be used.

(D) State the location of any temporary storage site and the final disposal site.

(e) Within 60 days of a site's becoming inactive, request in writing that the Commission issue an environmental hazard notice for the site. This environmental hazard notice will notify in perpetuity any potential purchaser of the property that:

(A) The land has been used for the disposal of asbestos-containing waste material;

(B) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required for active asbestos disposal sites have been filed with the Department; and

(C) The site is subject to the provisions of OAR 340-248-0205 through 340-248-0290.

(12) Rather than meet the requirements of this rule, an owner or operator may use alternative packaging, storage, transport, or disposal methods after receiving written approval by the Department.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 96, f. & ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91; Renumbered from 340-025-0465(13) - (15); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93; Renumbered from 340-025-0469; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5650; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

## 340-248-0290

### Nonfriable Asbestos Disposal Requirements

Work practices and procedures for packaging, storing, transporting, and disposal of nonfriable asbestos-containing waste material: The owner or operator of a facility or an activity covered under the provisions of OAR 340-248-0205 through 340-248-0290 and any other source of nonfriable asbestos-containing waste material must meet the following standards:

(1) Any waste that contains nonfriable asbestos material must be handled and disposed of using methods that will prevent the release of airborne asbestos-containing material.

(2) Rather than meet the requirements of this rule, an owner or operator may use alternative packaging, storage, transport, or disposal methods after receiving written approval from the Department.

Stat. Auth.: ORS 468.020, ORS 468A.025, ORS 468A.135 & ORS 468A.745

Stats. Implemented: ORS 468A.700 - ORS 468A.760

Hist.: DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03

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## Department of Fish and Wildlife Chapter 635

**Adm. Order No.:** DFW 134-2002(Temp)

**Filed with Sec. of State:** 12-19-2002

**Certified to be Effective:** 12-19-02 thru 4-1-03

**Notice Publication Date:**

**Rules Amended:** 635-041-0065, 635-042-0130, 635-042-0135

**Subject:** Amend rules to establish the winter salmon season for Treaty Indian fishers in the Columbia River above Bonneville Dam; and amend rules relating to commercial fishing seasons for smelt and sturgeon in the Columbia River below Bonneville Dam, consistent with action taken December 18, 2002 by the Columbia River Compact.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

## 635-041-0065

### Winter Salmon Season

Salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery from 12 noon February 1, 2003 to 12 noon March 21, 2003

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129 & ORS 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88;

# ADMINISTRATIVE RULES

FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03

## 635-042-0130 Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River December 1-31, 2002, and from 3 a.m. to 9 p.m. on the following dates: January 2, 2003, January 3, 2003, January 5, 2003, January 7, 2003, January 9, 2003, January 10, 2003, January 12, 2003, January 14, 2003, January 16, 2003, January 17, 2003, January 19, 2003, January 21, 2003, January 23, 2003, January 24, 2003, January 26, 2003, January 28, 2003, January 30, 2003, January 31, 2003, February 2, 2003, February 4, 2003, February 6, 2003, February 7, 2003, February 9, 2003, February 11, 2003, February 13, 2003, February 14, 2003, February 16, 2003, February 18, 2003, February 20, 2003, February 21, 2003, February 23, 2003, February 25, 2003, February 27, 2003, February 28, 2003, March 2, 2003, March 4, 2003, March 6, 2003, March 7, 2003, March 9, 2003, March 11, 2003, March 13, 2003, March 14, 2003, March 16, 2003, March 18, 2003, March 20, 2003, March 21, 2003, March 23, 2003, March 25, 2003, March 27, 2003, March 28, 2003, and March 30, 2003.

(2) It is unlawful to use other than the following gear for the taking of smelt in the Columbia River:

(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is unlawful to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

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

Stats. Implemented: ORS 506.129 & ORS 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03

## 635-042-0135 Sturgeon Season

(1) Sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Sturgeon and salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Adipose fin-

clipped salmon and sturgeon only may be sold from this fishery. The open fishing periods are as follows:

(a) 12 noon January 7, 2003, to 6 p.m. January 8, 2003;

(b) 12 noon January 14, 2003, to 6 p.m. January 15, 2003;

(c) 12 noon January 21, 2003, to 6 p.m. January 22, 2003;

(d) 12 noon January 28, 2003, to 6 p.m. January 29, 2003;

(e) 12 noon February 4, 2003, to 6 p.m. February 5, 2003;

(f) 12 noon February 11, 2003, to 6 p.m. February 12, 2003.

(3) Sturgeon and salmon may be taken for commercial purposes in Zone 1, 2, and 3 below the Longview Bridge during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9-3/4 inches. Salmon and sturgeon only may be sold from this fishery. The open fishing period is as follows:

(a) 7 p.m. August 5, 2001 to 7 a.m. August 6, 2001.

(4) Sturgeon and salmon must be delivered to wholesale fish dealers, cannery, or fish buyers undressed (in the round).

(5) It is unlawful to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or cannery;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any green sturgeon smaller than 48 inches or larger than 66 inches in overall length or any white sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(6) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection 2(a), (b), (c), (d), (e), and (f) of this rule.

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

Stats. Implemented: ORS 506.129 & ORS 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03

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**Adm. Order No.:** DFW 135-2002

**Filed with Sec. of State:** 12-23-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 11-1-02

**Rules Amended:** 635-004-0005, 635-004-0018, 635-004-0025, 635-004-0029, 635-004-0033, 635-004-0050, 635-006-0850

**Subject:** Adopted 2003 groundfish and halibut fishery regulations and adopted rules to reference future regulations for the sardine fishery.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

**635-004-0005**

**Scope of Rules**

Division 004 incorporates into Oregon Administrative Rules, by reference, Pacific Halibut Fishery Regulations of the International Pacific Halibut Commission (IPHC), included in the **Pacific Council News**, vol-

# ADMINISTRATIVE RULES

ume 26, number 3, October 2002, and in addition to the extent they are consistent with these rules, **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended** to incorporate the standards in the Pacific Council News). Therefore, persons must consult the **Pacific Council News** and **Federal Regulations** or the **Pacific Halibut Fishery Regulations 2003** as published by IPHC in addition to Division 004 to determine all rules applicable to halibut fishing requirements. It is unlawful to take halibut for commercial purposes except as set by the **IPHC** and in accordance with a valid permit issued by the **IPHC**.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0725, Renumbered from 635-036-0330; FWC 25-1989(Temp), f. & cert. ef. 4-5-89; FWC 51-1989, f. & cert. ef. 7-28-89; FWC 32-1990(Temp), f. & cert. ef. 4-4-90; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; 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; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03

## 635-004-0018

### Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, the annual groundfish specifications and management measures for **2003** included in the **Pacific Council News**, volume 26, number 3, October 2002, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660, Subpart G (61FR34572, July 2, 1996, as amended** to incorporate the standards in the Pacific Council News). Therefore, persons must consult the **Pacific Council News** and **Federal Regulations** in addition to Division 004 to determine all applicable groundfish fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the **Pacific Council News** and the **Federal Regulations** may be obtained by contacting Sharon Bird at 503-872-5252.

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

Stat. Auth.: ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 71-1996, f. 12-26-96, cert. ef. 1-1-97; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03

## 635-004-0025

### Closed Season

There is no closed season or area for the taking of ocean food fish for commercial purposes except:

(1) As provided in these rules or in the Code of Federal Regulations, Title 50 Part 660, subpart G.

(2) It is *unlawful* at all times to take Ocean food fish for commercial purposes from Oregon coastal bays, the Oregon estuary waters of the Columbia River, or from man-made structures, that extend from coastal bays, or within 200 yards of any man-made structure. This closure does not apply to:

(a) Ocean food fish taken in specific fisheries established by rule.

(b) Ocean food fish taken to be sold or used for scientific or educational purposes, or for live public display; or to

(c) Pacific herring, Pacific sardine (pilchard), anchovies, smelt, candlefish, and shad that are taken by hook-and-line and sold as bait.

(3) It is *unlawful* to take surfperch for commercial purposes from the Pacific Ocean from August 1 through September 30.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 38, f. & ef. 1-23-76, Renumbered from 625-010-0550; FWC 8-1979, f. 3-1-79, ef. 3-2-79; FWC 9-1979(Temp), f. & ef. 3-5-79 through 3-31-79; FWC 50-1979, f. & ef. 11-1-79, Renumbered from 635-036-0275; FWC 95-1994, f. 12-28-95, cert. ef. 1-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 97-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 63-2002(Temp), f. & cert. ef. 6-18-02 thru 12-14-02; DFW 103-2002(Temp), f. 9-13-02 cert. ef. 9-14-02 thru 9-30-02; DFW 115-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03

## 635-004-0029

### Sorting Required

It is *unlawful* to fail to sort, into the categories listed in 635-004-0033, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, harvest guideline, or quota or have cast.

Stat. Auth.: ORS 496.138, ORS 496.162, ORS 506.109, ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 123-1989, f. 12-19-89, cert. ef. 1-1-90; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03

## 635-004-0033

### Groundfish Restrictions

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 season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

(a) Minor Nearshore Rockfish;

(b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish);

(c) Minor Slope Rockfish;

(d) Black Rockfish;

(e) Canary Rockfish;

(f) Tiger Rockfish;

(g) Vermilion Rockfish;

(h) Widow Rockfish;

(i) Yelloweye Rockfish;

(j) Yellowtail Rockfish;

(k) Darkblotched Rockfish;

(l) Pacific Ocean Perch;

(m) Longspine Thornyhead;

(n) Shortspine Thornyhead;

(o) Arrowtooth Flounder;

(p) Dover Sole;

(q) Petrale Sole;

(r) Rex Sole;

(s) Other Flatfish;

(t) Lingcod;

(u) Sablefish;

(v) Pacific Whiting;

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

## 635-004-0050

### Logbook Required

(1) The Department of Fish and Wildlife will provide a logbook to each licensed commercial fishing boat from which ocean food fish other than Dungeness Crab are taken by means of a trawl net (including a shrimp trawl net), longline, or pot. In addition, a logbook shall be provided to each licensed commercial fishing boat taking squid regardless of gear. The skipper of such boat shall be responsible for maintaining the logbook in an accurate and truthful manner in accordance with the instructions contained therein.

(2) Logbooks shall be completed for a fishing trip within one week of landing.

(3) The skipper of the licensed commercial fishing boat shall, upon request of an authorized representative of the Department of Fish and Wildlife, permit examination and transcription of information from such logbook. Information so received by the Department shall be considered as confidential.

(4) The agency copy of the logbook shall be surrendered upon request of Department personnel.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-010-0570; FWC 34-1979, f. & ef. 8-22-79, Renumbered from 635-036-0295; FWC 15-1984, f. & ef. 4-5-84; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03

# ADMINISTRATIVE RULES

635-006-0850

## Developmental Fisheries Species List

(I) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH:

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying and annual renewal requirement of five landings. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(E) Pacific sardine (*Sardinops sagax*) and Pacific saury (*Cololabis saira*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 20 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. Experimental gear permits may be required. This rule incorporates, by reference, the sardine management measures for 2003 included in the Pacific Council List of Decisions for the November 2002 PFMC meeting, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660**, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Pacific Council decisions and the Federal Regulations may be obtained by contacting the Fish Division at 503-872-5252;

(F) Pacific sandfish (*Trichodon trichodon*) fishery has a qualifying and annual renewal requirement of five landings. There are 10 permits for harvest of which there are no dredging permits and no trawl permits, however, limited numbers of experimental gear permits may be issued for trawl harvest. Permits are area specific. Experimental gear permits may be required. No permit is needed for hand lines or hand harvest;

(G) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 20 permits for ocean harvest of which there are no trawl permits, however, limited numbers of experimental gear permits may be issued for trawl harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(H) Pacific pomfret (*Brama japonica*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest. Experimental gear permits may be required;

(I) Slender sole (*Eopsetta exilis*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest. Experimental gear permits may be required.

(J) Nearshore fishery species are: Buffalo sculpin (*Enophrys bison*), Red Irish Lord (*Hemilepidotus hemilepidotus*), Brown Irish lord (*Hemilepidotus spinosus*), Cabezon (*Scorpaenichthys marmoratus*), Kelp greenling (*Hexagrammos decagrammus*), Rock greenling (*Hexagrammos*

*lagocephalus*), Whitespotted greenling (*Hexagrammos stelleri*), Painted greenling (*Oxylebius pictus*), Kelp rockfish (*Sebastes atrovirens*), Brown rockfish (*Sebastes auriculatus*), Gopher rockfish (*Sebastes carnatus*), Copper rockfish (*Sebastes caurinus*), Black & Yellow rockfish (*Sebastes chrysomelas*), Calico rockfish (*Sebastes dalli*), Quillback rockfish (*Sebastes maliger*), Vermilion rockfish (*Sebastes miniatus*), China rockfish (*Sebastes nebulosis*), Tiger rockfish (*Sebastes nigrocinctus*), Grass rockfish (*Sebastes rastrelliger*), Olive rockfish (*Sebastes serranoides*), Treefish (*Sebastes serripes*). Applicants for a nearshore Developmental Fisheries permit must own a vessel that has landed at least 500 lbs. of nearshore species in Oregon in any one calendar year during the window period January 1, 1997 through July 1, 2001 to qualify for a permit north of Heceta Head. The majority of qualifying landings must have been made into ports north of Heceta Head. Applicants for a nearshore Developmental Fisheries Permit must own a vessel that has landed at least 750 lbs. of nearshore species in Oregon in any one calendar year during the window period January 1, 1997 through July 1, 2001 to qualify for a permit south of Heceta Head. The majority of qualifying landings must have been made into ports south of Heceta Head. Permits will be issued for either hook-and-line gear (including pole-and-line, troll, longline, and stick gear) or traps (pots) based on gear used for the majority of qualifying landings. Permits issued for pot gear shall be limited to a maximum of 50 pots. Annual renewal requirements are at least 5 landings and a total of 100 pounds of nearshore species in Oregon. Landings of nearshore species are restricted to north of Heceta Head or south of Heceta Head based on location of majority of landings made during qualification period. After 2003, no new permits will be issued until the number of permits issued falls below 50. Thereafter, there will be 50 permits available.

(b) INVERTEBRATES:

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing or one landing consisting of at least 1000 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Ocean cockle clams (*Clinocardium nuttallii*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are five permits for ocean harvest only. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(F) Bay clams including cockle clams (*Clinocardium nuttallii*), butter clams (*Saxidomus giganteus*), gaper clams (*Tresus capax, nuttallii*), native littleneck clams (*Protothaca staminea*), and softshell clams (*Mya arenaria*) fishery has no qualifying and annual renewal requirements for intertidal hand harvest, an unlimited number of permits, and a \$25 permit fee. There are 11 permits (individual or vessel) for subtidal dive harvest, effective March 18, 1997-December 31, 1997, and 10 permits thereafter for statewide harvest and five permits for harvest south of Heceta Head. Qualifying requirements are either five landings consisting of at least 200 pounds each landing or an annual total of 2500 pounds for one calendar year during the qualifying period of January 1, 1990 through October 16, 1995. Annual renewal requirements are either five landings consisting of at least 100 pounds each landing or an annual total of 2500 pounds. An incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch, is allowed during the closed season notwithstanding OAR 635-005-0020;

# ADMINISTRATIVE RULES

(G) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(H) California market squid (*Loligo opalescens*) and other squid (several species) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 30 permits for harvest using trawl gear and 30 permits for harvest using other gear types. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(I) Fragile urchin (*Alloccentrotus fragilis*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 500 pounds each landing. There are six permits for harvest using trawl gear and six permits for harvest using other gear. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head;

(J) Sea cucumber (*Parastichopus spp.*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are six permits for harvest using trawl gear, 10 permits for harvest by diver, and 10 permits for harvest by other gear. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(K) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only;

(L) Brine shrimp (*Artemia spp.*) fishery has a qualifying and annual renewal requirement of at least 5000 pounds landed. There are three permits to harvest adults.

(M) Flat abalone (*Haliotis walallensis*) fishery has a single permit authorized, a 3,000 pound annual quota limit, an annual renewal requirement of 10 landings of at least 20 pounds each landing, a 4-1/2 inch minimum size, year-round season, taken from nonintertidal areas with an abalone iron, and such additional permit conditions as the Director deems appropriate as required by OAR 635-006-870 and 635-006-0880.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

- (a) FISH
- (A) Salmon shark (*Lamna ditropis*);
- (B) Carp (*Cyprinus carpio*);
- (C) Black hagfish (*Eptatretus deani*);
- (D) Yellow perch (*Perca flavescens*);
- (E) Eelpouts (family *Zoarcidae*);
- (F) Brown bullhead (*Ameiurus nebulosus*);
- (G) Skiffish (*Erilepis zonifer*);
- (H) Northern squawfish (*Ptychocheilus oregonensis*).

(b) INVERTEBRATES:

- (A) Euphausiids (krill) (family *Euphausiidae*);
- (B) Pacific sand crab (*Emerita analoga*);
- (C) Freshwater mussels (families *Margaritifera*, *Anodonta*, *Gonidea*, and *Corbicula*).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

- (a) FISH
- (A) Spiny dogfish (*Squalus acanthias*);
- (B) Soupfin shark (*Galeorhinus zyopterus*);
- (C) Skate (family *Rajidae*);
- (D) American shad (*Alosa sapidissima*);
- (E) Pacific cod (*Gadus macrocephalus*);
- (F) Pacific flatnose (*Antimora microlepis*);
- (G) Pacific grenadier (*Coryphaenoides acrolepis*);
- (H) Jack mackerel (*Trachurus symmetricus*);
- (I) Chub (Pacific) mackerel (*Scomber japonicus*);
- (J) Greenstriped rockfish (*Sebastes elongatus*);
- (K) Redstripe rockfish (*Sebastes proriger*);
- (L) Shortbelly rockfish (*Sebastes jordani*);
- (M) Sharpchin rockfish (*Sebastes zacentrus*);
- (N) Splitnose rockfish (*Sebastes diploproa*);
- (O) Pacific sanddab (*Citharichthys sordidus*);
- (P) Butter sole (*Pleuronectes isolepis*);
- (Q) English sole (*Pleuronectes vetulus*);
- (R) Rex sole (*Errex zechirus*);
- (S) Rock sole (*Pleuronectes bilineatus*);

- (T) Sand sole (*Psettichthys melanostictus*);
- (U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);
- (V) Spotted ratfish (*Hydrolagus colliei*);
- (W) Wolf-eel (*Anarrhichthys ocellatus*);
- (X) Walleye pollock (*Theragra chalcogramma*). (L) Chub (Pacific) mackerel (*Scomber japonicus*);

(b) INVERTEBRATES:

- (A) Red rock crab (*Cancer productus*);
- (B) Purple sea urchins (*Strongylocentrotus purpuratus*);
- (C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & ORS 506.119

Stats. Implemented: ORS 506.129, ORS 506.450, ORS 506.455, ORS 506.460 & ORS 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99, DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03

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**Adm. Order No.:** DFW 1-2003(Temp)

**Filed with Sec. of State:** 1-14-2003

**Certified to be Effective:** 1-14-03 thru 7-9-03

**Notice Publication Date:**

**Rules Adopted:** 635-043-0056

**Subject:** Adopt rules to authorize Oregon Department of Fish and Wildlife to trap and relocate nuisance wild turkeys found within the Roseburg City Limits.

**Rules Coordinator:** Mike Lueck—(503) 872-5272, ext. 5447

**635-043-0056**

**Trapping of Wildlife**

For the purpose of alleviating a public nuisance or preventing property damage, the Department may trap and relocate wild turkeys found within the Roseburg city limits.

Stat. Auth.: ORS 498.158

Stats. Implemented: ORS 498.158

Hist.: DFW 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-9-03

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## Department of Geology and Mineral Industries Chapter 632

**Adm. Order No.:** DGMI 1-2002

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 9-1-02

**Rules Adopted:** 632-007-0000, 632-007-0010, 632-007-0020, 632-007-0030

**Subject:** The new rules implement DOGAMI's responsibilities under ORS 195.260(4)(a). The rules identify the maps used to identify "further review areas" (areas that may be subject to rapidly moving landslides).

**Rules Coordinator:** Gary Lynch—(541) 967-2039, ext. 23

**632-007-0000**

**Purpose**

(1) 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.

(2) The objective of these rules is to cite further review area maps.

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

**632-007-0010**

**Definitions**

(1) "Further review area" 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 dam-

# ADMINISTRATIVE RULES

age 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

## 632-007-0020

### Further Review Area Maps

(1) The Department of Geology and Mineral Industries, in cooperation with local governments and in coordination with the Oregon Department of Forestry, has for the counties in western Oregon and Hood River County developed further review area maps.

(2) For the purposes of these rules, further review areas are identified by the map designation specified in Oregon Department of Geology and Mineral Industries publication IMS 22.

(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 listed here are not designed or intended to indicate levels of site-specific hazard.

(5) Nothing in this Division is intended to modify the intent of the requirements of ORS 195.250 to 195.275. This Division is intended solely to clearly identify the maps produced by the Oregon Department of Geology and mineral Industries in response to ORS 195.260(4)(a).

(6) The requirements of ORS 195.260(4)(a) apply to no other maps or parts of maps issued by the Department.

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

## 632-007-0030

### Effective Date

The rules in this division are effective January 1, 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

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**Adm. Order No.:** DGMI 2-2002(Temp)

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 1-1-03 thru 6-28-03

**Notice Publication Date:**

**Rules Suspended:** 632-007-0000, 632-007-0010, 632-007-0020, 632-007-0030

**Subject:** Suspends rules that identified the maps to be used to identify "further review areas" (areas that may be subject to rapidly moving landslides).

**Rules Coordinator:** Gary Lynch—(541) 967-2039, ext. 23

## 632-007-0000

### Purpose

(1) 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.

(2) The objective of these rules is to cite further review area maps.  
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

## 632-007-0010

### Definitions

(1) "Further review area" 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

## 632-007-0020

### Further Review Area Maps

(1) The Department of Geology and Mineral Industries, in cooperation with local governments and in coordination with the Oregon Department of Forestry, has for the counties in western Oregon and Hood River County developed further review area maps.

(2) For the purposes of these rules, further review areas are identified by the map designation specified in Oregon Department of Geology and Mineral Industries publication IMS 22.

(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 listed here are not designed or intended to indicate levels of site-specific hazard.

(5) Nothing in this Division is intended to modify the intent of the requirements of ORS 195.250 to 195.275. This Division is intended solely to clearly identify the maps produced by the Oregon Department of Geology and mineral Industries in response to ORS 195.260(4)(a).

(6) The requirements of ORS 195.260(4)(a) apply to no other maps or parts of maps issued by the Department.

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

## 632-007-0030

### Effective Date

The rules in this division are effective January 1, 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

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

**Adm. Order No.:** SOSCF 14-2002(Temp)

**Filed with Sec. of State:** 12-19-2002

**Certified to be Effective:** 12-19-02 thru 6-17-03

**Notice Publication Date:**

**Rules Adopted:** 413-050-0261, 413-050-0301

**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:** These temporary rules are being filed to guide a service integration pilot project. Both child welfare and self-sufficiency programs have Child Care programs to support families receiving services from the Department of Human Services (DHS). These rules guide counties participating in the pilot project to integrate the provider approval processes. The participating counties are within five service Delivery Areas: SDA 1 - Multnomah County, 3 - Marion County only, 5 - Lane County, 11 - Klamath County, and 15 - Clackamas County. Statewide roll-out will occur when the results indicate we have resolved any noted issues. Prior to this pilot in specific counties, child welfare day care providers could only be licensed with the Child Care Division (CCD) of the Employment Department. An exception procedure allowed day care providers not licensed (but applying to be licensed) to provide services to child welfare families. With this exception, day care providers could be providing care for several months, while CCD licensing was being processed and before criminal history and child protective services were checked. Within DHS, Self-sufficiency child care providers receive a records check through a "listing" process. Therefore, in the pilot project areas, these rules will allow integration of these processes, child welfare workers will use the DHS Child Welfare Day Care Provider Listing form to obtain records checks on day care providers who are not licensed with CCD. Self-Sufficiency programs use the DHS Direct Pay Unit (DPU) and the Administrative Services Criminal Records Unit (CRU) to create a provider master file and conduct records checks. Integration will involve DPU creating a master file and CRU conducting records checks on child welfare day care providers not

# ADMINISTRATIVE RULES

licensed with CCD. Both DPU and CRU will assign these provider listing forms top priority and processing should take 2-4 days. This process eliminates the need for the exception procedure in the pilot areas. Once child welfare day care providers have passed the records check process, they will be entered into the child welfare payment system. This will automate billings and payments reducing the workload of staff who previously processed these manually.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-050-0200

### Purpose

(1) 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.

(2) Temporary revisions have been made to these rules to guide a pilot project that is being operated in the following specific counties in the Department Service Delivery Areas (SDAs): 2 (Multnomah County), 3 (Marion County only), 5 (Lane County), 11 (Klamath County), and 15 (Clackamas County) between December 2002 and June 30, 2003.

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

## 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

## 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

## 413-050-0230

### Policy 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 for all SDAs not participating in the Pilot Project:

(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 the provider but the service worker shall make final determination based on the needs of the child and goals of the case plan.

(b) In-Home Care:

(A) The Department does not license or contract with in-home day care providers. Therefore, prior to authorizing in-home care the service 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(ren). Valid reasons for not using a person include, but are not limited to: conviction of child abuse, a founded child abuse referral, behavior which may have a detrimental effect on a child, or physical or mental problem which would adversely affect a child; and

(iii) Obtain a provider number (see IIS User's Guide, Provider Subsystem); and

(iv) 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.

(4) Select a Provider for all SDAs in the Pilot Project (SDA 2, 3, 5, 11 and 15):

(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(ren).

(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



# ADMINISTRATIVE RULES

(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

## 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:

(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 for all SDAs not participating in the Pilot Project, will only be made to a day care provider who is certified or registered by the Child Care Division of the Employment Department.

(5) Department payments for all SDAs participating in the Pilot Project, will only be made to a day care provider who is a 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

## 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

## 413-050-0260

### Payment Revision or Plan Closure for SDAs Not Participating in the Pilot Project

(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.

(3) Any time there is an overpayment the worker must initiate overpayment and/or fraud procedures. See OAR 413-310-0000 through 0100 (Department Children, Adults and Family 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

## 413-050-0261

### Payment Revision or Plan Closure for SDAs Participating in the Pilot Project

(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 Children, Adults and Family Policy III-B.1.)

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03

## 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

## 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 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.

# ADMINISTRATIVE RULES

(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

## 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

## 413-050-0300

### Exceptions for SDAs Not Participating in the Pilot Project

(1) Specific exceptions to any section of these rules may be granted for good and just cause by the Department. The exception must be requested in writing and show how the intent of the rule will be met.

(2) No exception will be granted which may jeopardize the health, safety, and well-being of any child in care.

(3) 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

## 413-050-0301

### Exceptions for SDAs Participating in the Pilot Project

(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.

(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.: SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03

**Adm. Order No.:** SOSCF 15-2002(Temp)

**Filed with Sec. of State:** 12-19-2002

**Certified to be Effective:** 12-19-02 thru 6-17-03

**Notice Publication Date:**

**Rules Amended:** 413-200-0371

**Subject:** The following small revision is being made in the Safety Standards for Foster Care, Relative Care and Adoptive Families rules regarding Alternate Caregivers. 413-200-0371(6) will now read: When a child in the Department of Human Services (Department) custody is cared for by a child care provider or child care center the provider and/or center must be certified as required by the State Child Care Division (ORS 657A.280), or be approved as a Department Day Care provider, Foster Care or Relative Care provider.

This revision allows additional resources to serve as appropriately approved alternate caregivers. This emergency rule revision is being made to concur with temporary rules that are being filed this same date regarding Supportive Remedial Child Care.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-200-0371

### Alternate Caregivers

(1) The approved Foster Parent/Relative Caregiver is responsible for determining and selecting safe and responsible temporary alternative caregivers. The Foster Parent/Relative Caregiver must take into consideration the child's age, special needs, attachment, individual behaviors, and the length of time that the child will be with the alternate caregiver.

(2) When the Foster Parent/Relative Caregiver arranges for informal care of the child(ren) in the Department custody for less than 24 hours, including an overnight arrangement, the Foster Parent/Relative Caregiver will assure that the responsible person will be capable of assuming child care responsibilities, and must be present at all times. The Foster Parent/Relative Caregiver still maintains back-up responsibility for the child. Examples of informal arrangements include but are not limited to: short term babysitting and sleep-overs with friends.

(3) When the Foster Parent/Relative Caregiver arranges for the child(ren) in the Department custody to participate in organized overnight activities provided by schools, churches, civic organizations, scouts, or similar groups the Foster Parent/Relative Caregiver will;

(a) Request the sponsoring organizations to have policies to assure adult leaders are safe and responsible people.

(b) Notify the Department if the overnight activity is longer than 48 hours.

(4) When the Foster Parent / Relative Caregiver arranges for relief care services, the relief care provider must;

(a) Be at least 18 years of age,

(b) Have an approved Oregon criminal history check and;

(c) Background check (IIS).

(5) When the Foster Parent/Relative Caregiver will be separated from the child for 48 hours or longer, the Foster Parent/Relative Caregiver must notify the Department and the alternate caregiver must;

(a) Be at least 18 years of age,

(b) Have an approved Oregon criminal history check and;

(c) Department background check (IIS).

(6) When a child in the Department custody is cared for by a child care provider or child care center the provider and/or center must be certified as required by the State Child Care Division (ORS 657A.280), or be approved as a Department Day Care provider, Foster Care or Relative Care provider.

(7) Families with children with an adoption assistance agreement or permanent foster care agreement may develop an alternate caregiver plan with the the Department caseworker, so that notification does not have to take place each time an alternative caregiver is involved.

(8) When notifying the Department about alternate caregivers or overnight arrangements the notice must include: dates, name, address, and qualifications of alternate caregiver, and telephone number where the caregiver and alternate caregiver can be reached.

Stat. Auth.: ORS 418.005 - ORS 418.640

Stats. Implemented: ORS 418.005

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; SOSCF 15-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03

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**Adm. Order No.:** CWP 1-2003

**Filed with Sec. of State:** 1-7-2003

**Certified to be Effective:** 1-7-03

# ADMINISTRATIVE RULES

**Notice Publication Date:** 9-1-02

**Rules Amended:** 413-010-0700, 413-010-0705, 413-010-0712, 413-010-0714, 413-010-0715, 413-010-0716, 413-010-0717, 413-010-0718, 413-010-0719, 413-010-0720, 413-010-0721, 413-010-0722, 413-010-0723, 413-010-0732, 413-010-0735, 413-010-0738, 413-010-0740, 413-010-0743, 413-010-0745, 413-010-0746, 413-010-0750

**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-010-0700

### Purpose

(1) The purpose of Oregon Administrative Rules (OAR) 413-010-0700 through 0750 is to state procedures for ensuring the rights of individuals to have Notice and to Request a Review when a Child Protective Services (CPS) assessment results in a “Founded” Disposition. These rules outline a process to provide review, upon request, which begins with a preliminary review by an SDA Review Committee that has the authority to change the disposition, and upon additional request, final review by a Central Review Committee with the same authority to change the disposition.

(2) The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires child protective service agencies to provide notice to individuals identified as responsible for child abuse or neglect and to provide individuals with an opportunity to request and have a review of the disposition.

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0705

### Definitions

For the purposes of OAR 413-010-0700 to 0750, the following words and phrases have these meanings:

(1) “SDA Review Committee” means a group of three child welfare employees selected by an SDA Child Welfare Manager or a designee, none of whom were involved in the assessment that resulted in the specific CPS Founded Disposition under review. One of the members must be a Manager and one must be staff trained in CPS assessment and dispositions. Further requirements of the SDA Review Committee are described in OAR 413-010-0735 and 0738.

(2) “Central Review Committee” means a group of three child welfare employees selected by the CAF Manager for Protective Services or a designee, none of whom were involved in either the SDA Review Committee or in the assessment that resulted in the specific CPS Founded Disposition under review. Further requirements of the Central Review Committee are described in OAR 413-010-0745 and 0746. The three child welfare staff must include:

- (a) Either the CHS Assistant Director or a designee; and
- (b) Either the Manager for Child Protective Services or a designee; and

(c) At least one of the four CPS Consultants.

(3) “CPS” means the Department’s Child Protective Services program located in the CAF policy cluster, that includes but is not limited to the assessment of alleged child abuse or neglect.

(4) “CPS Disposition” is a finding that completes a CPS Assessment. Dispositions are defined in OAR 413-020-0430(15) and summarized as follows:

(a) “Founded” means there is reasonable cause to believe that the child abuse or neglect occurred;

(b) “Unfounded” means no evidence of child abuse or neglect was identified or disclosed; or

(c) “Unable to Determine” means some indications of child abuse/neglect exist, but there is insufficient data to confirm whether or not child abuse/neglect occurred.

(5) “CPS Founded Disposition” means that the Department determined at the conclusion of an assessment of alleged child abuse or neglect that there is reasonable cause to believe that child abuse or neglect occurred; and, when known, that there is reasonable cause to believe that a specific person or persons was responsible for the child abuse or neglect.

(6) “CAF” means Children, Adults and Families (CAF).

(7) “Community Human Services (CHS)” means the service delivery structure of the Department of Human Services.

(8) “Department” means the Department of Human Services (DHS).

(9) “Juvenile” means a person younger than age 18 years. OAR 413-010-0716 provides specific requirements regarding application of these rules for Juveniles.

(10) “Legal Finding” means a Juvenile or Criminal Court finding, guilty plea or guilty verdict which identifies that the person inquiring about or requesting a review was responsible for the child abuse or neglect which was the subject of the CPS Founded Disposition.

(11) “Notice of SDA Review Committee Decision (Form CF 314)” means a written notice of the Decision of the SDA Review Committee and a Notice of the Right to Request a Central Review. The Notice of SDA Review Committee Decision is further described in OAR 413-010-0738.

(12) “Notice of Central Review Committee Decision (Form CF 315)” means a written notice of the Decision of the Central Review Committee. The Central Review Committee Decision is the Final Order and is further described in 413-010-0746.

(13) “Notice of CPS Founded Disposition (Form CF 313)” means the written Notice delivered to the individual identified as responsible for the child abuse or neglect. This Notice states the right of the individual to Request a Review. Further requirements of the Notice are described in OAR 413-010-0715, 0717 and 0718, including who must receive the Notice if the individual identified as responsible for the child abuse or neglect is a juvenile, which is further described in OAR 413-010-0716.

(14) “Notice of a Legal Finding (Form CF 316)” means the written notice that Department has established that there is a Juvenile or Criminal Court Finding, guilty plea, or guilty verdict, which identifies that the person inquiring about or requesting a review was responsible for the child abuse or neglect which was the subject of the CPS founded disposition.

(15) “Notice of Waived Rights for Review (Form CF 317)” means a written notice that Department staff may send to a Person Requesting Review, when the office has documentation that a person refused to accept delivery of the Notice of CPS Founded Disposition or that the person accepted the delivery of the Notice of CPS Founded Disposition and did not Request a Review within the time period required in OAR 413-010-0720(7).

(16) “Perpetrator” means an individual identified by the Department as responsible for child abuse or neglect in a CPS Founded Disposition.

(17) “Person Requesting Review,” or “Person Requests a Review” means an individual who is identified in a CPS Founded Disposition and who Requests a Review of the Disposition because the individual believes the finding is in error. OAR 413-010-0715, 0716, 0717 and 0718 further describe the individual who may Inquire about a Review or Request a Review, and specifically if the individual is an employee of the Department (413-010-0714), or a Juvenile (413-010-0716).

(18) “Request for Review by SDA Review Committee” means a written request from a Person Requesting Review. The specific requirements for a Request for Review are described in 413-010-0721.

(19) “Request for Review by Central Review Committee” means a written request from a person who has received an SDA Review Committee Decision (CF Form 314), continues to believe the CPS Founded Disposition is in error, and requests additional review by a Central Review Committee. The specific requirements for a Request for Review by a Central Review Committee are described in OAR 413-010-0740.

(20) “Retain a Request for Review” means an SDA Child Welfare Manager or designee determines a Request for Review will be held until a juvenile court Legal Finding is made. More specific details are described in OAR 413-010-0722 and 0723.

(21) “SDA” means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; SOSCF 9-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0712

### Overview of the Procedures Outlined in These Rules

These rules include the following procedures:

(1) Applying DHS employee policies if the person identified as responsible in a CPS Founded Disposition is an employee of the Department. Refer to OAR 413-010-0714;

(2) Providing Notice of a CPS Founded Disposition as a result of a disposition. Refer to OAR 413-010-0715;

(3) Providing Notice of a CPS Founded Disposition and other documents to Juveniles when they are identified as responsible in a CPS Founded Disposition, as a result of a disposition. Refer to OAR 413-010-0716;

# ADMINISTRATIVE RULES

(4) Inquiry about a Review of CPS Founded Disposition as a result of a disposition made prior to August 4, 2000. Refer to OAR 413-010-0717;

(5) Inquiry about a Review of a CPS Founded Disposition when a person believes they have not received a notice. Refer to OAR 413-010-0718;

(6) SDA Responsibilities when a Person Inquires About a Review of a CPS Founded Disposition. Refer to OAR 413-010-0719;

(7) Information included in the Notice of CPS Founded Disposition (Form CF 313). Refer to OAR 413-010-0720;

(8) Making a Request for a Review of a CPS Founded Disposition. Refer to OAR 413-010-0721;

(9) Determining when Legal Findings preclude a Right for Review. Refer to OAR 413-010-0722;

(10) Providing a Notice of Legal Finding. Refer to OAR 413-010-0723;

(11) Local Department Office Responsibilities Related to Notices and Reviews. Refer to OAR 413-010-0732;

(12) SDA Committee Reviews of CPS Founded Dispositions. Refer to OAR 413-010-0735;

(13) Providing a Notice of SDA Review Committee Decision. Refer to OAR 413-010-0738;

(14) Requesting a Central Committee Review of CPS Founded Disposition; Refer to OAR 413-010-0740;

(15) SDA Responsibilities in a Request for Central Committee Review. Refer to OAR 413-010-0743;

(16) Central Committee Review; Refer to OAR 413-010-0745;

(17) Notice of Central Committee Review Decisions; Refer to OAR 413-010-0746;

(18) Revising CPS Founded Dispositions in the Integrated Information System (IIS). Refer to OAR 413-010-0750;

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

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0714

### Department Employee - Application of Department Employee Policies

When the individual identified as responsible for "Founded" Child Abuse or Neglect is a Department employee, the Department will refer to CAF Policy I-E.4.8.12 for additional and/or different requirements.

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 13-010-0715

### Providing Notice of a CPS Founded Disposition

The local Department office that determines a person responsible for a CPS Founded Disposition at the completion of a CPS assessment, shall deliver a Notice of CPS Founded Disposition (Form CF 313) to the person who has been identified as responsible in the CPS Founded Disposition. If the person is a Juvenile refer to OAR 413-010-0716. If the individual is not a juvenile the delivery shall be made in one of the following ways:

(1) by certified mail, restricted delivery, with a return receipt requested to the last known address; or

(2) by hand delivery, when it is hand-addressed to the individual by the Department child welfare caseworker, the original is signed and dated by the individual to whom it is addressed to acknowledge receipt, and signed by the caseworker. Local Department staff shall place the document with original signatures in the case record.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0716

### Providing Notice of a CPS Founded Disposition and Other Documents to a Juvenile

(1) The local Department office that determines a juvenile is responsible for a CPS Founded Disposition at the completion of a CPS assessment shall deliver the Notice of CPS Founded Disposition (Form CF 313) to one of the following persons who may act on behalf of the juvenile and submit a Request for Review based on the legal custody of the juvenile:

(a) The Juvenile's parent, or

(b) The Juvenile's guardian.

(2) If the Juvenile is in the Department's legal custody, the notice shall be sent to both of the following:

(a) The Juvenile's attorney, and

(b) The Juvenile's parent, unless there is cause to believe such consultation will be detrimental to the child, per 413-020-170 (2) (c),

(3) If the Juvenile is in Department custody and is unrepresented, the Department shall ask the Juvenile court to appoint an attorney for the child.

(4) The notice of a CPS Founded Disposition (Form CF 313) shall be delivered by certified mail, restricted delivery, with a return receipt requested to the last known address of the appropriate person(s).

(5) The Notice of CPS Founded Disposition (Form CF 313) shall include the information listed in OAR 413-010-0720.

(6) Any other documents that are delivered for the purposes of implementing these rules shall be delivered to the appropriate person(s) as outlined in this rule.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0717

### Inquiry about a Review When a CPS Founded Disposition was Made Prior to August 4, 2000

(1) The Department will not deliver a Notice of Founded CPS Disposition (Form CF 313) to persons identified as responsible in CPS Founded Dispositions as a result of assessments made prior to August 4, 2000, unless a person makes an inquiry to the Department about an opportunity for review as described in (2) below.

(2) Individuals who are identified as responsible in a CPS Founded Disposition made prior to August 4, 2000 may contact the Department and inquire about a Review of the Disposition. The Department will follow the procedures outlined in OAR 413-010-0719 to determine if a Review may be requested.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0718

### Inquiry about a Review of a CPS Founded Disposition When a Person Believes They Have Not Received a Notice

If a person believes they have not received a Notice of CPS Founded Disposition (Form CF 313), the person may contact the Department to inquire about a Review of the Disposition. The Department will follow the procedures outlined in OAR 413-010-0719 to determine if a Review of a CPS Founded Disposition may be requested.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0719

### Branch Responsibilities When a Person Inquires About a Review of a CPS Founded Disposition

Local Department office staff shall take the following steps when a person inquires about a Review of a CPS Founded Disposition. Persons may contact the Department under circumstances described in 413-010-0716, 0717 and/or 0718.

(1) Staff of the local office will record the individual's name and address, and a telephone number when available.

(2) Staff of the local office that determined the CPS Founded Disposition shall determine whether a Legal Finding exists for the person making the inquiry.

(a) If there is a Legal Finding that identifies the person making the inquiry as responsible for the child abuse or neglect that was the subject of the CPS Founded Disposition, the Department staff shall deliver a Notice of Legal Finding to the person (Form CF 316). A Request for Review shall be precluded as described in 413-010-0722.

(b) If there is no Legal Finding as described in (a) above, Department staff shall review the Department records to determine whether:

(A) A Notice of a CPS Founded Disposition was delivered to the person; and

(B) Whether the person refused the delivery.

(3) If staff determine that either the Notice was delivered as evidenced by the returned receipt, or that the person refused the delivery as evidenced by the returned receipt, the staff may prepare and deliver a Notice of Waived Rights for Review (Form CF 317), or inform the person by telephone. If the person is a juvenile, staff shall follow the procedures provided in OAR 413-010-0716.

(4) If staff determine that the Notice was not delivered as evidenced by the returned receipt, and that no Legal Finding was made, the staff shall deliver a Notice of CPS Founded Disposition as outlined in OAR 413-010-

# ADMINISTRATIVE RULES

0720. If the person is a juvenile, staff shall follow the procedures provided in OAR 413-010-0716.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0720

### Information Included in the Notice of a CPS Founded Disposition (Form CF 313)

The Notice of a CPS Founded Disposition (Form CF 313) shall include all of the following:

- (1) The case and sequence numbers assigned to the assessment that resulted in the CPS Founded Disposition;
- (2) The full name of the individual who has been identified as responsible for the child abuse or neglect as it is recorded in the case record;
- (3) A statement that the CPS Disposition was recorded as Founded including a description of the type of child abuse or neglect identified;
- (4) A statement about the right of the individual to make a Request for Review of the "founded" CPS disposition;
- (5) Instructions for making a Request for Review, which must include the reason the individual believes the CPS Founded Disposition is in error;
- (6) A statement that the local Department office may retain a Request for Review when a dependency petition has been filed in a juvenile court that identifies the person requesting review as responsible for the child abuse or neglect that was the subject of the Founded CPS Disposition. If the Request for Review is Retained, the Department staff shall notify the Person Requesting Review within 30 days of the juvenile court finding, of either the Legal Finding or the SDA Review Committee Decision.

(7) A statement that the person Waives the Right to Request a Review if the Request for Review is not received by the local Department office within 30 calendar days from the Date of Receipt of the Notice of CPS Founded Disposition, as documented by the US Postal Service.

(8) A statement that the SDA Review Committee shall consider all relevant case file information including CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review in their request. The Review Committee shall not: re-interview the victim; interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse or neglect;

(9) A statement that the local Department office will send the Notice of SDA Review Committee Decision (Form CF 314) within 30 days of receiving a Request for Review.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0721

### Making a Request for a Review of a CPS Founded Disposition

(1) A person who meets the criteria outlined in 413-010-0716, 0718, and/or 0719 may make an inquiry with the local Department Office to ask if they meet the criteria for Requesting a Review. A person meeting the criteria shall receive a Notice of CPS Founded Disposition, described in OAR 413-010-0720.

(2) A Person Requesting Review shall use information found on the Notice of CPS Founded Disposition to prepare a written Request for Review. The written Request for Review shall be delivered to a local Department office within 30 calendar days of the receipt of the Notice of CPS Founded Disposition and shall include the following items:

- (a) Date the Request for Review is written;
- (b) Case Number and Sequence Number (found on the Notice of CPS Founded Disposition);
- (c) Full Name of the Person identified as responsible in the CPS Founded Disposition;
- (d) The reason the Person is Requesting the Review. An explanation of why the person believes the CPS Founded Disposition is in error;
- (e) The Person's current name (if it has changed from the name noted in (c) above);
- (f) The Person's current street Address, City, State, Zip Code, and Telephone Number; and
- (g) The Person's signature.

Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0722

### Determining When Legal Findings Preclude a Right to Request a Review

(1) A Legal Finding will preclude a Person's Right to Request a Review when staff of the local Department office that determined the CPS Founded Disposition establish that a Legal Finding exists that is directly related to the inquiry the person has made. A Review shall not be held when a Legal Finding exists. A Notice of Legal Finding will be provided as outlined in 413-010-0723(1).

(2) When the Request for Review is Retained as described 413-010-0723 and the juvenile court Legal Finding is made that the child abuse or neglect occurred and is the subject of Found CPS Disposition and that the Person Requesting Review is responsible, a Review shall not occur. A Notice of Legal Finding (Form CF 316) will be provided as outlined in 413-010-0723.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0723

### Providing a Notice of Legal Finding (Form CF 316)

(1) A Request for Review may not be made by a Person who has a Legal Finding as described in 413-010-0722. If a Person inquires about a review and a Legal Finding exists, the Department staff will prepare and deliver a Notice of Legal Finding (Form CF316) that a Review shall not occur.

(2) On or after August 4, 2000 when a Request for Review has been Retained the Department staff shall notify the Person Requesting Review, within 30 calendar days of the juvenile court finding, using a Notice of a Legal Finding (Form CF316) that a Review shall not occur.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0732

### SDA Office Responsibilities Related to Notices and Reviews

(1) If an individual asks to review the record, OAR 413-350-0000 through 413-350-0090 shall govern inspection and copying of records.

(2) The local Department office that completed the assessment resulting in a CPS Founded Disposition shall maintain records to demonstrate the following, when applicable:

- (a) Whether the Department delivered a Notice of CPS Founded Disposition;
- (b) Whether or not the Notice of CPS Founded Disposition was received by the addressee, as evidenced by a returned receipt documenting the Notice was received, refused, or not received within the 15 calendar day time period as provided by the US Postal Service;
- (c) Date a Request for a SDA Review was received;
- (d) When a Request for SDA Committee Review was made, whether the Notice of the SDA Review Committee Decision (Form CF 314) was received or not, as evidenced by a returned receipt documenting the Notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service;
- (e) Date a Request for Central Committee Review was received.

(3) The Child Welfare Supervisor or designee shall maintain a comprehensive record of the Reviews held on CPS Founded Dispositions completed by that local Department office. The record shall include the date, case number, sequence number, and the Committee Decision.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0735

### SDA Review Committees and Reviews of CPS Dispositions

(1) The SDA Review Committee shall conduct a review and issue a Notice of SDA Review Committee Decision (Form CF 314) within 30 days of receiving a Request for Review of a CPS Founded Disposition, per OAR 413-010-0738 (3).

(2) If the Request for Review has been Retained as per OAR 413-010-0720(6) and a Legal Finding was not made that would preclude a review, the review shall occur within 30 calendar days of the completion of the juvenile court proceeding.

(3) The SDA Review Committee will operate as follows:

(a) The SDA Review Committee shall consider all relevant case file information including CPS assessment and disposition, screening informa-

# ADMINISTRATIVE RULES

tion, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review in their request. The Review Committee shall not: re-interview the victim; interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse or neglect;

(b) The SDA Review Committee shall decide that a CPS disposition will be changed if it was entered as a result of an input error;

(c) The SDA Review Committee shall have the authority to retain or change a CPS disposition after a review has occurred;

(d) When reviewing a CPS Founded Disposition, the Review Committee shall determine whether there is or is not reasonable cause to believe that child abuse or neglect occurred (ORS 419B.010) and whether there is or is not reasonable cause to believe the person requesting review is responsible;

(e) The SDA Review Committee will decide by majority vote of the participating committee members if the CPS disposition will be retained or changed.

(4) The Child Welfare Supervisor or designee shall prepare a Notice of SDA Review Committee Decision (Form CF 314) as described in OAR 413-010-0738.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0738

### Providing a Notice of SDA Review Committee Decision

(1) The Notice of SDA Review Committee Decision (Form CF 314) shall include the following items:

(a) Whether there is or is not reasonable cause to believe that child abuse or neglect occurred;

(b) Whether there is or is not reasonable cause to believe the Person Requesting the Review was responsible for the child abuse or neglect;

(c) The Decision of the SDA Review Committee about whether the CPS Founded Disposition will be retained or changed; and if changed, whether it will be changed to either Unable to Determine or Unfounded;

(d) A summary of the information upon which the decision was based, and when a CPS Founded Disposition is changed, the information will be added to the assessment narrative;

(e) A statement about how to request a review by the Central Review Committee, as described in OAR 413-010-0740.

(2) The Department staff shall place the Request for Review, and a copy of the SDA Review Committee Decision (Form CF 314) into the case file. No changes shall be made in the existing written case record.

(3) The Department shall deliver the SDA Review Committee Decision (Form CF 314) by certified mail, restricted delivery, with a return receipt requested, to the Person Requesting Review within 30 days of the Request for Review, according to 413-010-735 (1).

(4) If a person who has received Notice of the SDA Review Committee's Decision does not Request a Review by the Central Review Committee as outlined in OAR 413-010-0740 and the SDA Review Committee Decision is to change the CPS disposition; Department staff shall send the SDA Review Committee Decision to the Child Protective Services Program Coordinator. Revisions to the Disposition recorded in the Integrated Information System (IIS) will be made according to the procedures outlined in 413-010-0750.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0740

### Requesting a Central Committee Review

Within 30 calendar days, a person who has received Notice of the SDA Review Committee Decision may Request a Review by the Central Review Committee. A Person Requesting a Review by Central Committee may use a copy of the Request for SDA Review or prepare a new Request for Review by Central Committee, according to the description outlined in 413-010-0721. A Person Requesting a Review by the Central Committee shall deliver the Request to the local Department Child Welfare office within 30 days of the date the Notice of SDA Review Committee Decision (Form CF 314) was received, as evidenced on a U.S. Postal Service return receipt.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0743

### SDA Responsibilities in a Request for Central Committee Review

Within 10 calendar days of the Department staff receiving a valid Request for Central Committee Review shall forward the following documents to the DHS Central CPS Program Unit:

(1) The Request for Central Committee Review; and

(2) A copy of the case records pertinent to the CPS Founded Disposition.

Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0745

### Central Committee Review

(1) The Central Review Committee shall conduct a review and issue a Notice of Central Review Committee Decision (Form CF 315) within 60 days from the date the Central CPS Program Unit receives a Request for a Central Committee Review.

(a) The CPS program office shall schedule a review of the CPS Founded Disposition when a written Request for Review and case file information is received from the SDA.

(b) The Central Review Committee shall consider all relevant case file information including CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review in their request. The Review Committee shall not: re-interview the victim; interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse or neglect.

(2) The decision of the Central Review Committee shall be by majority vote of the participating committee members. When reviewing a CPS Founded Disposition, the Review Committee shall determine whether there is or is not reasonable cause to believe that child abuse or neglect occurred (ORS 419B.010) and whether there is or is not reasonable cause to believe that the Person Requesting Review is responsible for the child abuse or neglect.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0746

### Notice of Central Review Committee Decision

(1) Within 60 calendar days of the date the Central Committee receives the Request for Review from the SDA, the Central Review Committee shall prepare a Notice of Central Review Committee Decision (Form CF 315) that includes the following:

(a) When the CPS Disposition is Founded whether there is or is not reasonable cause to believe that child abuse or neglect occurred;

(b) When the CPS disposition is Founded whether there is or is not reasonable cause to believe that the Person Requesting Review was responsible for the child abuse or neglect;

(c) The decision that a CPS Disposition will be retained or changed; and if changed, changed to Unable to Determine or Unfounded Disposition;

(d) A summary of the information upon which the decision was based.

(2) Send the Notice of Central Review Committee Decision (Form CF 315) to the Person Requesting Review and the respective SDA for filing in the case record;

(3) If the decision is to change the CPS Disposition, the Central Review Committee shall send the Decision (Form CF 315) to the CAF CPS Program Coordinator. Revisions to the Disposition recorded in the Integrated Information System (IIS) will be made according to the procedures outlined in 413-010-0750; and

(4) The Central CPS Program Office shall maintain a comprehensive record of the Reviews of CPS Founded Dispositions conducted by the Central Review Committee. The record shall include the date, case number, sequence number, and the Committee Decision.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: CAPTA & ORS 418.005  
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

## 413-010-0750

### Revising Founded Child Abuse/Neglect Dispositions in the Integrated Information System (IIS)

When a Review Committee Decision is made to change a CPS Founded Disposition, the CAF CPS Program Coordinator or designee shall forward the Notice of SDA Review Committee Decision (Form CF 314) or

# ADMINISTRATIVE RULES

Notice of Central Review Committee Decision (Form CF 315) to the Department of Human Services Office of Information Services (OIS). OIS staff shall enter authorized information and make changes in Department's Integrated Information System (IIS), Families and Child Information System (FACIS). IIS staff shall add the reason for the change in Disposition to the existing Assessment Narrative and change the CPS Founded Disposition and the perpetrator and victim information.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: CAPTA & ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** CWP 2-2003

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**Notice Publication Date:** 10-1-02

**Rules Amended:** 413-020-0000, 413-020-0005, 413-020-0010, 413-020-0020, 413-020-0040, 413-020-0050

**Subject:** These rule revisions correct an error in the section identifying individuals who are appropriate for Voluntary Custody Agreement in 413-020-0010(b). Terminology throughout the rule has been corrected as it relates to the restructuring of the Department of Human Services.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-020-0000

### Purpose

These rules establish the conditions under which a parent(s)/ legal guardian(s) may enter into a "Child Placement Agreement" or a "Voluntary Custody Agreement" to have a child in their legal custody receive substitute care/ treatment from the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015 & ORS 418.312

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03

## 413-020-0005

### Definitions

(1) "Department" means the Department of Human Services.

(2) "Legal Guardian" means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:

(a) Authorize surgery for the child;

(b) Authorize enlistment in the armed forces;

(c) Consent to child's adoption when the child is in the permanent custody of the agency;

(d) Make other decisions of substantial legal significance concerning the child; but

(e) A guardian is not a conservator of the child's property or estate;

(3) "Legal Custody" means that a person or agency has legal authority:

(a) To have physical custody and control of a child;

(b) To supply the child with food, clothing, shelter and other necessities;

(c) To provide the child with care, education and discipline;

(d) To authorize medical, dental, psychiatric, psychological, hygienic or other remedial care or treatment for the child, and in any emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care; and

(e) Legal custody includes temporary custody of a child under an order pursuant to ORS 419B.331.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015 & ORS 418.312

Hist.: SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03

## 413-020-0010

### Types of Agreements

(1) Parent(s) with legal custody or legal guardian(s) may receive substitute care/ treatment for their child from the Department by signing a Child Placement Agreement or Voluntary Custody Agreement. The parent(s)/ legal guardian agrees to participate actively in making strengths-based plans and decisions for the child, based on the child's identified needs, to visit and financially support the child to the fullest extent possible, and to work cooperatively with the Department.

(a) "Child Placement Agreement" (CF 499). Under this type of agreement, the parent(s)/ legal guardian(s) does not give the Department legal

custody of the child. They retain legal authority, and are obligated to continue to exercise and perform all parental duties and legal responsibilities except those delegated to the Department by the signed agreement. Under ORS 418.312, it is appropriate to use a Child Placement Agreement if all three of the following conditions exist:

(A) The sole reason for placement is the need to obtain services for the child's emotional, behavioral or mental disorder or developmental or physical disability; and

(B) The parent(s)/legal guardian(s) is unable to provide for the level of skilled care or treatment that the child requires, but is able and willing to maintain a parental relationship and involvement with the child and assist in the care and treatment of the child; and

(C) The parent(s)/ legal guardian(s) does not have a history of founded referral(s) of abuse or neglect, and their child is not a pre-adjudicated or adjudicated delinquent.

(b) "Voluntary Custody Agreement" (CF 1005). Under a "Voluntary Custody Agreement," the parent(s)/legal guardian(s) gives the Department the legal custody of the child and the Department assumes designated parental duties and responsibilities in certain circumstances and conditions as permitted under ORS 418.015, and as stipulated in the signed agreement. Under ORS 418.015, it is appropriate to place a child in substitute care/treatment after a parent(s)/legal guardian(s) signs a "Voluntary Custody Agreement" if one of the following conditions exists:

(A) The child cannot remain at home due to a temporary crisis in the family and cannot safely stay with a member of the extended family or another responsible adult who is well known to the child; or

(B) The child needs to be placed outside the home due to problems in the family that could compromise the safety of a family member and a placement of limited duration in conjunction with intensive services, is likely to reunite the family and reduce safety concerns; or

(C) The parent(s)/legal guardian(s) is temporarily unable to fulfill parental responsibilities, maintain a supportive relationship with the child, and be a significant positive influence in the treatment and maintenance services provided to the child, as required by (a) (B) of this rule; or

(D) The parent(s)/guardian(s) acknowledges that the child has been abused or neglected and is acting in the best interest of their child by requesting a placement through signing a "Voluntary Custody Agreement."

(2) Any of the following situations is inappropriate for placement by either a "Child Placement Agreement" or a "Voluntary Custody Agreement", and require other Department or community intervention:

(a) There has been a founded incident of abuse or neglect, and the age of the child, the family history, or severity of the current abuse indicates that a court ordered transfer of custody is necessary to provide adequate protection for the child; or

(b) It is known or suspected that the parent(s)/legal guardian(s) of the child lives out-of-state or intends to move out-of-state after placement of the child; or

(c) A child refuses to remain at home solely due to parent(s) child conflict; or

(d) The parent(s)/legal guardian(s) requests placement of the child because of inability to manage the child's behavior, and the child and family members are unwilling to participate in intensive services focused on reunification of the family; or

(e) The parent(s)/legal guardian(s) has a demonstrated history of failure to work cooperatively with the Department of Human Services and/or the persons or private agency providing care and treatment to meet the child's needs; or

(f) The child has been committed to the Oregon Youth Authority.

(3) Parents who place their child through a Child Placement Agreement have the option of entering into a child support agreement with the Division of Child Support (DCS) rather than receiving a child support order. The process is as follows:

(a) The worker informs the parent(s) that they may enter into a non-adversarial support agreement (rather than court-ordered support) with DCS to discharge their support obligations. Existing child support orders may not be superseded by support agreements with DCS;

(b) The worker will supply the parent(s) who signs the "Child Placement Agreement" with the "DCS Referral for Non-Adversarial Support Agreement" (CF496). The parent(s) may complete the form and return it to the worker. If the form is not returned to the worker within 30 days, a support order may be entered.

(c) Each parent(s) with legal custody of the child may complete the form and return it to the worker. The worker forwards the form, along with a signed copy of the "Child Placement Agreement," form (CF 499), to:

# ADMINISTRATIVE RULES

Child Support Coordinator, Children's Benefits Unit, 500 Summer St. NE, Salem, OR 97301

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.015 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03

## 413-020-0020 Legal Consent

(1) Only a parent(s)/guardian(s) who has legal custody of the child may enter into a "Voluntary Custody Agreement," (CF 1005), or a "Child Placement Agreement," (CF 499). If more than one person has legal custody of the child, each must sign the agreement. The Department must make reasonable efforts to notify the non-custodial legal parent(s) of the child's placement.

(2) If the child is an Indian child who is an enrolled member or may be eligible for membership in an Indian tribe, all parent(s)/guardian(s) who have legal custody must sign the "Voluntary Custody Agreement" or "Child Placement Agreement" before a judge who has appropriate jurisdiction for the hearing. The child must be more than 10 days old. Refer to Policy# I-E.2.1, Placement of Indian Children, OAR 413-070-0240 for detailed requirements.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.015 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03

## 413-020-0040 Required Reviews

The federal regulations under the Adoptions and Safe Families Act (PL 105-89) and the state requirements for review of cases by Local Citizen Review Boards (419A.090-122) apply to all children placed in substitute care. All children who are placed under a "Child Placement Agreement" or a "Voluntary Custody Agreement" will be scheduled for the same Citizen Review Board and Court reviews as a child who is placed pursuant to court order. Please refer to Policy I-B.3.2.1, Substitute Care Placement Reviews for specific details of the requirements for these reviews.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.015 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03

## 413-020-0050 Termination of Voluntary Agreement

(1) Either the Department or the parent(s)/guardian(s) who signed the agreement may terminate it by providing 48 hours written notice. The child support agreement may be terminated at the same time by sending a copy of the written termination notice to the Department/CHS Child Support Coordinator.

(2) If a parent(s)/legal guardian(s) requests the termination of the voluntary agreement and the child is in imminent danger, or there is reason to believe the child's welfare is in jeopardy, the child shall be taken into protective custody and the court petitioned for legal custody.

(3) Eligible children under the Indian Child Welfare Act, who have a "Child Placement Agreement" or "Voluntary Custody Agreement" with the Department, are subject to OAR 413-070-0240. Paragraph (5) specifically states that an Indian child shall immediately be released to a parent(s)/Indian custodian upon withdrawal of a voluntary consent. It also states what notification to the court and other actions are required when return to the parent(s)/Indian custodian would place the child in imminent danger or harm.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.015, ORS 418.312 & ORS 419C.080  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** CWP 3-2003

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**Rules Amended:** 413-020-0200, 413-020-0210, 413-020-0220, 413-020-0230, 413-020-0240, 413-020-0250, 413-020-0260, 413-020-0270

**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-020-0200

### Purpose

These rules, 413-020-0200 through 0270, prescribe guidelines on caring for children in the legal custody of the Department in certified foster homes who require physical intervention to ensure their health and safety. These children are behaviorally reactive to stressful situations in ways that pose a continuing serious threat to themselves, others or property. Age-related behavior which may temporarily endanger a child and requires physical intervention to ensure the child's safety (i.e., a two and one half-year-old who suddenly attempts to dart into a busy street, or children who may require limited physical containment to prevent a recognized pattern of behavioral escalation which would predictably lead to unsafe behavior if allowed to go unchecked) does not fall within the intended meaning of these rules. These procedures govern the use of physical and mechanical restraints for children.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03

## 413-020-0210

### Definitions

(1) "Agency-Approved Training" applies only to the following: Oregon Intervention System, Professional/Practical Assault Response Training (PART C). Department-approved training uses techniques that have been researched and approved by the Department and have withstood legal challenges from the standpoint of civil and human rights. Alternative physical behavior management techniques may not be used unless an exception is granted and the technique is prior-authorized by the Department, in writing, after review of civil and human rights standards.

(2) "Anger/Child Management Techniques" are treatment approaches designed to reduce anxiety/stress and/or support the acquisition of increased self control in the child.

(3) "Behavior Intervention Plan" is a written plan, developed by the planning team, of support and training services for a child covering a 12-month period which addresses the child's support needs. The behavior intervention plan will be maintained in the child's case record and the provider's case file for the child, and reviewed at a minimum of six-month intervals.

(4) "Behavior Management Specialist" is an individual who has knowledge/training in behavioral theory, experience conducting functional analysis of behavior, experience developing and implementing written positive/non-aversive behavior intervention plans, and an understanding of communication systems and team process.

(5) 413-030-0205(1) "The Department" means the Department of Human Services (DHS).

(6) "Designated Behavior Intervention Consultant" means an individual with a working knowledge of the principles of positive behavior support and has been trained in the development of behavior intervention plans and the training referral process.

(7) "Incident Report (CF 983)" means a written report of any injury, accident, acts of physical aggression requiring restraint, or unusual incident involving a child that poses a serious physical threat to themselves, others or property. The Physical Restraint Incident Log, (CF 984) may only be used with prior authorization by the planning team.

(8) "Mechanical Restraint" is any object or apparatus, device or contraption applied or affixed to the child to limit movement, and includes, but is not limited to handcuffs, leg irons, soft restraints or Posey Strait Jacket.

(9) "Physical Restraint" means restricting the movement of a child, or restricting the movement or normal function of a portion of the child's body as described in agency-approved training methods, by forcefully and involuntarily depriving the child of free liberty to move about. Simple physical redirection, such as hand on back to redirect or briefly holding the upper arm(s) or clasping of the hand, should not be considered physical restraint.

(10) "Planning Team" means a team composed of the service worker, certifier, a Child Welfare Supervisor, designated behavior management consultant or a behavior management specialist, the primary caregiver, and a minimum of one of the following: the child's legal guardian or biological parent, other family members likely to have direct involvement with the child, advocates, school personnel, or other service providers, i.e., therapist, physician, personal care nurse, and when appropriate, the child. The child, when appropriate, will be consulted concerning who else they want on the team.

(11) "SDA" means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.

Stat. Auth.: OL 1993, Ch. 676



# ADMINISTRATIVE RULES

Stats. Implemented: OL 1993, Ch. 676  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SCF 8-1997, f. 8-12-97, cert. ef. 8-25-97; CWP 3-2002, f. & cert. ef. 1-7-03

## 413-020-0220

### Policy

Many children in the care and custody of the Department have a variety of physical and mental impairments. In order to treat and support these children, child care providers must be skilled in behavior intervention techniques and conflict resolution. Children requiring physical restraint must have a behavior intervention plan that is developed with sensitivity and compassion relevant to their needs. Providers using a physical restraint shall be certified in Department-approved training, or possess a current appropriate exception.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 3-2002, f. & cert. ef. 1-7-03

## 413-020-0230

### Behavior Intervention Plan

(1) For children who have demonstrated a serious threat to themselves, others or property, a behavior intervention plan shall be developed by the planning team using the CF 1009. This plan shall address the care/treatment needs of the child. The service worker, primary care giver and other members of the planning team will develop the plan. The supervisor for the worker must sign off on the plan. At a minimum, this plan shall be reviewed at six month intervals. For these children, a behavior intervention plan shall address action to be taken on the part of the provider including physical restraint, should the planned interventions fail to prevent unsafe behavior.

(2) Documentation of Behavior Intervention Plan Review. A team of people involved in the child's life (planning team) will meet to review the Behavior Intervention Plan after six months of implementation. A roster of attendance will be dated and signed by the participants. The provider or service worker will document any needed changes in the plan. Copies of the new plan (if amended) will be sent to team members. The service worker and/or provider needs to initiate and schedule this team review process. For children with physical limitations, the child's service worker will request a written order from the physician ordering any physical restraint technique that can be safely utilized for his/her patient. Behavior Intervention Plan Reviews will be filed in the child's case record.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03

## 413-020-0240

### Physical Restraint

(1) A physical restraint may be used only by providers or agency staff who have been trained in Department-approved techniques, and only in emergency situations to prevent a child from inflicting immediate and serious harm upon himself/herself or others, or property; or to safely transport a child. Physical restraint that results in injury to the child requires immediate notification to the local Department office Child Protective Services (CPS) Unit. A physical restraint shall only be used for health and safety reasons under the following circumstances:

(a) As part of the child's Behavior Intervention Plan that:

(A) Is intended to lead to less restrictive means of intervening in and altering the behavior for which the physical restraint is used;

(B) Has identified the specific physical intervention techniques which have been recommended by the planning team;

(C) Restricted to techniques consistent with Department-approved intervention methods;

(D) Has been approved in writing by the service worker and Child Welfare Supervisor. The continued need for physical intervention is reviewed and documented at a minimum of every six months by the service worker and provider, and the professional(s) who recommended use of the technique; and

(E) Is documented by the foster parent on the CF 983, "Physical Restraint Incident Report," or the CF 984, "Physical Restraint Incident Log," but no longer than 24 hours after the physical restraint has taken place. (Use of the CF 984 must be prior authorized by the Planning Team.) The original of the report shall be forwarded within five working days of the incident to the child's assigned service worker with the provider keeping a copy and a copy sent to the certifier for filing in the confidential section of the foster home record. In addition, verbal notification must be made by the foster parent to the agency within a maximum of 72 hours, or;

(b) As an emergency measure to assist a child in regaining self-control to prevent injury to himself/herself or others or severe property destruction, but only after alternative crisis diffusion and anger/child management techniques have been applied; or

(c) Is a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for protection during the time that a medical condition exists;

(d) In emergency situations, without a Behavior Intervention Plan, shall:

(A) Be documented by the foster parent in writing on the CF 983, "Physical Restraint Incident Report," as soon as possible, but no longer than 24 hours after the physical restraint has taken place. The original of the report shall be forwarded within five working days of the incident to the child's assigned service worker with the provider keeping a copy and a copy sent to the certifier for filing in the confidential section of the foster home record. In addition, verbal notification must be made by the foster parent to the agency within a maximum of 72 hours;

(B) Be used only until the child is calm and able to demonstrate reasonable control; and

(C) Prompt the service worker to schedule a planning team meeting if used more than three times in a six month period.

(2) Provider Training.

(a) Department foster care providers who reasonably anticipate needing to apply physical intervention as part of a child's ongoing behavior intervention plan may be evaluated for training in agency-approved intervention techniques. The need for training shall include an evaluation of the overall foster home dynamics, care taker motivation and/or ability, and a review of the causes of the identified child's behavior. Evaluations for training may only be done by Department staff (service worker and certifier). After the development of a Behavior Intervention Plan, a personal care nurse shall document the need for and recommend training. Requests for training of foster parents shall be directed to the foster/adoptive parent trainer. Department staff may coordinate with foster/adoptive parent trainers for training. Documentation verifying such training shall be maintained in the foster parent's certification file.

(b) Persons certified by an Department-approved trainer in Department-approved training, or holding an appropriate exception, should maintain the certification as defined by the standards of the training.

(3) Physical Injury Avoidance. Physical restraint shall be designed to avoid physical injury to the child and to minimize physical and psychological discomfort.

(4) Incident Report.

(a) The incident report shall include:

(A) The name of the child to whom the restraint was applied;

(B) The date, location, type and duration of restraint and of entire incident;

(C) The name of the provider and/or witnesses or persons involved applying the restraint; and

(D) A description of the incident including precipitating factors, preventive techniques applied, description of the environment, description of any physical injury resulting from the incident, follow-up recommendations and agencies notified.

(b) A copy of the incident report shall be sent within five working days of the incident to the child's service worker

(c) The service worker will provide a response to the incident report received to the provider within five working days.

(A) Any incident resulting in physical injury to the child shall cause immediate notification to the local Department office CPS Unit.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SOSCF 8-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 3-2002, f. & cert. ef. 1-7-03

## 413-020-0250

### Mechanical Restraints

(1) Providers shall not use mechanical restraints on children in care other than car seat belts or normally acceptable infant safety products, unless recommended by the planning team as part of the behavior intervention plan and an exception is granted by the SDA Manager or designee.

(2) A mechanical restraint used as part of a medical procedure shall be ordered by a physician and reviewed by a planning team and at a minimum of every six months for children in foster care. Physician's orders will be filed in the child's case record with a copy given to the provider.

(3) SDA Manager or designee must authorize in writing the use of all mechanical restraints.

Stat. Auth.: ORS 418.005

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03

## 413-020-0260

### Safety

The purpose of a restraint is to reduce the risk of injury. The safety of the child, provider or agency staff involved is of utmost importance. If a provider feels there may be some danger or potential for injury to himself/herself when interacting with a child, the provider shall immediately review the need for restraint per the guidelines of agency-approved training.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 3-2002, f. & cert. ef. 1-7-03

## 413-020-0270

### Exceptions

(1) Criteria for Exception. If there is a lack of resources (i.e., training, appropriate consultation, funding) an exception may be granted to a foster parent by a SDA Manager or designee. The granted exception must implement the standards required in these rules, or result in alternative services, methods, concepts or procedures that meet or exceed the standards of these rules.

(2) Exception Request. The service worker or provider requesting an exception shall submit, in writing, a request to the appropriate SDA Manager or designee which contains the following:

- (a) The section of the administrative rule from which the exception is sought;
- (b) The reasons for the proposed exception;
- (c) The alternative practice, service, method, concept or procedure proposed by the planning team;
- (d) A description of the child/guardian's opinion and participation in requesting the exception;
- (e) A plan and timetable for compliance, to be reviewed at six-month intervals, with the section of the rule from which the exception is sought.

(3) Notification. Within 10 working days of receipt of the request, the SDA Manager or designee shall notify the foster care program and the provider of the approval or denial of the exception.

(4) Written Approval. An exception may be implemented only after written approval from the SDA Manager or designee.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SOSCF 8-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 4-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** CWP 4-2003

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**Notice Publication Date:** 9-1-02

**Rules Adopted:** 413-030-0205

**Rules Amended:** 413-030-0200, 413-030-0210, 413-030-0220

**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-030-0200

### Purpose

(1) These rules, OAR 413-030-0200 through 0220, emphasize that the child's safety is the paramount concern in determining Substitute Care eligibility.

(2) The Department is responsible for determining if a child in the legal custody of the Department will be placed or continued in substitute care placement in accordance with statutes, administrative rules, agency procedures and placement practice guidelines. These rules, OAR 413-030-0200 through 0220, specify the minimum criteria for the substitute care classification and placement under any type of substitute care program licensed or certified by the Department. Additional criteria are outlined in rules for specific substitute care programs. See OAR 413-080-0000 through 0030 Shelter Care (CAF Policy I-E.4.1); OAR 413-080-0100 Family Foster Care (CAF Policy I-E.4.2); Foster Family Group Homes (CAF Policy I-E.4.2.1); OAR 413-080-0200 through 0270 Residential Services (CAF Policy I-E.4.3); and OAR 413-030-0400 through 0455 Independent Living Programs (CAF Policy I-B.2.3.5).

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

Stat. Auth.: ORS 418.005  
Stats. Implemented: Title IV-E, PL 95-608, ORS 418.015-ORS 418.315, 419B.331-419B.349 & PL 105-89  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 21-1999, f. & cert. ef. 10-6-99; CWP 4-2003, f. & cert. ef. 1-7-03

## 413-030-0205

### Definitions

(1) "The Department" means the Department of Human Services (DHS).

(2) "CAF" means Children, Adults and Families (CAF).

(3) "SDA" means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.

Stat. Auth.: ORS 418.005  
Stats. Implemented: Title IV-E, PL 95-608, ORS 418.015-ORS 418.315, 419B.331-419B.349 & PL 105-89  
Hist.: CWP 4-2003, f. & cert. ef. 1-7-03

## 413-030-0210

### Eligibility Criteria for Substitute Care Placement

For a child to be eligible for initial and continuing substitute care placement(s), the Department shall meet the following criteria:

(1) Legal Basis. The Department must have a current legal basis for placement:

- (a) Temporary custody under ORS 419.B.165; or
- (b) Legal custody of the child through a juvenile court order; or
- (c) A voluntary custody agreement in accordance with OAR 413-020-0100 through 0170 (CAF Policy I-B.1.4); or
- (d) A voluntary child placement agreement in accordance with OAR 413-020-0000 through 0050 (CAF I-B.1.3); or
- (e) Permanent custody based on a permanent commitment or release and surrender agreement of a parent; or
- (f) Verification that the child is an unaccompanied refugee minor.

(2) The child must be under 18 years of age at the time the child is placed in the Department's legal custody and placement services are first initiated.

(3) Reasonable Efforts. Except in those cases with a Voluntary Custody Agreement or Child Placement Agreement, the Department will make reasonable efforts to prevent or eliminate the need for removal of the child and to alleviate the barriers that keep the child from returning home. This includes an assessment of appropriate treatment and supportive services and providing such services when available through the Department or by referral to other community resources. To aid the court or Citizen Review Board (CRB) in making the findings required by this section, the Department shall present documentation to the court or CRB showing its reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child and services provided to safely return the child to the home. The department shall seek a reasonable efforts judicial determination within 60 days of a child's removal from the home, or a determination that due to aggravated circumstances reasonable efforts were not required to prevent the child's removal from their home. If the court does not make the reasonable efforts determination within 60 days, the child shall not be eligible for Title IV-E foster care maintenance payments program throughout the duration of that child's stay in substitute care. Refer to OAR 413-100-0240 Title IV-E-FC and General Assistance (CAF Policy I-E.6.1).

(4) The child requires substitute care placement because there is no parent or guardian available and able to provide safe care for the child even with the assistance of available supportive resources, and no relative is willing and appropriate to assume full responsibility for the child.

(5) Placement is needed for one of the following reasons:

- (a) The parent(s) or guardians are not available to care for the child due to death, abandonment, desertion, incarceration, institutionalization, or catastrophic illness; or
- (b) The child is at significant risk of abuse or neglect; or
- (c) The child is in the permanent custody of the Department for adoption planning; or
- (d) The child has a severe disabling condition requiring skilled care that the family cannot provide even with the assistance of community resources but the Department can provide the care the child requires in an available substitute care resource; or
- (e) The child's behavior is a serious danger to the child, the child's family or the community but the child can, without threat to self or others, be managed in an available and appropriate substitute care resource.

Stat. Auth.: ORS 418.005  
Stats. Implemented: Title IV-E, PL 95-608 & ORS 418.015 - ORS 418.315

# ADMINISTRATIVE RULES

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 21-1999, f. & cert. ef. 10-6-99; SOSCF 17-2000, f. & cert. ef. 7-25-00; SOSCF 10-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 4-2003, f. & cert. ef. 1-7-03

## 413-030-0220

### Eligibility After Age 18

(1) Eligibility for substitute care services shall cease at age 18 unless the person continues to meet both the eligibility criteria outlined earlier in OAR 413-030-0210 and in this section of the rules. Under the following conditions the Department may continue to provide placement services up to the maximum age of 21 years if the person is:

(a) Actively striving to complete the requirements for high school graduation and achieving satisfactorily in a full-time program of high school attendance, GED classes or a combination of classes and employment; or

(b) Enrolled in a special education program as called for in an Individual Educational Plan (IEP); or

(c) An unaccompanied refugee minor; or

(d) The person's situation has been reviewed and approved in writing for an exception to these rules by the SDA Manager or designee.

(2) In no instance shall a person receive substitute care services from the Department after the youth's 21st birthday.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E, PL 95-608 & ORS 418.015 -ORS 418.315 & ORS 419B.331 - ORS 419B.349

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 21-1999, f. & cert. ef. 10-6-99; SOSCF 17-2000, f. & cert. ef. 7-25-00; SOSCF 10-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 4-2003, f. & cert. ef. 1-7-03

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**Rules Amended:** 413-040-0400, 413-040-0410, 413-040-0420, 413-040-0430, 413-040-0440, 413-040-0450

**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-040-0400

### Policy

HIV testing is an intrusive medical procedure which can have serious social consequences. The Department will subject children in its custody to this procedure only if it is medically indicated. When a child in Department custody is tested for HIV, informed consent procedures shall be followed and the results of the test held in strictest confidence.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 5-2003, f. & cert. ef. 1-7-03

## 413-040-0410

### Definitions

(1) **"Acquired Immune Deficiency Syndrome (AIDS)"** is a disorder in which a person's immune system is severely suppressed. It is caused by the human immunodeficiency virus (HIV). In order for a person to be diagnosed as having AIDS the virus, immune system suppression, and an opportunistic infection or other condition stipulated by the U.S. Centers for Disease Control must all be present. A laboratory diagnosis of a CD4 less than 200 also is an AIDS defined illness.

(2) **"CAF"** means Children, Adults and Families (CAF).

(3) **"Department"** means the Department of Human Services (DHS).

(4) **"Counseling"** means group and individual counseling, emotional support groups, on-on-one emotional support, AIDS education, and/or information services.

(5) **"High Risk Group"** means the following:

(a) Having shared a needle with an intravenous drug abuser since 1977;

(b) For a man, having had sex with another man or men since 1977;

(c) Having been sexually active in an area where heterosexual transmission is believed to be high;

(d) Persons with hemophilia;

(e) Having been the sexual partner of a person in one of the previous categories;

(f) Being born to a woman whose history has put her in one of these other categories.

(6) **"HIV"** is the acronym for human immunodeficiency virus. This is the current name for the virus which causes AIDS.

(7) **"HIV Infection"**. People who have been tested and found to have the antibody are referred to as having HIV infection. These people are capable of transmitting the virus through risk behaviors, as described below.

(8) **"HIV Positive"** means that a blood test has indicated the presence of antibodies to HIV. This means that the person has been infected by the virus and the immune system has responded by producing antibodies. An exception is infants of HIV-infected mothers. They have been exposed to the mother's antibodies and carry these antibodies in their blood for a number of months after birth. A series of tests is necessary to determine if these infants are themselves infected with HIV.

(9) **"SDA"** means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 25-2000, f. & cert. ef. 9-7-00; CWP 5-2003, f. & cert. ef. 1-7-03

## 413-040-0420

### HIV Antibody Testing

(1) For children and youth in Department custody, the HIV antibody test is to be done only to facilitate the medical care of the child if clinically indicated after a thorough medical evaluation by a doctor knowledgeable about HIV infections. The test is not to be used to screen individuals with high risk behaviors or any other groups, nor to satisfy the curiosity of Department staff or contracted providers.

(2) Under the direction of a physician, infants born to mothers known to have engaged in high risk behaviors may be tested for HIV. The presence of HIV infection in an infant can be determined only after the mother's antibodies are gone from the child's bloodstream. Because maternal antibody crosses the placenta, the presence of HIV infection can only be determined after a series of tests.

(3) Victims of sexual abuse who have been exposed to blood or semen may be tested for HIV. If the child can understand, informed consent procedures shall be used (I-B.5.1, 413-040-0430). A physician knowledgeable in HIV care should be consulted immediately for consideration of HIV post-exposure prophylaxis.

(4) The Department shall not license any private child-caring agency whose admission criteria include a mandatory HIV test.

(5) The Department shall not contract with any service provider whose admission criteria include a mandatory HIV test.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 25-2000, f. & cert. ef. 9-7-00; CWP 5-2003, f. & cert. ef. 1-7-03

## 413-040-0430

### Informed Consent

(1) No person shall submit the blood of an individual to an HIV test without first obtaining informed consent or ascertaining that informed consent is obtained, consistent with subsection (7) of this rule.

(2) As legal custodian and guardian of the child, the Department may grant medical consent and authorize medical treatment. Children 13 years of age or older should be included in this planning and also consent. The Department must have a medical statement that the HIV test is necessary for care and treatment before ordering or arranging for a test. If the Department orders or arranges for an HIV test, informed consent procedures must be followed. A minor of any age may consent to a HIV test; and when the minor's consent is given, the consent of the minor's parents or guardians is not necessary for diagnosis, care or treatment. However, such consent must be informed consent.

(3) In all cases involving a child old enough to give informed consent, the worker shall try to obtain the consent of the child. However, if the physician and Department staff believe an HIV test is necessary to provide information necessary for the care of the child, and that child objects to the test and will not consent, the following options are available:

(a) SDA Manager or designee after consultation with the child's physician, may consent to the test for the child over the child's objection (413-020-0150 (c)(A)(iii)); or

(b) The worker may petition the court to order the child to be tested.

(4) Department staff are responsible to assure that informed consent is obtained when children in Department custody are to be given an HIV test. If the medical provider does not obtain the informed consent, Department staff shall do so or arrange for it to be done prior to the test.

# ADMINISTRATIVE RULES

(5) If a child is placed pursuant to a Voluntary Custody Agreement or a Voluntary Placement Agreement, the parent and the child retain the authority to consent to the test. The Department does not have the authority to consent to the test on behalf of the parent unless such authority is included in the express terms of the Agreement.

(6) Providers are not authorized to consent to a child's HIV test.

(7) Informed consent shall be obtained in the following manner, giving consideration to the child's age and ability to understand:

(a) Provide the person for his/her retention a copy of the CF 990, HIV Test Informed Consent.

(b) Orally summarize for the person the substance of the statements in the CF 990 and specify alternatives to the HIV test in the particular instance, and if the test information will be disclosed to others, who those others will be.

(c) Explain the risks from having the HIV test. This shall include a description of Oregon law pertaining to the confidentiality of information about an individual having the test and that individual's test results; a statement that there may be circumstances under which disclosure might be permitted or required without consent; and a statement of the potential consequences in regards to insurability, employment, and social discrimination if the HIV test results become known to others.

(d) Inform the person that he or she has the right to request additional information from a knowledgeable person before giving consent.

(e) Ask the person to be tested whether he/she has any further questions, and if so, provide a full and complete opportunity to ask those questions and receive answers from a person who is sufficiently knowledgeable to give accurate and complete answers about AIDS, HIV tests and the consequences of being tested or not tested.

(f) Have the person sign the CF 990, HIV Test Informed Consent, after having had an opportunity to read it.

(g) Maintain the signed CF 990 for at least seven years in a locked file separate from the case file.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 12-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 5-2003, f. & cert .ef. 1-7-03

## 413-040-0440

### Counseling

A child being referred for HIV antibody testing must be referred for pre-and post-test counseling.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 5-2003, f. & cert .ef. 1-7-03

## 413-040-0450

### Confidentiality

(1) Many Department records are exempt from disclosure and are strictly confidential under the public records exemptions or confidentiality status. All medical records are privileged information. AIDS and/or HIV test results are specifically designated highly confidential by statute (ORS 433.045) and Department Health Administrative Rule (333-12-270, 1-9) and must be held in the most strictly observed confidence possible to avoid consequences of casual or inappropriate disclosure of information. Information regarding a client's HIV status is to be maintained in a locked file separate from the case.

(2) In order to provide services to the child and to administer Department's child welfare services, Department staff may inform only those directly involved in case planning and who have a need to know, that a child or an adult who has a significant role in the child's plan, has AIDS or is HIV positive. The identification of who has a need to know in order to adequately meet the needs of the child shall be determined through a staffing which includes the worker, supervisor and Department central office (Personal Care Coordinator) representative, and should include input from the physician, county Health Department who ordered the test, or the HIV Program of the Department's Health Policy cluster.

(3) For children receiving services under a Voluntary Custody Agreement (CF 1005) or a Voluntary Placement Agreement (CF 499), the responsible parent(s) shall always be involved in making medical decisions for the child, and have access to medical information.

(4) Each person who subsequently gains access to this information must keep it in strictest confidence (ORS 433.045(3)). The worker shall advise all persons who have access to the medical information of their duty to safeguard the confidential nature of the information.

(5) If the Department learns from any source that a child is HIV positive, the above procedures must be followed.

(6) Pursuant to Health cluster Rule 333-012-0270, if the Department possesses information that an adult client or other person associated with a case if HIV positive, this does not confer the right to disclose the information, except as permitted by Oregon law.

(7) If disclosure of HIV information is deemed necessary for planning in the context of a court hearing, the worker shall not disclose the status in open court without either the written consent of the infected persons or a court order.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 12-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 5-2003, f. & cert .ef. 1-7-03

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**Rules Adopted:** 413-050-0005

**Rules Amended:** 413-050-0000, 413-050-0010, 413-050-0020, 413-050-0030, 413-050-0040, 413-050-0050

**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-050-0000

### Purpose

One mission of the Department is "Helping Children and Families." Children are best protected and nurtured when families are strong. The purpose of these rules is to help meet basic needs of families to maintain and strengthen the family so children can be maintained in their own homes whenever possible.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; CWP 6-2003, f. & cert .ef. 1-7-03

## 413-050-0005

### Definitions.

(1) "CAF" means Children, Adults and Families (CAF).

(2) "Department" means the Department of Human Services (DHS).

(3) "SDA" means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2003, f. & cert .ef. 1-7-03

## 413-050-0010

### Service Description

Regular housekeeping services are those tasks carried out within the home which are generally held to be routine and necessary to maintain the functioning of a family and which are performed by persons who are not members of the immediate household. Those tasks, by this definition, include, but are not necessarily limited to:

(1) Routine housecleaning and related chores;

(2) Laundry;

(3) Food preparation and dish washing;

(4) Twenty-four-Hour Emergency Service. There are temporary emergency circumstances wherein "live-in" arrangements are included under the housekeeping definition. Such 24-hour emergency service must be deemed as necessary to keep the family together and would include providing all routine household functions, including child care, usually when the only capable family members are temporarily absent or incapacitated.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; CWP 6-2003, f. & cert .ef. 1-7-03

## 413-050-0020

### Eligibility

(1) Payment for housekeeping services rendered will be made only on behalf of:

(a) Families who are current recipients of ADC, SSI, or are within the 0-79% State Median Income range; or

(b) Foster children (both IV-E and GA-FC) who are in the care and custody of the Department, living in the care of a foster family.

# ADMINISTRATIVE RULES

(2) Service Criteria. Housekeeping Services may be authorized when services are deemed to offer an adequate solution to the following conditions:

(a) Incapacity or short-term absence (usually not exceeding seven days) of the parenting persons who are unable to fulfill the routine, necessary household duties, due to such conditions as chronic or acute illness, severe emotional stress, physical handicap, complication of pregnancy, medically prescribed rest and childbirth. The need and duration of need related to physical conditions shall be confirmed verbally or in writing by the attending physician unless the degree of incapacity is obvious (person is physically immobile);

(b) Certain unusual requirements for care of ill or handicapped children which preclude the carrying out of routine, necessary housekeeping duties by the parenting person and such care and duration of care is verified by the child's attending physician.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; CWP 6-2003, f. & cert. ef. 1-7-03

## 413-050-0030

### Eligible Children Served Jointly with Other Department Programs

(1) The Seniors and Persons with Disabilities (SPD) policy cluster will be responsible for authorization and payment of Housekeeper Services when the service is to support and sustain the SSI parent in an Alternate Community Care Plan. This would apply when the parent is physically unable to provide essential care to himself or herself and would, without Housekeeper Services, require placement in a nursing home or other medical institution. Authorization and payment of Housekeeper Services for SPD cases is subject to the availability of funds. In such cases:

(a) The Department case manager will be responsible for developing, establishing and monitoring the Alternate Care Plan and determining the appropriateness for Housekeeping Services as an adjunct of an Alternate Community Care Plan, and for parent/s who are disabled.

(b) The child welfare case worker will be responsible for all other social service planning and service implementation for the family as may be needed to assure the well-being of the children.

(c) The Department is committed to coordination at either the worker or supervisor level to carry out joint provision of services. SPD will not authorize housekeeper payments for an SSI/ADC case, or SSI parent/SSI child case, without coordinated planning with CAF staff.

(2) CAF will be responsible for authorization and payment for Housekeeper Services when it is not an addition to an Alternate Care Plan.

(3) All housekeeper situations pertaining to a child who is eligible in his or her own right for SSI, other than that covered in (1) (a) of this rule, is the responsibility of CAF.

(4) An allowance to the AFDC recipient for food and shelter costs for a "live-in" housekeeper is available through SPD. Such payment is initiated through the Department case manager.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; CWP 6-2003, f. & cert. ef. 1-7-03

## 413-050-0040

### Authorization of Service

(1) CAF Housekeeping Services are to be authorized in advance of rendering the services.

(2) Under emergency conditions or other unusual circumstances housekeeping services may be provided for up to, but not exceeding, three working days prior to authorization. An "emergency" exists when the physical or emotional well-being of any family member would be endangered as a result of the time required to secure prior authorization. "Other unusual circumstances" are those deemed by prudent judgment to be reasonable explanations why a prior request for service was not made.

(3) Authorization Period. Each authorization for service is to be for a specific duration based on a reasonable estimate of the need, not to exceed 90 days for regular housekeeping or 6 months for disabled parents of children, and 7 days for emergency 24-hour services. Extensions are permissible with supervisory written approval.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; CWP 6-2003, f. & cert. ef. 1-7-03

## 413-050-0050

### Policies Governing Payment

(1) Payment rates are based on the minimum established by the Federal Wage and Hour Regulations. Payment may be made for regular housekeeping services for up to 40 hours per week. Overtime is paid at time and a half for each work hour above 40 hours per week, not to exceed a

maximum of 10 hours per week overtime. Overtime is calculated by determining the hours worked for each sequential 7 day period beginning with the first day worked. All hours worked over 40 for the week is overtime regardless of hours worked for any one day.

(2) Payment rates per day for 24-hour emergency live-in services shall be negotiated by the family and shall not exceed a maximum cash payment equal to 10 hours per day.

(3) Exceptions to Maximum Payment Rates will be allowed under the following conditions:

(a) When part of the housekeeper's authorized responsibilities include use of his/her own car for purposes essential to maintaining the family, such as grocery shopping, reimbursement can be made at a standard rate for state employee mileage reimbursement. The agency assumes no liability incurred as a result of the housekeeper's use of his/her own car;

(b) Where the local rates for housekeeping services are generally higher than the maximums established in this rule, and to the extent competent housekeepers are not available for Department services, a higher rate may be established by the SDA manager or designee. The SDA manager or designee shall notify staff in the local area affected, and the DHS central office program manager, of increased rates;

(c) Exceptions to the maximum rate on a case basis may be made by the SDA manager or designee taking into consideration the local housekeeping budget constraints and the justification of such exception.

(4) Social Security taxes will be withheld from vendor payments. The agency will pay the employer's share.

**Exception:** When payment for housekeeping services is made to a commercial firm, such as Homemakers International (Upjohn) or a private agency, the Social Security process of withholding and paying Social Security taxes are made by the firm or agency.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; CWP 6-2003, f. & cert. ef. 1-7-03

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**Subject:** These rule revisions are to clarify the terminology related to the Domestic Violence Fund and the committee that has been established related to the fund — Domestic and Sexual Violence Fund Advisory Committee. Contractor and/or grantee language was added throughout the rule. Also terminology throughout the rule has been corrected as it relates to the restructuring of the Department of Human Services.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-050-0500

### Policy

OAR 413-050-0500 through 413-50-0590 provide procedures for the Department to fund programs from the Domestic Violence Fund. The 1981 Oregon Legislature established this fund to provide intervention on behalf of and support for victims of domestic violence. The Department is authorized to enter into grants or contracts with public agencies or private non-profit organizations to provide intervention and support services to victims of domestic violence.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 108.610 - ORS 108.660

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0510

### Definitions

(1) "Applicant" means public agency or private non-profit organization that meets the minimum criteria outlined in 413-050-0515 and applies to the Department for funding from the Domestic Violence fund to operate qualified programs as described in 413-050-0570.

(2) "Contractor" means an Applicant/s that has been selected to provide services, to victims of domestic violence and their families through a grant or contract with the Department under these rules.

(3) "Crisis Line" is defined in ORS 108.610(2) and means an emergency telephone service staffed by persons who are trained to provide

# ADMINISTRATIVE RULES

emergency peer counseling, information, referral and advocacy to victims of domestic violence and their families.

(4) "Cultural Competency" means a set of congruent behaviors, attitudes, and policies that come together in a system, organization or among professionals and enable that system or those professions to work effectively in cross cultural situations. It refers to a program's ability, at the levels of policy, administration and practice, to honor and respect those beliefs, interpersonal styles, attitudes and behaviors of culturally diverse clients and the diverse staff who are providing services.

(5) "CAF": means Children, Adults and Families, a policy and program area of the Department of Human Services (DHS).

(6) "Department": means Department of Human Services.

(7) "Domestic and Sexual Violence Fund Advisory Committee (DSV-FAC)": means the Domestic and Sexual Violence Fund Advisory Committee established in OAR 413-050-0530.

(8) "Domestic Violence Fund" means the fund established by ORS 108.660 within the Department's Account of the State General Fund.

(9) "Domestic Violence" means Family Violence, defined by ORS 108.610 to mean the physical injury, sexual abuse or forced imprisonment, or threat thereof, of a person by another person who is related by blood, marriage or intimate cohabitation at the present or has been related at some time in the past, to the extent that the person's health or welfare is harmed or threatened thereby. Domestic violence includes a pattern of assaultive and/or coercive behaviors including physical, sexual, psychological and emotional abuses, as well as economic coercion that adults use against their intimate partners to gain power and control in that relationship.

(10) "Family Violence Prevention Program" means the program within the Department funded by the Domestic Violence Fund and other related funds as available to provide shelter and related services to victims of domestic violence.

(11) "Grantee(s)" means an Applicant/s that has been selected to provide services, to victims of domestic violence and their families through a grant or contract with the Department under these rules.

(12) "Safe house" means a place of temporary refuge, offered on an as needed basis to survivors of domestic violence and their families.

(13) "Shelter home or shelter facility" means a place of temporary refuge, offered on a 24-hour, seven-day per week basis to survivors of domestic violence and their children.

(14) "Underserved Populations" are communities or groups of people who face additional barriers to accessing services due to race, ethnicity, color, disability, primary language other than English, National origin, immigration status, geographic location, gender, age, sexual orientation, or poverty.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 108.610 - ORS 108.660

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0515

### Qualified Services

(1) The Department shall use the Domestic Violence Fund to make grants to and enter into contracts with nonprofit private organizations or public agencies to fund programs and projects designed to prevent, identify and treat domestic violence. Grants or contracts under this subsection may be made to:

(a) Fund shelter homes for victims of domestic violence,

(b) Fund crisis lines providing services to victims of domestic violence and their families;

(c) Fund safe houses for victims of domestic violence and their families; and

(d) Develop and establish programs for professional and paraprofessional personnel in the fields of social work, law enforcement, education, law, medicine and other relevant fields who are engaged in the field of the prevention, identification and treatment of domestic violence and training programs in methods of preventing domestic violence.

(2) A program providing crisis lines, safe homes or shelter homes funded under this administrative rule, shall provide or coordinate with other agencies to provide the following related services:

(a) Crisis Line;

(b) Emergency Housing;

(c) Intake and referral services;

(d) Safety planning, domestic violence information and assistance with basic needs;

(e) Resource advocacy and case management;

(f) Age appropriate services for children and adolescents;

(g) Transportation;

(h) Peer Support; and

(i) Community Collaboration, Education, and Training.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 108.610 - ORS 108.660

Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0530

### Advisory Committee

(1) The Domestic and Sexual Violence Fund Advisory Committee (DSVFAC) established in OAR 413-050-0530 shall serve as the advisory committee to the Domestic Violence Fund Program. Members shall be elected and serve terms in accordance with the by-laws established by the advisory committee. Copies of DSVFAC by-laws and other open records are available by contacting CAF.

(2) The Department shall consult the advisory committee regarding ongoing administration of the Family Violence Prevention Program and any proposed change that substantially affects the program's operation.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 108.610 - ORS 108.660

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 16-1998, f. & cert. ef. 8-13-98; SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0535

### Criminal History Checks

(1) The Grantee/Contractor shall obtain a criminal history record check on any potential employee or volunteer that will work with victims of domestic violence.

(2) The Grantee/Contractor shall develop a written policy or procedure that governs the review of the criminal history record of potential employees or volunteers and the determination of whether the potential employee or volunteer, based upon the criminal history, poses a risk to working safely with victims of domestic violence. The policy or procedure shall provide that the review includes an examination of:

(a) The severity and nature of the crime;

(b) The number of criminal offenses;

(c) The time elapsed since commission of the crime;

(d) The circumstances surrounding the crime;

(e) The subject individual's participation in counseling, therapy, education or employment evidencing rehabilitation or a change in behavior, and

(f) The policy or arrest report and whether that report confirms the employee's or volunteer's explanation of the crime.

(3) If the Grantee/Contractor determines that the potential employee or volunteer does not pose a risk to working safely with victims of domestic violence and chooses to hire the employee or volunteer, the Grantee/Contractor shall explain in writing the reasons for hiring the individual. The written explanation shall address how the potential employee or volunteer is presently suitable or able to work with victims of domestic violence in a safe and trustworthy manner, based on the policy or procedure described in (2). The written explanation shall be placed in the personnel file of the employee or volunteer along with the employee's or volunteer's criminal history record.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 108.610 - ORS 108.660

Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0540

### Staff and Volunteer Training

Grantees/Contractors providing services under these rules shall train employees and volunteers prior to staff or volunteers having direct contact with victims.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 108.610 - ORS 108.660

Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0545

### Board Member Orientation and Training

Grantees/Contractors shall provide training to members of the Grantee's/Contractor's Board of Directors on domestic violence and Board responsibilities and liabilities.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 108.610 - ORS 108.660

Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0550

### Culturally Appropriate Services

The Grantee/Contractor shall offer culturally, racially and ethnically diverse groups and other underserved populations services like those offered to other groups and populations. Services shall be delivered in ways that are appropriate to the group or population served.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 108.610 - ORS 108.660  
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0560

### Allocation of Funds

The Department shall use an equitable distribution method for funding programs throughout the state. The distribution method shall be reviewed by the Domestic and Sexual Violence Fund Advisory Committee.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 108.610 - ORS 108.660  
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0565

### Department Selection Criteria and Rules

In making grants or contracts, CAF shall consider the geographic area of the state that will be served by the Applicant. CAF is committed to fund programs to assist victims of domestic violence in all geographic areas of the state. CAF shall also:

(1) Follow Department of Administrative Services business services policies and procedures to award grants or contracts including public notification of funding opportunities.

(2) Issue Requests for Applications no less than every 5 years.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 108.610 - ORS 108.660  
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0575

### Evaluation Process

Applications shall be reviewed by an evaluation committee. The Department shall approve or reject each application received within 60 days after the submission deadline. Written notification shall be mailed to the applicant no later than five working days after the final actions are taken on the applications.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 108.610 - ORS 108.660  
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0580

### Contract Monitoring

(1) The Department shall provide the forms to be used by the Grantees/Contractors in both statistical reports and financial reports.

(2) Grantees/Contractors shall submit statistics on services provided through the funded program(s). Statistics shall include the numbers of victims of domestic violence who have been served.

(3) Grantees/Contractors shall submit financial reports on the use of the funds granted by CAF.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 108.610 - ORS 108.660  
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

## 413-050-0585

### Confidentiality

(1) The location of premises used to provide services under these rules shall be kept confidential.

(2) Grantees/Contractors shall keep all individual information relating to people served by programs operating under these rules confidential.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 108.610 - ORS 108.660  
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03

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**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-080-0000

### Purpose

These rules, 413-080-0000 through 413-080-030 define the program requirements unique to shelter care placements and are in addition to the expectations for all substitute care placements.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2003, f. & cert. ef. 1-7-03

## 413-080-0010

### Definition

(1) "Department" means the Department of Human Services (DHS).

(2) "SDA" means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA manager.

(3) "Shelter Care" means a home or other facility certified or licensed by the department as suitable for safekeeping of a child who is taken into temporary custody pending the investigation and disposition of juvenile court jurisdiction or to provide emergency services for children in the legal custody of the Department.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2003, f. & cert. ef. 1-7-03

## 413-080-0020

### Eligibility for Shelter Care

The Department may place a child in a certified shelter home or licensed shelter care facility and compensate the care provider at the appropriate shelter care rate if the child's circumstances meet one of the following criteria:

(1) The child would be in danger if allowed to remain at home until a regular placement can be arranged.

(2) The child has problems which cannot be adequately assessed while at home, and close and objective observation of the child's day-to-day behavior is needed in order to evaluate the reasons for the behavior and to determine the child's need for care and treatment.

(3) A child whose substitute care placement has failed or has been temporarily disrupted and must have an interim placement while arrangements are made for another regular placement. The department will not use shelter care for this purpose if the child can be transitioned directly into a regular placement.

(4) A Family Shelter Home is appropriate for any child who meets the criteria for family foster care placement.

(5) A Professional Shelter Care Center is appropriate for children who need:

(a) More intensive supervision and skilled behavior management than family shelter care provides and who require an assessment to determine whether or not a child should be returned to his/her family or placed in substitute care;

(b) Emergency 24-hour care where family shelter care is not available nor appropriate;

(c) Treatment planning for a child apart from his/her family.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2003, f. & cert. ef. 1-7-03

## 413-080-0030

### Length of Stay Constraints

Planning for children in shelter care shall receive top priority. A child shall not remain in shelter care longer than necessary as determined by the branch, and shall not exceed the maximum time frame listed below:

(1) Family Shelter Care. When emergency family shelter care placements are made, the provider will be paid at the established family shelter care payment rate not to exceed 14 days.

(2) Professional Shelter Care. The maximum length of stay in a professional shelter care center will be 56 days unless the SDA manager or designee approves an exception.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 15-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 8-2003, f. & cert. ef. 1-7-03

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**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

# ADMINISTRATIVE RULES

## 413-090-0000

### Purpose

These rules govern the payment for maintenance and treatment services for all children placed in substitute care with certified/licensed providers of care that are funded by the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2003, f. & cert. er. 1-7-03

## 413-090-0005

### Definitions

(1) "Adoption Assistance" means financial and/or medical assistance to adoptive families to assist them with costs associated with their adoptive child's needs. Financial benefits are funded by the Department's Adoption Assistance budget. Assistance can be in the form of cash and/or medical coverage, an Agreement Only, or special payments.

(2) "CAF" means the Children, Adults and Families policy and program area of the Department.

(3) "Department" means Department of Human Services.

(4) "SDA" means Service Delivery Area. A geographic region of one or more counties served by the Department and managed by an SDA Manager.

(5) "Sub-Acute Care" means psychiatric and mental health treatment under the direction of a psychiatrist provided as an alternative to hospitalization in a residential psychiatric treatment setting.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03

## 413-090-0010

### Payments — General Guidelines

#### (1) Family Foster Care

(a) Payment by the Department to foster parents for a child's room, food, clothing, incidentals and cash allowance (known as the regular foster care rate) will be made on a monthly basis, or prorated for portions of a month, after the period during which care has been provided. It will include the day the child enters the home, but exclude the day the child leaves the home. Costs of special care or service in accordance with a written Department service plan may also be provided if essential for the child's well being and if specifically authorized by the Department. See the OAR 413-090-0100 through 0210 Special Rate Policy (CAF Policy I-E.5.1.2);

(b) Regular foster care rates are based upon the age of the child and established by the Department subject to the availability of funds and are uniformly applied throughout the state. The current rates are available at each local Department office upon request;

(c) Payments to foster parents certified by the agency shall be inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment and other legal process under the laws of this state.

(2) **Residential Treatment.** Payment by the Department to purchase of care providers will be made as stipulated in signed contracts.

#### (3) Payments Prohibited:

(a) Payment will not be made for two simultaneous 24 hour out-of-home care services, such as foster care, relative care, family group homes, or residential treatment at the same time;

(b) Neither payment nor utilization credit will be given for duplicate simultaneous contracted treatment services, such as day treatment and residential treatment;

(c) Payment by the Department will not be authorized for the care of children in a home or facility supported by public funds and maintained only as a secure facility under the jurisdiction of a juvenile court;

(d) Any exceptions to these rules must be approved in writing by the director, or if for a Target Planning Child, by the CAF Target Planning and Consultation Committee. Exceptions will be considered only when federal funds will not be claimed.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.470

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03

## 413-090-0030

### Payment for Temporary Absences

#### (1) Family Foster Care:

(a) Continued payment may be made to the provider during a child's temporary absence when:

(A) The plan is for the child to return to the care of the same provider; and

(B) No other provider is receiving a maintenance payment for the child during the period of the absence.

(b) Payment may be authorized by the case worker for up to seven days after a child is temporarily absent from the foster home for a home visit, vacation or special activity or when the child is on runaway;

(c) Authorization for payment after a child is absent from a foster home for more than seven days must be approved by the SDA Manager or designee;

(d) Hospitalization. The provider will continue to receive payment when 24-hour medical care is required for a short period of time and the provider continues to exercise child caring responsibilities in anticipation of the child's return. (Hospitalization for medical treatment is not considered a substitute care placement with a duplicate maintenance or board and room payment.)

#### (2) Residential Treatment:

(a) Payments or utilization credit may be made to contracted providers for days children are on home visits or planned visits to another provider in the following circumstances:

(A) The visit is part of planned activities identified in the child's BRS service plan. Workers will be aware of the inclusion of planned visits in the service plan due to their involvement in the service planning process as outlined in OAR 413-080-0200 through/0270 (CAF Policy I-E.4.3, Residential Services);

(B) The assigned Department staff is informed prior to the visit taking place. It is the responsibility of providers to inform workers of scheduled visits.

(C) The child has no more than 8 total visit days per month.

(b) Children may be allowed more visit days than the 4 consecutive days or 8 total days per month. However, payment or utilization credit will not be given for such visit days, and Department workers cannot authorize such payments or utilization credit under any circumstances;

(c) Payment or utilization credit will not be made for days children are on runaway, days prior to when the child physically enters a provider's facility or therapeutic foster home, and days after the child physically leaves a provider's facility or therapeutic foster home as discharged. Department workers cannot authorize such payments or utilization credit;

(d) Hospitalization and "Sub-Acute" Care. The provider will continue to receive payment when 24-hour medical care is required for a short period of time and the provider continues to exercise child caring responsibilities in anticipation of the child's return. (Hospitalization and "Sub Acute" Care for medical treatment is not considered a substitute care placement with a duplicate maintenance of board and room payment.)

(e) Planned Visits to Another Provider. It is the responsibility of the purchase-of-care provider to reimburse the visiting resource at a reasonable rate agreed upon by both parties. The Department may not make maintenance payment to two providers at the same time.

(f) A purchase of service client invoice must be completed in accordance with Department billing procedures.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03

## 413-090-0040

### Payments During Adoptive Supervision

(1) A foster care payment shall not be authorized when a child is free for adoption and placed in a home designated by the adoption manager as the child's adoptive placement. See OAR 413-130-0000 through 413-130-0130 for the eligibility requirements of the Adoption Assistance Program.

(2) The Department will not make foster care payments to foster parents who plan to adopt the child when a child's status changes from foster care to adoptive placement or from a legal risk adoptive placement to an official adoptive placement. A reasonable period of time shall be allowed to determine adoption assistance eligibility. If an application for adoption assistance is in process, foster care payments may continue to be paid for a period of up to 120 days or until adoption assistance is in place, whichever occurs first.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03

## 413-090-0050

### Family Foster Care Out-of-State Payment Rates

(1) Oregon foster families who move out-of-state with a foster child placed by the Department will continue to receive Department's foster care



# ADMINISTRATIVE RULES

payment rate for a period of up to 120 days or until adoption assistance is in place, whichever occurs first.

(2) Out-of-state foster homes, licensed or certified (provisional or regular) by the responsible agency in the other state for placement of Oregon children, will be paid at the other state's rate.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** CWP 10-2003

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**Rules Amended:** 413-090-0300, 413-090-0310, 413-090-0320, 413-090-0330, 413-090-0340, 413-090-0355, 413-090-0365, 413-090-0370, 413-090-0380

**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-090-0300

### Purpose

These rules describe how payments for special and/or extraordinary needs may be used to benefit children in the custody of the Department who are in foster care, family and professional shelter care, residential group care and child who are in non-reimbursed placement such as the Oregon State Hospital.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03

## 413-090-0310

### Definition

(1) "Clothing Replacement Allowance": means the Department includes the cost of maintaining adequate clothing for each child in the substitute care maintenance payments to the provider.

(2) "The Department" means the Department of Human Services (DHS).

(3) "SDA" means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.

(4) "Payment for Special and/or Extraordinary Needs": means a payment for specific services or supplies which are essential to the child's substitute care and no other resource exists to cover the essential service or supply. This payment is unrelated to and independent of the regular monthly substitute care maintenance payment. The payment for the child's special or extraordinary need shall not be ongoing in nature and is available on a limited or one-time basis.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03

## 413-090-0320

### Policy

(1) Payments for Special and/or Extraordinary Needs shall be limited to the amounts stated in the I-E.5.2 Information letter. Requests shall state a specific amount.

(2) Exceptions to these rules may be made with the SDA Manager's or designee's approval in individual situations. Exceptions must be made prior to purchase and authorized in writing in the case file.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03

## 413-090-0330

### Clothing

(1) The agency will make certain that clothing needs of children going into or placed in substitute care, such as a residential facility and paid/unpaid foster or relative care are met. Both staff and contracted providers shall use reasonable judgment in making clothing purchases. It is expected that a child in the custody of the Department will be dressed similar to other children living in the community, but purchases are dependent upon funds available to the Department.

(2) Unless the SDA Manager or designee makes an individual exception, clothing purchases may be authorized after:

(a) Clothing available and belonging to the child is obtained from the parent(s), guardian, relative caregiver or provider at the time of placement or change of placement. If release of clothing is refused and it is in the best interest of the child, a court order for the release of such clothing is to be requested from the juvenile court;

(b) Clothing resources such as foster parent organizations or agency volunteer programs, etc., are to be used prior to any Department purchase of clothing;

(c) **Shelter Care:** The Department will make payment for emergency clothing after searching the available resources and determining that sufficient clothing is not available.

### (d) Ongoing Substitute Care:

(A) The payment to substitute care providers includes a clothing replacement allowance. It is the provider's responsibility to maintain the child's clothing with the clothing replacement allowance. The agency will not purchase replacement clothing except in extraordinary situations;

(B) When a child moves from one caregiver to another caregiver, all of the child's clothing, including clothing purchase for the child while in substitute care, shall go with the child. The child is not eligible for another emergency or standard clothing voucher;

(C) New clothing for a child in an adoptive placement will not be purchased except to make certain that the child is properly clothed for presentation to the adoptive parents at the time of placement;

(D) Children who are in shelter care or ongoing care generally will not receive a supplemental clothing voucher when they leave care temporarily and later return to out-of-home care. Exceptions for a supplemental clothing voucher may be made with the SDA Manager's or designee's approval.

(e) **Maximum Clothing Allowances:** The maximum rates the Department pays are outlined in the Information Letter, I-E.5.2. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03

## 413-090-0340

### Transportation

(1) The agency may pay for non-medical transportation not to exceed current Department mileage rates paid to case-work staff. Reasonable travel to the child's home for visitation is a Title IV-E allowable expense. All other transportation expenses shall be billed to General Fund:

(a) Visitation: When family visitation is a part of the service plan, the foster parent may be reimbursed for providing transportation to and from these visits. When the child is in a residential care and treatment facility and the written treatment plan includes visitation with parent(s) or relative(s), the cost of such visits are expected to be shared by the Department, service provider and child's family. Direct case-by-case negotiations with the provider and the child's family, to determine Department cost, shall be made in advance of the visits;

(b) School: When the child is in family foster care and the school district does not provide transportation, the foster parents may be reimbursed for mileage transporting the child to school, or for city bus passes where available and appropriate;

(c) In-state transportation by airline for children may be approved only if the cost of the air fare does not exceed all the actual costs of transporting the child by car.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03

## 431-090-0355

### Payments Eligible for Title IV-E

(1) Title IV-E allowable clothing expenses are based upon a consideration of what is necessary or required. For example, Title IV-E can be claimed if a child is required to have certain supplies for a specific school class project. Title IV-E should not be utilized for supplies needed for an after school enrichment program.

(2) Title IV-E allowable costs include, but are not limited to, locker and towel fees, art supplies, pencils, paper, necessary school clothing.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03

# ADMINISTRATIVE RULES

## 413-090-0365

### Education Costs Not Eligible for Title IV-E

- (1) Basic school costs are to be paid by local school districts.
- (2) The Department's maximum payments for educational cost are outlined in I-E.5.2 Information Letter.
- (3) The educational costs on the list below are not Title IV-E eligible. The Department may authorize the following allowable school costs if sufficient funds are available: [Table not included. See ED. NOTE.]  
[ED. NOTE: Tables referenced in this rule are available from the agency.]  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03

## 413-090-0370

### Payment Method

- (1) A CF 598 (Authorization and Vendor Invoice) must be completed in accordance with instruction and presented to the vendor.
- (2) The CF 598 will authorize a maximum amount; however, the vendor may only bill the Department for the actual amount of purchase.
- (3) A business will be reimbursed after submitting a CF 598 which certifies goods and/or services were rendered by the business in accordance with the CF 598.
- (4) A person or party who has purchased goods or services will be reimbursed upon submitting the completed CF 598 along with original receipt(s) for each item purchased.  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 10-2003, f. & cert. ef. 1-7-03

## 413-090-0380

### Children in Non-Reimbursed Placement at Oregon State Hospital and Other Non-Reimbursed Providers

- (1) The Department has established a procedure to provide personal allowances for children who are in custody of the Department and are placed in a non-reimbursed placement at Oregon State Hospital (OSH) and other non-reimbursed providers.
- (2) **Procedure:**
  - (a) Determine if the children have benefits or resource coming in to their trust account. The Department staff can use the IFDF screen to see if the child has a balance in his/her trust account. If there is money in the trust account, the worker can initiate a CF 198 (Trust Action) monthly to receive payment for the child. Maximum monthly amount is not to exceed \$30.00;
  - (b) If the child does not have any benefits or resources coming in, then the allowance payment may be made from "Payments for Special and/or Extraordinary Needs" using the individual the Department location cost center and an object code of 980.092, Personal Allowance. (This is an EAS object code). Department staff would initiate payment by completing a CF 294 (Administrative Expense Voucher) monthly, including the child's case number and person letter. Maximum monthly amount would be \$30.00.  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03

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**Rules Adopted:** 413-090-0405

**Rules Amended:** 413-090-0400, 413-090-0410, 413-090-0420, 413-090-0430

**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-090-0400

### Purpose

These rules, OAR 413-090-0400 through 0430, describe the payment of funeral, burial or cremation expenses for a child who dies while in the legal custody of the Department.  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 11-2003, f. & cert. ef. 1-7-03

## 413-090-0405

### Definitions

- (1) "Department" means the Department of Human Services (DHS).
- (2) "SDA" means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 11-2003, f. & cert. ef. 1-7-03

## 413-090-0410

### Eligibility for Payment

Funeral, burial or cremation expenses shall only be authorized for a child who is in the Department's legal custody at the time of death. All other resources for payment of expenses, including parents, relatives and guardians must be explored before approval is given for the Department to make payments.  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 11-2003, f. & cert. ef. 1-7-03

## 413-090-0420

### Payment Method

Payment by the Department will be by CF 294 (Administrative Expense Voucher). This expenditure will be charged to the branch Services and Supply allocation. Vendors must submit itemized billings on their letterhead.  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 11-2003, f. & cert. ef. 1-7-03

## 413-090-0430

### Allowable Costs

Funeral, burial or cremation expenses are to be borne by parents, relatives and guardians if at all possible. In the event the agency must cover costs, payment for funeral, burial or cremation expenses are not to exceed \$1,500. Exceptions can be made up to \$2,500 total with SDA Manager or designee approval. The following list specifies allowable expenses:

- (1) Funeral Service
  - (a) Transportation in excess of 25 miles for:
    - (A) First call;
    - (B) Funeral coach.
  - (2) Burial or Cremation:
    - (a) Cemetery burial:
      - (A) Endowment care, if provided by cemetery;
      - (B) Grave space;
      - (C) Outer case, opening and closing of grave.
    - (b) Indoor or Outdoor Mausoleum Burial:
      - (A) To be provided within total burial allowance;
      - (B) Opening, closing and lettering when crypt is already owned.
    - (c) Cremation Services:
      - (A) Cremation;
      - (B) Unpolished urn;
      - (C) Niche;
      - (D) Grave space for cremated remains;
      - (E) Interment of cremated remains;
      - (F) Endowment care when provided;
      - (G) Finished urn when an open-front niche is already owned;
      - (H) Transportation of cremated remains may be authorized by branch office in exceptional case.  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 11-2003, f. & cert. ef. 1-7-03

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**Adm. Order No.:** CWP 12-2003

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**Rules Amended:** 413-020-0100, 413-020-0110, 413-020-0120, 413-020-0130, 413-020-0140, 413-020-0150, 413-020-0160, 413-020-0170

**Subject:** These rule revisions clarify the positions within the Department of Human Services that are authorized to consent to various aspects of case planning for a child under the authority of the

# ADMINISTRATIVE RULES

Department. Terminology throughout the rule has been corrected as it relates to the restructuring of the Department of Human Services.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-020-0100

### Purpose

The purpose of OAR 413-020-0100 through 413-020-0170 is to:

- (1) Define the Department's authority as guardian and legal custodian of children in its care or in the care of its agents;
  - (2) Specify how that authority will be exercised by the Department and its agents; and
  - (3) Specify requirements to be met when this authority is exercised.
- Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 109.640 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03

## 413-020-0110

### Definitions

(1) "Child Placement Agreement" means an agreement between the legal parent(s)/legal guardian of a child and the Department. The Parent(s) retain "all legal authority for child while services are being provided by the Department.

(2) "Department" means Department of Human Services.

(3) "Guardian" means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:

- (a) Authorize surgery for the child;
- (b) Authorize enlistment in the armed forces;
- (c) Consent to the child's adoption when the child is in the permanent custody of the agency;
- (d) Make other decisions of substantial legal significance concerning the child; but

(e) A guardian is not a conservator of the child's property or estate.

(4) "Legal Custody" means that a person or agency has legal authority:

- (a) To have physical custody and control of a child;
- (b) To supply the child with food, clothing, shelter and other necessities;
- (c) To provide the child with care, education and discipline;
- (d) To authorize medical, dental, psychiatric, psychological, hygienic or other remedial care or treatment for the child, and in any emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care; and
- (e) Legal custody includes temporary custody of a child under an order pursuant to ORS 419B.233 and 419B.331.

(5) "Permanent Custody" means legal custody of a child:

(a) Who has been permanently committed to the Department by the juvenile court after parental rights have been terminated under ORS 419B.527;

(b) Who has been released and surrendered to the Department by the parents under ORS 418.270.

(6) "Physical Custodian" means a person or agency, including a child's legal or biological parent, a relative, foster parent, adoptive parent or a licensed child-caring agency who is authorized by the Department to provide a residence and day-to-day care for a child who is in the legal custody of the Department.

(7) "Service Worker" means the agency staff person assigned primary responsibility for a child served by the Department.

(8) "Voluntary Custody" means legal custody given to the Department, by written agreement, by a parent or legal guardian of a child.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 109.640 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03

## 413-020-0120

### Responsibility of Staff to Secure a Legal Consent

Whenever the legal consent of a parent or guardian is needed for a child in the care and custody of the Department, the service worker shall secure the consent of the person authorized to approve the proposed service or activity. Relevant information shall be provided the authorized person to assure the Department's authority to consent, the need for and advisability of the service or activity, and whenever feasible, the concurrence of parents and/or physical custodians.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 109.640 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03

## 413-020-0130

### Authority in Child Placement Agreements

(1) When a parent or guardian of a child authorizes a Child Placement Agreement with the Department, the parent(s) or guardian will remain guardian of the child and will retain legal authority, and are obligated to continue to exercise and perform all parental duties and legal responsibilities except those delegated to the Department by the signed CF 499 Child Placement Agreement.

(2) When a child is in the voluntary custody of the Department, the Department or the physical custodian will exercise the authority of a legal custodian as assigned in the CF 1005 Voluntary Custody Agreement.

(3) In the event the parent or legal guardian is unavailable or unwilling to fulfill the responsibilities of a guardian, the Department will petition the Juvenile Court and request authority to provide essential services to the child.

**Note:** Please refer to Child Placement Agreement/Voluntary Custody OAR 413-020-0000 through 413-020-0050 (CAF Policy I-B.1.3) for additional information regarding these two options for services.  
Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 109.640 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03

## 413-020-0140

### Exercise and Delegation of Legal Authority

Where the Department has legal custody of a child through a Voluntary Custody Agreement, a court order, or a Release and Surrender Agreement, the Department will exercise its authority through Department staff and through delegation to other persons as follows:

(1) **Physical Custodian.** The Department delegates the following responsibilities to the physical custodian by this administrative rule. This delegation shall continue as long as the child is in the legal custody of the Department and resides with the physical custodian. Any exception to this rule shall be given in writing to the child's custodian and a copy will be maintained in the child's case record with the Department. The department will delegate to the child's Physical Custodian its authority to consent to:

(a) The child/youth's registration in public school; assisting them with selecting or changing class schedules; authorizing absence from school; participation in school and extracurricular activities; and enrollment in school meal and school insurance programs. Consent for traditional school testing as deemed necessary. School pictures, except those listed under 413-020-0130(2)(c);

(b) Routine medical care and dental care, including vaccinations and immunization; routine examinations and lab tests;

(c) Short term inter-county travel;

(d) Application for work permits or releases.

(2) **Service Worker.** The Service Worker may exercise the Department's consent authority to any action to which the physical custodian may consent. In addition, the child's Service Worker may exercise the Department's authority to give consent for the following:

(a) Education records, academic or school behavioral records; or any specialized school testing. The Department Service Worker may not assume the role or responsibilities of Educational Surrogate, per OAR 581-015-0099.

(b) Psychiatric or psychological evaluation, or outpatient psychiatric or psychological treatment for the child; and

(c) Photograph(s) taken for publicity purposes or media promotions that may draw attention to the individual.

(3) **Service Delivery Area (SDA) Manager or Designee.** The SDA Manager or Designee may exercise the Department's consent authority to any action to which the Physical Custodian or Services Worker may consent. In addition, the SDA Manager or Designee may exercise the Department's authority to consent to the following actions with respect to children served by the SDA:

(a) Emergency medical care and/or surgery, to include anesthesia;

(b) Major medical and surgical procedures that are not extraordinary or controversial, to include anesthesia;

(c) Admission to a state training center for the retarded, or to any state hospital or a private hospital for purpose of psychiatric treatment;

(d) Registration in special schools, including private or alternative schools;

(e) Application for driver's training, permits and license;

(f) Interstate travel and international travel;

(g) Examination by law enforcement agency (e.g., polygraphs, interrogations without a warrant, etc.).

(h) Use of firearms for purpose of recreational hunting, target practice, and/or Hunter Safety Course.

Stat. Auth.: ORS 418.005

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 109.640 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03

## 413-020-0150

### Exercise and Delegation of Legal Guardian Authority

Where the Department has legal custody of a child through a court order in which the Department has specifically been given guardianship, or a Release and Surrender Agreement, the Department will exercise its authority through agency staff as follows:

(1) **Service Delivery Area (SDA) Manager or Designee;** may exercise the Department's authority to consent to the following actions with respect to children served by that SDA:

- (a) Enlistment of a child in the Armed Forces or the Job Corps; and
- (b) Marriage;

(2) **Department Adoption Manager;** may exercise the Department's authority to consent to the adoption of a child who is in the permanent custody of the agency. (ORS 109.316)

(3) Department Assistant Director for Community Human Services (CHS) or Department Assistant Director for Children, Adults and Families (CAF) or the Department Director, or in their absence and in the event of an emergency the Deputy Assistant Director for CHS or CAF may consent to the following actions for a child;

(a) Termination of a pregnancy, except when a young woman 15 years of age or older exercises her statutory right to consent to her own termination of a pregnancy;

(b) Extraordinary or controversial medical or surgical procedures, such as: Do Not Resuscitate Order (DNR), organ transplants, kidney dialysis, open heart surgery, or any procedure involving substantial life threat;

(c) Any medical or surgical procedure to which a legal parent or guardian of the child or the child is opposed;

(d) Sterilization under ORS Chapter 436, but only when such procedure is necessary to protect the child's life.

(4) **Department Director, Assistant Director for Children, Adults and Families (CAF), and Assistant Director for Community Human Services (CHS)** may exercise the Department's authority to consent to any action to which the Physical Custodian, Services Worker, Service Delivery Area (SDA Manager) may consent.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 109.640 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03

## 413-020-0160

### Actions Not Authorized

(1) No Department employee will consent to educational planning which is defined as the responsibility of a surrogate parent. (OAR 581-015-0099).

(2) No Department employee, or agent will exercise the Department's authority to give consent to the purchase of, or ownership of, a motor vehicle by a child in legal custody of the agency. This prohibition does not prevent a child in the legal custody of the agency from exercising the right to purchase or own a motor vehicle on his or her own account.

(3) No Department employee shall co-sign or counter-sign any purchase contract for a child in the Department's custody.

(4) No Department employee will accept responsibility or serve as conservator of a child's property or estate.

(5) No Department employee, or agent shall consent to the sterilization of a child, except pursuant to ORS Chapter 436, and to save the child's life.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 109.640 & ORS 418.312  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03

## 413-020-0170

### General Provisions

(1) The Department acknowledges the right of a minor 15 years of age or older to consent to hospital care, medical and surgical diagnosis or treatment without the consent of the parent or guardian. (ORS 109.640)

(2) The Department acknowledges the right of a minor 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder or chemical dependency, excluding methadone maintenance, by a physician. (ORS 109.675)

(3) Whenever Department staff exercise the agency's authority to authorize actions described as the responsibility of a legal guardian under these rules, Department staff shall:

(a) Consider the impact of the proposed action upon the welfare of the child, the child's family and the community prior to deciding whether to consent to or authorize the proposed action;

(b) Consult with the physical custodian of the child;

(c) When the child is not in the permanent custody of the Department, make reasonable efforts to consult the child's legal parent(s) or guardian(s) about the action proposed and consider the parent(s) or guardian's preference concerning the action proposed prior to making a decision to consent to or authorize the proposed action unless there is cause to believe such consultation will be detrimental to the child;

(d) Prepare a brief written record of the circumstances of the action consented to whenever the Department provides a written consent for actions defined as the responsibility of a guardian. The written record and a copy of any consent made in writing will be filed in the child's case record.

(4) In any case where Department staff consider it necessary or appropriate, they may notify the juvenile court, and/or seek the court's concurrence, prior to consenting to or authorizing any of the actions described in these rules with respect to children in the Department's custody.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 109.675  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03

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**Adm. Order No.:** CWP 13-2003

**Filed with Sec. of State:** 1-9-2003

**Certified to be Effective:** 1-9-03

**Notice Publication Date:** 10-1-02

**Rules Amended:** 413-050-0430, 413-050-0440

**Subject:** These rule revisions clarify the Special Medical Services provided for children by the Department of Human Resources. Terminology throughout the rule has been corrected as it relates to the restructuring of the Department of Human Services.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-050-0430

### Other Medical Payments

"Other Medical" payments are not federally matchable and are paid out of General Fund dollars. "Other Medical" is to be used for required medical services for a child in Department care and custody by court order or Voluntary Placement or Custody Agreement either in or out of substitute care, or parents or other adults identified in the child's case record. "Other Medical" is only to be used if the service is not available through Mental Health or OMAP as a Medicaid service. Payments from "Other Medical" may be made in the following situations:

(1) Drug and alcohol assessments for persons not eligible for Title XIX or the Oregon Health Plan.

(2) A one-time emergency medical need for children in the custody of the Department that have been returned home. This is limited to children of low-income families not eligible for medical services through the Department.

(3) Therapy for Children in Substitute Care, if recommended by a licensed psychiatrist or psychologist who evaluated the child, and the type of therapy and/or the therapist recommended is unavailable from the local mental health clinic or through the mental health plan (MHO) in which the child is enrolled. The therapist must be enrolled with OMAP or, failing that, there must be a signed contract in place prior to the therapy being provided. Funding availability will be determined by the SDA Manager or Designee (who may want to consult with the Assistant Field Administrator or the Medical Assistance Resource Coordinator to determine that there are no other resources available for funding).

(4) Consultation with a licensed or registered provider regarding the case or treatment planning for a specific child. Field staff's consultation with licensed experts in human behavior offers an alternative to costly individual evaluations for families or children who are experiencing severe medical, behavioral or emotional problems. Frequently, the case record contains information accumulated over time which a consultant, trained to evaluate and interpret such data, can assess to assist the agency in developing or managing a timely and well-focused case plan.

(5) Medical care for children in detention. ORS 418.034 mandates payment of the cost of medical care for the child in detention, including emergency medical care, if the child is in custody of the Department. "Medical care" means emergency medical care or medical care for a medical condition that existed prior to the child's being held in a juvenile detention facility or in a local correctional facility or lockup.

(6) Evaluations of parents when required by the Department for case-work planning to determine the parents' emotional stability, intellectual capacity, parenting capacity or maturity. These may include medical, psychiatric, psychological evaluations or drug and alcohol assessments. This

# ADMINISTRATIVE RULES

does not include ongoing treatment or services. Payment from "Other Medical" for the above services will not be made for parents in permanent planning cases or for parents who are Medicaid eligible through the Oregon Health Plan.

(7) Parent/child and/or sibling interaction evaluation.

(8) Protective service physical examinations authorized for the purpose of the legal investigation only and when out-of-home care is not a consideration.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title XIX

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 40-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 13-2003, f. & cert. ef. 1-9-03

## 413-050-0440

### Medical Services "Permanent Planning"

In cases designated permanent planning, the Department will make payments for necessary evaluations of parents, stepparents and/or live-in companions. This includes psychological, psychiatric and neurological evaluations, drug and alcohol assessments and parent-child interaction assessments. These services must be authorized in writing by the Adoption Services Unit prior to the services being provided.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title XIX

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 1-29-95; SOSCF 40-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 13-2003, f. & cert. ef. 1-9-03

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**Adm. Order No.:** CWP 14-2003

**Filed with Sec. of State:** 1-9-2003

**Certified to be Effective:** 1-9-03

**Notice Publication Date:** 10-1-02

**Rules Amended:** 413-070-0905, 413-070-0915, 413-070-0920, 413-070-0930, 413-070-0940, 413-070-0945, 413-070-0950

**Subject:** These rule revisions clarify requirements and criteria for assistance under the Guardianship Assistance demonstration project. Clarifications are related to eligibility, court documents, effective dates, and reviews. Terminology throughout the rule has been corrected as it relates to the restructuring of the Department of Human Services.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-070-0905

### Definitions

(1) "Guardianship Agreement" means a written agreement between DHS and the prospective guardians, signed prior to the establishment of guardianship, to provide guardianship assistance.

(2) "Guardianship Assistance" means financial and/or medical benefits to guardian families for costs associated with the needs of the child under their guardianship. Benefits may be in the form of cash and/or Medicaid coverage and/or nonrecurring legal costs in establishing the guardianship and/or Title XIX Personal Care payments.

(3) "Qualified Vendor Attorneys" are qualified attorneys, including Legal Aid Program attorneys who have signed a legal fees agreement with DHS to accept DHS's currently established standard payment, plus reimbursement of any personal costs incurred for court fees and the filing of mandatory court papers, or for obtaining birth certificates when establishing non-contested guardianships for children in DHS's care and custody, or to process adoptions.

(4) "Waiver" means the waiver of certain provisions and program regulations of Title IV-E of the Social Security Act for a demonstration project per Section 1130 of the Social Security Act, approved under specific terms and conditions by the U.S. Department of Health and Human Services, Administration for Children and Families.

(5) "Legal Custody and Guardianship" means that an adult, other than a legal parent of the child, has been made legally responsible for a minor child and the local department's commitment order has been rescinded.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E, Title IV-B, PL 103-432

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03

## 413-070-0915

### Eligibility

(1) Under the Title IV-E Waiver federal terms and conditions and state legislative approval, DHS shall operate a guardianship demonstration project providing guardianship assistance to specific children. Children in foster care for whom DHS is making a IV-E foster care maintenance payment

(including children in tribal custody) may participate in the project. Children for whom a Title XIX foster care payment is made from MHDDSD are ineligible to participate in the project.

(2) Under the Guardianship Assistance Waiver demonstration project, DHS will place a minimum of twenty children in guardianship each year. The children and their caretakers must meet the State established criteria to participate in the demonstration. DHS will comply with the general provisions over the full term of the Waiver demonstration project as stated in Oregon's approved amended Waiver demonstration project terms and conditions.

(3) There is no limit to the number of eligible children who may participate in the Guardianship Assistance Demonstration Project. However, the project is time-limited and federal funding is scheduled to end in July, 2003. Children found eligible for and receiving Guardianship Assistance prior to July, 2003 will continue to receive monthly general fund payments at the project's conclusion. Funding will continue until they reach age 18 or otherwise become ineligible as defined by policy. Continuous program funding from the State's general fund coffers for children enrolled in the project prior to July 2003 was sought and approved by the 1999 and 2001 Oregon legislative sessions.

(4) DHS will offer this new option only when other permanency goals, including return to the parent(s) or adoption are determined not to be in the child's best interest. DHS will represent the guardianship option to families as one which will normalize and stabilize family life, empower care givers in assuming the complete parenting role and minimize the level of state intrusion into their lives. For example, because the children will no longer be committed to the custody of DHS, the care givers will no longer be required to get permission from the DHS local office to take the child out-of-state for any reason, the placement will no longer be subject to Citizen Review Board substitute care reviews, and care givers will no longer be expected to participate in such reviews.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E, Title IV-B, PL 103-432

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03

## 413-070-0920

### Policy

DHS /Participating Tribe may support a legal guardianship provided the following assurances are met:

(1) The child has been in DHS/Participating Tribe's legal custody for more than twelve months. DHS may waive this requirement in certain situations, when a written justification referencing agency policy in determining permanent plans for children is prepared by the local DHS office/tribe and reviewed and approved by DHS local office /tribal committee and the DHS local office/tribal manager. Final approval to waive this and other requirements must be obtained from the Permanency and Adoption Manager or his/her designee.

(2) The child is in foster care and receiving a Title IV-E foster care payment.

(a) The child's eligibility for IV-E foster care maintenance payments will be reviewed and eligibility confirmed from the first of the month prior to the month in which the prospective guardians sign the application for guardianship assistance through the date the application was signed.

(b) Children temporarily ineligible for Title IV-E due to lump sum benefits are considered to be eligible for assisted guardianship once the lump sum is expended;

(c) Children for whom Title IV-E payments are being made with an SSI application pending may also be considered for assisted guardianship;

(d) Children eligible for Title IV-E foster care payments, but receiving SSI may also be considered for assisted guardianship when SSI is terminated.

(3) The child has a stable and positive relationship with a prospective guardian and has lived for at least six months in the home of the guardian. The DHS Committee may waive the six month placement requirement for sibling groups when at least one sibling meets all other subsidized guardianship criteria.

(4) The prospective guardian is an approved certified relative or non-relative provider.

(5) The prospective guardian is a non-relative and the child is at least 12 years old. The child may be a minor of any age if the prospective guardian is a relative. DHS will waive the age requirement for sibling groups placed with a non-relative when at least one sibling is at least 12 years of age and meets all other subsidized guardianship criteria.

(6) The child cannot return home. Reunification with his or her parent(s) is not possible.

# ADMINISTRATIVE RULES

(7) DHS has determined through steps outlined in DHS CAF Policy I-F.2, Determining the Appropriateness of Adoption as Permanency Plan, and DHS CAF Policy I-F.3.2.1, Termination of Parental Rights, that it is unwarranted to pursue adoption for reasons that may include, but are not limited to:

(a) Efforts to secure a voluntary relinquishment of parental rights have been unsuccessful, and termination of parental rights, as confirmed by legal counsel, is not a viable option;

(b) SOSCF has determined that adoption is not an appropriate plan for the child for reasons that may include, but are not limited to:

(A) A child aged 12 years or over, or a child less than 12 years of age who is capable of making this decision, will not consent to be adopted and another permanency plan has been identified; or

(B) The parent and child have a significant bond, but the parent is unable to care for the child, and another permanent plan has been identified. (DHS will discuss the proposed plan with the parent(s) and seek their written consent to the guardianship plan, if possible.)

(8) DHS and the prospective guardian agree that the child and the prospective guardian can maintain a stable relationship and function effectively without DHS supervision.

(a) DHS has formally assessed the placement with a finding that continuation of the placement is in the child's best interests in that the placement supports the safety, permanency and well-being of the child;

(b) The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager; or

(A) The child has needs, but they do not require continued agency funding (e.g. therapy is paid through insurance); or

(B) The child has needs which can be met through the guardian's utilization of community resources and the guardian has agreed to access or continue to maintain those services.

(9) The court agrees to termination of the order for DHS's/tribal care, custody and supervision when ordering guardianship.

(10) The juvenile court agrees to set aside or modify an order of permanent commitment to DHS thereby relieving DHS of their responsibility for the child so that guardianship may be granted to another individual.

(11) The juvenile court agrees to dismiss temporary commitment to the Department in cases in which a birth parent has voluntarily relinquished custody and where possibly the parent has signed a revocation of the voluntary relinquishment. It is desirable, though not a requirement, for parents to revoke the relinquishment when guardianship is the permanency plan instead of adoption.

(12) The child has legal resident status, or is an immigrant or citizen of the US, under the care of a relative caretaker who is residing in this county legally.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E, Title IV-B, PL 103-432

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03

## 413-070-0930

### Guardianship Assistance Payments and Medical Coverage

(1) The Guardianship Assistance rate shall be no more than the child's most recent monthly basic foster care rate and Title XIX personal care rate minus any regular monthly benefit other than child support payments made on behalf of the child. (A special rate payment shall not be included in the Guardianship Assistance rate.) Children residing outside the State of Oregon shall receive a payment based on the out-of-state basic foster care rate.

(a) DHS shall consider all other sources of income other than child support payments available to the child when determining the monthly assistance rate;

(b) The guardian shall become payee for, as necessary, any benefits other than child support payments for the child such as social security benefits;

(c) DHS shall pay the difference between any benefit other than child support payments that the child receives and the most recent foster care and personal care payment. For example, if the child receives Social Security benefits, the amount of the benefit shall be transferred to the guardian and the monthly income from these resources deducted from the total standard basic rate and personal care rate when determining the amount of assistance;

(d) The Guardianship Assistance monthly payment shall be contingent upon the guardian's performance of the duty, to cooperate with DCS and CAFS in doing what DCS and CAFS deems necessary with respect to child support enforcement services defined in OAR 413-070-925(5).

(2) The child's eligibility for Title XIX personal care payments and services may continue so long as the child resides in the State of Oregon. However, the amount of the personal care rate may be reduced if DHS determines through an analysis of the child's needs that the personal care service hours previously required have decreased.

(3) DHS shall authorize no monthly special care rate, other than the Personal Care payment, or any special one-time payment from either State general fund or Federal sources.

(4) Children participating in this Waiver demonstration, to the extent they are otherwise eligible, shall be provided a full range of services under the Medicaid program which includes health care services and mental health care services. Children moving out-of-state are entitled to continue to receive Medicaid services from the State of Oregon.

(5) The effective date shall be the first date all parties have signed the Guardianship Assistance Agreement, or the date of the court order, whichever is later.

(6) If a child receiving guardianship assistance benefits is placed in substitute care, guardianship assistance benefits may be adjusted, continued, or suspended. If the family is involved in the child's treatment, and the plan is for the child to return home, the family may ask to have the guardianship assistance benefits suspended, continued, or adjusted to reflect current expenses. When the child returns to the care of the guardians, guardianship assistance rates will be reviewed.

(7) CAFS Guardianship Assistance payments to legal guardians, who were agency certified foster parents for the child(ren) prior to becoming court designated guardians, shall be inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment and other legal process under the laws of this state.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E, Title IV-B, PL 103-432

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03

## 413-070-0940

### Title IV-E Guardianship Assistance Eligibility

(1) DHS administers the Guardianship Assistance program in order to provide continued financial support for selected children placed with financially needy appointed guardians.

(2) The guardianship appointment, monthly subsidy, and services shall continue without court involvement unless the child meets one of the following conditions. DHS shall cease or suspend, as appropriate, Guardianship Assistance when:

(a) The child reaches age 18 or emancipation, whichever comes first;

(b) Child custody or guardianship is awarded to another individual;

(c) The child is incarcerated for more than three months;

(d) The child is out of the home for an extended period with no plans to return to the home or is no longer living in the home;

(e) The child dies;

(f) A child marries;

(g) The guardian dies or terminates guardianship;

(h) It is demonstrated that the guardians are no longer legally responsible for the financial support of the child or the child is no longer receiving financial support from the guardian;

(i) The child is adopted;

(j) The child is placed in substitute care; or

(k) The annual report is not filed with DHS within 30 days of the anniversary date of the court's appointment of the guardian(s).

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E, Title IV-B, PL 103-432

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03

## 413-070-0945

### Annual Reviews

(1) Eligibility reviews for Guardianship Assistance shall be conducted on an annual basis.

(a) The guardian shall file a written report annually. The guardian shall file the report with the court within 30 days after each anniversary of the court appointment of guardianship;

(b) Guardians shall annually submit to DHS Central Office Adoption Unit a copy of the guardianship report required by the court within 30 days after each anniversary date of the court's appointment of the guardian(s);

(c) DHS shall hold the Guardianship Assistance check if the guardian does not submit to DHS the court report within 30 days after each anniversary date of the court's appointment of the guardian(s).

# ADMINISTRATIVE RULES

(2) The DHS local office Personal Care Registered Nurse shall assess Children receiving Personal Care Services Guardianship Assistance Payments annually. Personal Care assessments shall not be conducted on more than an annual basis except under extreme circumstances. Upon receiving a request from the Central Office Adoption Assistance Unit, the RN providing local Personal Care Services shall complete and submit an assessment of the child's current personal care needs to the Central Office Adoption Unit.

(3) The basic Guardianship Assistance rate shall not automatically increase. Guardians may request an increase in the child's subsidy up to the current rate of pay for the child's age, or up to the current rate of pay given cost of living increases or other legislatively approved increases for the basic foster care rate.

(4) The Guardianship Assistance basic rate may increase when the guardian payee does not receive the child benefits in the amount calculated and deducted as an offset to the basic Guardianship Assistance monthly payment.

(5) A review of the child's continuing Title IV-E eligibility status is not required for 12 months after the guardianship assistance application is signed, and during this time period it is not necessary to confirm ongoing parental deprivation in the home from which the child was removed as long as the child remains otherwise eligible to receive Guardianship Assistance. Ideally, the assistance application should be signed no earlier than 60 days prior to the anticipated hearing date on which the court will order guardianship.

Stat. Auth.: ORS 418.005  
Stats. Implemented: Title IV-E, Title IV-B, PL 103-432  
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03

## 413-070-0950

### Eligibility Retention

(1) DHS must review continued eligibility for Title IV-E foster care based on parental deprivation and the child's financial circumstances when children return to substitute care from a disrupted guardianship placement. The guardian's income is not considering during this review, nor is the guardian obligated to pay child support upon the child's return to substitute care. Title IV-E may be re-established based on the child's original removal from the parental or relative home if deprivation continues to exist; the child meets personal financial eligibility criteria; and all court related findings related to an initial removal are met.

(2) Children returning to Guardianship Assistance from foster care shall resume their original Title IV-E eligibility for Guardianship Assistance without regard to parental deprivation at the time of child's return to the guardian's care or the child's eligibility status while in foster care.

(3) Children moving from Guardianship Assistance to adoption shall remain eligible for Title IV-E adoption assistance.

(4) DHS shall not re-establish dependency on any child placed into guardianship under this demonstration project unless DHS determines there is cause for removal from the guardian's home due to abuse or neglect or unless DHS would otherwise re-establish dependency for reasons unrelated to the expiration of the Waiver or the termination of this demonstration, such as a change in the care giver's circumstances which leaves the care giver unable to care for the child(ren).

Stat. Auth.: ORS 418.005  
Stats. Implemented: Title IV-E, Title IV-B, PL 103-432  
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03

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**Rules Adopted:** 413-080-0205

**Rules Amended:** 413-080-0200, 413-080-0210, 413-080-0240, 413-080-0250, 413-080-0260, 413-080-0270

**Subject:** These rules are being amended to update the terminology to reflect the reorganization within the Department of Human Services, specifically related to the term Branch Manager.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-080-0200

### Purpose

Residential Services consists of 24-hour care and treatment provided by residential service programs operated by public and private agencies. This rule governs the use of residential services programs that contract with the Department to provide residential services for children in the Department's legal custody or children whose parents have signed a voluntary placement or custody agreement.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 23-1999, f. & cert. ef. 12-3-99; CWP 15-2003, f. & cert. ef. 1-9-03

## 413-080-0205

### Definitions

(1) "Department" means the Department of Human Resources.

(2) SDA means Service Delivery Area. A geographical area of one or more counties defined by the Department.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 15-2003, f. & cert. ef. 1-9-03

## 413-080-0210

### Residential Placements

(1) Residential Placements shall be made only after all other resources for meeting the child's needs in a family environment, either in the child's own home or a substitute home, have been explored or exhausted. Resources to consider are counseling, Intensive Family Services, referral to another agency for family services, Homemaker Services, Parent Training and the Big Brother/Sister program. Local Department offices should explore individualized services, or other options through Family Decision meetings and use resources available in the local community whenever possible, if these services will effectively meet the needs of the child and family and divert the child from placement in a residential service program. Foster home placement is not a pre-requisite for placement in a residential service program.

(2) Children who are inappropriate for a residential service referral include:

(a) Children whose needs can be met in foster care or another family type setting or other less restrictive environment except that such placement is not available.

(b) Children whose interpersonal relationships within a sibling group could be better preserved in another setting.

(c) Children whose behavior or mental and emotional disabilities, while representing significant problems for the family or the community, would be better serviced by the development of a service plan with the family which permits the child to remain at home.

(d) Children whose diagnosed mental and/or emotional disorder has been determined to require psychiatric hospitalization or placement in a psychiatric residential facility in order to protect self and others.

(e) Children whose demonstrated ability to function in the Independent Living Program indicates that it is a better resource.

(f) Children whose problems, circumstances or social history indicates that available residential service programs could not assist the child, or that the child and/or the community could not be protected during the placement.

(g) Children whose placement history clearly shows that additional use of residential service programs will not be of further benefit.

(h) Children who have been identified as eligible for services through the local Developmental Disabilities Office.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 23-1999, f. & cert. ef. 12-3-99; SOSCF 16-2001, f. 6-26-01, cert. ef. 7-1-01; CWP 15-2003, f. & cert. ef. 1-9-03

## 413-080-0240

### Resource Referrals

Written referrals to residential service programs shall follow the current format of the "Evaluation of Need for Residential Services and Level of Care" (CF 97). Referral material regarding the child and family may be provided by the juvenile department, Oregon Youth Authority, mental health workers, school district, or other community providers if these individuals have information which will assist in the referral process. The assigned Department worker shall be responsible for sending the referral to the provider. Workers should refer to the Treatment Referrals Policy, I-I.4, for further information regarding residential service program referrals.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005

# ADMINISTRATIVE RULES

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 23-1999, f. & cert. ef. 12-3-99; SOSCF 16-2001, f. 6-26-01, cert. ef. 7-1-01; CWP 15-2003, f. & cert. ef. 1-9-03

## 413-080-0250

### Service Planning

(1) Within two days after admission to a residential service program, the program shall develop an initial service plan which shall be developed jointly by the Department caseworker and the program, involving the child and parent(s). The service plan must be specific with regard to the behaviors to be addressed, services to remediate the problematic behaviors, and initial after care planning information. The program shall furnish a copy of the service plan to the Department caseworker which shall be filed in the case record.

(2) Service plans shall not be revised without the involvement of all major parties, (i.e., Department caseworker, provider, the child and parent(s)).

(3) Every service plan for a child in a residential service program shall be reviewed by the Department caseworker and provider a minimum of every 90 days, or more often as the case may warrant. This review shall include a face-to-face contact between the Department caseworker, the child and the provider.

(4) A written progress report shall be prepared by the provider following every review and a copy shall be sent to the assigned Department worker for inclusion in the case record.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 23-1999, f. & cert. ef. 12-3-99; CWP 15-2003, f. & cert. ef. 1-9-03

## 413-080-0260

### Child Welfare Caseworker's Role

(1) The Department caseworker shall, whenever possible, involve the child's parent(s) in the placement process including their participation in pre-screening interviews, service planning and identification of appropriate aftercare resources. The Department worker shall participate in the actual placement of the child in the residential service program.(2) When a child is placed in a residential service program, the Department worker shall continue to work with parents, other members of the family, as appropriate, and other resources in relation to children remaining in the home. Other Department services to families shall be used, as appropriate, including individualized services to assist the other children to remain at home, and to prepare the home for the return of the child in the residential service program.

(3) The Department case worker shall work cooperatively with residential service program staff in relation to planning for the child.

(4) The Department worker shall assist in arranging parent visitation with the child as agreed to by all service planning participants as appropriate and in accordance with planned services. The Department worker shall approval all home visits and/or community passes while the child resident in an Department contracted residential service program, per OAR Policy I-E.5.1, Maintenance and Treatment Payments.

(5) The Department worker shall begin the development of a specific aftercare plan for the child and family upon placement of the child in the residential service program. The details of the aftercare plan shall be developed in conjunction with the residential service provider and updated at each 90 day service plan review meeting.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 23-1999, f. & cert. ef. 12-3-99; CWP 15-2003, f. & cert. ef. 1-9-03

## 413-080-0270

### Intake and Placement Disagreements

(1) When a disagreement with a residential service program occurs with regard to acceptance of a child into the program, discharge of the child from the program, or the services the child and family are receiving, the Department worker shall contact the supervisor, Child Welfare Supervisor or the residential resource consultant for assistance in resolving the matter. Issues of abuse and neglect involving the residential service program must be reported to the Department office serving the area where the program is geographically located. (Refer to Department OAR Policy I-B.2.2.4, Response to Assessment of Child Abuse Reports in Private Child Caring Agencies and Private Residential Schools.)

(2) After review of the worker's concerns, the residential resource consultant, supervisor, or Child Welfare Supervisor shall contact the provider's staff, or if necessary, the provider's program director to resolve the problem.

(3) If the issue(s) cannot be resolved, the residential resource consultant supervisor, or Child Welfare Supervisor shall contact the assigned central office program analyst to request their involvement.

(4) After review of the issue(s) and the residential resource consultant, supervisor, or Child Welfare Supervisor's efforts to resolve the matter, the program analyst shall contact the provider's program director or program's board of directors to negotiate a solution.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 23-1999, f. & cert. ef. 12-3-99; SOSCF 16-2001, f. 6-26-01, cert. ef. 7-1-01; CWP 15-2003, f. & cert. ef. 1-9-03

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

**Adm. Order No.:** OMAP 72-2002(Temp)

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 12-24-02 thru 5-15-03

**Notice Publication Date:**

**Rules Amended:** 410-122-0020

**Subject:** The Durable Medical Equipment and Medical Supplies administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-122-0020 is being revised to change the requirement for yearly prescriptions to allow lifetime prescriptions for some items and specify when yearly prescription are required.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-122-0020

### Prescription Requirement

(1) The purchase or rental on or after October 1, 2002, of durable medical equipment (DME) and supplies must have a proper written order signed by the prescribing practitioner. An original, fax, or electronic prescription is acceptable. A practitioner means a person licensed pursuant to Federal and State law to engage in the provision of health care services within the scope of the practitioner's license and certification. A prescription is also required if modifications are made to original durable medical equipment. Repairs, parts needed for repairs and replacement parts (e.g., batteries), do not require a prescription.

(2) The DME provider must obtain a prescription before providing the service. The prescription must be supported by documentation in the prescribing practitioner's records.

(3) The prescription must be dated, legible and specify the exact medical item or service required, the ICD-9-CM diagnosis codes, number of units, and length of time needed. The Office of Medical Assistance Programs (OMAP) defines a lifetime need as 99 months. Only the initial lifetime prescription is required, unless otherwise indicated by the prescribing practitioner, for the following items:

(a) Ventilators;

(b) Suction pumps and related supplies;

(c) Intermittent positive pressure breathing device;

(d) Continuous positive pressure airway (CPAP) device and related supplies;

(e) Respiratory assist device and related supplies;

(f) Medicare 15-month capped rentals (follow Medicare guidelines related to prescription requirements and certificates of medical necessity).

(4) A new prescription is required:

(a) Once a year for incontinent supplies, ostomy supplies, urological supplies, and some diabetic supplies, per Medicare guidelines;

(b) When there is a change in the order for the item;

(c) When an item is replaced; or

(d) When there is a change of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) provider.

(5) DME providers are responsible for retaining a copy of the prescription in their records.

(6) The DME provider may change a prescription by documenting the change on the prescription with the date, time, initials, and who provided the change.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 41-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 in the North Salem, Woodburn, McMinnville, Lebanon, Albany and Corvallis branch offices, ef. 6-30-82 in the balance of the state; AFS 20-1983, f. 5-5-83, ef. 6-1-83; AFS 49-1987, f. 10-16-87, ef. 11-1-87; AFS 48-1989, f. & cert. ef. 8-24-89; HR 13-1991, f. & cert. ef. 3-1-91; Renumbered from 461-024-0004; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-



# ADMINISTRATIVE RULES

1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 72-2002(Temp), f. & cert. ef. 12-24-02 thru 5-15-03

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**Adm. Order No.:** OMAP 73-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 11-1-02  
**Rules Adopted:** 410-120-1230  
**Rules Amended:** 410-120-1280

**Subject:** The General Rules program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-120-1230 is adopted to allow providers to bill affected clients for copayments for outpatient/ambulatory and pharmacy services. Rule 410-120-1280 is amended to clarify billing and reference rules 410-120-1230 and 410-120-1235.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-1230

### Client Copayment

(1) Medical Assistance clients shall be responsible for paying a copayment for outpatient/ambulatory services. This copayment shall be paid directly to the provider. This copayment applies to all benefit packages except the Standard Benefit Package. Clients on the Standard Benefit Package have a separate copayment (See OAR 410-120-1235 for details).

(2) The following services are exempt from copayment:

- (a) Emergency services, as defined in OAR 410-120-0000;
- (b) Family planning services and supplies;
- (c) Prescription drugs ordered through Office of Medical Assistance

Program's (OMAP) Mail Order Pharmacy program;

(d) Any service not listed in (8) below.

(3) The following clients are exempt from copayments:

- (a) Services provided to pregnant women;
- (b) Children under age 19;
- (c) Any client receiving services under the Home and Community

based waiver and Developmental Disability waiver, or is an inpatient in a hospital, Nursing Facility (NF), Intermediate Care Facility for the Mentally Retarded (ICF/MR);

(d) American Indian/Alaska Native (AI/AN) clients who are members of a federally recognized Indian tribe or receive services through Indian Health Services (IHS), tribal organization or services provided at an Urban Tribal Health Clinic as provided under P.L. 93-638.

(4) Clients enrolled in an OMAP contracted managed care plan (Fully Capitated Health Plan, Dental Plan, or Mental Health Plan) will be exempt from copayments for any services paid for by their plan(s).

(5) Services to a client cannot be denied solely because of an inability to pay an applicable copayment. This does not relieve the client of the responsibility to pay, nor does it prevent the provider from attempting to collect any applicable copayments from the client; the amount is a legal debt, and is due and payable to the provider of service.

(6) A client must pay the copayment at the time service is provided unless exempted (see (2), (3) and (4) above).

(7) The provider should not deduct the copayment amount from the usual and customary fee. The Department of Human Services (DHS) will deduct the amount of the copayment from the amount paid to the provider (whether or not provider collects the copayment from the client), unless the client or services are exempt according to exclusions listed in (2) and (3) above. If the OMAP paid amount is less than the required copayment, the copayment amount will be equal to what OMAP would have paid.

(8) Services which require copayment are listed in Table 120-1230-1. There is one copayment assessed per provider/per visit /per day unless otherwise specified. Copayment applies regardless of location, i.e. provider's office or client's residence. Table 120-1230-1, Outpatient/Ambulatory Client Copayment (OPAC) Chart. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stat. Implemented: 414.065

Hist.: OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-120-1280

### Billing

(1) Medicaid Covered Services:

(a) A provider enrolled with the Office of Medical Assistance Programs or a Managed Care Plan under the Oregon Health Plan must not seek payment from a client eligible for Medical Assistance benefit, or from

a financially responsible relative or representative of that individual, for any services covered by Medicaid fee-for-service or through contracted managed care plans, including any coinsurance, copayments, and deductibles, except under the circumstances described below:

(A) The client did not inform the provider of Medical Assistance Program eligibility, of OHP managed health plan enrollment, or of other third party insurance coverage, either at the time the service was provided or subsequent to the provision of the service or item, and as a result the provider could not bill the Medical Assistance Program, the managed health care plan, or third party payer for any reason, including timeliness of claims, lack of prior authorization, etc. The provider must document attempts to obtain information on eligibility or enrollment;

(B) The client became eligible for Medical Assistance benefits retroactively but did not meet other established criteria described in these General Rules and the appropriate Provider Guides (i.e., retroactive authorization);

(C) A third party resource made payments directly to the client for services provided;

(D) The client did not have full Medical Assistance benefits. Clients receiving limited Medicaid coverage through the Medically Needy Program (for example, when payment is the financial responsibility of the client due to spend-down) or the Citizen Alien Waived Emergency Medical Program may be billed for services that are not benefits of those programs. The provider must document that the client was informed that the service or item would not be paid for by the medical assistance program;

(E) The client has requested continuation of benefits during the Administrative Hearing process and final decision was not in favor of the client. The client will be responsible for any charges since the effective date of the initial notice of denial;

(F) A client cannot be billed for services/treatment that has been denied due to provider error (i.e. required documentation not submitted, prior authorization not obtained, etc.);

(G) The charge is for a copayment to a client who is required to make a copayment, as outlined in OAR 410-120-1230 AND 410-120-1235.

(b) In exceptional circumstances, a client may request to be able to receive a covered service while asserting the right to privately pay for that service.

(A) Under this exceptional circumstance, a client can be billed for a covered service if the client is informed in advance of receiving the specific service of all of the following:

(i) That the requested service is a covered service and that the provider would be paid in full for the covered service if the claim is submitted to OMAP or the client's managed care plan, if the client is a member of a managed care plan;

(ii) The estimated cost of the covered service, including all related charges, the amount that OMAP or the client's managed care plan would pay for the service, and that the client cannot be billed for an amount greater than the maximum OMAP reimbursable rate or managed care plan rate, if the client is a member of a managed care plan;

(iii) That the provider cannot require the client to enter into a voluntary payment agreement for any amount for the covered service;

(iv) And that, if the client knowingly and voluntarily agrees to pay for the covered service, the provider will not be able to submit a claim for payment to OMAP or the client's managed care plan.

(B) Provider must be able to document in writing, signed by the client or the client's representative, that the client was provided the information described above; that the client was provided an opportunity to ask questions, obtain additional information and consult with the client's caseworker or client representative; and the client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The client shall be given a copy of the signed agreement. A provider may not submit a claim for payment for covered services to OMAP or to the client's managed care plan that are subject to such agreement.

(2) Non-Covered Medicaid Services:

(a) A client may be billed for services that are not covered by the Medical Assistance Program or Managed Care Plan. However, the client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must be able to document in writing signed by the client or client's representative, that the client was provided this information and the client knowingly and voluntarily agreed to be responsible for payment;

(b) Services which are considered non-covered are (in rule precedence order):

## ADMINISTRATIVE RULES

- (A) OAR 410-141-0480, Benefit Package of Covered Services; and
- (B) OAR 410-141-0520, Prioritized List of Health Services, and
- (C) OAR 410-120-1200, Medical Assistance Benefits: Excluded services and limitations.

(3) All claims must be billed on the appropriate form as described in the individual provider guide.

(4) Upon submission of a claim to OMAP for payment, the provider agrees that it has complied with all rules of the Medical Assistance Program. Submission of a claim, however, does not relieve the provider from the requirement of a signed provider agreement.

(5) All billings must be for services provided within the provider's licensure or certification.

(6) It is the responsibility of the provider to submit true and accurate information when billing the Medical Assistance Program. Use of a billing provider does not abrogate the performing provider's responsibility for the truth and accuracy of submitted information.

(7) A claim may not be submitted prior to delivery of service. A claim may not be submitted prior to dispensing, shipment or mailing of the item unless specified otherwise in OMAP's individual provider guide.

(8) A claim is considered a "valid claim" only if all required data is entered on or attached to the claim form. See the appropriate provider guide for specific instructions and requirements. Also, see "Valid Claim" in the Definitions section of these rules.

(9) For claims requiring a procedure code the provider must bill as instructed in the appropriate Medical Assistance provider guide and must use the appropriate CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, or OMAP unique code which best describes the specific service or item provided. For claims which require the listing of a diagnosis and/or procedure code as a condition of payment, the code listed on the claim form must be the code which most accurately describes the client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual provider guide. Hospitals must follow national coding guidelines:

(a) Where there is no appropriate descriptive procedure code to bill the Medical Assistance Program the provider must use the code for "Unlisted Services". Instructions on the specific use of "unlisted services" are contained in the individual provider guide. A complete and accurate description of the specific care, item, or service must be documented on the claim;

(b) Where there is one CPT, CDT or HCPCS code that according to CPT, CDT and HCPCS coding guidelines or standards, describes an array of services the provider must bill the Medical Assistance Program using that code rather than itemizing the services under multiple codes. Providers must not "unbundle" services in order to increase payment by the Medical Assistance Program.

(10) No person shall submit or cause to be submitted to the Medical Assistance Program:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service which has already been paid;

(c) Any claim upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form;

(d) Any claim for furnishing specific care, item(s), or service(s) which have not been provided.

(11) The provider is required to submit an Individual Adjustment Request on any claim where the provider identifies an overpayment made by the Medical Assistance Program or to refund the amount of the overpayment.

(12) A provider who, after having been previously warned in writing by the Medical Assistance Program or the Department of Justice about improper billing practices, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to the Medical Assistance Program for up to triple the amount of the Medical Assistance Program established overpayment received as a result of such violation.

(13) Billing and Payment from Other Resources and Potential Third Party Coverage:

(a) When the client has third party medical coverage indicated on the Medical Care Identification or through AIS, or other coverage which is known to the provider, the provider must bill the third party resource prior to billing the Medical Assistance Program, except under the following circumstances:

(A) When another party may be liable for an injury or illness (see definition of Liability Insurance), the provider may bill the insurer or liable

party or place a lien against a settlement or the provider may bill the Medical Assistance Program. The provider may not both place a lien against a settlement and bill the Medical Assistance Program. The provider may withdraw the lien and bill the Medical Assistance Program within 12 months of the date of service. If the provider bills the Medical Assistance Program, the provider must accept payment made by the Medical Assistance Program as payment in full. The provider must not return the payment made by the Medical Assistance Program in order to accept payment from a liability settlement or liability insurer or place a lien against that settlement;

(B) The provider may bill the Medical Assistance Program for the following items and services and the Medical Assistance Program will bill the third party resource:

(i) Drugs other than home parenteral, home enteral and home intravenous therapy;

(ii) Intermediate Care Facility Services for the mentally retarded;

(iii) Institutional services for the mentally and emotionally disturbed;

(iv) Prenatal and preventive pediatric services;

(v) Services covered by a third party insurer through an absent parent where the medical coverage is administratively or court ordered. The provider must first bill the third party insurer. The provider may bill the Medical Assistance Program when payment by the insurer is not made within 30 days of the date of service (see Table 1280 - TPR codes) in the provider guide.

(C) The provider may bill the Medical Assistance Program directly for services which are never covered by Medicare or another insurer on the appropriate form identified in the relevant provider guide. Documentation must be on file in the provider's records indicating this is a non-covered service. See the individual provider guide for further information on services which must be billed to Medicare first.

(b) When a provider receives a payment from any source prior to the submission of a claim to the Medical Assistance Program, the amount of the payment must be shown as a credit on the claim in the appropriate field;

(c) Except as described in (13), any provider who accepts third party payment for furnishing a service or item to a Medical Assistance client shall:

(A) Submit an Individual Adjustment Request per instructions in the individual provider guide, indicating the amount of the third party payment; or

(B) Make direct payment of the amount of the third party payment to the Medical Assistance Program. When the provider chooses to directly repay the amount of the third party payment to the Medical Assistance program, the provider must indicate the reason the payment is being made and must submit the check:

(i) An Individual Adjustment Request which identifies the original claim, name and number of the client, date of service and item(s) or service(s) for which the repayment is made; or

(ii) A copy of the Remittance Advice showing the original payment by the Medical Assistance Program.

(d) Providers are required to submit an Individual Adjustment Request showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit the Individual Adjustment Request within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery and/or sanction;

(e) The Medical Assistance Program reserves the right to make a claim against any third party payer after making payment to the provider of service. The Medical Assistance Program may pursue alternate resources following payment if it deems this a more efficient approach.

(14) Full Use of Alternate Resources:

(a) The Medical Assistance Program will generally make payment only when other resources are not available for the client's medical needs. Full use must be made of reasonable alternate resources in the local community. Pursuant to 42 CFR 35.61 subpart G and the Memorandum of Agreement in OAR 310-146-0000, Indian Health Services facilities and tribal facilities operating under a section 638 agreement are payors of last resort, and are not considered an alternate resource or third party resource;

(b) Alternate resources may be available:

(A) Under a federal or state worker's compensation law or plan;

(B) For items or services furnished by reason of membership in a prepayment plan;

(C) For items or services provided or paid for directly or indirectly by a health insurance plan or as health benefits of a governmental entity, excluding Indian Health Services or Tribal Health Facilities, such as:

# ADMINISTRATIVE RULES

- (i) Veterans Administration;
  - (ii) Armed Forces Retirees and Dependents Act (CHAMPVA);
  - (iii) Armed Forces Active Duty and Dependents Military Medical Benefits Act (CHAMPUS); and
  - (iv) Medicare Parts A and B.
- (D) To residents of another state under that state's Title XIX or State funded Medical Assistance Program; or
- (E) Through other reasonably available resources.

(15) Diagnosis Code Requirement:

(a) A primary diagnosis code is required on all claims, unless specifically excluded in an individual OMAP medical assistance programs' provider guide;

(b) When billing using ICD-9-CM codes, all diagnosis codes are required to the highest degree of specificity;

(c) Hospitals are always required to bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups. Table 1280 -TPR Codes. [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.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81, Renumbered from 461-013-0050, 461-013-0060, 461-013-0090 & 461-013-0020; AFS 47-1982, f. 4-30-82, & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 45-1983, f. 9-19-83, ef. 10-1-83; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 24-1985, f. 4-24-85, cert. ef. 6-1-85; AFS 33-1986, f. 4-11-86, ef. 6-1-86; AFS 43-1986, f. 6-13-86, ef. 7-1-86; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 14-1987, f. 5-31-87, ef. 4-1-87; AFS 38-1988, f. 5-17-88, cert. ef. 6-1-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0140, 461-013-0150, 461-013-0175 & 461-013-0180; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0260, 410-120-0280, 410-120-0300 & 410-120-0320; HR 31-1994, f. & cert. ef. 11-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-10-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 30-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2002, f. 6-14-02 cert. ef. 8-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 74-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 12-1-02  
**Rules Amended:** 410-121-0146

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-121-0146 is revised to remove the requirement for 15-day fill of initial prescriptions.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-121-0146**  
**Dispensing Limitations**

(1) The quantity indicated by the prescriber on the prescription may not be reduced except when in conflict with the limitations below. OMAP will consider any form of prescription splitting, except as required below in this rule, as a billing offense and will take appropriate action as described in the General Rules.

(2) The following dispensing limitations apply to OMAP reimbursement:

(a) Dispensing, except as otherwise noted in this rule, is limited to the amount prescribed but not to exceed a 34-day supply of the drug. Exceptions to the 34-day supply limitation includes mail order pharmacy dispensed through OMAP contracted Mail Order Pharmacy and prescription in the drug classes listed below. These drug classes are limited to the amount prescribed by the physician, but not to exceed a 100-day supply of the drug. Exceptions (codes are from First Data Bank's Standard Therapeutic Classification Codes):

- (A) Anticonvulsants, Code 48;
- (B) Thyroid Preparation, Code 55;
- (C) Rauwolfias, Code 70;
- (D) Vasodilators, Coronary, Code 72;
- (E) Vasodilators, Peripheral, Code 73;
- (F) Digitalis preparations, Code 74;
- (G) Xanthine derivatives, Code 75;
- (H) Contraceptives, Topical, Code 36;
- (I) Contraceptives, Oral, Code 63.

(b) After stabilization of a diabetic, a minimum of a one-month supply of Insulin should be provided per dispensing;

(c) For vaccines available in multiple dose packaging, a dispensing fee will be allowed for each multiple dose. When vaccines are administered at the pharmacy, refer to Administrative Rule 410-121-0185;

(d) For compounded prescriptions, components of the prescription shall be billed separately. A dispensing fee will be allowed for each component eligible for reimbursement and billed in this manner. Any reimbursement received from a third party for compounded prescriptions must be split and applied equally to each component.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 26-1984, f. & ef. 6-19-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 52-1986, f. & ef. 7-2-86; AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; Renumbered from 461-016-0090; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 461-016-0210; HR 16-1992, f. & cert. ef. 7-1-92; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1996(Temp), f. & cert. ef. 8-1-96; HR 27-1996, f. 12-11-96, cert. ef. 12-15-96; HR 20-1997, f. & cert. ef. 9-12-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 74-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 75-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 11-1-02  
**Rules Adopted:** 410-121-0154

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-121-0154 is adopted to indicate that certain OMAP clients will be charged copayments for certain pharmacy services as directed by HB 5527 (2001 Legislative session).

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-121-0154**  
**Client Copayment**

Copayments are required for certain clients. Refer to OAR 410-120-1230 for details.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 75-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 76-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 4-1-02  
**Rules Adopted:** 410-123-1085  
**Rules Amended:** 410-123-1240

**Subject:** The Dental Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-123-1085 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-123-1240 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-123-1085**  
**Client Copayments**

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 76-2002, f. 12-24-02, cert. ef. 1-1-03

**410-123-1240**  
**The Dental Claim Invoice**

(1) OMAP requires the use of the ADA claim form for the billing of all dental services. This includes all professional dental services provided in an ASC facility, outpatient hospital setting or inpatient hospital setting except for those dental services outlined in Rule 410-123-1440 which require the use of the HCFA-1500 claim form. OMAP will accept the new ADA, version 2000, claim form but will not require it until further notice.

# ADMINISTRATIVE RULES

(2) Instructions for the forms referenced in this rule are available from OMAP.

(3) Do not include OMAP copayments when billing for dental services.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 76-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 77-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 4-1-02  
**Rules Adopted:** 410-125-0050  
**Rules Amended:** 410-125-0680

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance Programs. Rule 410-125-0050 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-125-0680 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.  
**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-125-0050

### Client Copayments

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: OMAP 77-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-125-0680

### How to Complete the UB-92 for Medicaid

(1) Provider Identification: Enter provider name, mailing address and zip code. This information is needed on HARD COPY inpatient and outpatient claims only.

(2) Patient Control Number: The patient number assigned by the hospital. This is optional. If the patient account number is entered here, OMAP will print this information (up to 12 characters) on the Remittance Advice.

(3) Type of Bill: Enter the appropriate numeric code identified in the UB-92 user's manual. The following Type of Bill Codes are accepted by OMAP:

(a) 111 — Inpatient (use for most inpatient billings, including patients with Medicare Part A coverage only);

(b) 121 — Inpatient (use for inpatient billings for patients with Medicare Part B coverage only);

(c) 131 — Outpatient;

(d) 721 — Independent End Stage Renal Dialysis Facilities;

(e) 141 — Outpatient referenced Diagnostic Services;

(f) 831 — Hospital-based Ambulatory Surgery;

(g) This information is required on all claims.

(4) Patient's Name: Enter the patient's name as it appears on the Medical Care Identification. This information is required on ALL claims.

(5) Date of Birth: Date of birth is entered in month, day, year format. This information may be helpful to OMAP in processing the claim, but is not required.

(6) Admission Date: Use MMDDYY format. Enter the actual admission date, even if the patient was not eligible on that date. This is required on inpatient and outpatient claims.

(7) Admission Hour: Enter the hour of admission, using numbers from 00 to 24.00, 01 = 1 A.M., 10 = 10 A.M., 13 = 1 P.M. 23 = 11 P.M., and so on. The hour is required on both inpatient and outpatient claims.

(8) Type of Admission or Service: Use the following codes: (see definitions of emergent, urgent, and non-emergent in the Hospital Services Provider Guide):

(a) 1 — Emergent. Also use for emergency transfers between hospitals and for the combined outpatient and inpatient bills when a non-emergency outpatient procedure resulted in an emergent admission to the hospital. Use for inpatient hospital labor and delivery services for Citizen/Alien Waived Emergency Medical (CAWEM) clients. Also use to bill for outpatient emergency dental services and emergent outpatient hospital services for CAWEM clients;

(b) 2 — Urgent;

(c) 3 — Elective. Enter prior authorization number in Form Locator 91. See Prior Authorization section for prior authorization requirements;

(d) 4 — Newborn.

(9) Discharge Hour: Enter the hour of discharge, using numbers from 00 to 23 (as in Form Locator 16). The hour is required on inpatient and outpatient claims.

(10) Patient Status: Enter appropriate code as follows:

(a) 01 — Discharged to home or self care (routine discharge);

(b) 02 — Discharged or transferred to another acute care hospital;

(c) 03 — Discharged or transferred to skilled nursing facility (SNF);

(d) 04 — Discharged or transferred to an intermediate care facility (ICF);

(e) 05 — Discharged or transferred to another type of institution (not another acute care hospital);

(f) 06 — Discharged or transferred to home under care of home health service organization;

(g) 07 — Left against medical advice;

(h) 08 — Discharged to home under care of Home Enteral/Parenteral Provider.

(11) 20 — Expired: This code is required on inpatient claims only.

(12) Statement Covers Period — Use month, day, and year numeric format. Required on both inpatient and outpatient claims:

(a) Inpatient:

(A) "From" date is the date of admission;

(B) "Through" date is the date of discharge, transfer, or expiration;

(C) Total days in this field must equal the number of accommodation days in Form Locator 46. Do not count the day of discharge when calculating the number of accommodation days. See the Revenue Codes marked with a pound (#) sign in the Hospital Services guide. These are codes which count as days.

(b) Outpatient:

(A) "From" date is the date services began;

(B) "Through" date is the last date services were provided;

(C) Patient must be eligible on all dates on which services were provided. If you bill for more than one service or for a series of services, make certain the patient was eligible during the entire time for which you are billing;

(D) This information is required on both inpatient and outpatient claims.

(13) XOVR Indicator (See General Information About Billing for additional information about Medicare billings):

(a) When billing Medicare directly and providing the Medicaid third-party payor information to Medicare, the claim will cross-over automatically; Do not put XOVR in Form Locator 27;

(b) When billing on a hard copy claim, enter XOVR as follows:

(A) Inpatient:

(i) Patient has Part A — enter XOVR in Form Locator 11;

(ii) Patient has Part B only — Do not enter XOVR in Form Locator

11.

(B) Outpatient:

(i) Patient has Part A only — Do not enter XOVR in Form Locator 11;

(ii) Patient has Part B — enter XOVR in Form Locator 11;

(iii) If the patient has Part B, but the service is not covered by Medicare, do not enter XOVR in Form Locator 11. Place an NC in the Remarks Section (Form Locator 84).

(14) Occurrence Codes And Dates of Occurrence:

(a) Enter one of the following codes and the date of occurrence if applicable. Required on both inpatient and outpatient claims when applicable:

(b) 01 (Auto accident);

(c) 04 (Employment related accident).

(15) Special Program Indicator (Condition Codes):

(a) A1 — EPSDT/CHAP (Medicheck) if applicable;

(b) OMAP currently does not require any condition codes other than A1.

(16) HCPCS/Rates:

(a) Inpatient: No entry required;

(b) Outpatient: HCPCS codes are required for most services. Revenue codes requiring HCPCS are identified in (Revenue Code Table) of the Hospital Services Provider Guide;

(c) Enter the five digit code. Type of Service (TOS) Modifiers are no longer required on either electronically billed or hard-copy UB-92 claims;

(d) When using unlisted HCPCS codes, a description is required for pricing. Bill on hard copy and attach explanation.

(17) Revenue Codes:

## ADMINISTRATIVE RULES

(a) On each line of the claim, enter the Revenue Code which most accurately describes the service provided;

(b) Use an accommodation day Revenue Code if the patient was admitted and discharged, transferred, or expired on the same day. Revenue codes that count as accommodation days are designated by a pound sign (#) to the right of the revenue code in the Revenue Code Table in the Hospital Services Provider guide. The accommodation day Revenue Codes may be used when the patient is seen in the outpatient setting (for example, for ambulatory surgical procedures);

(c) The same Revenue Code may not appear on more than one line of an inpatient claim. You may report the same Revenue Code on multiple lines of an outpatient claim, as long as the lines are distinguishable by different HCPCS codes in Form Locator 44 and/or different dates of service in Form Locator 45;

(d) Outpatient laboratory, diagnostic and therapeutic radiology, etc. — Billing for technical and professional components;

(e) Bill using the appropriate Revenue Code for the technical component. If you are also billing for the professional component, use the appropriate Revenue Code from Revenue Codes 971 through 979. Bill the technical component using revenue codes 30X, 31X, 32X, 33X, 34X, 35X, 40X, 61X;

(f) Bill the professional component using Revenue codes 971, 972, 973, 974. Revenue Codes are required on all claims.

(18) Units of Service:

(a) Enter total units of service or accommodation days. Revenue Codes marked with a # sign (see Revenue Codes) count as accommodation days on inpatient claims. A Leave of Absence day(s) counts as an accommodation day;

(b) The total number of accommodation days must equal the number of days in form Locator 7. The day of discharge (the “through” date in the Form Locator 6) is not counted by OMAP’s computer as a day. However, the hospital should bill charges incurred on the day of discharge;

(c) For outpatient services which are provided over a period of time, more than one service may be billed on a single claim form. The From and Through dates (Form Locator 6) must reflect the range of dates on which services were provided. The number of units of service for each Revenue Code should appear in Form Locator 46. For services which require prior authorization, such as physical therapy or occupational therapy, the units of service should not exceed the number of services authorized for that period of time. Units of Service are required on all claims after every Revenue Code.

(19) Total Charges — Enter the total charges. At the bottom of Form Locator 42, enter Revenue Code 001. At the bottom of Form Locator 47, enter the total charges. Do NOT include charges for non-covered services in this column. Total charges are required in all claims.

(20) Not Covered. Enter charges for not covered services in this field. Do not total these charges and do NOT include these charges in the total charges appearing in Form Locator 47.

(21) Payor Identification:

(a) Do not include OMAP copayments in this field;

(b) Identify by name up to three payor organizations from which the provider might expect some payment for the bill. This information is required;

(c) Form Locators 50 through 66 have lines marked A, B and C. Line A is for the primary payor, line B is for a secondary payor, and line C for an additional secondary payor. When billing OMAP, reserve one line for OMAP information. OMAP is secondary to all other insurances;

(d) If OMAP is the only payor enter “OMAP” or “Oregon Medicaid” on Form Locator 50 line A. If there is a primary payor other than OMAP, e.g., Medicare, enter this insurer’s name on line A, and enter “OMAP” on line B (or on line C if there is more than one payor primary to OMAP).

(22) Principal Diagnosis Code is required on all claims. Enter the ICD-9-CM diagnosis code best describing the principal diagnosis (the condition established after study to be chiefly responsible for causing the hospitalization).

(23) Other Diagnosis Codes are required on all claims when applicable. Enter the ICD-9-CM diagnosis codes for up to four conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received and/or the length of stay. Do not enter diagnoses that relate to an earlier episode which have no bearing on the current hospital stay. “Other diagnoses” are conditions that affect patient care in terms of requiring clinical evaluation, therapeutic treatment, diagnostic procedures, extended length of hospital stay, increased nursing care and/or monitoring. This may affect the DRG assignment on inpatient stays.

(24) Principal Procedure required on inpatient and outpatient claims when procedures are performed. Enter the ICD-9-CM procedure code which best identifies the procedure completed. The principal procedure is the procedure performed for definitive treatment rather than for diagnostic or exploratory purposes, or to treat a complication, or the procedure most related to the principal diagnosis.

(25) Other Procedure Codes And Dates are required on inpatient claims only. Enter ICD-9-CM codes for up to two other procedures performed and the date on which the procedure was performed. Hospitals are not required to code diagnostic and therapeutic procedures such as CT scans, physical, occupational, or respiratory therapy, or radiological studies.

(26) Attending Physician ID:

(a) Enter the 6-digit OMAP Provider number or the UPIN of the attending physician;

(b) If the attending physician has no OMAP Provider number, or the number is unknown, enter 999999 and the physician’s name;

(c) The physician provider number is required on all inpatient claims, and required on all outpatient claims except Medicare/Medicaid “crossover” claims received by OMAP directly from Medicare.

(27) Other Physician ID: Enter the provider number of any other physician who provided care, such as a surgeon. For patients referred by a PCCM, the PCCM number appears in this field, with an R in front of the number.

(28) Remarks:

(a) Use this space for Third Party Resource (TPR) explanation codes. These are two letter identifiers (in Rule 410-120-1280);

(b) Other information which may appear in this field includes:

(A) Itemization of services provided under Revenue Code 512 (dental clinic) unless itemized on a separate attachment;

(B) A description of “unlisted” laboratory or radiology HCPCS codes which will allow manual pricing;

(C) Other information helpful in processing the claim.

(c) Claims billed electronically have a limit of 100 characters which can appear in this field. OMAP may not review information other than Third Party Resource explanation codes appearing in the Remarks section of an electronically billed UB-92. When you have important information about the claim, it is best to submit the claim hard-copy with the explanatory documentation attached.

(29) Value Codes: Units and Amounts. When billing OMAP, use these form locators to report Family Planning Percentage and Medicare Coinsurance and Deductible amounts, when applicable. Each Value Code data element consists of a 2 character alphanumeric Value Code, along with a numeric Value Code Amount:

(a) Value Code — A1 Deductible Payor A — When Medicare is the primary payor, identify Medicare as Payer A in Form Locator 50. Use Value Code A1 to report the Part A or Part B deductible amount (show the dollars and cents money amount of the deductible in the Amount portion of the form locator);

(b) Value Code — A2 Coinsurance Payor A — When Medicare is the primary payor, identify Medicare as Payer A in Form Locator 50. Use Value Code A2 to report the Part A or Part B coinsurance amount (show the dollars and cents money amount of the deductible in the Amount portion of the form locator). Note: OMAP does not require providers to report deductible and coinsurance value codes and amounts for primary insurers other than Medicare. When Medicare coverage is present, it will normally be reported as “Payor A” on the UB-92. However, in situations where Medicare is “Payor B”, use Value Codes “B1” and “B2” to report Medicare coinsurance and deductible;

(c) Value Code X0 Family Planning Percent — When family planning services are a component of services billed on the claim, OMAP requests that providers estimate the portion of the total charges related to family planning. Use Value Code “X0” and report the percentage of family planning in the cents area of the amount field. Round to the nearest whole percentage. Report 100% as \$1.00.

(30) Provider Number:

(a) Enter the 6 digit OMAP provider number on the line (A, B, or C) which corresponds to the line used to identify OMAP in Form Locator 50;

(b) The OMAP provider number is required. OMAP does not require the provider number for other payers listed in Form Locator 50.

(31) Prior Payments. Enter the actual amount of any payments received from a third party resource such as Medicare Part A, Part B, or other insurance on the line which corresponds to that payor’s identification in Form Locator 50.

# ADMINISTRATIVE RULES

(32) Estimated Amount Due — OMAP does not require the completion of this form locator, this information will not be used in processing claims.

(33) Cert — SSN — HIC — ID No.:

(a) Use this field to report the patient's Medicaid Client ID number (aka "Prime Number"), using the line (A, B, C) which corresponds to OMAP's identification in Form Locator 50. Enter the number as it appears on the client's Medical Care Identification Form (aka "Medical Card");

(b) Required on all claims.

(34) Treatment Authorization Codes — For services which have been prior-authorized by OMAP, enter the 9 digit authorization number in the line (A, B, or C) which corresponds to OMAP's identification in Form Locator 50.

(35) Service Date:

(a) Inpatient — Not required;

(b) Outpatient — Enter in MMDDYY format when applicable;

(c) There are two acceptable methods for billing for a series of services:

(A) You may list each date of service in form locator 45;

(B) You may bill for a series of services by indicating the number of units of service provided (form locator 46) and billing for the date range during which services were provided (form locator 6). Note: If Method (b) is used, be sure all services requiring prior authorization are billed on a single claim. If a service is later billed for the same date range, the claim will be denied as a duplicate service already paid.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90; Renumbered from 461-015-0490; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 22-1992, f. 7-31-92, cert. ef. 8-1-92; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 77-2002, f. 1-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 78-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 12-1-02

**Rules Amended:** 410-125-0700

**Subject:** The Hospital Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-125-0700 is revised to make necessary house-keeping corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-125-0700

### Revenue Codes

(1) Revenue Codes may be added or deleted to conform with national billing standards and changes in Medicare.

(2) Table 125-0700. [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.: AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; Renumbered from 461-015-0006; HR 9-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90; Renumbered from 461-015-0500; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 78-2002, f. 1-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 79-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 4-1-02

**Rules Adopted:** 410-127-0050

**Rules Amended:** 410-127-0120

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-127-0050 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative ses-

sion). Rule 410-127-0120 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-127-0050

### Client Copayments

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 79-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-127-0120

### How to Complete the UB-92

The following fields are required to be completed. Use the Medicare Home Health Billing Manual format if optional Form Locators are included:

(1) Form Locator 1 — Provider Identification — Enter the provider name, mailing address and zip code if billing on a paper claim.

(2) Form Locator 4 — Type of Bill — enter the appropriate three-digit numeric code to identify the type of claim; codes are:

(a) First digit — Type of Facility — 3 denotes home health;

(b) Second digit — Classification — 2 denotes "in home visits";

(c) Third digit — Frequency/Definition — 1 denotes "Admit through discharge claim": used for a claim encompassing an entire home health care span of service for which the agency expects reimbursement. 2 denotes "first claim": used for the first of an expected series of payment claims for the same home health care start of care. 3 denotes "Interim-continuing claim": used when one or more payment claims for the same home health start of care have already been submitted and further claims are expected to be submitted at a later date. 4 denotes "Interim-last claim": used for a claim which is the last of a series for a home health start of care. The "through" date of this claim (Form locator 6) is the discharge date or date of death for this service span.

(3) For Locator 6 — Statement Covers Period — enter the beginning and ending dates of service covered by this claim, using MMDDYY format.

(4) Form Locator 12 — Patient's Name — enter the client's last name, first name and middle initial as it appears on the client's Office of Medical Assistance Programs (OMAP) Medical Care Identification.

(5) Form Locators 24-30 — Condition codes — Enter A1 if EPSDT (Medicheck).

(6) Form Locator 42 — Revenue Codes — Enter the Revenue code which most accurately describes the service provided.

(7) Form Locator 46 — Service Units — Enter total units of service for each type of service. One visit equals one unit of service. One supply item equals one unit of service. Combine all units of the same code for the same date of service on the same line.

(8) Form Locator 47 — Total Charges — Enter the total charges pertaining to the related code. At the bottom of Form Locator 42 enter Revenue Code 001. At the bottom of Form Locator 47, enter the total charge.

(9) Form Locator 50 — Payer Identification — Enter the names of up to three payer organizations in order. Do not include OMAP copayments in this field. Line A for primary payer; line B for secondary payer and line C for tertiary payer. If Medicaid is primary, enter "Medicaid" one line A. If Medicaid is secondary or tertiary payer, enter the primary payer on line A and Medicaid on line B or C as appropriate.

(10) Form Locator 51 — Provider number — Enter your six-digit OMAP provider number on the line (A, B or C) which corresponds to the line you used to identify OMAP in Locator Code 50. Your OMAP provider number is required. Do not use a Billing Provider Number. OMAP does not require that you report your provider number for other payers listed in Locator Code 50.

(11) Form Locator 54 — Prior payments — Enter the amount of any payments received from a third party resource on the same letter line as is in Form Locator 50.

(12) Form Locator 60 — Cert-SSN-HIC-ID No. — Enter the patient's Medicaid Identification number on the same letter line (A, B or C) that corresponds to the line on which Medicaid payer information is shown in Form Locator 50.

(13) Form Locator 63 — Treatment Authorization codes — Enter the nine digit payment authorization number for authorized services. The PA number will begin with the number 0.

(14) Form Locator 67 — Principal Diagnosis Codes — Enter the ICD-9-CM codes describing the principal diagnosis (i.e., the condition for which the plan of treatment was established and the patient taken into service). The ICD-9-CM must be carried out to its highest degree of specificity.

# ADMINISTRATIVE RULES

ty, (see OMAP General Rules for details). Do not enter decimal points or unnecessary characters.

(15) Form locator 82 — Attending Physician I.D.: Enter the attending physician's six-digit OMAP provider number or UPIN.

(16) Form Locator 84 — Remarks — Use this space for the appropriate Third Party Resource (TPR) Explanation Codes:

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 28-1990, f. 8-31-90, cert. ef. 9-1-90; HR 12-1992, f. & cert. ef. 4-1-92; HR 15-1995, f. & cert. ef. 8-1-95; OMAP 19-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 50-2002, f. & cert. ef. 10-1-02; OMAP 79-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 80-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 4-1-02

**Rules Adopted:** 410-129-0190

**Rules Amended:** 410-129-0120

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-129-0190 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-129-0120 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-129-0120

### How to Complete a HCFA-1500

(1) The HCFA-1500 is a required billing form. Each HCFA-1500 is a complete billing document. If there is not enough space on the HCFA-1500 to bill all procedures, complete a new billing form for the rest of the procedures. Do not "carry over" totals from one HCFA-1500 to another. Completed HCFA-1500 forms must be sent to: Office of Medical Assistance Programs (OMAP). Unit further notice from OMAP, providers may bill using either the HCFA-1500 claim form dated 1/84 or the newly revised HCFA-1500, dated 12/90. If providers choose to use the 12/90 form, they must follow these instructions. If the unrevised HCFA-1500 billing form is used, providers must continue to use the instructions as they are currently shown in the Provider Guide.

(2) The following fields are always required to be completed:

(a) Insured's I.D. Number: The eight-digit number found on the OMAP Medical Card;

(b) Patient's Name: The name as it appears on the OMAP Medical Card;

(c) Name of Referring Physician or Other Source: Enter the name of the referring provider, HMO/PCO (if the client is in a prepaid health plan), or the primary care physician if the patient is restricted;

(d) ID Number of Referring Physician: Enter the OMAP provider number of the referring provider, HMO/PCO (if the client is in a prepaid health plan), or the primary care physician if the patient is restricted;

(e) Date of Service: Must be numeric (05/03/92). If "From-To" dates are used, a service must have been provided on each consecutive day but not more than once per day;

(f) Place of Service: Where service is provided:

(A) 2 — Outpatient hospital/OP department;

(B) 3 — Practitioner's office;

(C) 4 — Patient's home;

(D) 7 — Intermediate care facility;

(E) 8 — Skilled nursing facility;

(F) C — Residential treatment center.

(g) Type of Service Codes (TOS): Use Type of Service "J" in this field;

(h) Procedures, Services or Supplies: Use only the CPT Codes, HCPCS Codes or OMAP Unique Codes listed in the Speech-Pathology Guide;

(i) Charges: Enter a charge for each line item;

(j) Days or Units: This number must match the number of days in the Date of Service Field or the number of units of services provided;

(k) Total Charge: Enter the total amount for all charges listed on this HCFA-1500;

(l) Balance Due: Enter the balance (the information in the Total Charge Field minus the information in the Amount Paid Field);

(m) Provider Number: Enter the OMAP billing or provider number here.

**NOTE:** Only one number may be entered in this field.

(3) The following fields are required, when applicable:

(a) Other Insured's Name: This information is listed on the Medical Card. Use the Third Party Resource (TPR) codes found in the Billing Section to indicate response received from other resources;

(b) Is Patient's Condition Related To: Complete as appropriate when an injury is involved;

(c) Reserved for Local Use (Field 10d): Put a "Y" in this field if the service was an emergency;

(d) Prior Authorization Number: If required, enter the Prior Authorization number here;

(e) Reserved for Local Use — (Field 24K): Enter the OMAP performing provider number here, unless it is used in the Provider Number Field;

(f) Amount Paid: Enter the total amount paid from other resources. Do not include OMAP copayments in this field. Do not show any payment from OMAP on this line. If the patient has other insurance and this amount is zero, there must be a two-digit "reason" code in Field 9.

(4) Third Party Resource (TPR) Code:

(a) Select one code from either the single or the multiple insurance coverage lists. Enter this code in Field 9 on the HCFA-1500 or OMAP 505;

(b) Single Insurance Coverage. Select the most appropriate code when the patient has only one insurance policy in addition to Medicaid:

(A) UD — Service Under Deductible;

(B) NC — Service Not Covered by Insurance Policy;

(C) PN — Patient Not Covered by Insurance Policy;

(D) IC — Insurance Coverage Canceled/ Terminated;

(E) IL — Insurance Lapsed or not in Effect on Date of Service;

(F) IP — Insurance Payment Went to Policyholder;

(G) PP — Insurance Payment Went to Patient;

(H) NA — Service not Authorized or Prior Authorized by Insurance;

(I) NE — Service not Considered Emergency by Insurance;

(J) NP — Service not Provided by Primary Care Provider/ Facility;

(K) MB — Maximum Benefits Used for Diagnosis/ Condition;

(L) RI — Requested Information not Received by Insurance from Patient;

(M) RP — Requested Information not Received by Insurance from Policyholder;

(N) MV — Motor Vehicle Accident Fund Maximum Benefits Exhausted;

(O) AP — Insurance mandated under administrative/court order through an absent parent — Not paid within 30 days (effective November 1, 1991);

(P) OT — Other (if above codes do not apply, include detailed information of why no TPR payment was made).

(c) Multiple Insurance Coverage. Select most appropriate code when the patient has more than one insurance policy in addition to Medicaid:

(A) MP — Primary Insurance Paid — Secondary Paid;

(B) SU — Primary Insurance Paid — Secondary Under Deductible;

(C) MU — Primary and Secondary Under Deductible;

(D) PU — Primary Insurance Under Deductible — Secondary Paid;

(E) SS — Primary Insurance Paid — Secondary Service Not Covered;

(F) SC — Primary Insurance Paid — Secondary Patient Not Covered;

(G) ST — Primary Insurance Paid — Secondary Insurance Canceled/Terminated;

(H) SL — Primary Paid — Secondary Lapsed or Not in Effect;

(I) SP — Primary Paid — Secondary Payment Went to Patient;

(J) SH — Primary Paid — Secondary Payment Went to Policyholder;

(K) SA — Primary Paid — Secondary Denied — Service Not Authorized or Prior Authorized; (L) SE — Primary Paid — Secondary Denied — Service Not Considered Emergency;

(M) SF — Primary Paid — Secondary Denied — Service Not Provided by Primary Care Provider/Facility;

(N) SM — Primary Paid — Secondary Denied — Maximum Benefits Used for Diagnosis/ Condition;

(O) SI — Primary Paid — Secondary Denied — Requested Information Not Received from Policyholder;

(P) SR — Primary Paid — Secondary Denied — Requested Information not Received from Patient;

(Q) MC — Service Not Covered by Primary or Secondary Insurance;

(R) MO — Other (if above codes do not apply, include detailed information of why no TPR payment was made).

Stat. Auth.: ORS 184.750 & ORS 184.770

Stats. Implemented:

Hist.: HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; HR 11-1992, f. & cert. ef. 4-1-92; OMAP 80-2002, f. 12-24-02, cert. ef. 1-1-03

# ADMINISTRATIVE RULES

## 410-129-0190

### Client Copayments

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist. OMAP 80-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 81-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 5-1-02

**Rules Amended:** 410-129-0140

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-129-0140 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-129-0140

### Instructions on How to Complete the OMAP 505

(1) \*Patient's Name: Enter the name as it appears on the Medical Card.

(2) \*Insured's Medicaid Number: Enter the eight digit number from the Medical Card.

(3) \*Insured's Group Number: The Medicare number as it appears on the client's Medicare Identification Card. (Example: 123456789A or 234567890C1).

(4) \*Other Health Insurance Coverage: If no payment was received from Medicare, this space must be used to explain why no payment was made. Select a two-digit "Reason" code from the Third Party Resource (TPR) codes that are found in the billing section of this Guide. Be sure that this "reason" code is the first entry in Field 9, followed by the name of the Third party Resource (Medicare). Example: Medicare paid nothing ("Reason" code NC, Not Covered). Enter: NC-Medicare. Do not mail the Medicare EOB in with your claims.

(5) \*\* Was Condition Related To: Complete if service is related to an injury/accident.

(6) \*\*If an Emergency Check Here: Check here if the service was performed as an emergency.

(7) \*Name of Referring Physician or Other Source: Enter the OMAP provider number of the referring provider, HMO/PCO referrals, restricted patient referrals. If this service is the result of an HMO or PCO referral, the OMAP provider number of the HMO or PCO Plan must be entered here.

(8) \*\*Prior Authorization: If required, enter the prior authorization number here.

(9) \*Date of Service: Use a six digit numeric date. If a "From-To" date range is used, all services must be on consecutive days.

(10) \*Place of Service: Where service is provided:

- (a) 1 = Inpatient hospital;
- (b) 2 = Outpatient hospital/OP department/ER;
- (c) 3 = Practitioner's office;
- (d) 4 = Patient's home;
- (e) 7 = Intermediate care facility;
- (f) 8 = Skilled nursing facility;
- (g) C = Residential treatment center.

(11) \*Procedure Code: Enter the CPT Codes, HCPCS Codes or OMAP Unique Procedure Codes listed in this Guide.

(12) \*Days or Units: Enter the number of services or units billed.

(13) \*Type of Service Codes (TOS): Use Type of Service "J".

(14) \*Charges Billed Medicare: Enter the total dollar amount you billed to Medicare for each service.

(15) \*Medicare's Allowed Charges: Enter the dollar amount allowed by Medicare for each service.

(16) \*\*Provider Number: Enter the OMAP provider number here unless it is used in Field 34.

(17) \*Total Charge: Add the charges in Field 24G and enter the total dollar amount billed Medicare.

(18) \*Medicare Total Payment: Enter the total dollar amount paid by Medicare for the services.

(19) \*\*Insurance Other than Medicaid/ Medicare: Enter any amount paid by another resource, other than Medicare, such as other health insurance, or "Spend-Down" (client responsibility). Do not include OMAP copayments in this field. If the amount is zero, put in a "0".

(20) \*Balance Due: Subtract the amounts in Fields 28 and 30 from Field 27 and enter the balance in this field. An amount must be put in this field.

(21) Your Patient's Account Number: If the patient account number is entered here, OMAP will print that number on the Remittance Advice.

(22) \*Physician's or Supplier's name, Address, Zip Code and Phone Number: Only the OMAP provider number is required.

\* = Required Field\*\* = Required When Applicable

Stat. Auth.: ORS 184.750 & ORS 184.770

Stats. Implemented: ORS 414.065

Hist.: HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; OMAP 81-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 82-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 4-1-02

**Rules Adopted:** 410-130-0960

**Rules Amended:** 410-130-0010

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-130-0960 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-130-0010 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-130-0010

### Health Insurance Claim Form (CMS-1500)

(1) Each CMS-1500 is a complete billing document. If there is not enough space on the CMS-1500 to bill all procedures provided on the same date of service, complete a new billing form for the rest of the procedures. Do not "carry over" totals from one CMS-1500 to another.

(2) Bill prior authorized services on a separate CMS-1500 form for services not requiring prior authorization.

(3) Each field described in detail in section (6) of this rule is required unless otherwise noted.

(4) Send completed CMS-1500 forms to the Office of Medical Assistance Programs (OMAP).

(5) OMAP does not supply CMS-1500 forms, they can be obtained through local business forms suppliers or the Oregon Medical Association.

(6) Instructions for completing the CMS-1500:

(a) 1a — The eight-digit number found on the OMAP Medical Care ID;

(b) 2 — The name as it appears on the OMAP Medical Care ID;

(c) 9 (required when applicable) — This information is listed on the OMAP Medical Care ID. When appropriate, use the Third-Party Resource (TPR) codes found in the Billing Section of the Medical-Surgical Services guide to indicate response received from other resources;

(d) 10a-c (required when applicable) — Complete as appropriate when an injury is involved;

(e) 10d (required when applicable) — Put a "Y" in this field if service was an emergency. Labor and delivery services for Citizen/Alien-Waived Emergency Medical (CAWEM) women are considered an emergency;

(f) 17 — Enter the name of the referring provider;

(g) 17a — Enter the OMAP provider number of the referring provider;

(h) 21 — Enter the principal diagnosis code first and subsequent diagnosis as needed. Use diagnosis codes from ICD-9-CM. Enter up to four codes in priority order. Carry the codes to their highest degree of specificity (fourth or fifth digit). No diagnosis is required for independent labs or portable X-ray providers;

(i) 23 (required when applicable) — If required, enter the nine-digit prior authorization number here;

(j) 24A — Must be numeric. If "From-To" dates are used, all services must have been provided on consecutive days;

(k) 24B — Where service was provided:

- (A) 1 — Inpatient hospital;
- (B) 2 — Outpatient hospital;
- (C) 3 — Practitioner's office;
- (D) 4 — Client's home;
- (E) 5 — Day care facility;
- (F) 6 — Night care facility;



# ADMINISTRATIVE RULES

- (G) 7 — Intermediate care facility;
- (H) 8 — Skilled nursing home;
- (I) 9 — Surgical procedures — emergent;
- (J) A — Independent lab;
- (K) B — Other medical/surgical facilities/Ambulatory Surgical Centers;
- (L) C — Residential treatment center;
- (M) D — Specialized treatment center.
- (I) 24C — Type of Service Codes (TOS):
  - (A) 1 — Medical care — 90000-99999 MDs, DOs and Naturopaths;
  - (B) 2 — Primary Surgeon — 10000-69999 MDs, DOs and Naturopaths;
  - (C) 7 — Anesthesia — MDs, DOs and CRNAs;
  - (D) 8 — Assistant Surgeon — 10000-60000;
  - (E) H — Ambulatory Surgical Centers and Birthing Centers;
  - (F) K — Lab/X-ray (professional & technical) 70000-80000 — all providers;
  - (G) L — Podiatrist;
  - (H) N — Nurse Practitioner — Registered Nurse First Assistant;
  - (I) P — Lab/X-ray Professional fee charge, charge only for lab or X-ray service — 70000-80000 — all providers;
  - (J) S — Acupuncturists, Chiropractors, Psychologists, Licensed Direct Entry Midwives. Maternity Case Management services only: RN, Dietary Counselor, Licensed Dietician and Social Worker;
  - (K) T — Lab/X-ray — Technical fee charge only for laboratory or X-ray service — 70000-80000 — all providers;
  - (L) V — Family planning clinics;
  - (M) W — Licensed Physician Assistant — Use primary physician's provider number.
- (m) 24D — Use only CPT, HCPCS or OMAP unique codes. When appropriate, also enter no more than one two-digit modifier;
- (n) 24E — Use the one-digit line reference number from Field 21;
- (o) 24F — Enter a charge for each line item;
- (p) 24G — This number must match the number of days in Field 24A or the number of units of services provided;
- (q) 24H — Enter a "Y" only if the service is related to family planning or EPSDT;
- (r) 24K (required when applicable) — Enter the OMAP performing provider number here if a billing provider number is used in Field 33;
- (s) 26 (optional) — If your patient account number is entered here, OMAP will print the account number on the Remittance Advice;
- (t) 28 — Enter the total amount for all charges listed on this CMS-1500;
- (u) 29 (required when applicable) — Enter the total amount paid by any other insurance or resource. Do not include OMAP copayments in this field. Do not show any payment from OMAP on this line. If the client has other insurance and this amount is zero, there must be a two-digit "reason" code in Field 9;
- (v) 30 — Enter the balance after subtracting the Amount Paid from the Total Charge;
- (w) 33 — Enter the OMAP provider number of the provider to whom the check should be sent (actual service provider or the provider's billing service).

Stat. Auth.: ORS 209  
Stats. Implemented: ORS 414.065  
Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0530; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 48-1991, f. 10-16-91, cert. ef. 11-1-91; HR 12-1992, f. & cert. ef. 4-1-92; HR 36-1992, f. & cert. ef. 12-1-92; HR 6-1994, f. & cert. ef. 2-1-94; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 82-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-130-0960

### Client Copayments

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: OMAP 82-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 83-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 5-1-02  
**Rules Amended:** 410-130-0040

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-130-0040 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-130-0040

### Instructions on How to Complete the OMAP 505

- (1) 1 — Enter the client's name as printed on the Office of Medical Assistance Programs (OMAP) Medical Care ID.
- (2) 6 — Enter the eight-digit number found on the OMAP Medical Care ID.
- (3) 8 — Enter the Medicare number as it appears on the client's Medicare Identification Card.
- (4) 9 (required when applicable) — If no payment was received from Medicare, use this space to explain why no payment was made. Select a two-digit "reason" code from the Third Party Resource (TPR) codes shown in the Medical-Surgical Services guide. Be sure that this "reason" code is the first entry in Field 9, followed by the name of the TPR (Medicare). Example: Medicare paid nothing ("reason" code NC, Not Covered). Enter: NC-Medicare. If there is any other TPR, be sure to use a code that shows what both insurances did.
- (5) 10 (required when applicable) — Complete only when an injury is involved.
- (6) 16A (required when applicable) — Complete if the service was performed as an emergency. Labor and delivery services for Citizen/Alien-Waived Emergency Medical (CAWEM) women are considered an emergency.
- (7) 19 — Enter the OMAP provider number or UPIN of the referring (requesting) practitioner.
- (8) 23A — Enter primary diagnosis/condition of the client indicated by appropriate ICD-9-CM code number. Enter up to four codes in priority order. Carry the codes out to their highest degree of specificity.
- (9) 23B — If the service requires prior authorization, enter the nine-digit Prior Authorization number issued by OMAP or the branch/unit shown on the Medical Care ID.
- (10) 24A — Use a six-digit numeric date. If a "From-To" range is used, all services must be on consecutive days and the quantity in Field 24E must equal the number of days.
  - (11) 24B — Enter where service was provided:
    - (a) 1 — Inpatient hospital;
    - (b) 2 — Outpatient hospital;
    - (c) 3 — Practitioner's office;
    - (d) 4 — Client's home;
    - (e) 5 — Day care facility;
    - (f) 6 — Night care facility;
    - (g) 7 — Intermediate care facility;
    - (h) 8 — Skilled nursing home;
    - (i) 9 — Surgical procedures — emergent;
    - (j) A — Independent lab;
    - (k) B — Other medical/surgical facility/Ambulatory Surgical Centers;
    - (l) C — Residential treatment center;
    - (m) D — Specialized treatment center.
  - (12) 24C — Enter the appropriate procedure code plus any appropriate two-digit modifier.
  - (13) 24D — Enter a single diagnosis reference number on each line as shown in Field 23A.
  - (14) 24E — Enter the number of services or units you are billing for.
  - (15) 24F — Enter the appropriate type of service:
    - (a) 1 — Medical care — 90000-99999 MDs, DOs and Naturopaths;
    - (b) 2 — Primary Surgeon — 10000-69999 MDs, DOs and Naturopaths;
    - (c) 7 — Anesthesia — MDs, DOs and CRNAs;
    - (d) 8 — Assistant Surgeon — 10000-60000;
    - (e) H — Ambulatory surgical centers and birthing centers;
    - (f) K — Lab/X-ray (prof & tech) — 70000-80000 — all providers;
    - (g) L — Podiatrist;
    - (h) N — Nurse Practitioner — Registered Nurse First Assistant;
    - (i) P — Lab/X-ray Professional fee charge, charge only for lab or X-ray service — 70000-80000 — all providers;
    - (j) S — Acupuncturists, Chiropractors, Psychologists, Licensed Direct Entry Midwives. Maternity Case Management services only: RN, Dietary Counselor, Licensed Dietician and Social Worker;

# ADMINISTRATIVE RULES

(k) T — Lab/X-ray — Technical fee charge only for laboratory or X-ray service — 70000-80000 — all providers;

(l) V — Family planning clinics;

(m) W — Licensed Physician Assistant — Use primary physician's provider number.

(16) 24G — Enter the total dollar amount billed to Medicare for each service.

(17) 24H — Enter the dollar amount allowed by Medicare for each service.

(18) 24I — Enter your OMAP performing provider number here if it is not used in Field 34.

(19) 27 — Add the charges in Field 24G and enter the total dollar amount Medicare was billed.

(20) 28 — Enter the total dollar amount paid by Medicare for the services. Do not show Medicare or other insurance write-offs.

(21) 30 (required when applicable) — Enter any amount paid by any health insurance resource, other than Medicare. Do not include OMAP copayments in this field. If the amount is zero, put in a "0".

(22) 31 — Subtract the amounts in Field 28 and 30 from Field 27 and enter the balance in this field. You must enter an amount in this field.

(23) 32 (optional) — If your patient account number is entered here, OMAP will print the account number on the Remittance Advice.

(24) 34 — Enter the OMAP provider number of the actual service provider or the provider's billing service.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0550; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 36-1992, f. & cert. ef. 12-1-92; HR 6-1994, f. & cert. ef. 2-1-94; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 83-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 84-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 5-1-02

**Rules Amended:** 410-131-0240

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-131-0240 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-131-0240

### How to Complete the OMAP 505

(1) 1 — Enter the name as it appears on the Office of Medical Assistance Programs (OMAP) Medical Care ID.

(2) 6 — Enter the eight-digit number from the OMAP Medical Care ID.

(3) 8 — The Medicare number as it appears on the client's Medicare Identification Card. (Example: 123456789A or 234567890C1).

(4) 9 — If no payment was received from Medicare, this space must be used to explain why no payment was made. Select a two-digit "reason" code from the Third Party Resource (TPR) codes that are found in the billing section of the Physical and Occupational Therapy Services guide. Be sure that this "reason" code is the first entry in Field 9, followed by the name of the TPR (Medicare).

(5) 10 (required when applicable) — Complete only if service is related to an injury/accident.

(6) 16A (required when applicable) — Complete if the service was performed as an emergency.

(7) 19 — Enter the OMAP provider number or UPIN of the referring (requesting) provider.

(8) 23A — Enter the primary diagnosis/condition of the client indicated by current ICD-9-CM code number. Enter up to four codes in priority order. Carry the codes out to their highest degree of specificity. Do not enter the decimal point or unnecessary characters.

(9) 23B (required when applicable) — Enter the nine-digit payment authorization number issued by OMAP or the branch/unit shown on the OMAP Medical Care ID.

(10) 24A — Use a six-digit numeric date. If a "From-To" date range is used, all services must be on consecutive days.

(11) 24B — Where service is provided:

(a) 3 — Provider's office;

(b) 4 — Client's home;

(c) 7 — Intermediate care facility;

(d) 8 — Skilled nursing facility;

(e) D — Specialized treatment center.

(12) 24C — Enter the appropriate code listed in the Physical and Occupational Therapy Services provider guide.

(13) 24D — Enter a single diagnosis reference number as shown in Field 23A.

(14) 24E — Enter the number of services or units you are billing for.

(15) 24F — Use type of service "S".

(16) 24G — Enter the total dollar amount billed to Medicare for each service.

(17) 24H — Enter the dollar amount allowed by Medicare for each service.

(18) 24I (required when applicable) — Enter your OMAP performing provider number here if a billing provider number is used in Field 34.

(19) 27 — Add the charges in Field 24G and enter the total dollar amount Medicare was billed.

(20) 28 — Enter the total dollar amount paid by Medicare for the services.

(21) 30 — Enter any amount paid by another health insurance resource, other than Medicare. Do not include OMAP copayments in this field. If the amount is zero, enter a "0".

(22) 31 — Subtract the amounts in Fields 28 and 30 from Field 27 and enter the balance in this field. An amount must be put in this field.

(23) 32 — If your patient account number is entered here, OMAP will print the account number on the Remittance Advice.

(24) 34 — Enter the OMAP provider number of the provider to whom the check should be sent (actual service provider or the provider's billing service).

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 84-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 85-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 4-1-02

**Rules Adopted:** 410-131-0270

**Rules Amended:** 410-131-0220

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-131-0270 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-131-0220 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-131-0220

### How to Complete the Health Insurance Claim Form (CMS-1500)

Each CMS-1500 is a complete billing document. If there is not enough space on the CMS-1500 to bill all procedures provided, complete a new billing form for the rest of the procedures. Do not "carry over" totals from one CMS-1500 to another. The following fields are always required to be completed unless otherwise noted:

(1) 1a — The eight-digit number found on the Office of Medical Assistance Programs (OMAP) Medical Care ID.

(2) 2 — The name as it appears on the OMAP Medical Care ID.

(3) 9 (required when applicable) — If the client has other health insurance coverage (this information is on the OMAP Medical Care ID), and no payment was received from that resource, this space must be used to explain why no payment was made. Select a two-digit "reason" code from the Third Party Resource (TPR) codes section of the Physical and Occupational Therapy Services guide.

(4) 10a-c (required when applicable) — Complete only when an injury is involved.

(5) 10d (required when applicable) — Put a "Y" in this field if service was an emergency.

(6) 17 — Enter the name of the referring provider.

(7) 17a — Enter the OMAP provider number or the UPIN of the referring provider.

# ADMINISTRATIVE RULES

(8) 21 — Enter the primary diagnosis/condition of the client indicated by current ICD-9-CM code number, as supplied by the prescribing provider. Enter up to four codes in priority order. Carry the codes out to their highest degree of specificity. Do not enter the decimal point or unnecessary characters.

(9) 23 (required when applicable) — If billing for a payment authorized service, enter the nine-digit payment authorization number here. Do not bill payment authorized and non-payment authorized services on the same form.

(10) 24A — Must be numeric. If “From - To” dates are used, a service must have been provided on each consecutive day but not more than once per day.

(11) 24B — Where service is provided:

- (a) 3 — Provider’s office;
- (b) 4 — Client’s home;
- (c) 7 — Intermediate care facility;
- (d) 8 — Skilled nursing facility;
- (e) D — Specialized treatment center.

(12) 24C — Enter Type of Service “S” in this field.

(13) 24D — Enter the appropriate code listed in the Physical and Occupational Therapy provider guide.

(14) 24E — Enter a single diagnosis reference number as shown in Field 21.

(15) 24F — Enter your usual and customary charge for each line item.

(16) 24G — This number must match the number of days in the Date of Service field or the number of units of services provided.

(17) 24K (required when applicable) — Enter the OMAP performing provider number here if a billing provider number is used in Field 33.

(18) 26 — If your patient account number is entered here, OMAP will print the account number on the Remittance Advice.

(19) 28 — Enter the total amount for all charges listed on this CMS-1500.

(20) 29 (required when applicable) — Enter the total amount paid by any other insurance or resource. Do not include OMAP copayments in this field. Do not show any payment from OMAP on this line. If the client has other insurance and this amount is zero, there must be a two-digit “reason” code in Field 9.

(21) 30 — Enter the amount due after subtracting the Amount Paid from the Total Charge. Do not include insurance write-off amounts.

(22) 33 — Enter the OMAP provider number of the provider to whom the check should be sent (actual service provider or the provider’s billing service).

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 12-1992, f. & cert. ef. 4-1-92; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; HR 2-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 85-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-131-0270

### Client Copayments

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: OMAP 85-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 86-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 4-1-02  
**Rules Adopted:** 410-132-0050  
**Rules Amended:** 410-132-0140

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-132-0050 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-132-0140 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-132-0050

### Client Copayments

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: OMAP 86-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-132-0140

### Instructions on How to Complete the HCFA-1500 — Effective for Services Provided on or after November 1, 1996

(1) The HCFA-1500 is a complete billing document. If there is not enough space on the HCFA-1500 to bill all procedures provided, complete a new billing form for the rest of the procedures. Do not “carry over” totals from one HCFA-1500 to another:

(a) Insured’s I.D. Number. The eight digit number found on the OMAP Medical Care Identification;

(b) Patient’s name. The name as it appears on the OMAP Medical Care Identification;

(c) Name of Referring Physician or Other Source. Enter the name of the referring provider;

(d) ID Number of Referring Physician: Enter the OMAP provider number or UPIN of the referring provider;

(e) Date of Service. Must be numeric. If “From-To” dates are used, a service must have been provided on each consecutive day but not more than once per day;

(f) Place of Service. Where service is provided:

- (A) 4 — patient’s home;
- (B) B — school district facility.

(g) Type of Service (TOS). Enter type of service “S” in this field;

(h) Procedures, Services or Supplies. Enter the appropriate code listed in the OMAP Private Duty Nursing Services guide;

(i) Charges. Enter the provider’s usual and customary charge for each line item;

(j) Days or Units. This number must match the number of days in the Date of Services field or the number of units of services provided;

(k) Total Charge. Enter the total amount for all charges listed on this HCFA-1500;

(l) Balance Due. Enter the amount due after subtracting the Amount Paid from the Total Charge. Do not include insurance write-off amounts;

(m) Provider Number. Enter the OMAP provider number of the provider to whom the check should be sent (actual service provider or the provider’s billing service);

(n) Diagnosis or Nature of Illness or Injury. Enter the primary diagnosis/condition of the patient indicated by current ICD-9-CM code number. Enter up to four diagnosis codes in priority order. Carry the codes out to their highest degree of specificity. Do not enter the decimal point or unnecessary characters;

(o) Diagnosis Code. Enter a single diagnosis reference number as shown in Field 21.

(2) The following fields are required, when applicable:

(a) Other Insured’s Name. If the client has other health insurance coverage as listed on the Medical Care Identification, and no payment was received from that resource, this space must be used to explain why no payment was made. Select a 2 digit “reason” code for the Third Party Resource (TPR) codes shown in the Private Duty Nursing Services guide. Be sure that this “reason” code is the first entry in Field 9, followed by the name of the Third Party Resource;

(b) Is Patient’s Condition Related to. Complete only when an injury is involved;

(c) Reserved for Local Use (Emergency Services). Put a “Y” in this field if service was an emergency;

(d) Reserved for Local Use (Performing Provider). Enter the OMAP performing provider number here if a billing provider number is used in Field 33;

(e) Amount Paid. Enter the total amount paid by any other insurance or resource. Do not include OMAP copayments in this field. Do not show any payment from OMAP on this line. (If the patient has other insurance and this amount is zero, there must be a 2-digit “reason” code in Field 9.);

(f) Prior Authorization Number. If billing for a prior authorized service, enter the 9-digit Prior Authorization number here.

(3) Third Party Resource (TPR) Codes:

(a) Select one code from either the single or the multiple insurance coverage lists. Enter this code in Field 9 on the HCFA-1500 or OMAP 505;

(b) Single Insurance Coverage. Select the most appropriate code when the patient has only one insurance policy in addition to Medicaid:

- (A) UD — Service Under Deductible;
- (B) NC — Service Not Covered by Insurance Policy;
- (C) PN — Patient Not Covered by Insurance Policy;
- (D) IC — Insurance Coverage Canceled/Terminated;

# ADMINISTRATIVE RULES

(E) IL — Insurance Lapsed or Not in Effect on Date of Service;  
(F) IP — Insurance Payment Went to Policyholder;  
(G) PP — Insurance Payment Went to Patient;  
(H) NA — Service Not Authorized or Prior Authorized by Insurance;  
(I) NE — Service Not Considered Emergency by Insurance;  
(J) NP — Service Not Provided by Primary Care Provider/Facility;  
(K) MB — Maximum Benefits Used for Diagnosis/Condition;  
(L) RI — Requested Information Not Received by Insurance from Patient;  
(M) RP — Requested Information Not Received by Insurance from Policyholder;  
(N) MV — Motor Vehicle Accident Fund Maximum Benefits Exhausted;  
(O) AP — Insurance mandated under administrative/court order through an absent parent — not paid within 30 days;  
(P) OT — Other (if above codes do not apply, include detailed information of why no TPR payment was made).  
(c) Multiple Insurance Coverage. Select most appropriate code when the patient has more than one insurance policy in addition to Medicaid:  
(A) MP — Primary Insurance Paid — Secondary paid;  
(B) SU — Primary Insurance Paid — Secondary under Deductible;  
(C) MU — Primary and Secondary Under Deductible;  
(D) PU — Primary Insurance Under Deductible — Secondary Paid;  
(E) SS — Primary Insurance Paid — Secondary Service Not Covered;  
(F) SC — Primary Insurance Paid — Secondary Patient Not Covered;  
(G) ST — Primary Insurance Paid — Secondary Insurance Canceled/Terminated;  
(H) SL — Primary Paid — Secondary Lapsed or Not in Effect;  
(I) SP — Primary Paid — Secondary Payment Went to Patient;  
(J) SH — Primary Paid — Secondary Payment Went to Policyholder;  
(K) SA — Primary Paid — Secondary Denied — Service Not Authorized or Prior Authorized;  
(L) SE — Primary Paid — Secondary Denied — Service Not Considered Emergency;  
(M) SF — Primary Paid — Secondary Denied — Service Not Provided by Primary Care Provider/Facility;  
(N) SM — Primary Paid — Secondary Denied — Maximum Benefits Used for Diagnosis/Condition;  
(O) SI — Primary Paid — Secondary Denied — Requested Information Not Received from Policyholder;  
(P) SR — Primary Paid — Secondary Denied — Requested Information Not Received from Patient;  
(Q) MC — Service Not Covered by Primary or Secondary Insurance;  
(R) MO — Other (if above codes do not apply, include detailed information of why not TPR payment was made);  
(S) AP — Insurance mandated under administrative/court order through an absent parent — not paid within 30 days.  
Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: HR 9-1991, f. 1-28-91, cert. ef. 3-1-91; HR 12-1992, f. & cert. ef. 4-1-92; HR 6-1997, f. & cert. ef. 2-19-97; OMAP 86-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 87-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 4-1-02  
**Rules Adopted:** 410-140-0110  
**Rules Amended:** 410-140-0060

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-140-0110 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-140-0060 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.  
**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-140-0060

### Health Insurance Claim Form (HCFA-1500)

(1) Opticians always bill on the HCFA-1500. Optometrists and ophthalmologists bill use the HCFA-1500.

(2) Optometrists and ophthalmologists use the OMAP 505 form for those clients who have Medicare/Medical Assistance Program coverage. Opticians cannot bill Medicare.

(3) The information listed in this rule is necessary for processing claims and must be on the form. This information is entered in the computer system without review. This means that any other information written on your claim will not be read. The computer will automatically deny payment for any claim which does not contain required information.

(4) Each HCFA-1500 is a complete billing document. If there is not enough space on the HCFA-1500 to bill all procedures provided, complete a new billing form for the rest of the procedures. Do not “carry over” totals from one HCFA-1500 to another.

(5) The following fields are always required to be completed:

(a) Insured’s I.D. Number: The eight-digit number found on the OMAP Medical Care Identification;

(b) Patient’s Name: The name as it appears on the OMAP Medical Care Identification;

(c) Diagnosis or Nature of Illness or Injury: Enter the primary diagnosis/condition of the client indicated by current ICD-9-CM code number as supplied by the prescribing practitioner. Enter up to 4 codes in priority order. Carry the codes out to their highest degree of specificity. Do not enter the decimal point or unnecessary characters;

(d) Date of Service: Must be numeric. If “From-To” dates are used, a service must have been provided on each consecutive day, but not more than once per day;

(e) Place of Service: Where service is provided:

(A) 1 — Inpatient hospital;

(B) 2 — Outpatient hospital/OP Dept.;

(C) 3 — Practitioner’s office;

(D) 4 — Patient’s home;

(E) 7 — Intermediate care facility.

(f) Type of Service Codes (TOS). Enter the appropriate type of service:

(A) S — Optician;

(B) K — Complete Radiological Services;

(C) P — Professional Radiological Services;

(D) T — Technical Radiological Services;

(E) F — Optometrist;

(F) 1 — Ophthalmologist.

(g) Procedures, Services or Supplies: Use only CPT, HCPCS, or OMAP unique codes;

(h) Diagnosis Code: Enter a single diagnosis reference number as shown in Field 21;

(i) Charges: Enter your usual and customary charge for each line item;

(j) Days or Units: This number must match the number of days in Field 24A or the number of units of services provided;

(k) Total Charge: Enter the total amount for all charges listed on this HCFA-1500;

(l) Balance Due: Enter the amount due after subtracting the Amount Paid from the Total Charge. Do not include insurance write-off amounts;

(m) Provider Number: Enter the OMAP provider number of the provider to whom the check should be sent (actual service provider or the provider’s billing service).

(6) The following fields are required, when applicable:

(a) Other Insured’s name: If the client has other health insurance coverage, and no payment was received from that resource, this space must be used to explain why no payment was made. Select a two-digit “reason” code from the Third Party Resource (TPR) codes of the Visual Services guide. Be sure that this “reason” code is the first entry in Field 9, followed by the name of the TPR;

(b) Is Patient’s Condition Related to: Complete only when an injury is involved;

(c) Name of Referring Physician or Other Source: Enter the OMAP provider number or UPIN of the referring practitioner;

(d) ID Number of Referring Physician: Enter the name of the referring provider practitioner;

(e) Prior Authorization Number: If billing for a prior authorized service, enter the 9-digit PA number here. Do not bill prior authorized and non-prior authorized services on the same form;

(f) Reserved for Local Use (Field 10d): Put a “Y” in this box if service was an emergency;

(g) Reserved for Local Use — (24K): Enter the OMAP performing provider number here if a billing provider number is used in Field 33;

(h) Amount Paid: Enter the total amount paid by any other insurance or resource. Do not include OMAP copayments in this field. Do not show

# ADMINISTRATIVE RULES

any payment from OMAP on this line. If the client has other insurance and this amount is zero, there must be a 2-digit "reason" code in Field 9. Table 140-0060.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 12-1992, f. & cert. ef. 4-1-92; Renumbered from 461-018-0180; HR 15-1992, f. & cert. ef. 6-1-92; HR 37-1992, f. & cert. ef. 12-18-92; HR 15-1994, f. & cert. ef. 3-1-94; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 87-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-140-0110

### Client Copayments

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 87-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 88-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 12-1-02

**Rules Amended:** 410-141-0480, 410-141-0500, 410-141-0520

**Rules Repealed:** 410-141-0520(T)

**Subject:** The Oregon Health Plan Medicaid Demonstration Project rules govern Office of Medical Assistance Programs payment for health services provided to clients. Rules 410-141-0480, 410-141-0500 and 410-141-0520 reference the Prioritized List of Health Services (Prioritized List) as established by the Oregon Health Services Commission. Rule 410-141-0520 is amended to reference the most current Prioritized List, effective October 1, 2002. Rules listed above are revised to indicate a change to the number of lines covered for payment by OMAP. Due to OMAP Management action to balance the budget shortfall, OMAP is proposing to fund and cover for payment only the first 558 lines of the Prioritized List of Health Services, effective January 1, 2003. This decision is contingent upon approval from Centers for Medicare and Medicaid Services (CMS). Other minor housekeeping changes are corrected as needed.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0480

### Oregon Health Plan Benefit Package of Covered Services

(1) Oregon Health Plan (OHP) Clients are eligible to receive, subject to Section (12) of this rule, those treatments for the condition/treatment pairs appearing on the currently funded lines 1 through 558 of the Oregon Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520 when such treatments are Medically or Dentally Appropriate, except that services must also meet the prudent layperson standard defined in OAR 410-141-0140.

(2) Diagnostic services that are necessary and reasonable to diagnose the presenting condition of the Oregon Health Plan Client are covered services, regardless of the placement of the condition on the Prioritized List of Health Services.

(3) Comfort care is a covered service for an Oregon Health Plan Client with a Terminal Illness.

(4) Preventive Services promoting health and/or reducing the risk of disease or illness are covered services for Oregon Health Plan Clients. Such services include, but are not limited to, periodic medical and dental exams based on age, sex and other risk factors; screening tests; immunizations; and counseling regarding behavioral risk factors. (See Prioritized List of Health Services, adopted in OAR 410-141-0520).

(5) Ancillary Services are covered, subject to the service limitations of the Medical Assistance Program rules and provider guides, when the services are Medically or Dentally Appropriate for the treatment of a covered condition-treatment pair, or the provision of ancillary services will enable the Oregon Health Plan Client to retain or attain the capability for independence or self-care. A list of Ancillary Services is included in the Prioritized List of Health Services, adopted in OAR 410-141-0520.

(6) The provision of Chemical Dependency Services must be in compliance with the Office of Mental Health and Addiction Services (OMHAS) Administrative Rules, OAR 415-020-0000 to 0090 and 415-051-0000 to 0130 and the Chemical Dependency Prepaid Health Plan Standards in the Fully Capitated Health Plan Contract.

(7) In addition to the coverage available under section (1) of this rule, an Oregon Health Plan Client may be eligible to receive, subject to section (12) services for treatments which are below the funded line or not otherwise excluded from coverage:

(a) Services can be provided if it can be shown that:

(A) The patient has a funded condition for which documented clinical evidence shows that the funded treatments are not working or are contraindicated; and

(B) Concurrently has a medically related unfunded condition that is causing or exacerbating the funded condition; and

(C) Treating the unfunded medically related condition will significantly improve the outcome of treating the funded condition;

(D) Ancillary services that are excluded and other services that are excluded are not subject to consideration under this rule;

(E) Any unfunded or funded comorbid conditions or disabilities must be represented by an ICD-9-CM diagnosis code or when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity; and

(F) In order for the treatment to be covered, there must be a medical determination and finding by OMAP for fee-for-service clients or a finding by the managed care plan for enrolled clients that the terms of section (a)(A)-(C) of this rule have been met based upon the applicable:

- (i) Treating physician opinion;
- (ii) Medical research;
- (iii) Community standards; and
- (iv) Current peer review.

(b) Before denying treatment for an unfunded condition for any individual, especially an individual with a disability or with a co-morbid condition, providers must determine whether the individual has a funded condition and paired treatment that would entitle the individual to treatment under the program and both the funded and unfunded conditions must be represented by an ICD-9-CM diagnosis code; or, when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity.

(8) OMAP shall maintain a telephone information line for the purpose of providing assistance to practitioners in determining coverage under the Oregon Health Plan Benefit Package of Covered Services. The telephone information line shall be staffed by registered nurses who shall be available during regular business hours. If an emergency need arises outside of regular business hours, OMAP shall make a retrospective determination under this subsection, provided OMAP is notified of the emergency situation during the next business day. If OMAP denies a requested service, OMAP shall provide written notification and a notice of the right to an Administrative Hearing to both the OHP Client and the treating physician within five working days of making the decision.

(9) PHPs shall provide written notification of PHP determinations related to sections (1)-(7)(a) and (b) of this rule when such determinations result in a denial of requested services or denial of payment for services which have been obtained: If, as the result of a complaint or request for administrative hearing, OMAP determines a service is covered and the Oregon Health Plan Client is enrolled in a PHP that is required to provide the service as a Capitated Service, OMAP shall, within five working days of making a decision, provide written notification to the PHP.

(10) Oregon Health Plan Clients or practitioners, on behalf of Oregon Health Plan Clients, may request an Administrative Hearing to appeal OMAP decisions made related to section (7) of this rule:

(a) Requests for Administrative Hearings may be made orally to the OMAP Medical Director or his or her designee when an Oregon Health Plan Client's condition warrants an expedited decision, OMAP shall respond in a timely manner determined by the nature of the circumstance and in no event greater than ten (10) working days after receiving notice of the oral request for expedited decision;

(b) Requests for Administrative Hearing, appealing OMAP decisions, other than those subject to section (10)(a), must be written. Written appeals may be made through the client Administrative Hearings process or the provider appeals process and shall be responded to within the timelines of those processes in accordance with OAR 410-120-1560 through 410-120-1840.

(11) If a condition/treatment pair is not on the Health Services Commission's list of prioritized services and OMAP determines the condition/treatment pair has not been identified by the Commission for inclusion on the list, OMAP shall make a coverage decision in consultation with the Health Services Commission.

(12) Coverage of services available through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500,

# ADMINISTRATIVE RULES

## Excluded Services and Limitations for Oregon Health Plan Clients.

(13) General anesthesia for dental procedures which are Medically and/or Dentally Appropriate to be performed in a hospital or ambulatory surgical setting, is to be used only for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure as outlined below:

(a) Children under three years old with dental needs determined by the dentist or oral surgeon as requiring general anesthesia;

(b) Children over three years old requiring substantial dental care determined by the dentist or oral surgeon as requiring general anesthesia that may protect the child from unnecessary trauma;

(c) Clients with physical, mental or medically compromising conditions;

(d) Clients with dental needs for who local anesthesia is ineffective because of acute infection, anatomic variations, or allergy;

(e) Acute situational anxiety, fearfulness, extremely uncooperative or uncommunicative client with dental needs, determined by the dentist or oral surgeon, sufficiently important that dental care cannot be deferred;

(f) Clients who have sustained extensive orofacial and dental trauma;

or  
(g) Clients with dental needs who otherwise would not obtain necessary dental care when, in the decision of the dentist or oral surgeon, the need for dental treatment outweighs the risks of general anesthesia. The client's dental record must clearly document the justification for the level of anesthesia and why, in the estimation of the dentist or oral surgeon, the treatment in an office setting is not possible.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 1-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 15-1997, f. & cert. ef. 7-1-97; HR 26-1997, f. & cert. ef. 10-1-97; OMAP 17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-141-0500

### Excluded Services and Limitations for Oregon Health Plan Clients

(1) The following services are excluded:

(a) Any service or item identified in OAR 410-120-1200, Excluded Services and Limitations. Services that are excluded under the Oregon Medical Assistance program shall be excluded under the Oregon Health Plan unless the services are specifically identified in the Oregon Health Services Commission's Prioritized List of Health Services, adopted under OAR 410-141-0520;

(b) Any service or item identified in the appropriate provider guides as a non-covered service, unless the service is identified as specifically covered under the Oregon Health Plan Administrative Rules;

(c) Any treatment, service, or item for a condition that is not listed on the currently funded lines 1 through 558 of the Prioritized List of Health Services except as specified in OAR 410-141-0480, OHP Benefit Package of Covered Services, subsection (7);

(d) Any treatment, service, or item for a condition which is listed as a Condition/Treatment Pair in both currently funded and non-funded lines where the qualifying description of the diagnosis appears only on the non-funded lines of the Prioritized list of Health Services, except as specified in OAR 410-141-0480, OHP Benefit Package of Covered Services, subsection (7);

(e) Diagnostic services not reasonably necessary to establish a diagnosis for a covered or noncovered condition/Treatment Pair;

(f) Services requested by Oregon Health Plan (OHP) Clients in an emergency care setting which after a screening examination are determined not to meet the definition of Emergency Services and the provisions of 410-141-0140;

(g) Services provided to an Oregon Health Plan Client outside the territorial limits of the United States, except in those instances in which the country operates a Medical Assistance (Title XIX) program;

(h) Services or items, other than inpatient care, provided to an Oregon Health Plan Client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, per OAR 410-141-0080(2)(b)(G);

(i) Services received while the OMAP Member is outside the Contractor's service area that were either:

(A) Not authorized by the OMAP Member's Primary Care Provider;

or

(B) Not urgent or emergency services, subject to the Member's appeal rights, that the OMAP Member was outside Contractor's service area

because of circumstances beyond the OMAP Member's control. Factors to be considered include but are not limited to death of a family member outside of Contractor's service area.

(2) The following services are limited or restricted:

(a) Any service which exceeds those Medically Appropriate to provide reasonable diagnosis and treatment or to enable the Oregon Health Plan Client to attain or retain the capability for independence or self-care. Included would be those services which, upon medical review, provide only minimal benefit in treatment or information to aid in a diagnosis;

(b) Diagnostic Services not reasonably required to diagnose a presenting problem, whether or not the resulting diagnosis and indicated treatment are on the currently funded lines under the Oregon Health Plan Prioritized List of Health Services;

(c) Services that are limited under the Oregon Medical Assistance program as identified in OAR 410-120-1200, Excluded Services and Limitations. Services that are limited under the Oregon Medical Assistance program shall be limited under the Oregon Health Plan unless the services are specifically identified in the Oregon Health Services Commission's Prioritized List of Health Services, adopted in OAR 410-141-0520, or elsewhere in this chapter of the Oregon Administrative Rules.

(3) In the case of non-covered condition/treatment pairs, providers shall ensure that Oregon Health Plan Clients are informed of:

(a) Clinically appropriate treatment that may exist, whether covered or not;

(b) Community resources that may be willing to provide non-covered services;

(c) Future health indicators that would warrant a repeat diagnostic visit.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 1-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 18-1997, f. 7-11-97, cert. ef. 7-12-97; OMAP 17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-141-0520

### Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Ancillary Services and Preventive Services, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The most current list, dated October 1, 2002, is available on the HSC website (<http://www.ohppr.state.or.us/>). OMAP receives new information or modifications regarding the Prioritized List from HSC in the form of Attachments. The most recent, Attachment A, approved by the HSC July 17, 2002, is available on the HSC website.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency services are covered for all OHP clients when provided by an FCHP or by a provider who has a letter of approval from the Office of Alcohol and Drug Abuse Programs (ODAP) and approval to bill Medicaid for CD services. These codes are identified on the Chemical Dependency (CD) section of line 188.

(4) The first 558 lines of the Prioritized List of Services are currently funded and are covered for payment by OMAP.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-03; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 89-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 4-1-02

# ADMINISTRATIVE RULES

**Rules Adopted:** 410-146-0075

**Rules Amended:** 410-146-0320

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-146-0075 is adopted to indicate that certain non AI/AN OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-146-0320 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-146-0075

### Copayment for Standard Benefit Package

(1) American Indian/Alaska Natives (AI/AN) are not required to pay copayments for services provided through Indian Health Services (IHS), a Federally recognized Indian Tribe or Tribal Organization. This includes any health care services provided to the AI/AN member and is defined as provided directly, by referral, or under contracts or other arrangements between IHS, a Federally recognized Indian Tribe, Tribal Organization or an Urban Tribal Health Clinic and another health care provider.

(2) AI/AN are not required to pay copayments for services provided at an Urban Tribal Health Clinic.

(3) AI/AN Tribal Health Facilities may not charge copayments to Medical Assistance Program Clients.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 89-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-146-0320

### Instructions on Completing the CMS-1500

(1) Each CMS-1500 is a complete billing document. If there is not enough space on one CMS-1500 to include all procedures provided, continue on a new billing form, totaling each separately. Do not "carry over" totals from one CMS-1500 to another.

(2) Check your claim for missing or incorrect information before it's mailed. Your payment depends upon how well your claim is completed.

(3) How to complete the CMS-1500:

(a) 1a — The eight-digit number found on the Office of Medical Assistance Programs (OMAP) Medical Care ID;

(b) 2 — The name as it appears on the OMAP Medical Care ID;

(c) 9 (required when applicable) — This information is listed on the OMAP Medical Care ID. Use Third Party Resource codes that are found in the "Billing" section of the American Indian/Alaska Native (AI/AN) billing guide to indicate response received from other resources;

(d) 10a-c (required when applicable) — Complete as appropriate when an injury is involved;

(e) 10d (required when applicable) — Put a "Y" in this field if the service was an emergency;

(f) 17 — This information is required if your client has a Primary Care Case Manager (PCCM);

(g) 17a — This information is required if your client has a PCCM;

(h) 21 — Enter the principal diagnosis/condition of the client indicated by current ICD-9-CM code number. Enter up to four codes in priority order. Carry the codes out to their highest degree of specificity (fourth or fifth digit). For multiple encounters on same date of service, refer to the AI/AN billing guide for instructions;

(i) 24A — Enter the date (or first and last dates if consecutive days) that the service was provided;

(j) 24B — Enter the appropriate code for the place service was provided:

(A) A — Independent Lab;

(B) B — Other Medical/Surgical Facility;

(C) C — Residential Treatment Center;

(D) D — Specialized Treatment Center;

(E) 1 — Inpatient Hospital;

(F) 2 — Outpatient Hospital/Outpatient Department;

(G) 3 — Practitioner's Office;

(H) 4 — Client's Home, or school site etc.;

(I) 5 — Day Care Facility;

(J) 6 — Night Care Facility;

(K) 7 — Intermediate Care Facility;

(L) 8 — Skilled Nursing Facility.

(k) 24C — Enter type of service "1" unless otherwise specified in rules;

(l) 24D — Enter the most appropriate code as described in the AI/AN billing guide;

(m) 24E — Enter the one-digit line number which refers to the primary diagnosis from Field 21 for each service billed;

(n) 24F — Enter the charge for the service listed on that line;

(o) 24G — Enter the number of days or units. This number must match the number of days in Field 24A;

(p) 24H — Enter a "Y" if the service is related to family planning;

(q) 26 (optional) — Enter your unique patient account number here. It will be printed on your remittance advice;

(r) 28 — Enter the total of all of the charges listed in column F;

(s) 29 — Enter the total amount paid by any other insurance or resource. Do not include OMAP copayments in this field. Do not show any payment from OMAP on this line;

(t) 30 — Enter the amount due after subtracting the Amount Paid from the Total Charge. Do not include insurance write-off amounts;

(u) 33 — Enter your OMAP provider number here.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 89-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 90-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 410-147-0085

**Rules Amended:** 410-147-0600

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-147-0085 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-147-0600 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-147-0085

### Client Copayments

(1) Copayments may be required for certain services. See OAR 410-120-opac for specific details.

(2) American Indian/Alaska Natives (AI/AN) are not required to pay copayments for services provided through Indian Health Services (IHS), a Federally recognized Indian Tribe, Tribal Organization or services provided at an Urban Tribal Health Clinic. This includes any health care services provided to the AI/AN member and is defined as provided directly, by referral, or under contracts or other arrangements between IHS, a Federally recognized Indian Tribe, Tribal Organization or an Urban Tribal Health Clinic and another health care provider.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 90-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-147-0600

### Instructions on Completing the CMS-1500

(1) Check your claim for missing or incorrect information before it's mailed. Your payment depends upon how well your claim is completed.

(2) How to Complete the CMS-1500:

(a) 1a — The eight-digit recipient ID number found on the Office of Medical Assistance Programs (OMAP) Medical Care ID;

(b) 2 — The client's name as it is printed on the OMAP Medical Care ID;

(c) 9 (required when applicable) — If the client has other health insurance coverage as listed on the OMAP Medical Care ID, and no payment was received from that resource, this space must be used to explain why no payment was made. Select a two-digit "reason" code from the Third Party Resource (TPR) codes in the Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) guide. Be sure that this "reason" code is the first entry in Field 9, followed by the name of the TPR. For "reason" code NC, Not Covered, enter: NC-Blue Cross;

(d) 10d (required when applicable) — Complete only when an injury is involved;

(e) 10d — Enter a "Y" in this field if the service was an emergency. Labor and delivery services for Citizen/Alien-Waived Emergency Medical (CAWEM) women are considered an emergency;

# ADMINISTRATIVE RULES

(f) 17-17a — This information is required if your client has a Primary Care Case Manager (PCCM);

(g) 21 — Enter the principal diagnosis/condition of the client indicated by current ICD-9-CM code number. Enter up to four diagnosis codes in priority order. Carry the codes out to their highest degree of specificity (fourth or fifth digit). For multiple encounters on same date of service, refer to the FQHC and RHC guide for instructions;

(h) 24A — Must be numeric. If “From-To” dates are used, a service must have been provided on each consecutive day but not more than once per day;

(i) 24B — Enter the appropriate code for the place service was provided:

- (A) 1 — Inpatient Hospital;
- (B) 2 — Outpatient Hospital/Outpatient Department;
- (C) 3 — Practitioner’s Office;
- (D) 4 — Client’s Home, or school site, etc.;
- (E) 5 — Day Care Facility;
- (F) 6 — Night Care Facility;
- (G) 7 — Intermediate Care Facility;
- (H) 8 — Skilled Nursing Facility;
- (I) A — Independent Lab;
- (J) B — Other Medical/Surgical Facility;
- (K) C — Residential Treatment Center;
- (L) D — Specialized Treatment Center.

(j) 24C — Enter type of service “1” unless otherwise specified in rules;

(k) 24D — Enter the most appropriate code as described in the FQHC and RHC guide;

(l) 24E — Enter the one-digit line number which refers to the primary diagnosis from Field 21 for each service billed;

(m) 24F — Enter the charge for the service listed on that line;

(n) 24G — Enter the number of days or units. This number must match the number of days in Field 24A;

(o) 24H — Enter a “Y” if the service is related to family planning;

(p) 26 (optional) — Enter your unique patient account number here.

It will be printed on your Remittance Advice (RA). This area can also be used to identify the clinic site. This field can accommodate up to 12 characters;

(q) 28 — Enter the total of all of the charges listed in Field 24F;

(r) 29 — Enter the total amount paid by any other insurance or resource. Do not include OMAP copayments in this field. Do not show any payment from OMAP on this line. If the client has other insurance and this amount is zero, there must be a two-digit “reason” code in Field 9;

(s) 30 — Enter the amount due after subtracting the Amount Paid from the Total Charge. Do not include insurance write-off amounts;

(t) 33 — Enter your OMAP provider number here.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 42-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0700; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0300; OMAP 90-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 91-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 4-1-03  
**Rules Adopted:** 410-148-0095  
**Rules Amended:** 410-148-0180

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-148-0095 is adopted to indicate that certain OMAP clients will be charged copayments for certain ambulatory services as directed by HB 5527 (2001 Legislative session). Rule 410-148-0180 is amended to take care of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-148-0095

### Client Copayments

Copayments may be required for non-American Indian/Alaska Native clients for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 91-2002, f. 12-24-02, cert. ef. 1-1-03

## 410-148-0180

### Health Insurance Claim Form (HCFA-1500)

(1) Each HCFA-500 is a complete billing document. If there is not enough space on the HCFA-1500 to bill all services provided, complete a new billing form for any remaining procedures. Do not “carry over” totals from one HCFA-1500 to another.

(2) How to complete the HCFA - 1500:

(a) 1a — The eight-digit number found on the Office of Medical Assistance Programs (OMAP) Medical Care Identification;

(b) 2 — The name as it appears on the OMAP Medical Care Identification;

(c) 9 (required when applicable) — Third Party Resource (TPR) information is listed on the Office of Medical Assistance Programs (OMAP) Medical Care Identification. When appropriate, use the TPR codes found in the “Billing” section of the Home Enteral/Parenteral Nutrition and IV Services provider guide to indicate response received from other resources;

(d) 10a-c (required when applicable) — Complete as appropriate when an injury is involved;

(e) 10d (required when applicable) — Put a “Y” in this field if the service was an emergency;

(f) 17 (required when applicable) — Enter the name of the referring provider, Fully Capitated Health Plans (FCHP) (if the client is in a prepaid health plan), or the primary care case manager;

(g) 17a (required when applicable) — Enter the OMAP provider number of the referring provider, Fully Capitated Health Plan (FCHP) (if the client is in a prepaid health plan), or the primary care case manager;

(h) 21 — Enter primary diagnosis code first and subsequent diagnosis codes as needed. Use only ICD-9-CM diagnosis codes. Use diagnosis codes to the highest degree of specificity;

(i) 23 (required when applicable) — If required, enter the prior authorization number here;

(j) 24A — Must be numeric. If “From-To” dates are used, a service must have been provided on each consecutive day and the claim must not be submitted prior to the “to” date;

(k) 24B — Where service is provided:

- (A) 4 — Client’s home;
- (B) 5 — Day Care Facility;
- (C) 6 — Night Care Facility;
- (D) 7 — Intermediate Care Facility;
- (E) 8 — Skilled Nursing Facility.

(l) 24C — Type of service provided: S — Home Enteral/Parenteral and IV Services;

(m) 24D — Use only the HCPCS or OMAP unique codes listed in the Home Enteral/Parenteral Nutrition and IV Services provider guide;

(n) 24E: Enter the single-digit line reference number from Field 21 (i.e., 1, 2, 3, or 4)

(o) 24F — Enter a charge for each line item;

(p) 24G — Enter the number of services or units billed;

(q) 24K (required when applicable) — Enter the OMAP performing provider number here, unless it is used in Field 33;

(r) 26 (optional) — If a patient account number is entered in this field, OMAP will print the account number on the Remittance Advice;

(s) 28 — Enter the total amount for all charges listed on this HCFA-1500; Do not include OMAP copayments in this field.

(t) 29 (required when applicable) — Enter the total amount paid from other resources;

(u) 30 — Enter the balance (Field 28 minus Field 29);

(v) 33 — Enter the OMAP billing or provider number here. Only one provider number may be entered in this field;

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 26-1990, f. 8-31-90, cert. ef. 9-1-90; HR 9-1992, f. & cert. ef. 4-1-92; HR 26-1993, f. & cert. ef. 10-1-93; HR 3-1995, f. & cert. ef. 2-1-95; OMAP 7-1998, f. 2-27-98, cert. ef. 3-1-98; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0760; OMAP 91-2002, f. 12-24-02, cert. ef. 1-1-03

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**Adm. Order No.:** OMAP 92-2002  
**Filed with Sec. of State:** 12-24-2002  
**Certified to be Effective:** 1-1-03  
**Notice Publication Date:** 5-1-02  
**Rules Amended:** 410-148-0200

**Subject:** Administrative rules govern Office of Medical Assistance Programs (OMAP) payments to providers serving clients of the Medical Assistance programs. Rule 410-148-0200 is amended to take care



# ADMINISTRATIVE RULES

of a necessary housekeeping change related to billing for ambulatory copayments.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-148-0200

### Instructions on How to Complete the OMAP 505

(1) 1 — The name as it appears on the Office of Medical Assistance Programs (OMAP) Medical Care Identification.

(2) 6 — The eight-digit number from the OMAP Medical Care Identification.

(3) 8 — The Medicare number as it appears on the client's Medicare Identification.

(4) 9 — If no payment was received from Medicare, you must use this space to indicate why. Select a two-digit Third Party Resource (TPR) code from the TPR codes that are found in the "Billing" section of the Home Enteral/Parenteral Nutrition and IV Services provider guide. Be sure that this TPR code is the first entry in Field 9, followed by the name of the TPR (Medicare).

(5) 10 (required when applicable) — Complete if service is related to an injury/accident.

(6) 16A (required when applicable) — Check here if the service was performed as an emergency.

(7) 19 (required when applicable) — If this service is the result of a referral, enter the OMAP provider number of the referring (requesting) practitioner. If this service is the result of a Prepaid Health Plan (PHP) referral, the OMAP provider number of the PHP (not the practitioner) must be entered here.

(8) 23 — Enter primary diagnosis code first and subsequent diagnosis codes as needed. Use only ICD-9-CM diagnosis codes. Use diagnosis codes to the highest degree of specificity.

(9) 23B (required when applicable) — If OMAP prior authorization is required, enter the nine-digit code here.

(10) 24A — Must be numeric. If a "From-To" date range is used, the claim must not be submitted to OMAP prior to the "to" date.

(11) 24B — Where service was provided: 4 = Client's home, 7 = Intermediate Care Facility, 8 = Skilled Nursing Facility.

(12) 24C — Use only HCPCS or OMAP unique codes listed in the Home Enteral/Parenteral Nutrition and IV Services provider guide.

(13) 24D — Enter the single-digit line reference number from Field 23 (i.e., 1, 2, 3, or 4).

(14) 24E — Enter the number of services or units billed.

(15) 24F — Type of service provided: S — Home Enteral/Parenteral Nutrition and IV Services.

(16) 24G — Enter the total dollar amount billed to Medicare for each service.

(17) 24H — Enter the dollar amount allowed by Medicare for each service.

(18) 24I — Enter your Medicaid provider number here unless it is used (or different than the provider number) in Field 34.

(19) 27 — Add the charges in Field 24G and enter the total dollar amount billed Medicare.

(20) 28 — Enter the total dollar amount paid by Medicare;

(21) 30 (required when applicable) — Enter any amount paid by another resource, other than Medicare, such as other health insurance, or "Spend-Down" (client responsibility). Do not include OMAP copayments in this field. If the amount is zero, enter a "0".

(22) 31 — Subtract the amounts in Fields 28 and 30 from Field 27 and enter the balance in this field. An amount must be put in this field.

(23) 32 (optional) — If you enter your patient's account number here, OMAP will print the account number on your Remittance Advice.

(24) 34 — Only the OMAP provider number is required.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065

Hist.: HR 26-1990, f. 8-31-90, cert. ef. 9-1-90; HR 26-1993, f. & cert. ef. 10-1-93; HR 3-1995, f. & cert. ef. 2-1-95; OMAP 7-1998, f. 2-27-98, cert. ef. 3-1-98; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0780; OMAP 92-2002, f. 12-24-02, cert. ef. 1-1-03

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## Department of Human Services, Public Health Chapter 333

**Adm. Order No.:** OHD 22-2002

**Filed with Sec. of State:** 12-24-2002

**Certified to be Effective:** 12-24-02

**Notice Publication Date:** 7-1-02

**Rules Amended:** 333-054-0000, 333-054-0010, 333-054-0020, 333-054-0030, 333-054-0040, 333-054-0050, 333-054-0060, 333-054-0070

**Rules Repealed:** 333-054-0090

**Subject:** Due to USDA recommendations, rule changes include deleting some Type 2 state violations that are covered under Type 3 federally mandated violations. Rule changes outline acceptable parameters on the use of state and federally protected acronyms and logos and retention of WIC shopper information. Under these new rules, Oregon WIC vendors must be authorized with the Food Stamp Program, conduct all WIC transactions at the store location, and carry a minimum stock requirement at all times.

**Rules Coordinator:** Jana Fussell—(503) 731-4320, ext. 224

## 333-054-0000

### Description of WIC Program

(1) The WIC Program is a federally funded program established in 1972 by an amendment to the Child Nutrition Act of 1966. The purpose of the WIC Program is to serve as an adjunct to health care by providing: nutrition education and counseling; nutritious supplemental foods; and health screening and referral services to pregnant and breast-feeding women, infants, and children in certain high risk categories.

(2) Federal regulations governing the WIC Program, 7 CFR § Part 246, require adoption and implementation of standards and procedures to guide the state's administration of the WIC Program. These regulations also define the rights and responsibilities of vendors.

(3) The WIC Program in the State of Oregon is administered by the Department of Human Services (DHS).

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 291.003, ORS 431.110, ORS 431.250 & ORS 409.600  
Stats. Implemented: ORS 409.600  
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02

## 333-054-0010

### Definitions

(1) "Adequate Participant Access" means a determination based on the availability of other vendors within a five-mile radius, geographic barriers to using other vendors, local agency recommendations based upon identified participants' needs, and the availability of public transportation and roads.

(2) "Applicant" means any person, or person with an interest in the business, making a written request for authorization to participate in the WIC Program, including vendors that reapply for authorization.

(3) "Authorization" means the process by which DHS assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be vendors.

(4) "Authorized food" means any supplemental foods listed on the WIC Authorized Food List or the food instrument.

(5) "Authorized shopper" means the participant or any person designated by a participant who has been documented as such at the local agency to act on the participant's behalf and, in the case of an infant or child, the caretaker or the caretaker's designee.

(6) "CFR" means Code of Federal Regulations.

(7) "CMP" means civil money penalty.

(8) "Compliance buy" means a single covert, on-site visit in which a DHS representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments.

(9) "DHS" means Oregon Department of Human Services.

(10) "Disqualification" means the act of ending the WIC Program participation of a vendor, whether as a punitive sanction or for administrative reasons.

(11) "FNS" means the Food and Nutrition Service of the U. S. Department of Agriculture.

(12) "FSP" means the Food Stamp Program, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(13) "Food instrument" means a WIC Program voucher, check, electronic benefits transfer (EBT) card, coupon or other WIC approved document, which is used to obtain authorized foods.

(14) "Inventory audit" means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor's claim for reimbursement for such foods from DHS during a specific period of time.

# ADMINISTRATIVE RULES

(15) "Investigation" means a period of review, not to exceed 24 months, of a vendor's compliance with program rules and procedures.

(16) "Local agency" means

(a) A public or private non-profit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;

(b) an Indian Health Service unit;

(c) an Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.

(17) "Participant" means any pregnant woman, breastfeeding woman, post-partum woman, infant or child who receives authorized foods or food instruments under the WIC Program, and the breastfed infant of any participating breastfeeding woman.

(18) "Pattern" means three or more of the same rule violation that occurs within a single investigation.

(19) "Peer group" means a group of vendors categorized by DHS based on store type and store size.

(20) "Person" means a human being, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(21) "Person with an interest in the business" means an officer, director, partner, or manager of the business or a shareholder with 25% interest or more in the business.

(22) "Price adjustment" means an adjustment made by DHS, in accordance with the vendor agreement, to the purchase price on a food instrument, which matches the vendor's actual shelf price, for the total of the individual items, but exceeds the maximum amount allowable by DHS for the vendor's peer group for that food instrument.

(23) "Routine monitoring" means an overt, on-site visit in which DHS authorized representatives or federal officials identify themselves to vendor personnel.

(24) "Trafficking" means buying or selling food instruments for cash.

(25) "U.S.C." means United States Code.

(26) "Vendor" means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by DHS to participate in the WIC Program.

(27) "Vendor agreement" means a standard written legal contract between the vendor and DHS that sets forth responsibilities of the parties.

(28) "Vendor overcharge" means intentionally or unintentionally charging DHS more for authorized foods than the actual shelf price or the price they charge other shoppers.

(29) "Vendor Price List" means a list of current authorized foods and minimum stock requirements, with current shelf prices completed by the vendor.

(30) "Violation" means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050.

(31) "WIC Authorized Food List" means the list of supplemental foods approved by the State of Oregon.

(32) "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

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

Stat. Auth.: ORS 291.003, ORS 409.600, ORS 431.110, & ORS 431.250

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; HD 31-1994, f. & cert. ef. 12-22-94; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02

## 333-054-0020

### Vendor Participation

(1) Only authorized vendors may accept food instruments in exchange for authorized foods.

(2) Application:

(a) An applicant shall submit a completed application to DHS, which includes: an application form; a Vendor Price List; a sample of the applicant's current bank endorsement stamp or other method of endorsement approved by DHS, listing the specific store name and store number; a current Food Stamp Authorization number and any other documents or information required by DHS.

(b) DHS may limit the periods during which applications for vendor authorization will be accepted and processed. DHS will process applications, outside of the limited application period, when it determines the

applicant's store is necessary to ensure adequate participant access in a specific geographic location.

(3) Selection Criteria: In order for DHS to consider authorizing an applicant, the applicant shall:

(a) Demonstrate and maintain competitive pricing as determined by DHS based on the average redemption prices of individual authorized foods within the peer group appropriate to the applicant's characteristics, plus a DHS-determined percentage;

(b) Possess a current bank account number;

(c) Ensure the store has adequate refrigeration facilities;

(d) Not have, within the previous six years, a criminal conviction or civil judgment involving fraud or any other offense related to the applicant's business integrity or honesty;

(e) Possess a current FSP authorization number. Pharmacies shall be exempt from this selection requirement due to the nature of the services they provide for the WIC Program;

(f) Not have a history of serious violations with either the WIC Program or Food Stamp Program;

(g) Not be currently disqualified from participation in another state's WIC Program. DHS shall not authorize an applicant that has been assessed a CMP in lieu of disqualification by another state WIC Program until the period of the disqualification that would otherwise have been imposed has expired;

(h) Not be currently disqualified from participation in the Food Stamp Program. DHS shall not authorize an applicant that has been assessed a FSP civil money penalty in lieu of disqualification until the period of the disqualification that would otherwise have been imposed has expired; and

(i) Have a fixed location for each store.

(j) Stock representative items from all food categories specified on the Vendor Price List. Minimum quantities specified on the Vendor Price List shall be stocked or on order before authorization of an applicant:

(A) DHS may grant a written exception if the applicant is able to provide documentation that appropriate stock was on order at the time of the initial on-site review and will be in the store within 7 days;

(B) DHS may grant a written exception to this requirement for cases where there is no participant need in the applicant's area for a specific authorized food item, such as infant formula. DHS shall determine participant need based on the local agency's input regarding a vendor request for exception, vendor redemption data relative to the vendor's request, and the number of infants using formula in the vendor's store's zip code. If a local agency notifies the vendor of a specific need for that authorized food item, the vendor will ensure that the authorized food item is available within 7 days of the request;

(C) Pharmacies are exempt from this requirement, however, they shall obtain infant formula, including formula which requires a prescription, within 72 hours of a DHS or participant request.

(k) An applicant's store which is necessary to ensure adequate participant access may be exempt from OAR 333-054-0020(3)(a) and (j).

(4) Authorization Requirements:

(a) DHS or the local agency shall conduct a documented on-site visit prior to, or at the time of, authorization of an applicant, including evaluating the inventory and condition of authorized foods and providing the applicant with the WIC Program information prior to or at the time of authorization;

(b) DHS shall conduct a live interactive training prior to or at the time of authorization. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training; and

(c) Once authorized, the vendor shall remain in compliance with the current selection criteria set forth in OAR 333-054-0020(3) for the duration of the vendor agreement. DHS shall disqualify the vendor at any time the vendor does not meet the current selection criteria.

(5) Application Denials:

(a) DHS shall give the applicant written notification of denial, in conformance with ORS Chapter 183, as otherwise provided in these rules, DHS may deny an applicant authorization for reasons including, but not limited to, the following:

(A) The applicant's failure to meet the selection criteria;

(B) The applicant's failure to meet all of the WIC rules initially or for the duration of the vendor agreement;

(C) The applicant's store or business has been sold by its previous owner in an attempt to circumvent a WIC Program sanction. In making this determination, DHS may consider such factors as whether the applicant's store or business was sold to a relative by blood or marriage of the previous owner(s) or sold to any person for less than its fair market value;

# ADMINISTRATIVE RULES

- (D) The applicant's history of redemption of food instruments;
- (E) The applicant's refusal to accept training from the WIC Program;

or

- (F) The applicant's misrepresentation of information on the application;

Stat. Auth.: ORS 291.003, ORS 431.110, ORS 431.250 & ORS 409.600  
Stats. Implemented: ORS 409.600  
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02

## 333-054-0030

### Vendor Agreements

(1) Each applicant who has been approved for authorization shall sign a vendor agreement. The term of a vendor agreement shall not exceed three years. The vendor agreement shall be signed by a representative of DHS and a representative of the vendor who has the legal authority to sign the vendor agreement and obligate the applicant to the terms of the vendor agreement.

(2) A vendor shall apply for authorization prior to the expiration of each vendor agreement and shall meet the selection criteria in effect at the time of each application. DHS or local agency shall provide a vendor with not less than 15 days advance written notice of the expiration of its vendor agreement.

(3) In the event of any change in store facilities which adversely impacts participants' ability to transact food instruments, (including, but not limited to: store remodel, building damage, and equipment failure) DHS shall disqualify the vendor.

(4) DHS shall immediately terminate the vendor agreement if it determines that the vendor has provided false information in connection with its application for authorization.

(5) Either DHS or the vendor may terminate the vendor agreement for cause after providing at least 15 days advance written notice to the other party.

(6) DHS shall terminate a vendor agreement when DHS determines that there is an inappropriate relationship, real or apparent, which jeopardizes the fair and objective administration of the program between a vendor and DHS or any of its local agencies.

(7) When a vendor has more than one store location, the vendor agreement shall include a list of each store's name and location. Individual store locations may be added or deleted, by amendment to the vendor agreement or disqualification of an individual store location, without affecting the remaining store locations. Each store location included in the vendor agreement shall meet all applicable laws and rules.

(8) Neither DHS nor the vendor is obligated to renew the vendor agreement.

(9) The vendor agreement does not constitute a license or property interest.

(10) DHS may terminate the vendor agreement if a vendor has not been selected for regular use by at least five (5) authorized shoppers during the six-month period prior to the agency's review.

(11) Vendor Responsibility. A vendor shall:

(a) Comply with all applicable federal and state laws, rules and regulations, in addition to the terms of the vendor agreement;

(b) Be accountable for any intentional or unintentional action of its owners, officers, managers or employees, with or without the knowledge of management, who violate the vendor agreement or federal or state statutes, regulations, policies or procedures governing the Program. The vendor is also accountable for the actions of anyone who works as a checker, whether they are paid or not;

(c) Designate one person, at each authorized vendor location, to serve as the designated trainer. The designated trainer shall train all checkers and other staff involved with WIC transactions regarding the handling of food instruments. The vendor or its designated trainer shall promptly inform employees of changes in the WIC Program, including changes to the WIC Authorized Food List;

(d) Ensure that the designated trainer and store manager or other management employee participate in training prior to, or at the time of, the vendor's first authorization and annually thereafter. During the period in which a vendor agreement is in effect, DHS shall conduct at least one live interactive training for that vendor. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training;

(e) At all reasonable times, provide DHS' authorized representative or federal government official access to the vendor's facilities, books, records and documents at all reasonable times. The vendor shall provide the above entities and individuals access to food instruments negotiated on the day of

review, shelf price records, financial records and other documents that DHS or federal officials determine are pertinent to determining a vendor's compliance. The vendor shall also, upon request, furnish to DHS, within two days, verification of total vendor purchases of specific items in order to justify amounts claimed as WIC Program purchases;

(f) For a period of three years, maintain purchase and receiving records, including, but not limited to, inventory records showing all wholesale and retail purchases, state and federal tax returns, and other pertinent records that substantiate the volume and prices charged for redeemed food instruments. In the case of retail purchases, the vendor shall provide receipts specifying the authorized food item purchased, quantity, unit price and date of purchase;

(g) Notify DHS in writing of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change:

(A) In the event of a cessation of operations or any change in ownership, the legal authority obligating the vendor, or store location, the vendor agreement shall be terminated;

(B) In the event of a name change for any store the vendor shall, within 60 days of the change, ensure that the store's outside sign bears the same name as that listed on the vendor agreement; and

(C) If the vendor closes any store listed in the vendor agreement which contains more than one store location, the vendor shall notify DHS in writing of the closed store's name, address, and telephone number. This written notification shall be considered an amendment of the vendor agreement unless disapproved in writing by DHS within 15 days of DHS' receipt of the vendor's notification.

(h) Notify DHS in the event of any change in store facilities which adversely impacts participants' ability to transact food instruments, (including, but not limited to: store remodel, building damage, or equipment failure), by no later than 5 p.m. the next business day.

(i) Not sell expired authorized food or infant formula to authorized shoppers;

(j) Mark all authorized foods with the price charged for these products to the general public or prominently display the price of the foods near the location of the foods in clear view of customers and in a manner that clearly identifies the price with the specific food item;

(k) Upon DHS' request, complete and return a Vendor Price List by the deadline set by DHS;

(l) Maintain the premises in a sanitary condition;

(m) Not retain WIC identification or any information that identifies a shopper as a WIC participant or disclose information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;

(n) Not engage in any conduct that would discriminate against any authorized shopper or participant based on the individual's race, color, national origin, gender, age, and disability. Complaints of discrimination will be forwarded to the USDA for follow-up in accordance with 7 CFR § 246.8(b).

(o) Use the "WIC" acronym or logo only as follows:

(A) To identify the vendor as an authorized WIC vendor;

(B) To identify authorized food items by attaching shelf-talkers stating "WIC-approved" or "WIC-eligible" to store shelves.

(p) Not use the "WIC" acronym and/or logo in any way that might give the impression to WIC shoppers that the store location is:

(A) Owned by the Oregon WIC Program;

(B) Operated by the Oregon WIC Program;

(C) Officially endorsed by the Oregon WIC Program; or

(D) Preferred by the Oregon WIC Program.

(q) Comply with investigations by federal or state officials; and

(r) Implement corrective action as directed by DHS within 30 days from the issuance of a "Notice of Non-Compliance."

(12) Redemption of food instruments. A vendor shall:

(a) Require each authorized shopper to produce that individual's WIC identification card prior to the transaction. The vendor shall not require the authorized shopper to provide any other identification or information in addition to the WIC identification card in order to use the food instrument;

(b) Not allow any employee, owner, or person with an interest in the business, who is also an authorized shopper, to redeem a food instrument for which he or she is an authorized shopper;

(c) Complete all food instrument transactions at the authorized store location. The vendor shall not deliver food purchased with food instruments to WIC participants.

(d) Refuse to accept food instruments that appear to be altered;

# ADMINISTRATIVE RULES

(e) Accept only valid food instruments made payable to "Any Authorized Oregon WIC Vendor;"

(f) Accept only food instruments within the time period indicated in the "First Day To Use" and "Last Day To Use" boxes. The vendor shall refer the authorized shopper back to the local clinic if either of these dates is missing or if the "Last Day To Use" is handwritten;

(g) Ensure authorized shoppers receive the same treatment as provided to other customers such as honoring manufacturer's coupons, in-store specials or store promotions and not requiring separate lines for WIC authorized shoppers;

(h) Not accept any food instrument in exchange for alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. § 802;

(i) Not accept any food instrument in exchange for credit or non-food items other than those listed in (h);

(j) Not accept any food instrument in exchange for food items or quantities other than those specifically identified on the food instrument, including charging the WIC Program for supplemental food in excess of those listed on the food instrument;

(k) Ensure that only those brand names and food types listed on the WIC Authorized Food List are purchased;

(l) Not influence the authorized shopper's choice of authorized foods;

(m) Not charge authorized shoppers for authorized foods obtained with food instruments;

(n) Not charge DHS more than the vendor's current shelf price or the advertised sale price, whichever is lower, for authorized food purchases;

(o) Not include sales tax or container deposits as part of the purchase price of the authorized foods listed on the food instrument;

(p) Write the actual purchase price in the designated box on the food instrument before the authorized shopper signs the food instrument. The purchase price shall include only the authorized food items actually provided to the authorized shopper at the time of the transaction;

(q) Duly witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of any food instrument accepted for payment and compare that signature with the signature on the WIC Program identification card, ensuring that these signatures match;

(r) Provide the authorized shopper with a receipt for foods purchased with a food instrument; and

(s) After each transaction, return the WIC Program identification card to the authorized shopper.

(13) Post-redemption of food instruments. A vendor shall:

(a) Not provide a refund or exchange for an authorized food item obtained with a food instrument, except for an exchange of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(b) Not alter any food instrument, including by use of correction fluid;

(c) Prior to deposit of a food instrument, stamp each food instrument with the vendor's unique DHS-approved 4-digit number in the designated area on the front of the food instrument;

(d) Prior to deposit of the food instrument, endorse the back of each redeemed food instrument with the store's bank endorsement stamp or other method of endorsement approved by DHS;

(e) Deposit each redeemed food instrument into the vendor's bank within the time period designated on the front of the food instrument; and

(f) Not deposit a food instrument for reimbursement for foods or formula not received by an authorized shopper.

(14) Improperly redeemed food instruments:

(a) DHS may make price adjustments in order to comply with price limitations in accordance with the vendor agreement. The maximum amount DHS will reimburse a vendor for a food instrument is the average peer group price of the food instrument plus a DHS-determined percentage;

(b) DHS may deny reimbursement to the vendor for improperly redeemed food instruments or may demand refunds for reimbursements already made on improperly redeemed food instruments. In addition to denying payment or assessing a claim, DHS may sanction the vendor for overcharges or other errors in accordance with OAR 333-054-0060;

(c) The vendor shall reimburse DHS, within 30 days of DHS' written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments and for unsubstantiated volumes of authorized foods;

(d) When DHS denies reimbursement for a food instrument or requests payment for an improperly redeemed food instrument, the vendor shall have an opportunity to provide DHS with written justification for the

error. A vendor shall submit the written justification, along with the returned food instrument, within the timeframe on the front of the food instrument; and

(e) The vendor shall not seek restitution from an authorized shopper or participant for a food instrument not reimbursed or partially reimbursed by DHS, or for which DHS has requested payment from the vendor.

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

Stat. Auth.: ORS 291.003, ORS 431.110, ORS 431.250 & ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02

## 333-054-0040

### Vendor Monitoring

(1) DHS shall monitor vendors for compliance with applicable laws and rules, including on-site investigation of randomly selected vendors.

(2) DHS or its authorized representative may conduct compliance buys to collect evidence of improper vendor practices.

Stat. Auth.: ORS 291.003, ORS 431.110, ORS 431.250 & ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02

## 333-054-0050

### Violations

Violations shall be classified as either Type 1, 2, or 3 violations based on the severity of the violation. Each violation is listed by type below:

(1) Type 1 Violations:

(a) Accepting a food instrument that does not bear a "First Day To Use" and "Last Day To Use" date or is not made payable to "Any Authorized Oregon WIC Vendor";

(b) Accepting a food instrument before the "First Day To Use" or after the "Last Day To Use";

(c) One incident of failing to maintain an adequate stock of authorized foods or formula to fill food instruments consistent with vendor agreement requirements. DHS may grant an exception if the vendor is able to provide documentation that the appropriate stock was on order at the time of the violation and received by the vendor within 7 days of the violation;

(d) Failing to notify DHS of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change;

(e) Failing to notify DHS by no later than 5 p.m. the next business day following any change in store facilities which adversely impact participants' ability to transact food instruments;

(f) Failing to prominently display shelf prices for authorized foods;

(g) Failing to complete and return the Vendor Price List by the deadline set by DHS;

(h) Failing to correctly endorse food instruments;

(i) Failing to enter the actual purchase price in the designated box before the authorized shopper signs the food instrument;

(j) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument; and

(k) Failing to ensure that within 60 days of a name change the outside sign bears the same name as that listed on the vendor agreement.

(2) Type 2 violations:

(a) Influencing an authorized shopper's selection of authorized foods;

(b) Accepting any food instrument when a valid WIC Program identification card is not presented prior to the transaction;

(c) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(d) Failing to witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of the food instrument accepted for payment or failing to compare that signature with the signature on the WIC Program identification card;

(e) Treating authorized shoppers differently than other customers, such as a separate line for authorized shoppers or discourteous treatment;

(f) Selling expired authorized foods or infant formula to authorized shoppers;

(g) Failing to ensure that the designated trainer is able to demonstrate the correct procedure for processing a food instrument;

(h) Allowing a purchase of authorized infant formula in a quantity not prescribed on the food instrument;

(i) Failing to reimburse DHS, within 30 days of written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments;

(j) Retaining WIC identification or any information that identifies a shopper as a WIC participant or disclosing information regarding a client

# ADMINISTRATIVE RULES

of the WIC Program to any person other than DHS, its representatives or a federal official;

(k) Failing to maintain sanitary conditions;

(l) Including sales tax or container deposits as part of the actual cost of the authorized foods listed on the food instrument;

(m) Failing to:

(A) Respond to a request issued by DHS;

(B) Accept training when required by DHS;

(C) Implement corrective action imposed by DHS;

(D) Comply with terms in a final order issued by DHS; or

(E) Comply with an investigation by federal or state officials;

(n) Charging authorized shoppers for authorized foods obtained with food instruments; and

(o) Using the "WIC" acronym or logos in an unauthorized manner.

(3) Type 3 violations:

(a) One year disqualification:

(A) A pattern of providing unauthorized food items, in exchange for food instruments, including charging for authorized food provided in excess of those listed on the food instrument;

(B) A pattern of allowing the purchase of brand names or food types other than those listed on the WIC Authorized Food List;

(C) Failing to provide purchasing/receiving records to substantiate the volume and prices charged to DHS, within two business days of DHS' request for such documentation;

(D) Refusing DHS or a federal official access to food instruments negotiated on the day of review;

(E) A pattern of failing to stock appropriate quantities of authorized foods and infant formula;

(F) Seeking restitution from WIC Program participants or authorized shoppers for a food instrument not paid by DHS or for which reimbursement has been requested by DHS;

(G) Providing change when redeeming a food instrument;

(H) Violating the nondiscrimination clause listed in the vendor agreement or OAR 333-054-0030(11)(n);

(I) A pattern of allowing a refund or any other item of value in exchange for authorized foods or providing exchanges for authorized food items obtained with food instruments, except for exchanges of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper; and

(J) Providing false information or omitting pertinent information on the vendor application.

(b) Three year disqualification:

(A) One incident of the sale of alcohol, an alcoholic beverage, or a tobacco product in exchange for a food instrument;

(B) A pattern of claiming reimbursement for the sale of an amount of a specific authorized food item which exceeds the store's documented inventory of that authorized food item for a specific period of time;

(C) A pattern of vendor overcharges;

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels or locations. This includes, but is not limited to: use of an unauthorized vendor/and or unauthorized person, and/or redemption of food instruments outside of an authorized store location.

(E) A pattern of charging for authorized foods not received by the authorized shopper; and

(F) A pattern of providing credit or non-food items in exchange for food instruments, other than those items listed in OAR 333-054-0050(3)(b)(A), (3)(c)(A) and (3)(c)(B).

(c) Six year disqualification:

(A) One incident of buying or selling a food instrument for cash (trafficking);

(B) One incident of selling a firearm, ammunition, explosive, or controlled substance, as defined in 21 U.S.C. § 802, in exchange for a food instrument;

(d) Permanent Disqualification: Conviction of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for a food instrument..

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 291.003, ORS 431.110, ORS 431.250, ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02

## 333-054-0060

### Vendor Sanctions

(1) DHS does not have to provide the vendor with prior warning that violations were occurring before imposing any sanction.

(2) Type 1 violations:

(a) For the first Type 1 violation, DHS may issue the vendor a "Notice of Non-Compliance", regardless of how many Type 1 violations occur during a single compliance buy.

(b) For the second Type 1 violation committed within twelve months of the first Type 1 violation, regardless of how many Type 1 violations occur during a single compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan to DHS within 14 days of the date of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented within 30 days of the "Notice of Non-Compliance."

(c) For the third Type 1 violation committed within twelve months of the first Type 1 violation, regardless of how many Type 1 violations occur during a single compliance buy, DHS may disqualify the vendor from the WIC Program for six months.

(3) Type 2 violations:

(a) For the first Type 2 Violation, regardless of how many Type 2 violations occur during a single compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan within 14 days of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented within 30 days of the "Notice of Non-Compliance."

(b) For the second Type 2 violation committed within 24 months of the first Type 2 violation, regardless of how many Type 2 violations occur during a single compliance buy, DHS may disqualify the vendor from the WIC Program for one year.

(c) For a Type 2 violation followed by a Type 1 violation within 24 months of the first violation, DHS may disqualify a vendor from the WIC Program for six months.

(d) DHS may disqualify a vendor from the WIC Program for one year for a combination of three Type 1 and 2 violations, such as a Type 2 violation, followed by a Type 1, followed by a Type 2, within 24 months of the first violation.

(4) Type 3 violations:

(a) For the first Type 3 violation listed in OAR 333-054-0050(3)(a)(A), DHS shall disqualify the vendor for one year. For the first Type 3 violation listed in OAR 333-054-0050(3)(a)(B) to (J), DHS may disqualify the vendor for one year.

(b) For a Type 3 violation listed in OAR 333-054-0050(3)(b)(A) to (F), DHS shall disqualify the vendor for three years.

(c) For a Type 3 violation listed in OAR 333-054-0050(3)(c)(A) and (B), DHS shall disqualify the vendor for six years.

(d) For a Type 3 violation listed in OAR 333-054-0050(3)(d), DHS shall permanently disqualify the vendor. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

(e) For a second Type 3 violation referred to in OAR 333-054-0060(4)(a), (b) and (c) of this section, DHS shall double the second sanction. Civil money penalties may only be doubled up to the limits allowed under OAR 333-054-0060(5)(j)(C).

(f) For a third Type 3 violation referred to in OAR 333-054-0050(4)(a), (b) and (c) of this section, DHS shall double the third sanction and all subsequent sanctions that were previously imposed. DHS shall disqualify vendor and may not impose CMPs in lieu of disqualification for third or subsequent sanctions for violations referred to in OAR 333-054-0060(4)(a), (b) and (c).

(5) Disqualification:

(a) A vendor may not apply for authorization during a period of disqualification or termination from the WIC Program.

(b) DHS shall not accept a vendor's voluntary withdrawal from the WIC Program as an alternative to disqualification. In addition, DHS may not use non-renewal as an alternative to disqualification.

(c) DHS shall disqualify a vendor that does not pay, partially pays or fails to timely pay, a CMP assessed in lieu of disqualification, for the length of the disqualification corresponding to the violation for which the CMP was assessed. If this vendor was assessed more than one CMP in lieu of dis-

# ADMINISTRATIVE RULES

qualification as the result of a single investigation, DHS shall disqualify the vendor for the period corresponding to the most serious violation.

(d) The total period of disqualification imposed for DHS violations, resulting from a single investigation, listed in OAR 333-054-0050(1), 333-054-0050(2) and 333-054-0050(3)(a)(B) through (J) may not exceed one year.

(e) After a vendor is disqualified, in order to participate in the WIC Program, they must apply for authorization.

(f) Prior to disqualifying a vendor, DHS shall determine if disqualification of the vendor would result in inadequate participant access. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify the vendor and shall impose a CMP in lieu of disqualification. DHS shall include documentation of its participant access determination and any supporting documentation in each vendor's file. DHS shall not impose a CMP in lieu of disqualification for third or subsequent sanctions, even if the disqualification results in inadequate participant access. DHS shall not impose a CMP in lieu of disqualification for trafficking or an illegal sales conviction, even if the disqualification results in inadequate participant access.

(g) DHS shall disqualify a vendor who has been disqualified from the FSP. The disqualification shall be for the same length of time as the FSP disqualification, although it may begin at a later date than the FSP disqualification. Such disqualification by the WIC Program shall not be subject to administrative or judicial review under the WIC Program.

(A) DHS may disqualify a vendor who has been assessed a CMP in lieu of disqualification in the FSP, as provided in 7 CFR § 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. DHS shall determine if the disqualification of a vendor would result in inadequate participant access prior to disqualifying a vendor for FSP disqualification pursuant to paragraph (9) of this section or for any of the violations listed in this section. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify or impose a CMP in lieu of disqualification. DHS shall include participant access documentation in vendor files.

(B) DHS shall provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has disqualified for any of the violations listed in paragraphs OAR 333-054-0060(4)(a), (4)(b) and (4)(c) of this section. This information shall include the vendor's name, address, identification number, the type of violation(s), length of the disqualification, or the length of the disqualification corresponding to the violation for which a FSP CMP was assessed.

(h) Disqualification from the WIC Program may result in disqualification as a retailer in the FSP. Such disqualification may not be subject to administrative or judicial review under the FSP.

(i) DHS may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a mandatory sanction.

(A) The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency.

(B) If DHS determines that disqualification of a vendor would result in inadequate participant access, DHS shall not impose a CMP in lieu of disqualification.

(j) DHS shall use the following formula to calculate a CMP imposed in lieu of disqualification pursuant to these rules:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from paragraph (5)(j)(B) of this section by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed \$10,000 for each violation. For a violation that warrants permanent disqualification, the amount of the CMP shall be \$10,000. DHS shall impose a CMP for each violation when during the course of a single investigation DHS determines a vendor has committed multiple violations. The total amount of CMPs imposed for violations cited as part of a single investigation shall not exceed \$40,000.

(k) DHS shall disqualify a vendor for a period corresponding to the most serious sanction when during the course of a single investigation DHS

determines a vendor has committed multiple violations. DHS shall include all violations in the notice of administrative action. If a sanction for a specific violation is not upheld after a hearing or appeal, DHS may impose a sanction for any remaining violations.

(l) If the basis for disqualification of a vendor is for violation of OAR 333-054-0050(3)(d), the effective date of the disqualification is the date the vendor received notice, either actual or constructive, of the disqualification.

(6) DHS shall, where appropriate, refer vendors who abuse the WIC Program to appropriate federal, state or local authorities for prosecution under applicable statutes.

(7) A vendor who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws. A vendor who has embezzled, willfully misapplied, stolen or fraudulently obtained program funds, assets, or property shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.

(8) A vendor may be subject to actions in addition to the sanctions in this section, such as claims by DHS of reimbursement for improperly redeemed food instruments and penalties outlined in 7 CFR § 246.12(1)(2)(i).

(9) DHS shall use the following criteria to determine inadequate participant access:

(a) The availability of other authorized vendors within a five-mile radius;

(b) Geographic barriers to using other authorized vendors;

(c) Local agency recommendations based upon identified participants' needs; and

(d) Availability of public transportation and roads;

(10) Any time DHS uses criteria in (9), DHS shall include participant access documentation in vendor file.

(11) DHS shall not reimburse for food instruments submitted by a vendor for payment during a period of disqualification.

(12) A vendor is not entitled to receive any compensation for revenues lost as a result of a disqualification.

Stat. Auth.: ORS 291.003, ORS 431.110, ORS 431.250 & ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02

## 333-054-0070

### Administrative Review

(1) Except as otherwise provided in these rules, DHS shall provide a vendor with an administrative review in accordance with the provisions of ORS Chapter 183.

(2) The vendor shall not be entitled to an administrative review for the following actions:

(a) The validity or appropriateness of DHS' limiting or selection criteria;

(b) The validity or appropriateness of DHS' participant access criteria and DHS' participant access determinations;

(c) DHS' determination regarding whether a vendor had an effective policy and program in effect to prevent trafficking regardless of the vendor's awareness, approval, and/or involvement in the violation activity;

(d) Denial of authorization if DHS vendor authorization is subject to the procurement procedures applicable to DHS;

(e) The expiration of the vendor's agreement;

(f) Disputes regarding food instrument payments and vendor claims; and

(g) Disqualification of a vendor as a result of disqualification from FSP.

(3) If the vendor agreement expires during the appeal period, DHS will accept application for renewal and delay determination until the appeal process is over.

Stat. Auth.: ORS 291.003, ORS 431.110, ORS 431.250 & ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02

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

Adm. Order No.: AFS 20-2002

Filed with Sec. of State: 12-20-2002

Certified to be Effective: 1-1-03

# ADMINISTRATIVE RULES

**Notice Publication Date:** 9-1-02

**Rules Adopted:** 461-200-1070

**Subject:** OAR 461-200-1070 is a new rule which sets out the steps the Child Support Program will take and the types of support enforcement services provided when an order is received from an Oregon court and there is no case on the child support system, depending on the language in the orders received.

**Rules Coordinator:** Michelle Kuttner—(503) 986-6240

## 461-200-1070

### 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 Child Support Program 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 computer system if one does not already exist;

(B) Initiate appropriate enforcement action; and

(C) Send the parties the information required in OAR 461-200-1060(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 child support computer system 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 IV-D services has been received:

(A) Create an information only, non-IV-D case on the child support computer system 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 IV-D services at any time if the order includes a provision for child support.

(d) If the order seeks only payment through the child support program and no application or other written request for IV-D services has been received:

(A) Create a non-IV-D case on the child support computer system, if one does not already exist, to receive and distribute payments in accordance with OAR 461-200-6020; 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 IV-D 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 IV-D services, the Child Support Program shall process the application or request in accordance with OAR 461-200-1060.

Stat. Auth.: ORS 409.021 & 411.060

Stats. Implemented: ORS 25.020 & 25.080

Hist.: AFS 20-2002, f. 12-20-02 cert. ef. 1-1-03

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**Adm. Order No.:** AFS 21-2002(Temp)

**Filed with Sec. of State:** 12-30-2002

**Certified to be Effective:** 12-30-02 thru 6-27-03

**Notice Publication Date:**

**Rules Adopted:** 461-135-0701

**Subject:** Rule 461-135-0701 is being adopted to terminate the General Assistance Program effective February 1, 2003.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-135-0701

### Terminate GA and GAM Programs

(1) Effective February 1, 2003, the General Assistance (GA) and General Assistance Medical (GAM) programs are not funded.

Notwithstanding other rules of the Department, the programs are closed effective that date.

(2) Effective January 31, 2003, all persons eligible for or receiving benefits of the GA or GAM program become ineligible for the program. The Department will not authorize or provide any benefit under the programs after January 31, 2003.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 21-2002(Temp), f. & cert. ef. 12-30-02 thru 6-27-03

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**Adm. Order No.:** AFS 22-2002

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 12-1-02

**Rules Adopted:** 461-135-0401

**Rules Amended:** 461-006-0452, 461-025-0315, 461-110-0115, 461-120-0120, 461-125-0600, 461-135-0730, 461-135-0900, 461-145-0255, 461-155-0250, 461-155-0270, 461-155-0295, 461-155-0300, 461-155-0680, 461-160-0580, 461-160-0620, 461-160-0810, 461-165-0180, 461-195-0521

**Rules Repealed:** 461-135-0401(T), 461-135-0730(T), 461-155-0295(T)

**Subject:** Rule 461-006-0452 is being amended to: 1) increase the amount the Department of Human Services considers to be the reasonable cost of a plain and decent funeral for insolvent estates of public assistance recipients, 2) ensure that the Department of Human Services is notified by funeral homes and recipients of refunds of unused burial funds of a public assistance recipient, 3) clarify what pre-death arrangements can act as an offset against the \$3,000 standard, and 4) identify various funeral-related expenses that are not considered part of a plain and decent funeral.

Rule 461-025-0315 is being amended to specify that hearings on denials of shelter payments in the JOBS program or payments for basic living expenses in the Assessment program are expedited.

Rule 461-110-0115 is being amended to fix a typographical error.

Rule 461-120-0120 is being amended to add language that adult victims of severe forms of trafficking, who have been certified by the U.S. Department of Health and Human Services (HHS) are eligible for benefits and services to the same extent as refugees.

Rule 461-125-0600 is being amended to revise existing policy. On February 19, 2002 the Social Security Administration (SSA) issued new regulations revising the Mental Impairment Listings for Title XVI and Title II. Because the General Assistance (GA) program uses the same Listings of Impairments as SSA, DHS is adopting the revised changes.

Rule 461-135-0401 is being adopted to close the ERDC Student Child Care program (ERDC-SBG) and end the maintenance of the ERDC-SBG waiting list effective September 30, 2002. The temporary version of this rule is being repealed as this final version replaces it.

Rules 461-135-0730 and 461-155-0295 are being amended to remove the QMB-SMP subprogram. This is necessary because the Federal Government has allowed this level of QMB to sunset as of December 31, 2002. The temporary versions of these two rules are being repealed as these final versions replace them.

Rule 461-135-0900 is being amended to delete language that refugees must inform the Department of the name of the resettlement (voluntary) agency that assisted them with their resettlement in the United States.

Rule 461-145-0255 is being amended to clarify that Chaffee Housing program benefits are counted the same way for self-sufficiency programs as Independent Living program subsidies.

Rules 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0580 and 461-160-0620 are being amended to reflect the Congress-

# ADMINISTRATIVE RULES

sionally-approved cost-of-living increase for recipients of Social Security/SSI.

Rule 461-155-0680 is being amended to remove an out-of-date acronym.

Rule 461-160-0810 is being amended to clarify the application of unearned income for an EPD client residing in a community-based care setting.

Rule 461-165-0180 is being amended to clarify that child care providers cannot bill clients for losses incurred due to collection of a provider overpayment, garnishment or lien.

Rule 461-195-0521 is being amended to state that when a client has incurred an overpayment due to both an administrative error and a client error in the same month, the client error amount is calculated by determining the total overpayment for the month and subtracting from it the portion due to administrative error. This rule is also being amended to indicate that categorically eligible food stamp households are not ineligible due to incorrect income for all related programs except the expanded categorical group based on the 185% income limit and receipt of the Information and Referral pamphlet.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-006-0452

### Burial Expenses

(1) The Department of Human Services has determined that a plain and decent funeral and disposition of the remains of a decedent can be arranged for an average cost of \$3,000. This cost includes all professional services and merchandise. Preparation of the remains will be done in accord with applicable laws and regulations.

(2) For individuals dying on or after January 1, 2003, where the Department of Human Services is a claimant in their estate and where there would be insufficient assets remaining after any funeral costs to satisfy the Department's claim in full, not more than \$3,000 in estate assets, less any prearranged funeral trust, funds set aside for burial, life insurance policies specifically identified to pay for funeral expenses, or burial insurance, may be expended for funeral expenses and disposition of the remains of the decedent.

(3) In instances where a pre-paid funeral plan is sought to be changed for a Medicaid client after their death, and pre-paid funeral funds are refunded, it is the responsibility of the funeral home and the recipient(s) of the funds to inform, in writing, the Department of Human Services, Estate Administration Unit, PO Box 14021, Salem, OR 97309-5024, of any refund within 30 days of such action. Any monies refunded after the client has died are an estate asset and subject to the claims of creditors.

(4) The following items are not considered professional services or merchandise and will not be allowable in meeting the plain and decent funeral standard: Travel and/or lodging expenses to attend the funeral; cost of meals to attend the funeral; transportation of the remains beyond the immediate geographic area (beyond 25 miles); the cost of flowers; the cost to pay for an obituary; donations to charities in the decedent's name; the cost of memorial videos; and the cost of a reception after the funeral. The aforementioned list is not all-inclusive and other similar costs may be denied if the estate of the Medicaid recipient is inadequate to meet the public assistance claim amount.

Stat. Auth.: ORS 410.070, ORS 411.060, ORS 411.070 & ORS 414.106

Stats. Implemented: ORS 411.620, ORS 411.630, ORS 411.795, ORS 412.600, ORS 413.200 & ORS 414.105

Hist.: AFS 43-1983(Temp), f. & ef. 7-1-85; AFS 78-1985, f. & ef. 12-9-85; AFS 25-1994, f. & cert. ef. 11-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 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 disagrees with the denial of continued 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

## 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 expenses that would increase the individual's independence and employment potential. Also included in this category are retirement accounts (IRAs, 401(k)s, TSAs, KEOGHs, etc.) and Medical Savings Accounts (MSAs).

(2) *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).

(3) *Cost share* means the amount of unearned income in excess of the OSIP income and payment standard that is given to the state.

(4) *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.

(5) *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).

(6) *Employment* means an ongoing work activity for which income is received and a potential tax liability is incurred.

(7) *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.

(8) *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.

(9) *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

## 461-120-0120

### Alien Status; REF, REFM

Persons admitted lawfully under any of the following provisions of law meet the alien status requirements of the REF and REFM programs:

(1) Section 203(a)(7) of the Immigration and Nationality Act (INA) (8 U.S.C. 1153(a)(7)) — aliens admitted as conditional entrants.

(2) Section 207 of the INA (8 U.S.C. 1157) — aliens admitted as refugees.

(3) Section 208 of the INA (8 U.S.C. 1158) — aliens granted asylum.

(4) Section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) — paroled aliens who are:

(a) Refugees or asylees; or

(b) Haitians or Cubans who are either:

(A) Public interest parolees; or

(B) Humanitarian parolees.



# ADMINISTRATIVE RULES

(5) Section 584(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in Public Law 100-202 as amended.

(6) Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) — “victims of trafficking” certified under the law.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 11-2002(Temp), f. & cert. ef. 10-1-02 thru 12-31-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-125-0600

### GA Impairment; Presumptive GA Medical Condition

A client with a severe physical, mental, or special senses and speech impairment expected to last at least 12 continuous months from the date of request for assistance is presumed to meet GA impairment criteria with documentation of any of the following conditions:

(1) Renal disorder with chronic hemodialysis or peritoneal dialysis required or kidney transplant performed within 12 months.

(2) Permanent visual impairment with visual acuity correctable to no better than 20/200 in best eye.

(3) Current diagnosis of acute leukemia.

(4) An organic mental disorder, schizophrenic, paranoid or other psychotic disorder or an affective disorder with a medically documented history of a chronic organic mental disorder; chronic schizophrenic, paranoid, or other psychotic disorder; or chronic affective disorder of at least two years duration that has caused more than a minimal limitation of ability to do basic work activities, with signs and symptoms currently attenuated by medication or psychological support; and one of the following:

(a) Repeated episodes of decompensation, each of extended duration;

(b) A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

(c) Current history of one or more years of inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

(5) Mental retardation. Mental retardation refers to a significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the development period — that is, the evidence demonstrates onset of the impairment before the age of 22. The required level of severity for this disorder is met when the requirements of subsection (a), (b), or (c) are satisfied:

(a) Mental incapacity evidenced by dependence upon others for personal needs and the inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

(b) A score of 59 or less on a WAIS-III IQ test;

(c) A score of 70 or less on a WAIS-III IQ test and a physical or other mental impairment imposing additional and significant work-related limitation of function.

(6) Current diagnosis of breast cancer with distant metastases.

(7) Any current diagnosis of cancer with metastasis to brain or spinal cord.

(8) Current diagnosis of small cell (oat cell) carcinoma of lung.

(9) Current diagnosis of primary or metastatic cancer of the liver, gallbladder or bile ducts.

(10) Severe cardiac impairment assessed as Class III or higher by the New York Heart Association classification system within the last 30 days.

(11) Severe chronic heart failure (CHF); and

(a) Ejection fraction of 30% or less measured within the last 30 days;

or

(b) Cardiac enlargement (cardiomegaly) documented within the last 30 days.

(12) Aortic aneurysm, repaired or unrepaired, diagnosed within the last 90 days.

(13) Chronic cor pulmonale (not acute and reversible).

(14) Malnutrition resulting from any gastrointestinal disorder and persisting despite treatment.

(15) Chronic anemia with hematocrits 30% or less due to any diagnosis and persisting despite treatment.

(16) Chronic thrombocytopenia with platelet counts below 40,000/cubic millimeter due to any diagnosis and persisting despite treatment.

(17) Current diagnosis of multiple myeloma.

(18) Current diagnosis of aplastic anemia.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 1-1998, f. 1-28-98, cert. ef. 2-1-98; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-135-0401

### Terminate ERDC-SBG

(1) Effective October 1, 2002, the ERDC-Student Block Grant (ERDC-SBG) program is not funded. Notwithstanding other rules of the Department, the program is closed effective that date.

(2) Effective September 30, 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 September 30, 2002.

(3) The waiting list of prospective applicants referred to in OAR 461-115-0015(1) will not be maintained.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 12-2002(Temp) f. & cert. ef. 10-1-02 thru 3-30-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-135-0730

### Specific Requirements; QMB

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-BAS are not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are:

(A) Medicare Part A and Part B premiums; and

(B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB-DW:

(a) To qualify for QMB-DW program, a person must be eligible for Part A of Medicare as a qualified disabled worker under Section 1818(A) of the Social Security Act. These are people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.

(b) QMB-DW clients are eligible only for payment of their premiums for Part A of Medicare. They are not eligible for MAA, MAF or OSIPM at the same time they are eligible for QMB benefits.

(3) The following requirements apply to QMB-SMB:

(a) To qualify for QMB-SMB, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-SMB are not eligible to receive the full range of the Department's medical services. QMB-SMB benefits are limited to payment of Medicare Part B premiums.

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 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-135-0900

### Specific Requirements; REF, REFM

This rule applies to refugee clients who have lived in the United States for less than eight months. The term “refugee” refers to those clients whose alien status is described in OAR 461-120-0120. The month in which refugees enter the United States counts as the first month of residence, except for those granted asylum under section 208 of the Immigration and Nationality Act (INA) (8 U.S.C. 1158). The first month for REF and REFM benefits for asylees is the month in which they were granted asylum.

(1) For refugees residing in Clackamas, Multnomah and Washington counties:

(a) The Refugee Case Service Project (RCSP) is a prior resource. Refugees may apply to RCSP for cash benefits and employment services during their first eight months of residence in the United States. The Department will open a TANF grant for refugees with dependent minor children during the ninth month of residence in the United States if they still need assistance and are eligible for the program.

(b) The New Arrival Employment Service (NAES) project is under contract with the Department to provide employment and social adaptation services to eligible refugees for the first 12 months of residence in the United States.

# ADMINISTRATIVE RULES

(2) For refugees residing in counties other than Clackamas, Multnomah and Washington:

(a) Clients without dependent children who satisfy all other applicable financial and non-financial eligibility standards are eligible for REF and REFM during their first eight months of residence in the United States.

(b) TANF is a prior resource for refugees with dependent children.

(c) REF and REFM clients may not participate in the Assessment Program.

(3) For refugees residing in all Oregon counties, REFM clients to whom children are born may receive REFM for the entire benefit group through their eighth month of residence in the United States if they are ineligible for MAA, MAF or TANF.

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 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 33-1996(Temp), f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-145-0255

### Independent Living Program Subsidies

(1) Independent Living Program subsidies are payments and services provided to children 16 to 20 years of age by the Department. The Independent Living Program (including the Chaffee Housing program) is described at OAR 413-030-0400 to 0455. The subsidies help the children live independently when their foster care payments are discontinued upon reaching 16 years of age.

(2) For all programs except EA and FS, the subsidies are excluded from income.

(3) For the EA and FS programs, the subsidies are countable unearned income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-155-0250

### Income and Payment Standard; OSIP, OSIPM

(1) For OSIP and OSIPM (except OSIP-EPD, OSIPM-EPD and OSIPM-MN) clients in long-term care and in waived nonstandard living arrangements, the countable income limit standard is 300 percent of the SSI standard. The one-person SSI standard is used for an individual who has no income and is living alone in the community to compute the countable income limit. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD, OSIPM-EPD and OSIPM-MN) adjusted income standard takes into consideration the need for housing, utilities, food, clothing, personal incidentals and household supplies. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The payment standard is used as the adjusted income limit and to calculate cash benefits for non-SSI OSIP clients. The OSIP-AB adjusted income/payment standard includes a transportation allowance. The total standard is: [Table not included. See ED. NOTE.]

(4) The payment standard for SSI/OSIP clients living in the community is either the SIP amount or the ESB amount. The SIP (supplemental income payment) is a need amount added to any other special or service needs to determine the actual payment. The ESB (excess SSI benefit) is a resource amount used to offset special and service need payments:

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For SSI couples in an AFC, ALF or RCF, an amount is added to each person's SIP entry that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unusual medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted income limit is 250 percent of the 2002 federal poverty level for a family of one. This 250 percent limit equals \$1,846 per month or \$22,152 per year.

[ED. NOTE: Tables 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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-155-0270

### Payment Standard for NSLA; OSIP, OSIPM

For all OSIP and OSIPM cases in nonstandard living arrangements, the OSIP/OSIPM Payment Standard is allocated as follows: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-155-0295

### Income Standard; QMB-SMB

The adjusted income standard for QMB-SMB is 135 percent of the 2002 federal poverty level (see OAR 461-155-0290).

QMB-SMB Adjusted Income Standard

(Case Descriptor SMB)

101% - 120% of the Federal Poverty Level

No. in Need Group — Amount

1 — \$886

2 — 1,194

3 — 1,502

4 — 1,810

5 — 2,118

6 — 2,426

7 — 2,734

8 — 3,042

9 — 3,350

10 — 3,658

Each additional person — 308

QMB-SMB Adjusted Income Standard

(Case Descriptor SMF)

121% - 135% of the Federal Poverty Level

No. in Need Group — Amount

1 — \$997

2 — 1,343

3 — 1,690

4 — 2,036

5 — 2,383

6 — 2,729

7 — 3,076

8 — 3,422

9 — 3,769

10 — 4,115

Each additional person — 347

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; 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 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; 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 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-155-0300

### Shelter-in-Kind Standard

For OSIP, OSIPM, and QMB, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, \$345 for total shelter or \$207 for housing costs only.

(b) Living with others, \$161 for total shelter or \$97 for housing costs only.

(2) For a couple:

(a) Living alone, \$420 for total shelter or \$252 for housing costs only.

# ADMINISTRATIVE RULES

(b) Living with others, \$153 for total shelter or \$92 for housing costs only.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060 & ORS 411.070  
Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-155-0680

### Special Need; Supplemental Telephone Allowance

(1) The Department will provide a telephone allowance for SSI eligibles and clients receiving in-home services if they are unable to leave their residence without assistance due to a documented medical condition.

(2) The telephone allowance may cover the following costs:

(a) The least expensive appropriate telephone service or the basic rate, whichever is less.

(b) The cost of telephone adaptive equipment, if the client has a medically documented need (for instance, TDD or emergency response system).

(c) A one-time installation charge.

(3) All clients granted a telephone allowance must apply for a payment through the Oregon Telephone Assistance Program (OTAP). In addition, clients requesting payment for telephone installation must apply for Link-Up America. If the Link-Up America credit does not cover the installation cost, the Department will provide for the difference up to a maximum supplement payment of \$30.

Stat. Auth.: 411.060  
Stats. Implemented: 411.060  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-160-0580

### Excluded Resource; Community Spouse Provision On or After 10/1/89 (Except OSIP-EPD and OSIPM-EPD)

In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who began a continuous period of care on or after October 1, 1989.

(1) Determine if the couple's resources make the institutionalized spouse eligible or ineligible for OSIPM as follows:

(a) Step 1: Determine what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Use OSIP policy to determine which of the couple's resources were countable resources. The rules used to determine whether a community spouse's resources are countable are the same rules used with respect to an OSIP or OSIPM applicant or recipient.

(B) Combine both spouses' countable resources.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) Step 2: Calculate one half of what the couple's combined countable resources were at the beginning of the continuous period of care. Treat the community spouse's half of the couple's combined resources as a constant amount when determining eligibility.

(c) Step 3: Determine the community spouse's resource allowance. The community spouse's resource allowance is the largest of the three following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$90,660.

(B) \$18,132 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule, (OAR 461-160-0580(1)(c)(C) and (1)(f)(C)), the term *court-ordered community spouse resource allowance* means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance.

(d) Step 4: Determine what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. Use the procedure in Step 1.

(e) Step 5: Subtract the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) Step 6: Compare the remaining resources to the OSIP resource standard for one person. If the remaining resources are at or below the standard, the institutionalized spouse is eligible. If the remaining resources are above the standard, the institutionalized spouse is not eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$90,660) plus the OSIP resource standard for one person.

(B) \$18,132 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (See section (1)(c)(C) of this rule for definition of *court-ordered community spouse resource allowance*.)

(D) An amount which, if invested, would produce income equal to the difference between the amounts described in subparagraphs (i) and (ii) of this paragraph.

(i) The maintenance needs allowance computed in accordance with OAR 461-160-0620(5).

(ii) The difference between the following:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The greater of the personal needs allowance and the applicable OSIP standard for the institutionalized spouse. This paragraph (D) applies only if the amount described in subparagraph (i) is larger than the amount described in subparagraph (ii).

(2) Once eligibility has been established, resources equal to the community spouse's resource allowance (from section (1)(c) above) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

Stat. Auth.: ORS 411.060 & ORS 411.700  
Stats. Implemented: ORS 411.060 & ORS 411.700  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-160-0620

### Income Deductions; Long-Term Care or Waivered Services

Deductions from income in the OHP, 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

# ADMINISTRATIVE RULES

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) \$1,493 is added to

(B) The amount over \$448 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 sub-section (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 \$1,493. To determine the eligible dependent's income allowance:

(A) The eligible dependent's monthly income is deducted from \$1,493.

(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.

(8) In the OHP and OSIPM (except OSIPM-MN) programs, 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 OHP and OSIPM (except OSIPM-MN) programs, 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

## 461-160-0810

### Determining Cost Share and Room and Board Payments; OSIPM-EPD Clients Residing in a Community-Based Care Facility

This rule explains how to determine *cost share* and room and board payments for OSIPM-EPD clients in a residential community-based care facility.

(1) All unearned income, except for Personal Incidental Funds, special needs and other applicable income deductions, must be given to the provider for room and board. The remaining unearned income is applied to the cost of services.

(2) If the client's unearned income is insufficient to pay the cost of room and board, the client must use both earned and unearned income to pay the provider the Room and Board Standard.

(3) A client who has only earned income must pay the provider the Room and Board Standard from earned income.

(4) Clients must make the payments described in this rule each month as a condition 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; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-165-0180

### Eligibility of Child Care Providers

To be eligible for child care payment from the Department, a provider must meet all of the requirements in sections (1), (2), (3), and (4) of this rule.

(1) The provider must submit a completed Department listing form to the Department. If information available to the Department provides no basis for denial, the Department will approve the provider to receive payment for child care from the Department unless:

(a) The provider was previously found ineligible for payment and was not subsequently determined to be eligible; or

(b) The Department determines, following completion of Criminal History (CH) and Child Protective Service (CPS) records checks, that the provider, or other subject person, is not eligible for payment.

(2) The provider must:

(a) Allow the Department to inspect the site of care while child care is provided.

(b) Keep daily attendance records that show the arrival and departure times each day for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep the records for 12 months and provide them to Department staff on request.

(c) Be the person who actually provides the child care. The provider must notify the Department before using someone else to supervise children on a temporary basis.

(d) Not be in the same filing group as the child cared for and must not be the child's parent.

(e) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(f) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(3) Each provider must meet the requirements of either subsection (a) or (b) of this section:

(a) A provider subject to OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 must be currently certified or registered with the Child Care Division (CCD) of the Employment Department and be in compliance with the applicable rules. The Department may deny eligibility for payment to a registered or certified provider when a review of CH or CPS records, an investigation of a complaint, or information provided by another agency indicates a substantial risk to the health or safety of children in the provider's care.

(b) A provider exempt from the rules specified in subsection (a) of this section must:

(A) Submit names of the following persons together with their authorizations for a record check through the CH record system maintained by the Oregon State Police and the CPS record system maintained by the Department:

(i) The provider and each person the provider uses to supervise children in his or her absence.

(ii) In the case of a provider who provides care for children in the provider's home:

(I) Each person 16 years of age or older who lives in the provider's home; and

(II) Each person who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child there.

(iii) The site director of a child care facility exempt from the requirement to be certified by CCD, and each employee of the facility who may have unsupervised access to children in the facility.

(B) Comply with the requirements of OAR 461-165-0400.

(C) Meet the following requirements:

(i) Be 16 years of age or older and in such physical and mental health as will not adversely affect his or her ability to care for a child in care. When a provider under the age of 18 applies to be listed, a responsible adult must also sign the application and must jointly assume all the responsibilities of the minor provider, including the obligation to repay an overpayment. An adult whose child is cared for by the minor provider may not

# ADMINISTRATIVE RULES

serve as the responsible adult if the Department makes a payment for that care.

(ii) Report to the Department, with respect to any person covered by paragraph (3)(b)(A) of this rule, any arrest and any involvement with CPS or any other agency that provides child protective services.

(iii) Report to the Department any change to his or her name or address and the addition of any person to the household within 10 days of occurrence.

(iv) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(v) Supervise each child in care at all times.

(vi) Prevent persons who have demonstrated behavior that may have a detrimental effect on a child from having access to the children in his or her care.

(vii) Allow custodial parents of children in his or her care to have immediate access to their children at all times.

(viii) Inform parents of the need to obtain immunizations for their children.

(ix) Take reasonable steps to protect children in his or her care from the spread of infectious diseases.

(x) Provide information, in a manner specified by the Department, required to conduct CH and CPS records checks or determine whether the provider meets health and safety requirements.

(D) Ensure that the facility where care is provided meets the following standards, unless the care is provided in the home of the child. A provider who provides care where the child lives must meet only the requirements of subparagraph (iii) of this paragraph.

(i) The facility has safe drinking water.

(ii) The facility has a working smoke detector on each floor level and in any area where children nap.

(iii) All floor levels used by children have two usable exits to the outdoors (a sliding door or window that can be used to evacuate children is considered a usable exit), or, if a second floor is used for child care, the provider has a written plan for evacuating children in an emergency.

(iv) Fireplaces, space heaters, electrical outlets, wood stoves, stairways and other hazards have barriers to protect children.

(v) Firearms, ammunition, and other dangerous items such as medicine, drugs, cleaning supplies, paints, plastic bags, and poisonous and toxic materials are kept in a secure place out of children's reach.

(vi) The building, grounds, toys, equipment and furniture are maintained in a clean, sanitary and hazard-free condition.

(vii) The facility has a telephone in operating condition.

(4) A provider is not eligible to receive a child care payment if the Department has referred an overpayment against the provider to a collection agency and the claim is unsatisfied.

Stat. Auth.: ORS 181.537 & ORS 411.060

Stats. Implemented: ORS 181.537, ORS 411.060 & ORS 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

## 461-195-0521

### Special Rules for Calculation of Overpayments

This rule contains special rules for calculating an overpayment.

(1) If a client directly receives support that should be, but is not, used to reimburse the Department for assistance or to reduce benefits, there is an overpayment for the lesser of the following:

(a) The amount of support the client received directly that should have been used to reimburse the Department or reduce benefits; and

(b) The cash benefits received by the benefit group for the month, minus support from an obligor that was used as reimbursement to the state.

(2) If a client failed to comply with the requirements of OAR 461-120-0345 relating to medical insurance, an overpayment is calculated according to this section. The client is not included in the need group (see OAR 461-110-0630) during any period in which the client failed to meet a requirement of the OAR 461-120-0345 by withholding information or giving false information. Therefore, there is an overpayment equal to the difference between the benefits the group received and the reduced amount it would have received had the client been removed from the need group.

(3) If the benefit group was categorically eligible for food stamps, there is no Food Stamp overpayment based on resources, Social Security account number, or residency. A Food Stamp overpayment may exist based on incorrect income.

(a) For a group found eligible for food stamps under OAR 461-135-0505(1)(a), (b) or (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for food stamps and would be entitled to at least \$10 in food stamp benefits.

(b) For a group found eligible for food stamps only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185% Federal Poverty Level, the group is no longer categorically eligible and the overpayment is the food stamp benefit amount.

(4) When a client receives waived services in the OSIPM program and does not contribute toward their services, the overpayment is either his or her adjusted income or the actual cost of the waived services, whichever is less.

(5) Credit against an overpayment is allowed as follows:

(a) In the GA, REF and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless it would have been authorized if requested.

(b) Credit is allowed for an underpayment of benefits.

(c) In the OSIP, OSIPM and QMB programs, when the overpayment results from the client's failure to report receipt of a lump sum, a credit is allowed for that portion of the benefit the client was entitled to use to establish a cash reserve, even though no cash reserve was retained.

(d) In the FS program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(6) Benefits paid during the notice period (see OAR 461-175-0050) are included in the calculation of the overpayment if:

(a) The client failed to report changes within the reporting time frame; and

(b) Benefits could have been adjusted in time to prevent the overpayment if the client had reported changes at any time within the reporting time frame.

(7) An overpayment is determined and calculated by assigning unreported income to the applicable budget month without averaging the unreported income. There is a rebuttable presumption that a client's earnings reported in a quarterly earnings report from the Employment Department were received by the client in equal amounts during the months identified in the report.

(8) Earned income deductions are applied in calculating an overpayment except as follows:

(a) For MAA, MAF, REF and TANF, no earned income deduction (see OAR 461-160-0160 and -0190) is allowed for a client who, without *good cause*, did either of the following:

(A) Failed to report all earned income within the reporting time frame.

(B) Under reported earned income.

(b) For FS, no deduction is applied to earned income not timely reported.

(9) For the purposes of section (8) of this rule, *good cause* means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(10) In the TANF program, the amount of support retained by the Department as current reimbursement each month is added to other income to determine ineligibility. In the case of a client not eligible for TANF, the overpayment is offset by support retained by the Department as current reimbursement.

(11) When a client has incurred an overpayment due to both an *administrative error* and a *client error* in the same month, the *client error* overpayment is calculated by determining the total overpayment for the month and subtracting from it the portion due to *administrative error*.

(12) (a) In the medical programs, there is no overpayment if the client was ineligible for financial assistance but, during the period in question, would have been eligible for EXT or any other medical program.

(b) When an overpayment is caused by *administrative error*, there is no corresponding overpayment in the medical programs if the client had been eligible to receive medical benefits under EXT, GAM, MAA, MAF, OSIPM or SAC. In such cases, the overpaid cash benefits are not counted as income in calculating eligibility for EXT, GAM, MAA, MAF, OSIPM or SAC and are not used in determining the client's *spend down* (see OAR 461-160-0080).

Stat. Auth.: ORS 411.060, ORS 411.660, ORS 411.816 & ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.630, ORS 411.635, ORS 411.660, ORS 411.816 & ORS 418.100

# ADMINISTRATIVE RULES

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03

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**Adm. Order No.:** AFS 23-2002(Temp)

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 1-1-03 thru 6-30-03

**Notice Publication Date:**

**Rules Adopted:** 461-135-0301, 461-135-0721

**Rules Amended:** 461-025-0310, 461-025-0315, 461-155-0035, 461-155-0150, 461-175-0010

**Subject:** Rule 461-025-0310 is being amended by adding a new section (3), which states positively that there is no right to a contested case hearing to dispute a program requirement established by law and gives 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 in section (1)(c) to make it more clear that the rule authorizes an expedited hearing over continuation of benefits only to the extent required by ORS 411.095(2). OAR 461-025-0315 is amended in section (1)(d) to make it more clear that the decision notice informs the client of the extent to which there is a right to hearing.

Rule 461-135-0301 is being adopted to close the Emergency Assistance (EA) program effective January 1, 2003.

Rule 461-135-0721 is being adopted to terminate the OSIPM-MN program effective January 1, 2003.

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 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.

Rule 461-175-0010 is being amended to more clearly describe a decision notice and to amend section (1)(c) (which becomes section (2)(c)) 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.

**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

(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

## 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).

# ADMINISTRATIVE RULES

(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

## 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

## 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

## 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) Through January 31, 2003, 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 — \$26;
- (b) Two people — \$32;
- (c) Three people — \$43;
- (d) Four people — \$52;
- (e) Five people — \$52;
- (f) Six people — \$75;
- (g) Seven people — \$75;
- (h) Eight or more people — \$109.

(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 \$43 through January 31, 2003. Thereafter the amount used 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.

(4) Beginning February 1, 2003, 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 — \$28;
- (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.

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

## 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).

(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

## ADMINISTRATIVE RULES

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 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 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) Through January 31, 2003, this section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is 1.85 times the amount given in OAR 461-155-0290, rounded down to the next whole number. The ERDC copay is \$25 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:  $k = -30$ ;

(B) 3 persons:  $k = -55$ ;

(C) 4 persons:  $k = -50$ ;

(D) 5 persons:  $k = -51$ ;

(E) 6 persons:  $k = -80$ ;

(F) 7 persons:  $k = -92$ ;

(G) 8 or more persons:  $k = -103$ .

(d) The constant b is determined by the number of people in the need group, as follows:

(A) 2 persons:  $b = 17.0$ ;

(B) 3 persons:  $b = 22.0$ ;

(C) 4 persons:  $b = 20.0$ ;

(D) 5 persons:  $b = 19.8$ ;

(E) 6 persons:  $b = 32.0$ ;

(F) 7 persons:  $b = 32.0$ ;

(G) 8 or more persons:  $b = 39.0$ .

(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) Effective February 1, 2003, 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 461-155-0290, 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:  $b = 33.2$ ;



# ADMINISTRATIVE RULES

(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.

(12) 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 clients 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.

(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

## 461-175-0010

### What a Decision Notice Must Include

(1) A *decision notice* is a document describing the Division'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 identify 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

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**Adm. Order No.:** AFS 24-2002(Temp)

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 1-1-03 thru 6-30-03

**Notice Publication Date:**

**Rules Amended:** 461-170-0015, 461-170-0020, 461-170-0030

**Subject:** Rules 461-170-0015, 461-170-0020 and 461-170-0030 are being amended so that clients receiving ERDC, FS, MAA, MAF and TANF will not be required to report when their rate of pay changes due to the annual adjustment to the state minimum wage.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-170-0015

### Changes that Must Be Reported; ERDC

ERDC clients must report the following changes:

(1) Changes as required by the Periodic Review form and according to APR requirements.

(2) The following changes within 10 days of occurring. If these changes are reported for another program, they are considered reported for ERDC:

- (a) Changes in members of the filing group, and any resulting changes in income.
- (b) Changes of address.
- (c) Changes in source of income, including the loss of a job, and related changes in the amount of income.
- (d) Changes in the rate of pay, except that clients are not required to report a change due to the annual adjustment in the Oregon minimum wage.
- (e) Changes in child care providers.
- (f) For ERDC-SBG, changes in the student caretaker's alien status and student status.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: 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 13-1994, f. & cert. ef. 7-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03

## 461-170-0020

### Changes That Must be Reported; FS, MAA, MAF, TANF

Clients in the FS, MAA, MAF and TANF programs are required to report the changes described in this rule.

(1) Clients must report the following changes within 10 days of occurrence unless the client is required to report the change by section (2) of this rule:

- (a) A change in members of the filing group and any resulting change in income;
- (b) A change in employment, including getting a job, quitting or losing a job;
- (c) A change in source of income;
- (d) A change in earned income based on hourly wages when the change is due to:
  - (A) The rate of pay, except that clients are not required to report a change due to the annual adjustment in the Oregon minimum wage; or
  - (B) A change greater than five in the number of hours worked each week when the change is expected to last one month or longer;
- (e) A change in earned income not based on hourly wages of more than \$100 a month;
- (f) A change in unearned income, except a change in a public assistance grant, of more than \$25;
- (g) The acquisition or change in ownership of nonexcluded vehicles;
- (h) The sale or receipt of resources that cause total resources to exceed program resource limits;
- (i) A change in residence and the shelter costs in the new residence;
- (j) A benefit group member's noncompliance with OFSET when that person is a mandatory participant; and
- (k) A change in the legal obligation to pay child support.

(2) Clients in the monthly reporting system must report changes in income as required by the Monthly Change Report.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.105

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03

## 461-170-0030

### Changes That Must be Reported; Not ERDC, FS, MAA, MAF, OHP, TANF

(1) For all programs except ERDC, FS, MAA, MAF, OHP, OSIP-EPD, OSIPM-EPD and TANF, clients are required to report within 10 days all changes in income, resources, and circumstances that may affect their eligibility for benefits or the amount of benefits they receive.

(2) For OSIP-EPD and OSIPM-EPD, clients must report the following changes within 10 days:

- (a) A change in employment, including obtaining, quitting or losing a job.
- (b) A change in source of income.

# ADMINISTRATIVE RULES

(c) A change in earned income based on hourly wages when the change is due to:

(A) A change in rate of pay; or

(B) A change greater than five in the number of hours worked each week when the change is expected to last one month or longer.

(d) A change in earned income not based on hourly wages of more than \$100 a month.

(e) A change in unearned income, except a change in a public assistance grant, of more than \$25.

(f) A change in residence.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.105

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 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03

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**Adm. Order No.:** AFS 25-2002(Temp)

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 1-1-02 thru 6-30-03

**Notice Publication Date:**

**Rules Amended:** 461-193-0560

**Subject:** Rule 461-193-0560 is being amended because the amount of the Refugee Case Service Project payments standards is being reduced based on case size.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 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) Through January 31, 2003, the following is the monthly basic payment standard:

CASE SIZE — BASIC STANDARD

1 — \$336

2 — 427

3 — 503

4 — 617

5 — 712

6 — 830

7 — 915

8 — 1,034

9 — 1,094

10 — 1,199

11 — 1,304

12 — 1,409

13 and over — \$214 for each additional person

(3) Beginning February 1, 2003, the following is the monthly basic payment standard:

CASE SIZE — BASIC STANDARD

1 — \$332

2 — 423

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 — \$202 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

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

**Adm. Order No.:** SDSL 12-2002

**Filed with Sec. of State:** 12-26-2002

**Certified to be Effective:** 12-28-02

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 411-300-0100, 411-300-0110, 411-300-0120, 411-300-0130, 411-300-0140, 411-300-0150, 411-300-0160, 411-300-0170, 411-300-0180, 411-300-0190, 411-300-0200, 411-300-0210, 411-300-0220

**Subject:** The Children's Intensive In-Home Services (CIIS) rules are effective December 28, 2002, superseding temporary rules that expire December 27, 2002. These rules prescribe the standards, responsibilities and procedure for delivery of services and are established to ensure that CIIS augment and support independence, empowerment, dignity and development of child through the provisions of flexible and efficient services to eligible families.

CIIS are exclusively intended to allow a child who has a developmental disability and intense behaviors to have a permanent and stable familial relationship. The services provided the support necessary to enable the family to meet the needs of caring for a child who meets the eligibility criteria for CIIS, as described in these rules. These services are intended to support, not supplant, families' natural supports and services.

**Rules Coordinator:** Pam Warren—(503) 945-6954

## 411-300-0100

### Mission Statement, Purpose and Statutory Authority

(1) Mission Statement. The mission of the Department of Human Services, Developmental Disability Services is to provide support services that will enhance the quality of life of persons with developmental disabilities and to provide specialized services for children with severe impairments.

(2) Purpose. These rules establish the policy of and prescribe the standards and procedures for the provision of Children's Intensive In-Home Services (CIIS) for children in the Model Waiver for Children with Intense Behavior Needs. These Administrative Rules are established to ensure that CIIS augment and support independence, empowerment, dignity, and development of the child through the provision of flexible and efficient services to eligible families. CIIS are exclusively intended to allow a child who has a developmental disability and intense behaviors to have a permanent and stable familial relationship. The services provide the support necessary to enable the family to meet the needs of caring for a child who meets the eligibility criteria for CIIS. These services are intended to support, not supplant, families' natural supports and services.

(3) Statutory Authority. These rules are authorized by ORS 409.050 and carry out the provisions of ORS 430.215 and 427.007.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0110

### Definitions

(1) "Activities of Daily Living (ADL)" means tasks usually performed in the course of a normal day in a child's life; such as eating, dressing, bathing and personal hygiene, mobility, bowel and bladder control, usual developmental tasks, such as play and social development

(2) "Aide" means a caregiver who is hired by the family or a billing provider to provide In-Home Daily Care (IHDC).

(3) "Behavior Criteria" means the assessment tool, Form MHDDSD-DD-0521, used by the CIIS to evaluate the intensity of the challenges presented by children.

(4) "Behavior Consultant" means a contractor with specialized skills who assesses the child, the needs of the family, and the environment in terms of the behavioral support and related issues, develops a Behavior Support Plan, trains parents and providers, and monitors and revises the Behavior Support Plan as needed.

(5) "Billing Provider" means an organization that enrolls with the Department and contracts with the Department to provide services through its employees and bills the Department for the performing provider's services.

(6) "Child" means a person who is under the age of 18, eligible for developmental disability services and accepted for services under the Model Waiver for Children with Intense Behavior Needs.

(7) "Complete Plan of Care (CPC)" means a written document developed by the service coordinator with the family that describes the needs of the child and the needs of the family that impact the child and how those needs will be met. It includes the Nursing Care Plan when one exists.

(8) "Cost Effective" means that in the opinion of the service coordinator a specific service meets the child's service needs and costs less than or is comparable to other service options considered.

(9) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation occurs only after assessment of the specific situation, the abilities of the unlicensed person, teaching the task and ensuring super-

# ADMINISTRATIVE RULES

vision. Delegation by a registered nurse shall only occur to the extent allowed by Oregon Board of Nursing's administrative rules. Delegation by physicians is also allowed.

(10) "Department" means the State of Oregon Department of Human Services.

(11) "Developmental Disability (DD)" for children five years and younger is always provisional 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 OAR 411-300-0110(11)(a)

(12) "Developmental Disability (DD)" for children six years and older is always provisional and means:

(a) There is a diagnosis of mental retardation or developmental disability, and;

(b) There is a significant adaptive behavior 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 direction, which requires training or supports similar to that required by individuals with mental retardation, and;

(c) Must not otherwise primarily be attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment, and

(d) The individual is expected to need multiple, specialized supports indefinitely.

(13) "Eligible Range" means that the score on the Behavior Criteria is at or above 200.

(14) "Family Home" means the residence of the child, which is not a foster home, group home, or other residential service funded with public funds.

(15) "ICF/MR Model Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children in their family home who otherwise would have to be served in an ICF/MR if the waiver program was not available.

(16) "In-Home Daily Care (IHDC)" means essential supportive daily care delivered by a qualified provider who enables a child to remain and/or return to his/her family's home.

(17) "Parent" means biological parent, adoptive parent or legal guardian.

(18) "Primary Care giver" means the parent or relative or other non-paid parental figure that provides the direct care of the child at the times that a provider is not present.

(19) "Provider or Performing Provider for In-Home Daily Care" means the individual who is qualified to receive payment from the Department for In-Home Daily Care and meets the requirements of OAR 411-300-0170. Performing Providers work directly with children. Providers may be employees of Billing Providers, employees of the family or independent contractors.

(20) "Respite" means short-term care provided for the relief of the primary caregiver.

(21) "Service Coordinator" means an employee of Seniors and People with Disabilities/Children's Intensive In-home Services who ensures a child's eligibility for CIIS services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0120

### Eligibility

(1) In order to be eligible for services, the child must meet the following criteria:

(a) Be under the age of 18; and

(b) Be DD eligible; and

(c) Be accepted by CIIS by scoring greater than 200 on the Behavior Criteria within 2 months of starting services; and

(d) Be on the ICF/MR Model Waiver; and

(e) Reside in the family home; and

(f) Be capable of being safely served in the family home. This includes, but is not limited to, parents demonstrating the willingness, skills, and ability to participate in the care as outlined in the Complete Plan of Care. This must be done in a cost effective manner as determined by the service coordinator within the limitations of OAR 411-300-0150 and 411-300-0160.

(2) Children who reside in a hospital, school, sub-acute facility, nursing facility, ICF/MR, residential facility, foster home, or other institution are not eligible for CIIS Services.

(3) Children who have family, government and/or community resources available to provide for their care or do not require waived services are not eligible for CIIS; also children not safely served in their homes as per OAR 411-300-0120(1)(f) are not eligible for CIIS. The services are not available to replace care provided by a parent or to replace other governmental or community services.

(4) Children who have a score of 150 or less will be transitioned out of CIIS within six months and will no longer be eligible for services.

(5) Children will be disenrolled from CIIS if they no longer meet the criteria of OAR 411-300-0120(1).

(6) Children may be otherwise eligible but will be placed on a wait list if the allowable number of children on the Model Waiver are already being served. Children will be served off the wait list on a first come, first served basis as space on the Model Waiver allows. The date the initial application for service is completed shall determine the order on the wait list.

(7) The date the application is complete is the date that CIIS has the required demographic data on the child and CIIS has a statement of DD eligibility.

(8) Children who were once served in CIIS, left those services, and now reapply and who currently meet all other criteria for eligibility shall be put on the wait list as of the date their first application for services was complete.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0130

### Complete Plan of Care

(1) The service coordinator shall be responsible for the following activities:

(a) Assessment: The service coordinator will assess the individual service needs of the child through interviews with the parents, caregivers or other interested persons. The assessment will include:

(A) Identification of services for which the child is currently eligible.

(B) Identification of services currently being provided.

(C) All available family, government and/or community resources and private health insurance that meet any or all of the child's needs.

(b) Care Planning: The service coordinator will prepare, with the input of the family and any other person at family's request, a written Complete Plan of Care that:

(A) Defines the needs of the child and the family;

(B) Identifies the methods, resources and strategies which address some or all of those needs;

(C) Identifies the number of hours of IHDC or Behavior

Consultation authorized for the child; and

(D) Identifies other services authorized by CIIS for the child.

(E) Translated as necessary upon request.

(2) The Complete Plan of Care will:

(a) Note the maximum hours of authorized provider services;

(b) Estimate the cost of the care.

(3) The Nursing Care Plan, when one exists, will be included in the Complete Plan of Care.

(4) The plan will be reviewed with the family prior to implementation and a copy provided to the family.

(5) The plan will include the date of the next planned review which, at a minimum, will be completed within 365 days of the last plan.

(6) Significant changes in the needs of the child shall be reflected in the Complete Plan of Care and a copy provided to the family.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0140

### Rights of the Child

(1) When interventions in the behavior of the child are necessary, positive, preventative, non-adversive interventions shall be emphasized.

# ADMINISTRATIVE RULES

(2) The least intrusive intervention to keep the child and others safe shall be used.

(3) Abusive or demeaning interventions shall never be used.

(4) When physical restraints are required they can only be used as a last resort and providers must be appropriately trained as per behavior support plan.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0150

### Scope and Limitations of CIIS

(1) Parents are the primary care giver(s) and the services are intended to support, not supplant the natural supports supplied by the family.

(2) The Complete Plan of Care will use the most cost effective services for safely meeting that child's needs as determined by the service coordinator.

(3) CIIS may include a combination of the following based upon the needs of the child as determined by the service coordinator and consistent with the child's Complete Plan of Care:

(a) Behavior Consultations;

(b) Minor Home Adaptations;

(c) Motor Vehicle Adaptations;

(d) Goods, services, and supplies; or

(e) In-Home Daily Care.

(4) All services authorized by the Department must be included in a written Complete Plan of Care in order to be eligible for payment.

(5) The annual average monthly payment, as authorized in the CIIS Complete Plan of Care, dated from the initial CPC to the anniversary date, for a child whose score on the Behavior Criteria is 200 or greater, shall not exceed the maximum amount of \$2500.00 allowed per month. This is in accordance with OAR 411-300-0150(2).

(6) The annual average monthly payment, as authorized in the CIIS Complete Plan of Care, dated from the initial CPC to the anniversary date, for a child whose score on the Behavior Criteria is less than 200 and greater than 150, shall not exceed the maximum amount of \$1500.00 allowed per month. This is in accordance with OAR 411-300-0150(2).

(7) If multiple children in one household are eligible for the Model Waiver and their needs can be safely met within the average monthly cost allowed for one child, that should be the maximum budget authorized. This is in accordance with OAR 411-300-0150(2).

(8) Exceptions by the Department to the above cost limitations in service may only be made in the following circumstances:

(a) The child is at immediate risk of loss of home without the expenditure.

(b) In order to provide supports for emerging or changing care needs/behaviors, the service coordinator can authorize additional costs for a time-limited period, not to exceed 90 days.

(c) Temporary additional costs can be authorized when a significant medical condition or event occurs and prevents the primary caregiver from rendering care or services. The following must occur:

(A) Documentation of primary caregivers medical condition by physician.

(B) Service Coordinator must authorize with supervisor's approval.

(C) Must be reviewed at least every 90 days.

(d) The service coordinator determines, with a behavior consultant, that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the service coordinator shall determine that all care givers, including the parents, have been trained in behavior management and that all other feasible recommendations from the behavior consultant and service coordinator have been implemented.

(e) If the parent of child's primary language is not English, cost of interpretation/translation services related to CIIS, will not be considered part of the child's maximum monthly budget.

(9) CIIS shall only be authorized to enable the family to meet the needs of caring for the child on the Model Waiver.

(10) CIIS shall not pay for services that are:

(a) Abusive, aversive or demeaning; or

(b) Experimental; or

(c) Illegal; or

(d) Determined unsafe for the general public by recognized child and consumer safety agencies; or

(e) Not necessary or cost-effective; or

(f) Educational services for school-age children, including professional instruction, formal training and tutoring in communication, socialization, and academic skills; or

(g) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds.

(11) Behavior Consultation may include:

(a) Working with the family to identify:

(A) Areas of a child's home life that are of most concern for the family and child;

(B) The formal or informal responses the family or providers have used in those areas; and

(C) The unique characteristics of the family that could influence the responses that would work with the child.

(b) An assessment of the child that includes:

(A) Specific identification of the behaviors or areas of concern;

(B) Identification of the settings or events that are likely to be associated with or to trigger the behavior;

(C) Identification of early warning signs of the behavior;

(D) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by this behavior, including the possibility that the behavior is:

(i) An effort to communicate,

(ii) The result of a medical condition,

(iii) The result of an environmental cause; or

(iv) The symptom of an emotional/psychiatric disorder.

(E) Evaluation and identification of the impact of disabilities, such as autism, blindness, deafness, etc., that affect the child and the area of concern, and that impact the development of strategies; and

(F) Assessment of current communication strategies.

(c) Development of a variety of positive strategies that assist the family and providers to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. This can include changes in the physical and social environment, developing effective communication, and appropriate responses by parents and providers to the early warning signs.

(A) Positive, preventive interventions shall be emphasized.

(B) The least intrusive intervention possible shall be used.

(C) Abusive or demeaning interventions shall never be used.

(D) The strategies shall be adapted to the specific disabilities of the child and the style/culture of the family.

(d) Development of emergency/crisis procedures to be used to keep the child, family and providers safe. Physical restraint is only utilized in accordance with OAR 411-300-0140(4).

(e) Writing a Behavior Support Plan that includes the following:

(A) Use of clear, concrete language that is understandable to the family and providers; and

(B) Describes the assessment and strategies and procedures to be used.

(f) Teaching the provider and family the strategies and procedures to be used.

(12) Behavior consultation shall only be authorized to support families in their caregiving role, not as an educational service. Behavior consultation will be authorized only as needed to respond to specific problems identified by the parents or service coordinator.

(13) Minor home adaptations shall only be authorized:

(a) When they are necessary to ensure the health, welfare and safety of the child or which enable the child to function with greater independence in the home. Adaptations or improvements to the home which are of general utility and are not for direct safety, remedial benefit or long term benefit to the child are excluded. Adaptations which add to the total square footage of the home are excluded. Adaptations funded by CIIS shall be the most cost-effective solution.

(b) All minor home adaptations shall be provided in accordance with applicable state or local building codes by licensed contractors. Any modification that impedes egress shall be approved only if a risk assessment demonstrates no safer solution and a safety plan is signed by the family.

(c) For minor home adaptations that, singly or together, exceed \$5000, the Department may protect its interest for the entire amount of the adaptations through liens or other legally available means.

(d) Minor home adaptations that are provided in a rental structure shall be authorized in writing by the owner of the structure prior to initiation of the work. This does not preclude any requirement related to the Reasonable Accommodation Act.

(14) Motor vehicle adaptations shall only be authorized for the primary vehicle used by the child. The adaptation must be directly related to the child's disability and not a typical repair or upkeep required by a motor vehicle.

# ADMINISTRATIVE RULES

(15) Goods, services, and supplies may include any combination of the following:

(a) **Homemaker.** Homemaker services consist of general household activities. Homemaker services shall only be authorized to allow the primary care giver more time to be with their child.

(b) **Respite.** Respite services can be authorized on a limited basis for relief for the primary care giver.

(c) **Transportation.** Payment for transportation can be authorized to gain access to community services, activities and resources as specified in the CPC. No payment can be made for medical transportation or for transportation provided by a family member.

(d) **Specialized equipment and supplies.** Items could include, among others, communication devices, adaptive clothing, adaptive eating equipment, or adaptive sensory or habilitation devices or supplies. Items furnished by the Oregon Health Plan are excluded. Increased utility costs caused by the unique needs of the child and the disability may be approved as long as the family continues to pay typical utility expenditures.

(e) **Chore.** Chore services are those needed to make the home a clean, sanitary, and safe environment. These services shall be provided only in situations where no one else in the household or other persons are capable of performing or providing these. Services include heavy household chores such as window washing or carpet cleaning.

(f) **Family training.** Training and counseling services may be authorized for the families of CIIS children which increase the family's capability to care for their child.

(A) Conference or workshop registrations which directly relate to the child's disability and will increase the knowledge and skills of the family may be authorized. Travel and lodging expenses are excluded. Meals are excluded unless included in the registration cost. Funding for training is included in the monthly budget as calculated by the service coordinator.

(B) Counseling services shall:

(i) Only be provided by licensed mental health providers,

(ii) Directly relate to the child's disability and the ability of the parents to care for their child,

(iii) Be short term, and

(iv) Have treatment goals prior approved by the Service Coordinator.

(C) Counseling services are excluded for:

(i) Therapy that could be obtained through Oregon Health Plan or other payment mechanisms;

(ii) Marriage therapy;

(iii) Therapy to address parent(s) or other family member(s)' psychopathology; and

(iv) Counseling that addresses stressors not directly attributed to the child eligible for CIIS.

(g) **Specialized Consultation.** Services by a physical therapist, occupational therapist, speech and language therapist, or dietitian. Services covered by the Oregon Health Plan are excluded.

(h) **Specialized diet.** In order to be authorized:

(A) The foods must be on the approved list developed by the Department

(B) The diet must be ordered by a physician licensed by the Oregon Board of Medical Examiners

(C) The diet must be monitored by a dietician

(D) It cannot be reimbursed through the Oregon Health Plan or any other source of public and private funding.

(E) Cost of food will not exceed \$100 per month.

(i) **Translation.** If the parent or child's primary language is not English, the services of a translator or interpreter may be authorized only to allow the child or parents to communicate with providers of CIIS services.

(j) Other goods, services, and supplies may be eligible for payment if:

(A) They are directly related to the child's disability;

(B) They are included in an approved Complete Plan of Care;

(C) They maintain the health and safety of the child;

(D) They are cost effective;

(E) They are not typical for a family to provide a child of the same age; and

(F) They are required to help the family to continue to meet the needs of caring for the child.

(16) Goods, services and supplies paid for by the Department shall be documented by receipts and the receipts maintained by the Department for 5 years. If no receipt is available, the family shall submit to the Department in writing a statement that they received the goods, service or supplies and the date they were received on.

(17) The Department may protect its interest through any legally allowable means for any good, service, or supply as determined by the Department.

(18) The Department may expend its funds through contract, purchase order, use of credit card, payment directly to the vendor, or any other legal payment mechanism.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0160

### Scope and Limitations of In-Home Daily Care Services

(1) In-Home Daily Care services may include a combination of assistance with ADLs, nursing services, or other supportive services, as determined by the service coordinator, consistent with the child's Complete Plan of Care. The extent of the services may vary, but the extent of service is limited as described in OAR 411-300-0150. The services include:

(a) **Basic personal hygiene** — including assistance with bathing and grooming;

(b) **Toileting/bowel and bladder care** — including assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(c) **Mobility** — including transfers, comfort, positioning, and assistance with range of motion exercises;

(d) **Nutrition** — including meal preparation, special diets, monitoring intake and output, and feeding;

(e) **Skin care** — including dressing changes;

(f) **Supervision** — Providing an environment that is safe and meaningful for the child, interacting with the child to prevent danger to the child and others, and assisting the child with appropriate leisure activities;

(g) **Communication** — Assisting the child in communicating, using any means used by the child;

(h) **Neurological** — Monitoring of seizures, administering medication, observing status; and

(i) **Other Personal Care Tasks or Services.**

(2) When any of the services listed in Subsection (1)(a) through (i) of this rule are essential to the health and welfare of the child, the following supportive services may also be provided:

(a) **Housekeeping tasks** necessary to maintain the child in a healthy and safe environment;

(b) **Arranging for necessary medical equipment, supplies, and medications;**

(c) **Arranging for necessary medical appointments;**

(d) **Accompanying the child to appointments, outings, and community-based activities; and**

(e) **Activities to enhance development.**

(3) The hours may be spread throughout the time authorized in the voucher or used in large blocks as the family determines.

(4) Hours shall be authorized only to support a family in their primary care giving role.

(5) Hours shall not be authorized that will supplant the services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives. Hours shall not be authorized solely to allow a parent to work and/or attend school.

(6) When two or more children in the same home or setting qualify for CIIS, the same provider shall provide services to all qualified children if services can be safely delivered by a single provider, as determined by the service coordinator.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0170

### Provider Qualifications

(1) A performing provider for In-Home Daily Care is an individual, 18 years or older, who provides evidence satisfactory to the Department or its designee that demonstrates, by background, education, references, skills, and abilities, that he/she is capable of safely and adequately providing the services authorized.

(2) A performing provider for Behavior Consultation shall have the following:

(a) Education, skills, and abilities necessary to provide the services in OAR 411-300-0150(11); and

(b) Current certification demonstrating completion of Level II training in Oregon Intervention Systems; and

# ADMINISTRATIVE RULES

(c) Submit a resume or the equivalent to the Department with evidence of at least:

(A) Bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavior science or related field and one year experience with people with disabilities who present difficult or dangerous behaviors; or

(B) Three years of experience with people with disabilities who present difficult or dangerous behaviors and at least 1 year of that experience must include providing the services in OAR 411-300-0150(11).

(C) Additional education and/or experience may be required to safely and adequately provide the services described in OAR 411-300-1500(11).

(3) A provider shall maintain a drug-free work place, pass a criminal history check as defined by OAR 411-009-0000 through 411-009-0110, not be on the current federal Centers for Medicare and Medicaid Services list of excluded or debarred providers, and be free of convictions or founded allegations of abuse and/or neglect by the appropriate agency, including but not limited to the Department of Human Services.

(4) A prospective performing provider that will work with a child shall consent to a criminal record check by CIIS or the Department prior to enrolling as a provider. CIIS or the Department may require a criminal record check for any provider having regular unsupervised contact with children in the home. CIIS or the Department may require that the provider provide fingerprints and processing fees for the purpose of a criminal record check.

(5) A provider shall not be a parent, step parent, spouse, or legal guardian of the child.

(6) A performing provider must sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any In-Home Daily Care.

(7) A provider is not an employee of the Department or the State of Oregon and is not eligible for state benefits and immunities, including but not limited to PERS or other state benefit programs.

(8) If the performing or billing provider is an independent contractor, during the terms of the contract, the performing or billing provider shall maintain in force at his/her own expense Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. The provider shall furnish evidence of insurance coverage to CIIS prior to beginning work. This insurance is to cover damages caused by error, omission, or negligent acts related to the professional services. There shall be no cancellation of insurance coverage(s) without 30 days written notice to CIIS.

(9) If the performing provider is an employee of the family, the provider shall submit to the Department documentation of immigration status required by Federal Statute. The Department will maintain documentation of immigration status required by Federal Statute, as a service to the family/employer.

(10) A Billing Provider that wishes to enroll with the Department shall maintain and submit evidence upon initial application and upon request by the Department of the following:

(a) Current criminal history checks on each employee who will be providing services in a home showing that the employee has no disqualifying criminal convictions;

(b) Professional Liability Insurance that meets the requirements of OAR 411-300-0170(8); and

(c) Any licensure required of the agency by the State of Oregon or federal law or regulation.

(11) A provider shall immediately notify the family and CIIS, if appropriate, 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 service required by the child for whom services are being provided.

(12) Providers described in ORS Chapter 419 are required to report suspected child abuse to their local office of the Department of Human Services or police in the manner described in ORS Chapter 419.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350  
Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350  
Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0180

### Prior Authorization for In-Home Daily Care

(1) Payment for services must be authorized by the Department before services begin. Payment will be based on these rules, the service needs of the child as documented in the Complete Plan of Care and the cost effectiveness of the proposed services.

(2) Prior to authorization of services that are to be provided by a nurse, there shall be a physician's order for the nursing services. However,

CIIS shall determine whether payment of nursing services or the hours of service as ordered by the physician will be authorized for payment according to these rules.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350  
Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350  
Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0190

### Documentation Needs for In-Home Daily Care and Behavior Consultation

(1) Accurate time sheets of services, dated and signed by the individual provider and the parent after the services are provided, shall be maintained and submitted to CIIS with any request for payment for services.

(2) Requests for payment for services shall:

(a) Include the voucher that prior authorized the services;

(b) Be signed by the parent of the child after the services were delivered, verifying that the services were delivered as billed; and

(c) Be signed by the provider or billing provider, acknowledging agreement upon request with the terms and condition of the voucher and attesting that the hours were delivered as billed.

(3) Documentation of provided services shall be provided to the service coordinator upon request and maintained in the child's place of residence or the place of business of the provider of services. Payment can only be made for services related to the child's disability as outlined in the Complete Plan of Care.

(4) Vouchers and time sheets shall be retained by the Department for at least five years from the date of service.

(5) Behavior Consultants shall submit to the Department, upon request, the following written in clear, concrete language, understandable to the family and IHDC providers:

(a) An evaluation of the child, the family's concerns, the environment of the child, current communication strategies used by the child and used by others with the child and any other disability of the child that would impact the appropriateness of strategies to be used with the child;

(b) Any behavior plan or instructions left with parents or IHDC providers that describes the suggested strategies to be used with the child.

(6) Documentation of provided services shall be maintained by the billing provider for at least seven years from the date of service.

(7) Upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit or Centers for Medicare and Medicaid Services or their authorized representatives, providers or billing providers shall furnish requested documentation immediately or within the time frame specified in the written request. Failure to comply with the request may be deemed by the Department as reason to deny or recover payments.

(8) Access to records by the Department inclusive of medical/nursing records, behavior/psychiatric and financial records, does not require authorization or release by the CIIS child or family.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350  
Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350  
Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0200

### Payment for In-Home Daily Care and Behavior Consultation

(1) Payment will be made after services are delivered as authorized by the service coordinator.

(2) Rates will be individually negotiated by the Department, based on the individual needs of the child, within the guidelines published by the Department.

(3) Authorization must be obtained prior to the delivery of any services for those services to be eligible for payment.

(4) Providers must request authorization for payment of services provided during an unforeseeable emergency on the first business day following the emergency service. The service coordinator will determine if the service is eligible for payment.

(5) The Department will make payment to the employee of the family on behalf of the parent. The Department will pay the employer's share of FICA and withhold the employee's share of FICA as a service to the family/employer.

(6) The delivery of authorized services shall occur so that any individual employee of the parent shall not exceed forty hours per work week. Services will not be authorized that require the payment of overtime, without written prior authorization by the supervisor of CIIS.

(7) The Department will not pay for any hours of service provided by an individual performing provider beyond 16 hours in any 24 hour period unless the hours are part of a 24-hour rate negotiated by the Department and

# ADMINISTRATIVE RULES

there is evidence the child can be safely served with a 24-hour rate. Exceptions shall require written authorization by the supervisor of CIIS.

(8) Holidays are paid at the same rate as non-holidays.

(9) Travel time to reach the job site is not reimbursable.

(10) Requests for payments must be submitted to the Department within three (3) months of the delivery of services in order to be eligible for payment.

(11) Payment by the Department for CIIS shall be considered full payment for the services rendered under Title XIX or Title XXI. Under no circumstances shall the performing provider or billing providers demand or receive additional payment for these services from the family or any other source unless the payment is the financial responsibility (spend-down) of the child under the Medically Needy Program.

(12) Medicaid funds are the payor of last resort. The provider or billing provider shall bill all third party resources before Medicaid unless another arrangement is agreed upon by the Department in the Complete Plan of Care.

(13) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider of service.

(14) Prior authorizations which have been issued may be voided without cause by the Department.

(15) Upon submission of the voucher for payment, the provider agrees that it has complied with:

(a) All rules of the Department;

(b) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(16) All billings must be for services provided within the provider's licensure.

(17) It is the responsibility of the provider to submit true and accurate information on the voucher. Use of a billing provider does not abrogate the performing provider's responsibility for the truth and accuracy of submitted information.

(18) No person shall submit to the Department:

(a) A false voucher for payment;

(b) A voucher for payment which has been or is expected to be paid by another source; or

(c) Any voucher for services which have not been provided.

(19) The Department will make payment only to the enrolled provider who actually performs the service or the provider's enrolled billing provider. Federal regulations prohibit the Department from making payment to collection agencies.

(20) Payments may be denied if any provisions of OAR 411-300-0100 through 411-300-0200 are not complied with.

(21) Overpayments shall be recouped. The amount to be recovered:

(a) Will be the entire amount determined or agreed to by the Department;

(b) Is not limited to amount(s) determined by criminal or civil proceedings; and

(c) Will include interest to be charged at allowable State rates.

(22) The Department will deliver to the provider by registered or certified mail or in person a request for repayment of the overpayment or notification of recoupment of future payments.

(23) Payment schedules with the interest may be negotiated at the discretion of the Department.

(24) If recoupment is sought from a family who received services, contested hearing rights in OAR 411-300-0210 shall apply.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0210

### Denial of Services, Amount of Services, or Eligibility

(1) The Department shall notify every applicant or recipient of services, unless the action is part of the CPC or the parent has agreed, in writing at the time of denial of a request for eligibility, or at the time of any action to terminate, suspend, or reduce CIIS eligibility or covered services, of the right to a hearing. A notice concerning termination, suspension, or reduction of existing services shall be mailed to or served personally upon the child's parent or legal guardian not later than ten days before the effective date of action.

(2) The parent or legal guardian may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to Department of Human Services, Seniors and People with

Disabilities, CIIS, Salem, Oregon. If the Department denies a written request for additional or different services, it must notify the parent or guardian in writing at the time of the denial of the information specified in paragraph (3) of this rule.

(3) A notice required by paragraphs (1) or (2) of this rule shall be served upon the parent or legal guardian personally or by certified mail. The notice shall state:

(a) A statement of what action the Department intends to take;

(b) The reasons for the intended action;

(c) A statement of the child's right to a contested case hearing;

(d) A statement that the Department'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;

(e) A statement that the notice becomes a final order upon default if the parent or legal guardian fails to request a hearing within a specified time;

(f) In cases of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(g) An explanation of the circumstances under which CIIS services will be continued if a hearing is requested.

(4) If the parent or legal guardian disagrees with the decision of the Department, they may request a contested case hearing as provided in ORS 183. The request for a hearing must be in writing on Form AFS 443 and signed by the parent or legal guardian. To be considered timely, the request must be received by the Department within 30 days from the date of the Department's notice of denial.

(5) The family shall be offered an opportunity for informal review by the Department or the designee.

(6) The performing or billing provider shall submit relevant documentation to the Department within five working days at the request of the Department when a hearing has been requested.

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

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02

## 411-300-0220

### Sanctions for CIIS Providers

(1) Sanction(s) may be imposed on a provider when a following condition is determined by the Department to have occurred:

(a) Convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or issuance of a provider number;

(b) Convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) Had his/her license suspended, revoked, or otherwise limited, or surrendered his/her license;

(d) Has failed to safely and adequately provide the services authorized;

(e) Has had an allegation of abuse or neglect substantiated against them;

(f) Failed to cooperate with any investigation and/or grant access to or furnish, as requested, records or documentation;

(g) Billed excessive or fraudulent charges or convicted of fraud;

(h) Has made a false statement concerning conviction of crime or substantiation of abuse;

(i) Falsified required documentation;

(j) Has not adhered to the provisions of OAR 411-300-0100 through 411-300-0220, or

(k) Been suspended or terminated as a provider by another agency within the Department.

(2) The following sanctions may be imposed on a provider by the Department:

(a) The provider may be terminated from participation in CIIS or in the MFC Program;

(b) The provider may be suspended from participation for a specified length of time and/or until specified conditions for reinstatement are met and approved by the state; and

(c) The Department may withhold payments to the provider.

(3) If the Department makes a decision to sanction a provider, the provider will be notified 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.

(4) The provider may appeal a sanction by requesting an administrative review by the Administrator of the Department or designee.

# ADMINISTRATIVE RULES

(5) For an appeal 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.

(6) At the discretion of the Department, providers who have previously been terminated or suspended by any agency within DHS may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050, ORS 417.340 - ORS 417.350  
Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350  
Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02

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**Adm. Order No.:** SPD 1-2003(Temp)

**Filed with Sec. of State:** 1-7-2003

**Certified to be Effective:** 2-1-03 thru 6-3-03

**Notice Publication Date:**

**Rules Amended:** 411-015-0015, 411-015-0100

**Subject:** These amendments, effective February 1, 2003, indicate client assessed priority levels the Department is currently able to serve based on program reductions required to maintain a balanced budget for the biennium, pursuant to ORS 183.335(5), the mandates of HB 5100 and further directives from the E-Board.

**Rules Coordinator:** Pam Warren—(503) 945-6954

## 411-015-0015

### Current Limitations

The Department has the authority to establish by Administrative Rule the priority level within which to manage its limited resources. The Department is currently able to serve:

(1) Persons determined eligible for OSIPM or TANF if they are assessed as meeting at least one of the priority levels (1) through (14) of OAR 411-015-0010.

(2) Persons eligible for Oregon Project Independence funded services if they meet at least one of the priority levels (1) through (18) of OAR 411-015-0010.

(3) Persons needing Risk Intervention Services in areas designated to provide such services. Persons with the greatest priority under OAR 411-015-0010 will be served first.

(4)(a) Persons sixty-five years of age or older having a primary diagnosis of mental illness or developmental disability are eligible for nursing facility and community based care services if they meet Sections (1), (2), or (3) of this rule and are not in need of specialized mental health treatment services or other specialized Department residential program intervention as identified through the PASARR or mental health assessment process.

(b) Persons under sixty-five years of age having a primary diagnosis of mental illness or developmental disability are not eligible for Department nursing facility services unless determined appropriate through the PASARR process.

(c) Persons under sixty-five years of age whose primary diagnosis and primary need for service is due to mental illness or developmental disability are not eligible for Title XIX Home and Community Based Care Waivered Services paid for under the Department's 1915(c) Waiver.

Stat. Auth.: ORS 410.060, ORS 410.070 & ORS 411  
Stats. Implemented: ORS 410.070  
Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 5-1986, f. & ef. 4-14-86; SSD 9-1986, f. & ef. 7-1-86; SSD 12-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 12-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 21-1991, f. 12-31-91, cert. ef. 1-1-92; Renumbered from former 411-015-0000(4); SSD 1-1993, f. 3-19-93, cert. ef. 4-1-93; SDDS 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03

## 411-015-0100

### Eligibility for Nursing Facility or Community-Based Care Services

(1) To be eligible for Nursing facility services, Community-based care waiver services for aged and physically disabled, Independent Choices, Spousal Pay, or the Program of All-Inclusive Care for the Elderly (PACE), a person must:

- (a) Be age 18 or older; and
- (b) Be eligible for OSIPM or TANF; and

(c) Meet the functional impairment level within the service priority levels currently served by the Seniors and People with Disabilities as outlined in OAR 411-015-0000 and the requirements in OAR 411-015-0015; or

(d) To be eligible to have services paid through the State Spousal Pay Program the person must meet requirements as listed above in (a), (b), (c), and in addition the requirements in OAR 411-030-0080.

(2) Persons who are age 17 or younger and reside in a nursing facility are eligible for nursing facility services only. They are not eligible to

receive community-based care waiver services, including Spousal Pay or Independent Choices program services.

Stat. Auth.: ORS 410 & ORS 414.065  
Stats. Implemented: ORS 410.070  
Hist.: SSD 7-1991(Temp), f. & cert. ef. 4-1-91; SSD 13-1991, f. 6-28-91, cert. ef. 7-1-91; SDDS 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03

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## Department of Oregon State Police, Office of Emergency Management Chapter 104

**Adm. Order No.:** OEM 1-2003

**Filed with Sec. of State:** 1-15-2003

**Certified to be Effective:** 1-15-03

**Notice Publication Date:** 12-1-02

**Rules Amended:** 104-080-0000, 104-080-0010, 104-080-0020, 104-080-0021, 104-080-0022, 104-080-0023, 104-080-0024, 104-080-0025, 104-080-0026, 104-080-0027, 104-080-0028, 104-080-0030, 104-080-0040, 104-080-0050, 104-080-0060, 104-080-0070

**Subject:** Update the current rules to account for new technology and legislative requirements.

**Rules Coordinator:** Carolyn Flock—(503) 378-2911, ext. 221

## 104-080-0000

### Purpose

The purpose of the 9-1-1 Emergency Telephone System Program is:

(1) To provide uniform statewide access to police, fire, or medical service through the emergency telephone number 9-1-1.

(2) To provide the implementation of Enhanced 9-1-1 telecommunications service statewide.

(3) To provide and monitor the distribution and expenditure of 9-1-1 telephone tax funds in all accounts to 9-1-1 jurisdictions who provide 9-1-1 emergency telephone system services in Oregon.

(4) To study the efficiency of 9-1-1 telecommunications services throughout the State of Oregon.

(5) To implement the requirements of ORS 401.710 to 401.790.

Stat. Auth.: ORS 401.730(1)(a)  
Stats. Implemented: ORS 401.710 - ORS 401.790  
Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 3-1992(Temp), f. & cert. ef. 7-15-92; EMD 3-1993(Temp), f. & cert. ef. 1-15-93; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0010

### Definitions

(1) "Automatic Location Identification (ALI)" means the automatic display at a public safety answering point of the subscriber telephone number, the service address for the telephone and supplementary information.

(2) "Automatic Number Identification (ANI)" means the automatic display at a public safety answering point of the subscriber telephone number. "Pseudo-ANI (pANI)" means the number assigned to a wireless 9-1-1 call identifying the tower or sector from which the call originated. It is used for the routing of 9-1-1 Wireless calls to the designated 9-1-1 Primary PSAP.

(3) "CAD" includes Computer Aided Dispatch; Computer Assisted Dispatch.

(4) "Data Base" includes:

(a) The data required to direct network routing of an emergency call to the primary public safety answering point responsible for the emergency service zone of the calling party;

(b) The data used to identify the jurisdictional boundaries within a 9-1-1 service area for each associated public or private safety agency;

(c) The data required to transfer an emergency call from a primary public safety answering point to either another primary public safety answering point or a secondary public safety answering point; and

(d) The data required to assign default routing within Oregon to a designated public safety answering point at times of network routing failure.

(5) "Data Management System" means the combination of manual procedures and computer programs used to create, store, manipulate and update data required to provide selective routing and ALI/GALI.

(6) "Primary PSAP" means a primary public safety answering point or local 9-1-1 jurisdiction which is currently an enhanced entity. Primary PSAPs are the only entities for which Enhanced 9-1-1 will be deployed for purposes of these rules.

(7) "Emergency Service Zone" means a defined geographical territory consisting of a specific combination of law enforcement, fire and EMS coverage areas.



# ADMINISTRATIVE RULES

(8) "Geographic Automatic Location Identification (GALI)" means the automatic display at a primary public safety answering point of the positional location of the subscriber, ten-digit ANI for the device and supplementary information.

(9) "Interoperability" means deployment of Enhanced 9-1-1 technologies having been engineered to allow full functionality when providers' resources are shared by two or more PSAPs or where a PSAP's Enhanced 9-1-1 telecommunications service is derived from two or more utilities regardless of whether the call is received directly from the calling party or by transfer from a contiguous PSAP.

(10) "Master Street Address Guide (MSAG)" means a database of street names containing address ranges with their associated communities that denotes emergency service numbers for 9-1-1 purposes. "Mapped Master Street Address Guide (mMSAG)" means a geographically referenced database of street names that include the following attributes; street name, to and from address ranges, city name, county name, and emergency service number. This database is used to plot the location of a 9-1-1 call provided the appropriate location information is available.

(11) "Network" includes:

(a) A series of connecting points which can be joined to create communications channels intended to allow public access into the 9-1-1 emergency reporting system;

(b) Connecting points which include all Oregon providers, facility and services required to complete the emergency call; and

(c) Provider based connection of both switched and dedicated channels ultimately terminating upon station terminal equipment within each primary public safety answering point.

(12) "Network Exchange Services" includes:

(a) Intrastate telecommunications services required to deliver Enhanced 9-1-1;

(b) Any telecommunications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon.

(13) "On-Premises Equipment (Also referred to as Customer Premise Equipment or CPE)" includes:

(a) Those devices required to decode network signaling allowing the display of ALI/GALI;

(b) The station terminal equipment required for display of decoded signaling and voice contact with the calling party in a synchronous manner.

(14) "Open Systems" includes but is not limited to:

(a) System Application Program Interface (ISO/IEC 9945-1:1990);

(b) Information technology-Portable Operating System Interface (POSIX) (IEEE Std1003.1-1990).

(15) "P.01 Grade of Service" means emergency telecommunications service in which no more than one call in 100 attempts will receive a busy signal on the first attempt during the average busiest hour.

(16) "Positional Location" means:

(a) The means by which to describe a point on the surface of the Earth usually termed an "x, y" coordinate;

(b) "x, y" coordinate information will be provided in decimal degrees with six places of accuracy based on the North American datum (NAD) 83-91;

(c) "x, y" shall also include a "z" element when available. "z" is intended to reflect elevation in feet from Mean Sea Level.

(17) "Primary Utility" means:

(a) A utility having an exchange boundary that contains a primary public safety answering point and is therefore responsible for providing network access;

(b) The utility responsible as the first point of contact for coordination of network maintenance and repair.

(18) "Provisioning" means the process of providing or obtaining needed equipment or services.

(19) "Selective Routing" means the capability of routing a 9-1-1 call from a central office to a designated PSAP based upon the telephone number and/or the location of the calling party.

(20) "Automatic Telephone Number Identification (ATNI)" means:

(a) All forms of Automatic Number Identification (ANI), Automatic Location Identification (ALI), and database information used in the processing of a 9-1-1 emergency telephone call;

(b) ATNI refers to the utility customer's telephone number, the customer's main telephone service location and the name of the utility customer required pursuant to OAR 104-080-0050(11)(a) to be supplied to the primary PSAP or 9-1-1 jurisdiction through an Enhanced 9-1-1 telephone system. This reference to ATNI does not include Wireless 9-1-1 services;

(c) ATNI information may be displayed either on a video monitor or hard copy printer.

(21) "DMS" means Data Management System as defined in OAR 104-080-0010(5).

(22) "Official Report" means;

(a) A final document, created by a PSAP or other public safety agency, for incident reporting purposes;

(b) After all confidential data received from the (NP) or (NL) data source are edited or deleted in compliance with ORS 401.765 (2) and this rule; and

(c) Which is incident specific and is not co-mingled with other related incidents.

(23) "Official report" does not mean:

(a) An intermediate or temporary record;

(b) An automatic electronic display, and hard copy or electronic storage of ATNI;

(c) Call logs, either manual or automated, unless separated by incident;

(d) Computer Aided Dispatch records, unless separated by incident;

(e) Call detail voice and log recorders;

(f) ATNI, ANI, or ALI display units and printers.

NOTE: Unless otherwise noted above, terms used in these rules are defined in ORS

401.710(1) through (19), and OAR 104-080-0010(1) through (23)

Stat. Auth.: ORS 401.730(1)(a)

Stats. Implemented: ORS 401.710 - ORS 401.790

Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 3-1992 (Temp), f. & cert. ef. 7-15-92; EMD 3-1993(Temp), f. & cert. ef. 1-15-93; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0020

### Planning Considerations

(1) The Division shall publish and maintain a document entitled "PSAP Manager's Guide to Implementing Enhanced 9-1-1 Telephone Service". This document shall provide policy and procedures under these administrative rules.

(2) Enhanced 9-1-1 shall be implemented on a countywide basis at a minimum. All public safety answering points or 9-1-1 jurisdictions within a county shall participate in the planning process for Enhanced 9-1-1. A primary public safety answering point or 9-1-1 jurisdiction can submit a plan either alone or jointly with any other public safety answering points or 9-1-1 jurisdictions within the county.

(3) The Manager of a primary PSAP is responsible for the Enhanced 9-1-1 Service Plan for their 9-1-1 service area.

(4) No primary PSAP shall submit a final Enhanced 9-1-1 Service Plan if less than ninety percent of their total 9-1-1 service area is addressed. "Addressed" as used herein is interpreted to mean address ranges assigned to streets (named) based on a predetermined grid.

(5) A primary PSAP shall first contact their primary utility to initiate the planning, coordination and implementation of their Enhanced 9-1-1 system.

(6) The primary PSAP and primary utility shall mutually identify other utilities within the primary PSAP's service area for identification within the plan.

(7) Upon completion of the Enhanced 9-1-1 Service Plan, the primary PSAP will submit the final plan to the Division, all public and private safety agencies in the 9-1-1 Service area, and the Utility(s) which provides local exchange access service in the 9-1-1 service area.

(8) The Enhanced 9-1-1 Service Plan shall contain the following sections and information:

(a) "Section 1 — Introduction" of the Enhanced 9-1-1 Service Plan shall include at a minimum:

(A) The name of the Enhanced 9-1-1 service area (i.e., The Enhanced 9-1-1 Service Plan for Jackson County);

(B) An executive summary of what is contained in the plan and how the system will operate;

(C) The submission date of the Enhanced 9-1-1 Service Plan and whether it is a preliminary or final Enhanced 9-1-1 Service Plan;

(D) The estimated accumulative working days required to complete implementation of the Enhanced 9-1-1 telecommunications service;

(E) Estimated time by the primary PSAP to complete:

(i) MSAG (Master Street Address Guide) development;

(ii) ESN (Emergency Service Number) assignment;

(iii) Facility survey;

(iv) Local agreements;

(v) Design of on-premises equipment;

(vi) Addressing if required.

(F) Estimated time of the Utility to complete:

# ADMINISTRATIVE RULES

- (i) Data bases;
  - (ii) Network configuration;
  - (iii) Pricing;
  - (iv) Installation;
  - (v) Testing;
  - (vi) Central Office modification if required.
- (b) "Section 2 — System Overview" of the Enhanced 9-1-1 Service Plan shall include at a minimum:

(A) A map showing the geographical boundaries of the telephone exchanges included in the proposed 9-1-1 service area. The final primary and secondary PSAP location(s) within the system area and any other jurisdictional boundaries that are pertinent to the system description;

(B) The name and mailing address and telephone number of all Public or Private Safety Agencies participating. The name, title and telephone number of the primary PSAP Manager submitting the plan;

(C) Name, address and telephone number of all primary and secondary PSAPs affected by this plan as well as the PSAP manager's name.

(c) "Section 3 — System Design and Standards Compliance" of the Enhanced 9-1-1 Service Plan shall include at a minimum:

(A) A description of the 9-1-1 system routing and switching configuration, as provided by the primary utility and compiled from all utilities or vendors participating in the installation;

(B) A description of the default routing and switching configuration by central office as provided by the utility;

(C) A description of the Network Exchange Services, which will transport the automatic location identification and automatic number identification information to the designated PSAP upon a person placing a call. This will also include the Central Office equipment and any Network Access Mileage provided by the primary utility and in compliance with the approved tariff schedule on file with the Oregon PUC;

(D) A disaster recovery plan per ORS 401.775 will be attached to this plan;

(E) A description and/or documentation from the primary utility that the 9-1-1 system is designed to a P.01 grade of service. A plan to monitor and maintain this grade of service must be included by the primary utility;

(F) A listing of the non-emergency 24-hour published number for each public safety answering point or 9-1-1 jurisdiction and each participating Public and Private Safety Agency;

(G) A listing of the primary and secondary PSAP(s) 7or 10-digit 24-hour emergency number;

(H) An itemized listing of the primary PSAP(s) on-premises equipment that will be necessary to implement the Enhanced 9-1-1 system. The description must include sufficient specification to identify the equipment relating to system adequacy. At a minimum, the equipment must provide automatic display of the telephone number and address of a caller at the time of receiving the incoming 9-1-1 call.

(d) "Section 4 — System Operational Standards Compliance" of the Enhanced 9-1-1 Service Plan shall include at a minimum:

(A) A listing of all Public and Private Safety Agencies served by each primary and secondary PSAP and whether the 9-1-1 call for each agency will be handled by direct dispatch, call relay or transfer;

(B) A description of how 9-1-1 calls entering the system, which do not require the dispatching of a Public or Private Safety Agency, will be handled or referred.

(e) "Section 5 — System Expenses" of the Enhanced 9-1-1 Service Plan shall itemize and provide documentation of the following initial and recurring system expenses:

(A) Costs of the Network Exchange Services necessary to provide the minimum of P.01 grade of service, provided by the serving Utility and approved within a tariff schedule by the Oregon PUC;

(B) Costs at each primary PSAP for the on-premises equipment, installation and maintenance. Citing of statute and rules relating to public contracting used for procurement;

(C) Costs for ongoing maintenance following the warranty period for the on-premises equipment. Projected costs for network maintenance contained within a PUC approved tariff schedule;

(D) Costs for data base development (MSAG). The estimated length of time these costs will need to be incurred. Provide costs, if any, for ongoing data base update for the Service Area. Include title of position and hourly wage/benefit package of employee doing the database development;

(E) Any costs for central office conversion necessary for Enhanced 9-1-1 implementation as provided by the utilities;

(F) Costs for consulting work being submitted for approval;

(G) Costs, if any, for street addressing being submitted for approval;

(H) In addition to the requirements set forth in ORS 401.755(9), revised plans submitted under ORS 401.755(2) shall include the written approval of the 9-1-1 jurisdiction or primary public safety answering point presently providing 9-1-1 telephone service.

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

Stat. Auth.: ORS 401.730(1)(a)

Stats. Implemented: ORS 401.710 - ORS 401.790

Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 3-1992(Temp), f. & cert. ef. 7-15-92; EMD 3-1993(Temp), f. & cert. ef. 1-15-93; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0021

### Purpose

The standards and procedures set out in this rule will be followed to insure the calling party's right to confidentiality is not breached in violation of ORS 401.765(2).

Stat. Auth.: ORS 401.730(1)(a)

Stats. Implemented:

Hist.: EMD 1-1993, f. & cert. ef. 1-15-93; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0022

### Definitions

(1) "Automatic Telephone Number Identifications (ATNI)" means:

(a) All forms of Automatic Number Identification (ANI), Automatic Location Identification (ALI), and database information used in the processing of a 9-1-1 emergency telephone call.

(b) ATNI refers to the utility customer's telephone number, the customer's main telephone service location and the name of the utility customer required pursuant to OAR 104-080-0050(10)(a) to be supplied to the primary PSAP or 9-1-1 jurisdiction through an enhanced 9-1-1 telephone system. This reference to ATNI does not include Wireless 9-1-1 service.

(c) ATNI information may be displayed either on a video monitor or hard-copy printer.

(2) "DMS" means Data Management System as defined in OAR 104-080-0010(5).

(3) "Official Report" means a final document, created by a PSAP or other public safety agency, for incident reporting purposes:

(a) After all confidential data received from the (NP) or (NL) data source are edited or deleted in compliance with ORS 401.765(2) and this rule; and

(b) Which is incident specific and is not co-mingled with other unrelated incidents.

(4) "Official Report" does not mean:

(a) An intermediate or temporary record;

(b) An automatic electronic display, and hard copy or electronic storage of ATNI;

(c) Call logs, either manual or automated, unless separated by incident;

(d) Computer Aided Dispatch records, unless separated by incident;

(e) Call detail voice and log recorders;

(f) ATNI, ANI or ALI display units and printers.

NOTE: Unless otherwise noted above, terms used in these rules are defined in ORS 401.710(1) through (19), and OAR 104-080-0010(1) through (16).

Stat. Auth.: ORS 401.730(1)(a)

Stats. Implemented:

Hist.: EMD 1-1993, f. & cert. ef. 1-15-93; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0023

### Use of 9-1-1 ATNI Information

(1) All telecommunicators, as defined in OAR 104-060-0010, shall not rely solely on the automatic display of ATNI information to determine the location of the call unless no other information is available.

(2) The telecommunicator, to the extent practicable under the circumstances existing at the time of the call, shall confirm the accuracy of ATNI information, and the identity of the calling party because the calling party and the utility customer whose name is displayed may not be presumed to be one-in-the-same person.

Stat. Auth.: ORS 401.730(1)(a)

Stats. Implemented:

Hist.: EMD 1-1993, f. & cert. ef. 1-15-93; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0024

### Use of Non-Published or Non-Listed ATNI Information

(1) When a telecommunicator has determined that the automatic display ATNI is derived from a non-published (NP) or non-listed (NL) data source, the telecommunicator shall obtain from the calling party permission to disclose the information to the general public before it is used in an official report. Permission shall be deemed to have been granted only if the

# ADMINISTRATIVE RULES

calling party identifies him or herself as the person listed in the NP or NL data source and indicates that it is acceptable that the NP or NL ATNI information may be disclosed to the general public. However, any information obtained from a calling party in a 9-1-1 call may be used for emergency dispatch purposes without restriction. The utilities shall provide a NP or NL designation with the ID in their data sources and shall notify their customers of privacy limitations associated with calls placed to 9-1-1.

(2) All records and reports relating to the call shall be reviewed for confidential information prior to public release and disclosure. Upon determination that confidential information exists, disclosure shall take place only after all data received from the (NP) or (NL) data source are edited or deleted in compliance with ORS 401.765(2).

(3) Upon receipt of ID with a (NP) or (NL) designation, when transferring the ID to the dispatcher or a public or private safety agency, the PSAP operator or 9-1-1 jurisdiction telecommunicator shall identify the information as having been received from a non-published or non-listed data source.

Stat. Auth.: ORS 401.730(1)(a)  
Stats. Implemented:  
Hist.: EMD 1-1993, f. & cert. ef. 1-15-93; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0025

### Official Reports

(1) A PSAP is not required to write an official report. Should a 9-1-1 jurisdiction or primary PSAP choose not to write an official report, all of its records must be kept confidential and are not subject to disclosure until an official report is written by another public or private safety agency.

(2) As defined in the Oregon Public Records Law, ORS 192.430, all records of a public body including PSAPs are "public records" and are subject to public disclosure unless otherwise expressly prohibited by law or withheld from disclosure in whole or in part by an agency pursuant to an express exemption from the Oregon Public Records Law. ORS 401.765(2) establishes an exception.

Stat. Auth.: ORS 401.730(1)(a)  
Stats. Implemented:  
Hist.: EMD 1-1993, f. & cert. ef. 1-15-93; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0026

### DMS

The DMS used by the PSAP or 9-1-1 jurisdiction must be approved as part of the primary PSAP's final plan.

Stat. Auth.: ORS 401.730(1)(a)  
Stats. Implemented:  
Hist.: EMD 1-1993, f. & cert. ef. 1-15-93; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0027

### Reverse Query Without 9-1-1 Activation

(1) Nothing in these rules shall be interpreted as allowing "reverse query" of any utility supplied Automatic Location Information DMS unless and until a primary PSAP has received a live 9-1-1 call from the public, and then only for the purpose of identifying the customer name, address and phone number of the phone from which the call was made.

(2) Reverse query includes any ability to search the utility DMS regardless of the technological ability of the Customer Premises Equipment.

Stat. Auth.: ORS 401.730(1)(a)  
Stats. Implemented:  
Hist.: EMD 1-1993, f. & cert. ef. 1-15-93; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0028

### Procedures for Obtaining ATNI Information Without 9-1-1 Activation

(1) Each primary PSAP shall establish policy and procedures to allow the prompt acquisition of ATNI information through a Utility's DMS in the absence of a 9-1-1 activation.

(2) Procedures shall include agreements with each utility(s) security system and be subject to periodic testing to assure accuracy.

Stat. Auth.: ORS 401.730(1)(a)  
Stats. Implemented:  
Hist.: EMD 1-1993, f. & cert. ef. 1-15-93; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0030

### Administrative Considerations

(1) Except as otherwise provided by local agreement that has been approved by the Division, 9-1-1 callers shall first be routed to the primary public safety answering point serving the caller's primary law enforcement agency.

(2) Transfers shall be kept to an absolute minimum. A 9-1-1 call should not be transferred more than once. Any deviation from this section shall be subject to division approval.

(3) Auto-dialing alarms and/or automated voice announcers shall not be allowed to access 9-1-1 telephone lines unless utilized to meet the requirements of the Americans with Disabilities Act.

(4) All 9-1-1 calls generated within the State of Oregon, shall be answered in the State of Oregon, to the extent telecommunications technology will allow. Exceptions to this rule shall be granted subject to conditions in 104-080-0070(2).

(5) No 9-1-1 emergency reporting system shall use on-premises equipment designed to offer a 9-1-1 caller a choice of options for determining the disposition of their 9-1-1 call without the assistance of a 9-1-1 call taker. Devices specifically prohibited are known generically as "Automated Call Attendant" or "Voice Mail".

(6) Allowable devices are limited to pre-recorded messages informing the 9-1-1 caller that all call taking positions are currently busy and to remain on the line. These "queue" devices shall be capable of sequencing calls in a manner that forces the oldest call in the queue to be answered first by the next available call taker.

(7) All telecommunicators, as defined in OAR 104-060-0010, should not rely solely on the automatic display of ATNI information to determine the location of the call unless no other information is available.

(8) The telecommunicator, to the extent practicable under the circumstances existing at the time of the call, should confirm the accuracy of the ATNI information, and the identity of the calling party because the calling party and the utility customer whose name is displayed may not be presumed to be the one-in-the-same person.

(9) When a telecommunicator has determined that the automatic display ATNI is derived from a non-published (NP) or non-listed (NL) data source, the telecommunicator shall obtain from the calling party permission to disclose the information to the general public before it is used in an official report. Permission shall be deemed to have been granted only if the calling party identifies himself or herself as the person listed in the NP or NL data source and indicates that the NP and NL ATNI information may be disclosed to the general public. However, any information obtained from the calling party in a 9-1-1 call may be used for emergency dispatch purposes without restriction. The telecommunications carrier shall provide a NP or NL designation with the ID in their data sources and shall notify their customers of privacy limitations associated with calls placed to 9-1-1.

(10) All records and reports relating to the call shall be reviewed for confidential information prior to public release and disclosure. Upon determination that confidential information exists, disclosure shall take place only after all data received from the NP or NL data source are edited or deleted in compliance with ORS 401.765(2).

(11) Upon receipt of ID with a NP or NL designation when transferring the ID to the dispatcher or a public or private safety agency, the PSAP operator or 9-1-1 jurisdiction telecommunicator shall identify the information as having been received from a non-published or non-listed data source.

(12) A PSAP is not required to write an official report. Should a 9-1-1 jurisdiction or primary PSAP choose not to write an official report, all its records must be kept confidential and are not subject to disclosure until an official report is written by another public or private safety agency.

(13) As defined in the Oregon Public Records Law, ORS 192.430, all records of a public body including PSAPs are "public records" and are subject to public disclosure unless otherwise expressly prohibited by law or withheld from disclosure in whole or in part by an agency pursuant to an express exemption from the Oregon Public Records Law. ORS 401.765(2) establishes an exception.

(14) The data management system used by the PSAP or 9-1-1 jurisdiction must be approved as part of the primary PSAP's final plan.

(15) Reverse Query shall be allowed only after the PSAP has received a live emergency call on either its 9-1-1 lines or seven-digit emergency lines from the public, and then only for the purpose of identifying the customer name, address, and phone number from which the call was made or where the emergency is located. Reverse query includes any ability to search the telecommunications carrier data management system regardless of the technological ability of the customer premise equipment.

(16) A PSAP upgrading to Enhanced 9-1-1 will only be authorized Enhanced 9-1-1 telephone positions equal to that currently in use for active basic 9-1-1 call taking. A PSAP replacing Enhanced 9-1-1 call taking equipment will only be authorized Enhanced 9-1-1 telephone positions equal to those currently in use. A PSAP may request an increase of Enhanced 9-1-1 telephone positions subject to approval of the Division. All requests shall be in writing and based on the following criteria:

- (a) Population increase of PSAP service area;
- (b) Increased 9-1-1 call volume;

# ADMINISTRATIVE RULES

(c) PSAP consolidation.

Stat. Auth.: ORS 401.730(1)(a)

Stats. Implemented: ORS 401.710 - ORS 401.790

Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 3-1992(Temp), f. & cert. ef. 7-15-92; EMD 3-1993(Temp), f. & cert. ef. 1-15-93; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0040

### Operations

(1) TTY equipment required. Each PSAP shall be equipped with a Telephone Typewriter (TTY) for which it is possible to connect an incoming TTY call on any line to the TTY. TTY access shall meet all Federal requirements outlined in the American Disabilities Act of 1990.

(2) Logging recorder equipment is recommended:

(a) It is recommended each PSAP have a logging recorder in operation equipped to record all voice conversations of each call as well as the date and time of each call;

(b) It is recommended each call taker station be equipped with an instant playback type of recorder to record each incoming 9-1-1 call. At least 10 minutes of storage capacity should be included. It is highly recommended that the recorder be of a digital voice storage type with no moving parts.

(3) Back-up power equipment is recommended:

(a) It is recommended each primary public safety answering point have a gasoline, diesel, propane or other powered motor generator set for powering the primary public safety answering point during long term power outages;

(b) Each primary public safety answering point shall have a battery powered Uninterruptible Power Supply (UPS) which should be capable of powering the essential customer premise equipment at the primary public safety answering point for a period sufficiently long to enable the motor generator recommended in subsection (3)(a) of this rule to start and stabilize. No calls shall be lost during the transition to the UPS.

(4) Each primary public safety answering point shall have building security to restrict intentional disruption of operations. All 9-1-1 processing and control equipment shall be accessible only to authorized personnel. Display and printing equipment shall be located so that the information is limited to those with a need to know.

(5) All exposed 9-1-1 circuit facilities and 9-1-1 customer premise equipment (CPE) rooms at the primary public safety answering point shall be protected and internally marked to prevent accidental damage or tampering. For this section "protected" includes maintaining the ambient room temperature per the CPE manufacturers' requirements.

(6) A primary PSAP call taker station shall consist of an operator position equipped with (minimum):

(a) Telephone device;

(b) ANI display; and

(c) ALI display.

(7) Any equipment, supplies and services purchased from the Enhanced 9-1-1 Subaccount shall be for the provisioning of Enhanced 9-1-1 telecommunications services.

Stat. Auth.: ORS 401.730(1)(a)

Stats. Implemented: ORS 401.710 - ORS 401.790

Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 3-1992(Temp), f. & cert. ef. 7-15-92; EMD 3-1993(Temp), f. & cert. ef. 1-15-93; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0050

### Technical

(1) All plans or contracts submitted for State review will be approved by the Division on the basis of service and cost for the 9-1-1 service area impacted.

(2) Subscriber information data shall be the responsibility of the providers and made available through a Data Management System (DMS) to the requesting primary PSAP at time of receipt of an Enhanced 9-1-1 call.

(3) Unless approved by the division no primary utility shall require any primary PSAP to query more than one Data Management System for all Enhanced 9-1-1 calls.

(4) The primary PSAP, primary utility, and the Division shall mutually identify the need for selective routing and the associated devices through which all calls for service are to be processed.

(5) Where interoperability requires the affected telephone utility to share its automatic location identification, a Division approved method shall be implemented.

(6) Provisioning on-premise equipment is subject to approval by the Division and must meet open systems requirements:

(a) Two methods of provisioning on-premise equipment will be considered by the Division:

(A) Provided by the primary utility and billed as non-recurring charges with monthly maintenance included; and

(B) Customer Owned And Maintained.

(b) On-premises equipment shall perform the following minimal functions:

(A) Line hold and line indicator for Enhanced 9-1-1 service;

(B) Common control equipment and, when determined necessary by the Division, Automatic Call Distribution equipment and call sequencers;

(C) Telephone sets as indicated for primary interrogation and dispatch positions only;

(D) Automatic Number Identification controller(s) and associated display(s) as indicated for primary interrogation and dispatch positions only;

(E) Automatic Location Identification controller(s), data device(s), data channel(s) and display(s) as indicated for primary interrogation and dispatch positions only;

(F) Call detail recorder defined as a character print device;

(G) Holdover battery supply for paragraphs (A) through (E) of this subsection;

(H) An Uninterrupted Power Supply (UPS) shall be allowed in lieu of battery holdover when prior approval is received from the Division. Any allowed UPS device shall be only for the purpose of supporting a PSAP's Enhanced 9-1-1 CPE.

(c) When a primary PSAP elects to purchase CPE that is intended to be Customer Owned and Maintained the primary PSAP shall comply with the following:

(A) The equipment must be compatible with and functionally equivalent to the primary utility provided Enhanced 9-1-1 network;

(B) Mean time to repair must be equal or better to that provided by the primary utility;

(C) Equipment must be FCC approved and provide noiseless supervised transfer and conferencing.

(d) All Customer Owned and Maintained equipment is the responsibility of the primary PSAP regarding maintenance and provisioning of these standards.

(9) All installations shall be capable of both analog and digital receipt of incoming Enhanced 9-1-1 calls. Digital compatibility for voice includes, but is not limited to, Signaling System 7, Feature group "X" and ISDN. Digital compatibility for data includes the ability to accept location information on a single digital transport provided by the prime utility.

(10) Every utility providing Automatic Location Identification shall present uniform data streams as required for contiguous primary PSAP operations. Such data streams may be transmitted in such a manner to allow each primary PSAP's station terminal equipment to display automatic location identification in a predetermined manner. Any vendor supplied data management system shall search other vendors' data management system to respond to an ALI request from a PSAP when the requested data does not reside on the vendors' system. The source of all ALI is to be part of the submitted plan presented by the primary PSAP and primary utility.

(11) Each Automatic Location Identification data set shall include at a minimum:

(a) Area Code and Telephone number, ten digit ANI when available;

(b) Class of service;

(c) Time in 24-hour format;

(d) Date;

(e) Subscriber name or non-published;

(f) House number;

(g) House number suffix;

(h) Prefix and or Post directional;

(i) Street name including type;

(j) Emergency Service Number location;

(k) Postal community;

(l) State;

(m) Emergency Service Number;

(n) Pilot number;

(o) Emergency Service Number translation;

(12) Each utility shall provide to the primary PSAP a Master Street Address Guide in either printed or electronic format as agreed to within the plan.

(13) Ownership of the Master Street Address Guide shall be jointly held between the primary PSAP, the utility, and Division.

(14) Each utility shall provide the Division a completed Master Street Address Guide in electronic format upon final completion and as agreed upon between the utility and the Division.

# ADMINISTRATIVE RULES

(15) Each utility shall provide an updated Master Street Address Guide to the primary PSAP on a quarterly basis or as agreed upon within the contract for service upon each primary PSAP's installation and thereafter at intervals agreed upon between the Division and providers.

(16) The provider of each Data Management System shall be responsible for the provider based Master Street Address Guide process including compilation and continued maintenance.

(17) The selective routing database contained within each approved selective routing device shall be maintained by the vendor(s) of such selective routing in such a manner as to accurately reflect the most recent issuance or change of address, service or service account datum within 48 hours of such change.

(18) The Division shall approve all Emergency Service Numbers assigned by a primary PSAP and primary utility. The Division will make a reasonable attempt to prevent duplication of these Emergency Service Numbers. The Division may, as required, assign or direct reassignment of Emergency Service Numbers to prevent unnecessary duplication or confusion. All geographic information data provided or produced from Enhanced 9-1-1 Sub-Account funding shall be jointly owned between the primary PSAP and the Division.

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

Stat. Auth.: ORS 401.730(1)(A)

Stats. Implemented: ORS 401.710 - ORS 401.790

Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0060

### Funding Considerations

(1) Emergency Communications Account:

(a) Telephone tax funds shall be distributed in January, April, July and October of each year;

(b) Cities and Counties shall determine the appropriate 9-1-1 jurisdiction to which their distribution shall be directed;

(c) 9-1-1 jurisdictions shall receive telephone tax funds directly from their respective city(s) and county(s) unless prior arrangements have been made and approved by the Division;

(d) The Division shall maintain a current listing of recognized 9-1-1 jurisdictions eligible to receive and expend 9-1-1 telephone tax funds;

(e) Allowable Emergency Communications Account expenditures at the primary PSAP include only:

(A) 9-1-1 call taking personnel;

(B) 9-1-1 telephone line charges;

(C) 9-1-1 telephone system for call processing of 9-1-1 calls;

(D) Transfer and relay telephone line charges to secondary PSAPs;

(E) Fifty percent funding of radio base stations necessary to notify responders of a 9-1-1 call for service;

(F) 9-1-1 telephone system maintenance costs;

(G) Receive only pagers if this is primary means of notifying responders of 9-1-1 call for service;

(H) Fifty percent funding of transmit/receive pagers, portable or mobile radios and repeater stations when used as primary means of notification of responding agencies of a 9-1-1 call for service;

(I) Training expenses for 9-1-1 call takers;

(J) 9-1-1 answering contracts for primary PSAPs;

(K) Telephone and radio recording equipment used to record 9-1-1 telephone calls and notifications of responding agencies of 9-1-1 calls for service;

(L) Uninterruptible power supply systems for 9-1-1 telephone systems;

(M) Plectrons and encoders if this is the primary means of notifying responding agencies of a 9-1-1 call for service;

(N) Public education regarding 9-1-1 use and availability;

(O) Computer data links to responding agencies if this is the means used to notify responding agencies of 9-1-1 calls for service;

(P) Rural addressing;

(Q) Base rate charges for seven or ten digit emergency and non-emergency PSAP reporting numbers.

(f) The following items are allowed on a percentage basis of funding with Emergency Communications Account funds with prior approval of the Division as to the percentage allowed:

(A) Computer aided dispatch systems that handle 9-1-1 call processing and notification of responding agencies of 9-1-1 calls for service;

(B) Telephone and radio consoles;

(C) Administration and overhead (rent, utilities, maintenance) of a multi-use PSAP that includes dispatching of public safety services;

(D) Backup power systems (generators);

(E) Alternate PSAP sites and circuit routing when used for disaster recovery;

(F) Planning costs for the preliminary and final plan preparation for Enhanced 9-1-1 Plans required in Section 6 and 7, chapter 743, Oregon Laws 1991.

(g) Any other items not covered by these rules that after application by the primary PSAP and concurrence of the Division are necessary in providing 9-1-1 services in the primary PSAP service area;

(h) Secondary PSAPs are not eligible for funding from this account.

(2) Enhanced 9-1-1 Sub-Account: The following costs of providing Enhanced 9-1-1 telephone service shall be reimbursed from the Enhanced 9-1-1 Sub-Account of the Emergency Communications Account, subject to available funds and the following requirements, to those 9-1-1 Planning Committees that have been issued an Enhanced 9-1-1 Service Plan Approval by the Division:

(a) Costs of the Network Exchange Services necessary to provide the minimum grade of service defined in ORS 401.720(4)(d);

(b) Costs for on-premises equipment:

(A) Allowances for Customer Owned And Maintained on-premises equipment will be limited to the estimated cost of the primary utility supplied solution or actual costs, whichever is less;

(B) Integration of Automatic Number Identification and Automatic Location Identification into a Computer Aided Dispatch system in use by a primary PSAP may be compensated in lieu of on-premise display equipment with the exception that one Automatic Number Identification display and one Automatic Location Identification display must be actively in use on-site. Compensation will be limited to the cost of such displays as provided by the primary utility;

(C) On-going maintenance costs following the warranty period, if any, for on-premises equipment;

(D) Payment of costs for on-going maintenance of the on-premises equipment following the expiration of the warranty period for the equipment shall be made by submitting a copy of the maintenance contract with an itemized listing of hourly labor rates and equipment costs to the Division for approval;

(E) The Division shall make payment directly to the vendor upon verification that the charges are for the 9-1-1 on-premises equipment and services originally contracted for and that the vendor's hourly labor rate does not exceed the prevailing labor rate for similar communication equipment and services.

(c) Database, MSAG development and maintenance based on the hourly wage including benefits of employee(s) doing this work for the primary PSAP and the number of hours the employee(s) devotes to this process as approved by the Division;

(d) Payment of costs for consulting related to Enhanced 9-1-1 shall be made by the Division directly to the consultant, but only after verification that:

(A) The need and proposed cost of consulting services were identified in either the original Enhanced 9-1-1 Service Plan; and

(B) A copy of the consultant's contract and fees have been submitted and approved by the Division.

(e) Funding associated with the deployment of a rural addressing system that is adequate to support Enhanced 9-1-1 is subject to prior approval of the Division. Funding priority will be given to jurisdictions that do not now have an addressing system:

(F) Units of local government not directly providing public safety answering point operation and having investments as defined in Chapter 533, Section 20(2) of Oregon Laws 1981 as amended shall first expend such investments.

(3) Equipment Replacement Sub-Account: The Equipment Replacement Sub-Account was established to replace Enhanced 9-1-1 customer premises equipment currently in service that does not accomplish the functional requirements for processing Enhanced 9-1-1 calls as determined by the Division and may include:

(a) Maintenance issues based on the age of the equipment, and the availability of the parts;

(b) Ability to meet open systems requirements of the State of Oregon;

(c) Ability to migrate to new technologies developed for Enhanced 9-1-1 services.

(4) The Division shall work with a PSAP that has requested CPE replacement to determine the need for equipment replacement and will make the final determination whether or not to replace the CPE.

(5) The process for provisioning replacement CPE will follow the same process outlined in OAR 104-080-0050(8), and is required to have Division approval.

# ADMINISTRATIVE RULES

(6) Funding from the Equipment Replacement Sub-Account will only be authorized for those PSAPs that comply with these rules.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 401.730(1)(a)  
Stats. Implemented: ORS 401.710 - ORS 401.790  
Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03

## 104-080-0070 Variance

(1) The mediation of disputes between a governing body, 9-1-1 jurisdiction and public or private safety agency regarding a 9-1-1 system, not otherwise resolved in accordance with a written agreement, shall be undertaken as provided in ORS 401.785.

(2) Any deviation from these guidelines is subject to approval by the Division. Requests for deviation shall identify which section(s) are affected and include supporting documentation of the device or process involved. The Division may require additional clarification at its discretion.

(3) Primary PSAPs geographically situated in such a manner that interoperability with another primary PSAP is believed to be an unreasonable goal, shall request a variance from the applicable provisions of these rules.

Stat. Auth.: ORS 401.730(1)(a)  
Stats. Implemented: ORS 401.710 - ORS 401.790  
Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03

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

**Adm. Order No.:** OSFM 1-2003

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**Rules Adopted:** 837-110-0007, 837-110-0075, 837-110-0155

**Rules Amended:** 837-110-0060, 837-110-0070, 837-110-0140, 837-110-0150

**Subject:** OAR 837-110 - Field Burning and Propaning Rules require growers who are burning fields next to highways and roadways to have a fire watch "to assure driver safety and divert traffic if necessary." The definition of a fire watch has been vague, and a grower's responsibility for traffic safety has been confusing. The additions and amendments to these rules are designed to clear up the confusion.

**Rules Coordinator:** Glen Andreassen—(503) 373-1540, ext. 210

## 837-110-0007 Definitions

(1) Local services road: Serves isolated areas that have little or no potential for further development and those serving a minimal number of parcels of land. Most of these roads will not be through roads (connected to public roads on both ends) but will dead end at the service to the last parcel on the road.

(2) Trained Flagger: Has successfully completed a training course taught by a competent person. The training course must comply in substance with Oregon Department of Transportation flagging course content.

Stat. Auth.: ORS 476.030, ORS 476.380 & ORS 478.960  
Stats. Implemented: ORS 476.380 & ORS 478.960  
Hist.: OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

## 837-110-0060 Communication

The ability to call assistance and summon help from an appropriate emergency response agency shall be maintained at all times by phone, or by radio communications between all firefighting equipment used in the burning of the field and a constantly staffed base station or home with phone access.

Stat. Auth.: ORS 476 & ORS 478  
Stats. Implemented: ORS 476.380 & ORS 478.960  
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

## 837-110-0070 Fire Safety Watch

In addition to the firefighting equipment required by OAR 837-110-0020 and 837-110-0030, a continuous fire safety watch shall be provided. The fire safety watch:

(1) Shall patrol the perimeter of the field during burning operations.

(2) Shall begin prior to the ignition of the field and continue for at least 30 minutes after open flame ceases. However, the fire watch shall not leave until it is confirmed that the fire is completely out.

(3) Shall consist of at least one firefighting vehicle having a water tank with at least a 200 gallon water capacity and which meets the requirements of OAR 837-110-0030 and 837-110-0060.

Stat. Auth.: ORS 476.030, ORS 476.380 & ORS 478.960  
Stats. Implemented: ORS 476.380 & ORS 478.960  
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94; OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

## 837-110-0075 Traffic Safety

The person responsible for the acreage being burned shall provide signage and trained flaggers for traffic safety. The person responsible:

(1) May allow a field to burn next to a state highway without designated buffer zones or next to an arterial route as long as there are trained flaggers and warning signage on the road at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary. Burning may occur next to a state highway without designated buffer zones or an arterial route only if there are no combustibles or brush between the edge of the field and the highway or route.

(2) May allow a field to burn next to a rural collector road as long as there is signage on the road at both ends of the field informing drivers that burning is occurring ahead and they should be prepared to stop. Trained flaggers shall be available in the vicinity to immediately respond with flagging signs to the road at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary. Burning may occur along a rural collector road only if there are no combustibles or brush between the edge of the field and the rural collector road.

(3) May allow a field to burn next to a rural local service road as long as there is signage on the road at both ends of the field informing drivers that burning is occurring ahead. Trained flaggers shall be available to be on the road with flagging signs at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary.

**NOTE:** For purposes of these rules, state highway, arterial routes and collector roads are defined by the Federal Highway Administration and the Oregon Department of Transportation. Before burning a field, contact your county road authority for road designation and county regulations.  
Stat. Auth.: ORS 476.030, ORS 476.380 & ORS 478.960  
Stats. Implemented: ORS 476.380 & ORS 478.960  
Hist.: OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

## 837-110-0140 Communication

The ability to call for assistance and summon help from an appropriate emergency response agency shall be maintained at all times by phone or radio communications between all firefighting equipment used in the burning of the fields and a constantly staffed base station or home with phone access.

Stat. Auth.: ORS 476 & ORS 478  
Stats. Implemented: ORS 476.380 & ORS 478.960  
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

## 837-110-0150 Fire Safety Watch

A fire watch:

(1) Shall begin following the propaning of the field and continue for at least 30 minutes after completion. However, the fire watch shall not leave until it is confirmed that the fire and all smoke sources are completely out.

(2) Shall consist of at least one firefighting vehicle with at least a 200 gallon water tank, which is manned and equipped as stipulated in OAR 837-110-0020, 837-110-0030, and 837-110-0060.

Stat. Auth.: ORS 476.030, ORS 476.380 & ORS 478.960  
Stats. Implemented: ORS 476.380 & ORS 478.960  
Hist.: FM 7-1988(Temp), f. & cert. ef. 8-12-88; FM 8-1988(Temp), f. & cert. 8-15-88; FM 1-1989, f. & cert. ef. 2-7-89; FM 4-1993(Temp), f. & cert. ef. 8-11-93; FM 2-1994, f. & cert. ef. 2-7-94; OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

## 837-110-0155 Traffic Safety

The person responsible for the acreage being burned shall provide signage and trained flaggers for traffic safety. The person responsible:

(1) May allow a field to burn next to a state highway without designated buffer zones or next to an arterial route as long as there are trained flaggers and warning signage on the road at both ends of the field during

# ADMINISTRATIVE RULES

the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary. Burning may occur next to a state highway with out designated zones or an arterial route only if there are no combustibles or brush between the edge of the field and the highway or route.

(2) May allow a field to burn next to a rural collector road as long as there is signage on the road at both ends of the field informing drivers that burning is occurring ahead and they should be prepared to stop. Trained flaggers shall be available in the vicinity to immediately respond with flagging signs to the road at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary. Burning may occur along a rural collector road only if there are no combustibles or brush between the edge of the field and the rural collector road.

(3) May allow a field to burn next to a rural local services road as long as there is signage on the road at both ends of the field informing drivers that burning is occurring ahead. Trained flaggers shall be available to be on the road at both ends of the field during the time that the burning is occurring, in order to assure driver safety and stop or divert traffic if necessary.

**NOTE:** For purposes of these rules, state highway, arterial routes and collector roads are defined by the Federal Highway Administration and the Oregon Department of Transportation. Before burning a field, contact your county road authority for road designation and county regulations.

Stat. Auth.: ORS 476.030, ORS 476.380 & ORS 478.960

Stats. Implemented: ORS 476.380 & ORS 478.960

Hist.: OSFM 1-2003, f. 1-8-03, cert. ef. 2-1-03

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## Department of Revenue Chapter 150

**Adm. Order No.:** REV 7-2002

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 12-20-02

**Notice Publication Date:**

**Rules Renumbered:** 150-465.517(3) to 150-465.517(5)

**Subject:** Renumber rule to reflect statute renumber in 2001 Legislative Session.

**Rules Coordinator:** Xann-Marie Culver—(503) 947-2099

### 150-465.517(5)

#### Payment of the Operating Fee

(1) For calendar years beginning on or after January 1, 2002, the annual operating fee must be paid in a single payment that is due on the facility's first day of operation in the calendar year.

**Example:** AB Dry Cleaners begins operation of its facility on July 1 of the current year. Its first annual payment is due on July 1 and will be prorated based on six months of operation during the calendar year. The payment for the following year will be due on January 1 of that next year.

(2) For calendar years beginning on or after January 1, 2000, and before January 1, 2002, the annual operating fee for a dry cleaning facility or dry store may be paid in a single payment on January 1 or in four equal installments payable on January 1, April 1, July 1, and October 1.

Stat. Auth.: ORS 305.100 & ORS 465.543

Stats. Implemented: ORS 465.517

Hist.: REV 10-1999, f. 12-30-99, cert. ef. 12-31-99; REV 7-2000, f. & cert. ef. 8-3-00, Renumbered from 150-465.517; REV 5-2001, f. & cert. ef. 12-31-01; REV 7-2002, f. & cert. ef. 12-20-02, Renumbered from 150-465.517(3)

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**Adm. Order No.:** REV 8-2002

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 12-31-02

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 150-18.902(5), 150-305.222, 150-305.612, 150-314.280(3), 150-323.140, 150-323.160(2), 150-465.517(3)

**Rules Amended:** 150-305.145(2), 150-314.260, 150-314.280-(N), 150-314.385(1)-(B), 150-314.525(1)-(A), 150-314.840, 150-315.164

**Rules Repealed:** 150-29.375, 150-314.610(4)-(A), 150-305.612(T), 150-314.840(T)

**Rules Transferred:** 150-23.185 to 150-23.186, 150-23.185-(A) to 150-23.186-(A)

**Subject:** To adopt, amend, repeal, or amend and renumber administrative rules relating to personal income tax, corporation income and excise taxes, drycleaner fees, and tobacco tax compliance.

**Rules Coordinator:** Xann-Marie Culver—(503) 947-2099

### 150-18.902(5)

#### Appeal Period after Garnishment Challenge Denied

If a person makes a challenge to a garnishment, and that challenge is denied in whole or in part by the department, the person may request a contested case hearing before an administrative law judge of the Hearing Officer Panel established under Chapter 849, Oregon Laws 1999. To be valid, the hearing request must be in writing and must be received by the department within 90 days of the date on the face of the Response to Challenge to Garnishment letter issued by the department.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 18.902

Hist.: REV 8-2002, f. & cert. ef. 12-31-02

### 150-23.186

#### Oregon Department of Revenue Tax Garnishments and Orders to Withhold Child or Spousal Support.

(1) The Department of Revenue is authorized to continuously garnish up to 25 percent of an employee's disposable earnings to recover delinquent state tax debt. Concurrently, a district attorney or the Division of Child Support of the Department of Justice is authorized to request the courts to order the withholding of delinquent and current child or spousal support from an employee's disposable earnings.

(2) Under ORS 23.186(4), the maximum disposable earnings subject to garnishment is reduced by an order to withhold wages for child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. Normally, any other existing garnishments would then be limited to 25 percent of disposable earnings after subtracting the order to withhold wages. However, ORS 23.186(6) specifies that, for garnishments to pay state tax debt, the provisions of ORS 23.186(4) do not apply. Therefore, a garnishment to pay state tax debt would be calculated upon disposable earnings and not reduced by an order to withhold child or spousal support.

(3) Example 1:

Employee A has \$4,000 per month of disposable earnings. Employee A owes delinquent child support totaling \$15,000. An order to withhold child support has been granted which requires Employee A's employer to withhold 35 percent of disposable earnings.

Employee A also owes a state personal income tax debt totaling \$5,000. The department has garnished Employee A's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold child support and the garnishment as follows: [Formula not included. See ED. NOTE.]

(4) If for any reason orders to withhold wages for child or spousal support and garnishments for state tax debt exceed the disposable earnings of the taxpayer, any orders to withhold wages under ORS 25.378 will have priority over any other legal process, including all garnishments for state tax debt or otherwise (ORS 25.375). The employer will reduce payments pursuant to the department's garnishment as needed.

(5) Example 2:

Employee A's employer has been paying 35 percent of Employee A's disposable earnings under an order to withhold child support. The employer now has received a Special Notice of Garnishment from the department which causes a one-time garnishment of 100 percent of Employee A's disposable earnings. Since more than 100 percent of Employee A's disposable earnings have been attached, under ORS 25.375, the order to withhold now takes priority. The employer would compute and distribute payments under the order and garnishment as follows: [Formula not included. See ED. NOTE.]

[ED. NOTE: Formulas referenced in this rule are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 23.185

Hist.: RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185 by REV 8-2002, f. & cert. ef. 12-31-02

### 150-23.186-(A)

#### Oregon Department of Revenue Other Agency Account Garnishments

(1) Under ORS 293.250, the Department of Revenue may, render assistance to recover delinquent debts owed to any state officer, board, commission, corporation, institution, department or other state organization assigned by the agency to the Department of Revenue for collection, including actions to continuously garnish up to 25 percent of an employee's disposable earnings.

(2) Under ORS 23.186(4), nonexempt disposable earnings are reduced by an order to withhold child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. The maximum disposal earnings subject to garnishment for the period is determined by ORS 23.186(2)(a) through 23.186(2)(e) minus any amount required to be withheld from an individual's disposal earnings for the period pursuant to an order to withhold child or spousal support issued under ORS 25.378 and others. The order to withhold child or spousal support may reduce the amount available for garnishment to zero.

(3) Under ORS 23.186(2)(a) through 23.186(2)(e) the nonexempt disposable earnings subject to garnishment for the period is calculated by

# ADMINISTRATIVE RULES

reducing the individual's disposable earnings for that period by the amount of disposable earnings exempt from garnishment. The amount of disposable earnings exempt from garnishment is the greater of 75 percent of the disposable earnings for the period under ORS 23.186(1) or the minimum exemption amount under ORS 23.186(2)(a) through ORS 23.186(2)(e).

(4) Example 1: Employee A has \$1,000 per week of disposable earnings. Employee A owes child support totaling \$15,000. An order to withhold for child or spousal support under ORS 25.378 has been issued to Employee A's employer directing the employer to withhold 10 percent of Employee A's disposable earnings. Employee A also owes a state agency for a delinquent student loan totaling \$5,000. (a state non-tax debt). The Department of Revenue has garnished Employee A's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold for child or spousal support and the garnishment as follows: [Calculation not included. See ED. NOTE.] Although the Department of Revenue has issued a 25 percent garnishment that would normally return \$250, because of the order to withhold for child or spousal support, the amount available on the non-state tax debt garnishment is limited to \$150.

(5) Example 2: Assume the same facts as in example 1 except that the order to withhold child or spousal support is 35 percent. The employer would calculate the order to withhold child or spousal support and garnishment as follows: [Calculation not included. See ED. NOTE.]

(6) Example 3: Employee A has \$200 per week disposable earnings. Employee A owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished Employee A's employer for 25 percent of disposable earnings. Employee A is not under an order to withhold for child or spousal support. The employer would calculate and pay the garnishment as follows: [Calculation not included. See ED. NOTE.]

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

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 23.185

Hist.: REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185(A) by REV 8-2002, f. & cert. ef. 12-31-02

## 150-305.145(2)

### Accrual of Interest After Waiver

(1) The Department of Revenue will notify the taxpayer in writing if interest is waived under ORS 305.145(1). The taxpayer must pay the amount of the assessment within the appropriate appeal period. If the taxpayer does not pay the balance in full within the applicable appeal period, interest will accrue from that time on the balance due as provided in ORS 314.400(4).

(2) If the balance due is based on a Notice of Assessment the appeal period is 90 days from the date on the notice. If the balance due is based on a Magistrate decision, the appeal period is 60 days from the date of the decision. If the balance due is based on a Tax Court Judgment, the appeal period is 30 days from the date of the judgment.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.145

Hist.: RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; REV 8-2002, f. & cert. ef. 12-31-02

## 150-305.222

### Defines Order for Purposes of Interest Rate Increase

(1) If tax is not paid within 60 days after the date an individual is notified of a tax delinquency, the interest rate imposed by ORS 305.220 is increased by one-third of one percent per month (4% annually.) The interest is also increased after 60 days for tax due, if not paid or appealed, on a notice of assessment following a deficiency, or a final order issued by the Tax Court or Supreme Court that affirms the deficiency.

(2) For purposes of ORS 305.222, an order is defined as:

(a) A Decision and Judgment issued under a small claims procedure in the Magistrate Division of the Oregon Tax Court,

(b) Any Decision or Stipulated Judgment issued by the Magistrate Division of the Oregon Tax Court,

(c) A Judgment issued by the Regular Division of the Oregon Tax Court, or

(d) A Judgment issued by the Oregon Supreme Court.

Example (1) Clyde timely files his current year return on April 15, but does not pay the tax shown as due. The department processes the return and sends a notice of tax due on April 28. Additional interest is charged beginning on the 61st day (June 28) after the department issues the notice.

Example (2) Assume the same facts as Example 1, except the return is adjusted in processing and Clyde receives a notice of deficiency for additional tax due. No payment is received and a notice of assessment is issued 30 days later. The interest rate is increased beginning 61 days from the assessment date if the tax is not paid or appealed.

Example (3) Assume the same facts as Example 2, except that Clyde appeals the assessment to the Magistrate Division of the Oregon Tax Court and chooses a small

claims procedure. The Decision and Judgment issued by the Magistrate affirms the tax due. If payment of the tax is not made within 60 days of the Decision and Judgment, interest is increased on the 61st day.

Example (4) Assume the same facts as Example 3, except that Clyde appeals to the Magistrate Division of the Oregon Tax Court and chooses a standard case. The Magistrate Division issues a Decision that upholds the assessment. Additional interest is charged beginning 61 days after the date of the Decision, if the tax is not paid and no appeal is filed.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.222

Hist.: REV 8-2002 f. & cert. ef. 12-31-02

## 150-305.612

### Offset of State Debt Through U.S. Treasury Offset Program

(1) The Department of Revenue may submit liquidated state income tax debt for offset against federal tax refunds through the "Treasury Offset Program" under 26 USC 6402(e) and 31 CFR 285.8. For purposes of this rule, liquidated means legally enforceable because:

(a) The liability is assessed, either self-assessed by the taxpayer or department-assessed;

(b) The department has made written demand for payment of the liability and issued a warrant as provided for in ORS 305.895 and 314.430;

(c) The taxpayer is not in bankruptcy; and

(d) All relevant appeal periods for contesting the liability have expired.

(2) Notice of intent to offset. Before submitting an Oregon tax debt to Financial Management Service, U.S. Treasury for offset against a federal refund, the Department of Revenue must send written notice of intent to offset to the taxpayer by certified mail.

(3) Disagreement procedures. If a taxpayer disagrees with the notice of intent to offset and wants reconsideration, the taxpayer must submit a letter of disagreement within 60 days of the date shown on the notice of intent to offset. The taxpayer must provide, and the department will limit consideration to, evidence that the tax debt scheduled for offset is not:

(a) Past due, or

(b) Legally enforceable.

(4) If the taxpayer claims that the debt is not legally enforceable because the taxpayer is an enrolled member of an Indian tribe whose income is not subject to Oregon tax under ORS 316.777 or ORS 316.785, the department will consider the merits of such a claim unless the issue has already been finally adjudicated by a court in a proceeding to which the department is a party.

(5) Review of disagreement. For each letter of disagreement, the department will:

(a) Review all evidence provided by the taxpayer, and

(b) Remove taxpayer's name from the federal refund offset list for this debt if evidence supports the taxpayer's position that the debt is not past due or legally enforceable.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.612

Hist.: REV 5-2002(Temp), f. & cert. ef. 9-23-02 thru 3-1-03; REV 8-2002 f. & cert. ef. 12-31-02

## 150-314.260

### REMIC Filing Requirements

A real estate mortgage investment conduit (REMIC) receiving income from prohibited transactions, must file an Oregon Form 20-I and a copy of the complete federal return, including a Schedule Q (Notice to Residual Interest Holder of REMIC Income or Loss) for each residual interest holder. A REMIC must file an Oregon return only for tax years with income from prohibited transactions.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.260

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 8-2002, f. & cert. ef. 12-31-02

## 150-314.280(3)

### Election to Use Alternative Apportionment Weightings by Taxpayers Engaged in Utilities or Telecommunications; Revocation of Election

(1) A taxpayer engaged in utilities or telecommunications as defined in ORS 314.280(3)(e)(A) and (B) may elect to use the apportionment factor weightings per ORS 314.650 (1999 Edition) by attaching a statement to the original or amended tax return on which the taxpayer first claims the alternative factor weightings. The statement must explain that the taxpayer elects to apportion income from primarily engaging in utilities or telecommunications using the factor weightings provided in ORS 314.650 (1999 Edition), as authorized by ORS 314.280(3)(b). The election may be made for tax years beginning on or after May 1, 2003.



# ADMINISTRATIVE RULES

(2) Taxpayers may revoke the election made under section (1) of this rule by attaching a statement to the original or amended return for the tax year for which the revocation is effective. The statement must explain that the taxpayer is revoking the election authorized by ORS 314.280(3)(b).

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 314.280  
Hist.: REV 8-2002, f. & cert. ef. 12-31-02

## 150-314.280-(N)

### Modified Factors for Financial Organizations

(1) A financial organization having income from business activity that is taxable both within and without this state must allocate and apportion its net income as provided in this rule for tax years beginning on or after January 1, 1993. All items of nonbusiness income (income that is not includable in the apportionable tax base) must be allocated pursuant to the provisions of ORS 314.610 through 314.645 and the rules thereunder. A financial organization organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the Federal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, must allocate and apportion its net income as provided in this rule.

(2)(a) All business income (income that is includable in the apportionable income tax base) must be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is determined by adding the product of the taxpayer's receipts factor as described in section 4 of this rule multiplied by two, to the property factor as described in section 5 of this rule and the payroll factor as described in section 6 of this rule and dividing the sum by four. If one of the factors is missing, the remaining factors are added and the sum is divided by three (divide by two if the missing factor is the receipts factor). A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(b) Each factor must be computed according to the method of accounting (cash or accrual) used by the taxpayer for the taxable year.

(c) See OAR 150-314.280-(M) for other methods of apportionment and allocation or modification of the method in this rule that may be allowable.

(3) Definitions as used in this rule, unless the context otherwise requires:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement, or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(A) A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(B) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) "Commercial domicile" means:

(A) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(B) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed or directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, no matter where the services of such employees are performed, as of the last day of the taxable year.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services provided by the merchant to the credit card.

(f) "Financial organization" is defined in ORS 314.610(4).

(g) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans do not include: loans representing property acquired in lieu of

or pursuant to a foreclosure under section 595 of the federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from other depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(h) "Loan secured by real property" means that 50 percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(i) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(j) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(k) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(l) "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly:

(A) starts his or her work and to which the employee customarily returns in order to receive instructions from the employer, or

(B) communicates with customers or other persons, or

(C) performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points.

(m) "Real property owned" and "tangible personal property owned" means real and tangible personal property, respectively,

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(n) "Regular place of business" means an office at which the taxpayer conducts business in a regular and systematic manner and that is continuously maintained, occupied, and used by employees of the taxpayer.

(o) "State" is defined in ORS 314.610, paragraph (8).

(p) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(q) "Taxable" is defined as "taxable in another state" in ORS 314.620.

(r) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

(4) Receipts Factor.

(a) In general. The receipts factor is a fraction as provided in ORS 314.665(1). The receipts factor includes only those receipts described herein that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. See OAR 150-314.665(3).

(c) Receipts from the lease of tangible personal property.

(A) Except as described in paragraph (B) of this subsection, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(B) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the

## ADMINISTRATIVE RULES

property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(A) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than 50 percent of the fair market value of the real property is located within this state. If more than 50 percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection must be included in the numerator of the receipts factor if the borrower is located in this state.

(B) The determination of whether the real property securing a loan is located within this state is made as of the time the original agreement was made, and any and all subsequent substitutions of collateral are disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.

(A) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes all net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card-holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts are computed net of any card holder charge backs, but are not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card-holders.

(k) Loan servicing fees.

(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of

which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(C) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor must include such fees if the borrower is located in this state.

(l) Receipts from services. See OAR 150-314.665(4).

(m) Receipts from investment assets and activities and trading assets and activities.

(A) Interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities, trading account assets, federal funds; securities purchased and sold under agreements to resell or repurchase, options, future contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (i) and (ii) of this paragraph, the receipts factor includes the amounts described in such subparagraphs.

(i) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The receipts factor includes the amount by which interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(B) The numerator of the receipts factor includes interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities described in paragraph (A) that are attributable to this state.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph), attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the average value of such trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(iv) For purposes of this paragraph, average value is determined using the rules for determining the average value of tangible personal property set forth in subsections (c) and (d) of section (5).

(C) In lieu of using the method set forth in paragraph (B) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction, the

## ADMINISTRATIVE RULES

numerator of which is the gross income from such assets and activities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph) attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(D) If the taxpayer elects or is required by the department to use the method set forth in paragraph (C) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior written permission from the department, or the department requires, the use of a different method.

(E) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines are presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth under ORS 314.665.

(o) Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

### (5) Property Factor.

(a) In general. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real property, tangible personal property, loans, and credit card receivables located and used within this state during the taxable year and the denominator of which is the average value of all such property located and used both within and without this state during the taxable year.

(b) Property included. The property factor includes only property the income or expenses of which are included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged off for federal income tax purposes is treated as charged off for purposes of this section.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receiv-

able is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding.

(d) Average value of property owned by the taxpayer. See OAR 150-314.655(2)-(A) and 150-314.655(3).

(e) Average value of real property and tangible personal property rented to the taxpayer. See OAR 150-314.655(2)-(B).

(f) Location of real property and tangible personal property owned by or rented to the taxpayer.

(A) Except as described in paragraph (B) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(B) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft is deemed to be used in this state and the amount of value that is included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.

(g) Location of loans.

(A)(i) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state is presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(III) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in subparagraph (A)(ii) of this section may be rebutted upon a showing by the department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is located within this state if:

(I) The taxpayer had a regular place of business within this state at the time the loan was made; and

(II) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(B) In the case of a loan that is assigned by the taxpayer to a place without this state that is not a regular place of business, it is presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined by subsection (3)(c), was within this state.

(C) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue will be reviewed on a case-by-case basis and consideration will be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval," and "administration" are defined as follows:

(i) Solicitation. Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business that the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as

# ADMINISTRATIVE RULES

the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination, and security required). Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iv) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) Administration. Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables are treated as loans and are subject to the provisions of subsection (g) of this section.

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state, absent any change of material fact, remains assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business there.

(6) Payroll factor.

In general. The payroll factor is determined as provided in ORS 314.660 and the rules thereunder.

(7) When an Oregon consolidated group includes both financial corporations and nonfinancial corporations, Oregon returns must be filed as follows:

(a) If a financial corporation and one or more nonfinancial corporations are subject to taxation by Oregon:

(A) The financial corporation must file a return in its name under the provisions of ORS 317.715(5)(b), apportioning the income of the entire unitary group included in its federal consolidated return under the provisions of this rule. The factor numerators must include the Oregon property, payroll and receipts of the financial corporation only. The denominators must include the total property, payroll, and sales or receipts of the entire unitary group that is included in income or loss subject to apportionment.

(B) The nonfinancial corporations subject to Oregon taxation must file a consolidated return in the name determined under the provisions of OAR 150-317.710(5)(a)-(A). The income of the entire unitary group included in their consolidated federal return, including the financial corporation, must be apportioned using the standard apportionment factors under ORS 314.655 through 314.665. The numerators of the apportionment factors must include the Oregon property, payroll, and sales of the nonfinancial corporations and exclude the Oregon property, payroll, and receipts of the financial corporation. The denominators of the apportionment factors must include the property, payroll, and sales or receipts of the entire unitary group that is included in income or loss subject to apportionment.

(b) If a financial corporation is the only member of the unitary group subject to Oregon taxation, the income of the entire unitary group included in its consolidated federal return must be apportioned as provided in this rule. The Oregon property, payroll, and receipts of the financial corporation must be included in the apportionment factor numerators. The total property, payroll, and receipts or sales of the entire unitary group that is included in income or loss subject to apportionment must be included in the apportionment factor denominators.

(c) If no financial corporation is subject to Oregon taxation, but one or more nonfinancial corporations are, the standard apportionment factors provided in ORS 314.655 through 314.665 must be applied to the income of the entire unitary group, including any financial corporations. The Oregon property, payroll, and sales of the nonfinancial corporations must be included in the apportionment factor numerators. The denominators of the apportionment factors must include the property, payroll, and sales or

receipts of the entire unitary group that is included in income or loss subject to apportionment.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.280

Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95;

REV 8-2002, f. & cert. ef. 12-31-02

## 150-314.385(1)-(B)

### Filing Returns of Income: Extensions, Chapters 316, 317 and 318

(1) If a taxpayer cannot file a return within the prescribed time, the department may grant the taxpayer an extension of time for filing but this does not extend the time for payment of the tax.

(2) Procedure for requesting an Oregon extension when a federal extension is granted. The department will consider that an extension of time to file an Oregon return has been granted if the taxpayer has obtained from the Internal Revenue Service an extension of time to file the federal return. No request need be made to the department prior to filing the Oregon return. A copy of the approved federal extension or a copy of a filed automatic federal extension request under Internal Revenue Code (IRC) section 6081(b) may be attached to the Oregon return in accordance with current tax return instructions and will serve as evidence of a granted extension by the department. Obtaining an automatic extension for filing a return under this rule does not relieve the taxpayer of the responsibility to pay the estimated tax nor does it eliminate the interest charges for failure to pay the estimated tax. Neither does such an extension relieve the taxpayer of a late payment penalty provided under ORS 314.400, except when the requirements of paragraph (3) of OAR 150-314.400(1) are met. The length of the Oregon extension will be the same as the length of the extension granted by the Internal Revenue Service. If the Internal Revenue Service denies the taxpayer's extension request, but grants the taxpayer a period of time from the date of the denial in which to file the return the department will grant the taxpayer an equal period of time provided a copy of the denied extension request is attached to the Oregon return at the time of filing in accordance with the current tax return instructions.

(3) Procedure for requesting an extension for Oregon only.

(a) Individuals who have not requested a federal extension of time to file a federal personal income tax return or who are making a payment may do so for Oregon by completing and filing the appropriate Oregon form according to instructions provided by the department. The extension request and payment must be filed with the department on or before the original due date of the associated return.

(b) Corporations request a separate Oregon extension by writing "For Oregon Only" across the top of a federal extension form, filling out the form with Oregon tax information, and sending it, with any unpaid estimated excise tax, to the address for filing the associated tax return. A request for an extension for Oregon only must be filed on or before the original Oregon due date for the associated return.

(c) Insurance companies filing federal income tax returns on a fiscal year basis should request a separate extension for Oregon. The Oregon extension will be for the same length of time that would be allowed if the insurance company had filed a calendar year federal return and applied for a federal extension.

[Publications: The publications referenced are available from the agency]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.385

Hist.: 1958-59; 9-71; 11-73; 1-1-77; 12-31; 78; 12-31-80; 12-31-81; 12-31-82; 12-31-83; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 8-2002, f. & cert. ef. 12-31-02

## 150-314.525(1)-(A)

### Estimated Tax: Delinquent or Underestimated Payment or Both, Constitutes Underpayment

(1) An underpayment of corporation estimated tax exists when the payments received on or before a payment due date are less than the required payment due as determined under section (3) of this rule.

(2) For returns processed on or after January 1, 2001. If none of the exceptions as provided in section (3) of this rule are met, interest on underpayment of estimated tax is computed on the difference between the lowest amount determined under section (3) of this rule and the total estimated tax payments for the installment period made on or before the due date. [Calculations not included. See ED. NOTE.]

(3) Exceptions. Underpayment charges will not be imposed if each estimated tax payment is equal to or more than 25 percent (or the appropriate percentage of tax for short periods provided in OAR 150-314.515) of any one of the following:

(a) One hundred percent of the tax for tax years beginning on or after January 1, 1996.

# ADMINISTRATIVE RULES

(b) One hundred percent of the tax shown on the return for the preceding tax year (after credits and any state surplus refund) provided that the preceding tax year was a period of twelve months and an Oregon return showing a liability was filed for such tax year.

(A) When applying this subsection to a current taxable year of less than 12 months, the tax for the preceding tax year is reduced by multiplying it by the number of months in the short tax year and dividing the resulting amount by 12.

(B) This subsection applies only to the first required estimated tax payment due for a tax year by a large corporation. When a large corporation's first required payment is reduced under this subsection, the second required payment must be increased by the amount of the reduction. A large corporation is a corporation with federal taxable income, prior to net operating loss or capital loss deductions, of \$1 million or more in any of the three prior tax years.

(c) An amount equal to 100 percent of the tax computed on annualized taxable income. Annualized taxable income is computed as provided in ORS 314.525(2)(c)(A) or using the same annualization periods as used for federal tax purposes. Tax credits available on the date of the payment may be deducted from the annualized tax. An estimated or anticipated tax credit may not be used.

(d) An amount equal to 100 percent of the amount obtained by applying Section 6655(e)(3)(C) of the Internal Revenue Code to Oregon taxable income for any corporation with seasonal income.

[ED. NOTE: Calculations referenced in this rule are available from the agency.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.525

Hist.: 9-74; 1-1-77; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85, Renumbered from 150-315.525(1)?; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

## 150-314.840

### Information That May Be Furnished

As permitted by law, the department may disclose and give access to information described in ORS 314.835 to certain categories of persons, including, but not limited to:

#### (1) Department of Human Services

(a) Under provisions of ORS 418.135, the Department of Human Services may request in writing any information contained in the department's tax files as to the location, income, and property of parents who, according to the Department of Human Services, have abandoned or deserted or are failing to support their children receiving public assistance. The request must clearly specify the information desired and must supply the information the department requires. The request must contain a certification by the Department of Human Services that the information is being requested pursuant to ORS 418.135. The information must be used only for the purposes specified by the law authorizing the disclosure.

(b) Upon written request of the Department of Human Services, the department will disclose the names, addresses and social security numbers of applicants for elderly rental assistance under ORS 310.630 to 310.706 as authorized by ORS 314.860. The department must maintain a record of all requests for such disclosure. The information must be used only for the purposes specified by the laws authorizing the disclosure.

(2) Division of Child Support. Under the provisions of ORS 418.135 and 180.320, the Division of Child Support of the Department of Justice may request any information contained in the department's tax files for the purposes and under the limitations set forth in that statute. The rules set forth in subparagraph (a) of paragraph (1) of this rule for supplying information to the Department of Human Services will be followed in complying with any such requests. The information must be used only for the purposes specified by the laws authorizing the disclosure.

(3) District Attorneys. Under provisions of ORS 418.135, the District Attorney of any county in the state may request any information contained in the department's tax files for the purposes and under the limitations set forth in that statute. The rules set forth in subparagraph (a) of paragraph (1) of this rule for supplying information to the Department of Human Services will be followed in complying with any such requests. The information must be used only for the purposes specified by the law authorizing the disclosure.

(4) Corporations. The returns of a corporation will be open to inspection by any officer of the corporation or its authorized representative.

(5) Partnerships. The return of a partnership will be open to inspection by any person who was a partner during any part of the tax year covered by the return, provided that a showing satisfactory to the department is made that the person was a partner during the tax year covered by the return. In the event of the death of a partner, the return of the partnership will be open to inspection by the executor as defined in ORS 118.005 who is responsible for filing an inheritance tax return with respect to the deceased partner. Any person requesting information under this paragraph must make known to the department the reason for the request and the use to be made of the information.

(6) Conflicting Claims to a Dependency Deduction. The returns of two taxpayers claiming the same dependent(s) will be open to inspection by those two taxpayers as allowed in ORS 305.215.

(7) Taxpayer or Authorized Representative. Upon request by the taxpayer or the taxpayer's authorized representative, and unless otherwise prohibited by an Internal Revenue Service agreement, the department will permit either the taxpayer or the taxpayer's authorized representative to obtain copies of the taxpayer's income tax returns filed with the department for any tax year, copies of reports filed by the taxpayer in connection with such returns, and any other information that the department considers necessary in the administration of the tax laws. Upon request by the taxpayer or the taxpayer's authorized representative, and payment of the charges set forth in OAR 150-192.440, the department will furnish to either of them copies of these documents. Such requests may be made in person, in writing, or by telephone, e-mail or other generally used means of communication.

(a) "Taxpayer," for purposes of this rule, includes the executor or personal representative of a deceased taxpayer's estate or a person who is appointed or authorized by law to pay the taxes of a deceased taxpayer, and a trustee or other person who, by law, must pay the income taxes of a trust. However, only the tax information of a deceased taxpayer that relates to the duties of the executor, personal representative, or other person appointed or authorized to pay the taxes of the deceased taxpayer may be disclosed to such taxpayers.

(b) An "authorized representative" as used in this rule is a person authorized to represent the taxpayer under ORS 305.230. The department will recognize that a person is authorized to represent the taxpayer upon the filing with the department or tax magistrate division of a document apparently signed by the taxpayer clearly authorizing such representation or if the magistrate division is satisfied that the person is so authorized. The department may recognize a person as an authorized representative based on other evidence that the person is so authorized. If the magistrate division accepts a document signed by a person on behalf of a taxpayer, or has issued an order declaring that the person is authorized to represent the taxpayer, the department will consider the magistrate division to be satisfied that the person is an authorized representative. Unless a written authorization by the taxpayer provides otherwise, the department will presume the person is authorized to represent the taxpayer only with respect to the proceeding before the department or the magistrate division and will disclose only documents and information relating to the tax years at issue in that proceeding.

(A) Without evidence of the filing of a written authorization to represent the taxpayer, the department may determine that a person who otherwise meets the criteria of ORS 305.230, is authorized to represent the taxpayer with respect to a particular tax matter by revealing to the department knowledge of tax information that is:

(i) Related to the tax matter that is the subject of the inquiry or communication;

(ii) Of a nature that is generally known only to the taxpayer; and

(iii) Of a nature that taxpayers ordinarily do not share with others except for the purpose of empowering the person to represent the taxpayer regarding the taxpayer's tax matters.

Example: The inquirer reveals knowledge of taxpayer-related, private information from a department billing or notice.

(8) Husband and Wife Filing Separately. If a husband and wife have filed separate tax returns, neither spouse nor authorized representative will be permitted to inspect the separate return of the other spouse or to obtain any information from it or any related report without first having obtained written consent to do so from such other spouse except as provided in section (6) above.

(9) Power of Attorney. The department may disclose to a person who has a sufficient power of attorney, the same information that the department may disclose to the taxpayer.

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

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 314.840  
Hist.: 11-71; 11-73; 12-19-75; 1-1-77; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; REV 2-1998, f. & cert. ef. 5-1-98; REV 6-2002(Temp), f. & cert. ef. 10-3-02 thru 3-31-03; REV 8-2002, f. & cert. ef. 12-31-02

## 150-315.164

### Farmworker Housing Credit

#### (1) General Information.

(a) A credit is available to taxpayers who construct, install, or rehabilitate housing for farmworkers and their immediate families.

(b) The credit is available for farmworker housing projects that are physically begun on or after January 1, 1990.

(c) Depreciation and amortization expenses associated with the farmworker housing project are not decreased by the amount of the tax credit allowed under Oregon Laws 1989, Ch. 963, SB 734, relevant sections of which are printed in the note following ORS 316.116.

(d) The taxpayer's adjusted basis in the housing project is not decreased by any tax credits allowed under Oregon Laws 1989, Ch. 963, SB 734, relevant sections of which are printed in the note following ORS 316.116.

#### (2) Qualifications for the Tax Credit.

(a) The farmworker housing project must be located in Oregon to qualify for the credit.

(b) The housing project must be limited to occupancy by farmworkers during the tax year in order to qualify for the credit. If the housing is occupied at any time during the year by persons other than farmworkers and their immediate families, the housing will not qualify for the credit. Nor can the housing be used for any other function except housing for farmworkers.

#### (c) The taxpayer claiming the credit must:

(A) Obtain a letter of credit approval from the Oregon Housing and Community Services Department (OHCS D); and

(B) Certify on an annual basis that any units that were occupied during the tax year were occupied only by farmworkers or their immediate families. The letter of credit approval and the certification must be maintained in the taxpayer's records and made available to the department on request.

(d) The OHCS D administers the application and eligibility process for this credit. See chapter 813, divisions 41 and 42 of the Oregon Administrative Rules, and contact OHCS D for more information.

#### (3) Computation of the Tax Credit For Projects Completed in Tax Years Beginning On or After January 1, 2002

(a) The credit is equal to 50 percent of the costs directly associated with the construction or rehabilitation of the farmworker housing project including costs for financing, construction, excavation, installation, and permits. Construction includes acquisition of new or used prefabricated or manufactured housing. Acquisition costs of land and existing improvements on that land used for the project are not included in the computation.

(b) The credit first may be claimed in the year the project is completed or in any of the nine succeeding tax years. No more than 20 percent of the total credit may be claimed in any one tax year. The housing is not required to be occupied prior to the end of the tax year in which the project is completed in order for the credit to be claimed.

(c) Tax credits not used in a tax year may be carried forward for up to nine years. Any credit carried forward is used first, before the allowable current year credit.

(d) Costs of rehabilitation include capital expenditures only. The allowable costs are those incurred for additions or improvements to property (or related facilities) with a useful life of five years or more. Rehabilitation costs do not include the cost of acquiring the building or an interest in the building.

(4) *Computation of the Tax Credit for Projects Completed in Tax Years Beginning before January 1, 2002.* The credit is equal to 30 percent of costs described in subsection (3)(a) if completed after December 31, 1995, and 50 percent if completed before December 31, 1995. The credit is claimed in equal installments over a consecutive five-year period beginning in the year the farmworker housing project is completed. The credits may be carried forward for up to five years. Otherwise, the computation of the credit is the same as specified in section (3) of this rule.

(5) *Disallowance and Forfeiture of Tax Credit.* The tax credit will be disallowed and any prior years' credits forfeited in the case of:

(a) Fraud or misrepresentation by the taxpayer to obtain the credit.

(b) A taxpayer who is an owner or operator who fails to substantially comply with occupational health and safety rules, regulations, or standards.

The Department of Consumer and Business Services will notify the department of any farmworker housing project failing to substantially comply with these standards.

(c) A taxpayer who is an owner or operator who fails to obtain required registration as a farmworker camp with the Department of Consumer and Business Services.

(d) A taxpayer who is an owner or operator of a farmworker housing project that is not operated by a person who holds a valid endorsement as a farmworker camp operator, if required under ORS 658.730.

(6) Sale of Farmworker Housing Project. If the farmworker housing project is sold, the original investor may continue to claim the tax credit, provided all other provisions are met.

Example: LeRay began construction of a farmworker housing project on his property on July 1, 1995. The project was completed on December 15, 1995, and on that date complied with the applicable health and safety standards. The housing was registered with the Department of Consumer and Business Services, and LeRay obtained endorsement as a farm camp operator. LeRay must claim the credit on his 1995 return, even though no units are occupied until 1996. If LeRay sells the property, he may continue to claim the credit only by obtaining a statement from the new owner of the property, certifying that any occupied units are occupied only by farmworkers and their immediate families. Upon audit or examination, LeRay must provide a statement for each year in which the credit is claimed if requested by the department.

(7) Transfer of Credit to Contributor. For tax years beginning on or after January 1, 2002, an owner or operator of farmworker housing may transfer to one or more contributors up to 80 percent of the total credit the owner or operator may claim. A contributor claiming the credit and the owner or operator must file a joint statement to be attached to the return on which the credit is claimed. The statement must include:

(a) The owner or operator's name, federal employer ID number (FEIN), Oregon business identification number (BIN), and designation as either the owner or operator;

(b) The contributor's name, FEIN, and BIN;

(c) The amount and percentage of the credit transferred;

(d) The total amount of credit the owner or operator may claim, before any transfer to contributors; and

(e) Signatures of or on behalf of the owner or operator and the contributor.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.164

Hist.: 9-20-89, 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.116(Note)-(B); RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.154; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 8-2002, f. & cert. ef. 12-31-02

## 150-323.140

### Notification of Proposed Suspension or Revocation of License; Appeal; Final Notification

(1) When the department proposes to suspend or revoke an existing valid license, the department will notify the distributor of the proposed action, stating the reasons for such action. The distributor has 90 calendar days from the date on the notice to file an appeal requesting a hearing with the Magistrate Division of the Oregon Tax Court or correct the deficiency or other non-compliance to the department's satisfaction.

(2) If a distributor requests a hearing within the appeal period in section (1), no action will be taken by the department regarding the suspension or revocation of a license until the Magistrate has decided the case.

(3) If a distributor does not request a hearing within the appeal period in section (1), or correct the deficiency or other non-compliance to the department's satisfaction, the department will issue a final notice of suspension or revocation of an existing valid license.

(4) The notices described in sections (1) and (3) will be mailed to the distributor by certified mail, return receipt requested, using the last known address of the distributor. Return of the notice as undeliverable or because the distributor fails or refuses to pick up or accept the notices will not extend the appeal period or delay the action specified in the final notice.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 323.140

Hist.: REV 8-2002, f. & cert. ef. 12-31-02

## 150-323.160(2)

### Responsibility for Affixing of Tax Stamps

(1) The distributor that first distributes cigarettes to anyone in the state of Oregon must affix the required tax stamps to the packs of cigarettes.

# ADMINISTRATIVE RULES

This requirement applies to distributors that are physically located inside or outside of Oregon.

Example 1: If a distributor sells cigarettes to a dealer in Oregon, the distributor must affix the required tax stamps.

Example 2: If distributor A sells cigarettes to distributor B who is within Oregon, distributor A must affix the required tax stamps.

(2) If the distributor that first distributes cigarettes in Oregon fails to affix the required tax stamps, any subsequent distributor possessing unstamped cigarettes must affix the required tax stamps before distributing those cigarettes in Oregon.

(3) A distributor that fails to affix the tax stamps as required by section (1) may be subject to civil and criminal penalties as provided in ORS 323.480 to 323.482.

(4) Distributors are not required to affix tax stamps to cigarettes that are free from tax under ORS 323.040, 323.050, 323.055, or 323.060.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 323.160

Hist.: REV 8-2002, f. & cert. ef. 12-31-02

## 150-465.517(3)

### Dry Cleaning Services Defined

Gross revenue of a dry cleaning facility derived from dry cleaning services is used as the base in determining the annual environmental fee to be paid by the facility. "Dry cleaning services" is defined as the cleaning of garments or other fabrics by and at a dry cleaning facility as defined in ORS 465.200(6) using a dry cleaning solvent as defined in ORS 465.200(9). Dry cleaning services do not include soap and water laundering, sales of goods such as hangers or other accessories, and garment storage. Pressing and alteration are excluded only if these services are charged for separately.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 465.517

Hist.: REV 8-2002, f. & cert. ef. 12-31-02

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**Adm. Order No.:** REV 9-2002

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 1-31-03

**Notice Publication Date:** 11-1-02

**Rules Amended:** 150-305.220(1), 150-305.220(2), 150-305.220(3)

**Subject:** To amend administrative rules relating to the interest rate applied to refunds and tax deficiencies.

**Rules Coordinator:** Xann-Marie Culver—(503) 947-2099

## 150-305.220(1)

### Computation of Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after February 1, 2003, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of .5833 percent per month (7 percent annually). For a fraction of a month, interest will be computed at .0192 percent per day.

(2) Interest starting date. The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be figured on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to figure interest due from taxpayers on deficiencies and delinquencies. [Table not included. See ED. NOTE.]

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places. [Table & Examples not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.220

Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03

## 150-305.220(2)

### Interest on Refunds

(1) *Adjustment to statutory rate.* For interest periods beginning on or after February 1, 2003, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of

Revenue will bear interest at the rate of .5833 percent per month (7 percent annually). For a fraction of a month, interest will be computed at .0192 percent per day.

(2) *Interest starting date.* The interest starting date will be 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is later.

(3) *Interest periods.* An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be figured on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) *Interest rates.* For interest periods beginning on or after June 1, 1983, the interest rate will be the same as the interest rate on deficiencies and delinquencies.

(5) *Decimal places used in computations.* In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates and interest periods used by the Oregon Department of Revenue to figure interest due to taxpayers on refunds. [Table & Examples not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, 12-31-82, Renumbered from Ch. 16, Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03

## 150-305.220(3)

### Interest Rate Formula Rule

(1) Once a year the director will compare the Oregon interest rate used for deficiencies, delinquencies, and refunds with the interest rate charged by the Internal Revenue Service for deficiencies and delinquencies to which one percent has been added. If the Oregon rate is one percent or more different from the modified federal rate, the director will revise the Oregon rate to the federal rate plus one percent. The comparison will be conducted in September

(2) Interest rates established under section (1) will be effective for interest periods beginning on or after February 1, 2003 and for interest periods beginning on or after January 1 of each year thereafter.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.220

Hist.: RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 2-1989, f. 12-18-89, cert. ef. 12-31-89; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03

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**Adm. Order No.:** REV 10-2002

**Filed with Sec. of State:** 12-31-2002

**Certified to be Effective:** 12-31-02

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 150-306.265, 150-308.560, 150-321.207(1)

**Rules Amended:** 150-307.175, 150-307.220-(B), 150-307.230-(B), 150-307.240-(B), 150-308.290(4)(b), 150-308.290(7)-(B), 150-308.704, 150-308.709, 150-308.712, 150-309.022(1), 150-310.110

**Rules Repealed:** 150-306.115(J), 150-309.024-(B)

**Rules Ren. & Amended:** 150-309.100-(A) to 150-309.100(2)-(A), 150-309.100(1) to 150-309.100(2)-(B), 150-309.100 to 150-309.100(3)-(A), 150-309.100(1)-(A) to 150-309.100(3)-(B), 150-309.100(2)-(C) to 150-309.100(3)-(C)

**Subject:** To adopt, amend, repeal, and amend and renumber administrative rules relating to property tax, local budget and valuation of low income housing units.

**Rules Coordinator:** Xann-Marie Culver—(503) 947-2099

## 150-306.265

### Application Filing by Telephonic Facsimile (FAX)

The Department of Revenue or any county may accept an application for property tax exemption or special assessment by FAX according to the policies and procedures of the receiving agency.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 306.126

Hist.: REV 10-2002, f. & cert. ef. 12-31-02

## 150-307.175

### Property Tax Status of Alternative Energy Systems

Definitions:

# ADMINISTRATIVE RULES

(1) "Alternative energy system" means a solar, geothermal, wind, water, fuel cell or methane gas energy system.

(2) "Principal business activity" means the primary commercial activity engaged in by an individual or other entity for the production of income.

(3) ORS 307.175 provides an exemption from ad valorem property tax for certain properties equipped with alternative energy systems. Properties that do not qualify for the exemption include:

(a) Properties subject to central assessment under ORS 308.515; and

(b) Properties owned or leased by individuals or entities whose principal business activity is the production, transportation or distribution of energy.

(3) The following factors will be considered in determining whether an individual or legal entity's principal business activity is the production, transportation or distribution of energy:

(a) Whether the owner or lessee is carrying on the activity for the purpose of earning a profit.

(b) Whether the owner or lessee represents to others that the owner or lessee will provide energy for a price.

(c) Whether the owner or lessee engages in a regular course or pattern of activities in connection with the production, transportation or distribution of energy.

(4) This rule does not apply to alternative energy systems that provide heating or cooling for personal consumption.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.175

Hist.: RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 10-2002, f. & cert. ef. 12-31-02

## 150-307.220-(B)

### Qualifications for Exemption of Mutual or Cooperative Telephone Associations

(1) Qualifying Conditions. Property owned by a mutual or cooperative telephone association is qualified for exemption if all the following conditions are satisfied:

(a) Ownership. The property must be owned by an association of persons that:

(A) Is wholly mutual or cooperative in character, whether incorporated or not. The characteristics of a mutual or cooperative association are:

(i) Each incorporated association is organized as a cooperative association or, if organized as a nonprofit organization, its bylaws provide that it operate as a cooperative association.

(ii) Each unincorporated association provides in its bylaws that the association is mutual or cooperative in character and is not to produce profit.

(iii) While one member may hold more stock or shares in the association than another member, voting cannot be based on ownership of shares, stock, certificates, or other evidence of their interest. Voting must be restricted to one vote to a member, or in proportion to their actual, estimated or potential patronage, as the bylaws may provide, except that in no event may any one member thereby exercise a majority vote.

(iv) All members must share proportionately, according to their evidence of interest, in the cost of construction, maintenance, and operation of the association's properties, and in the division of any surplus or reserves accumulated when such a surplus or reserve is not necessary for proper maintenance or construction of such system or all members must share in proportion to their patronage as the bylaws may provide.

(B) Operates without profit in money.

(C) Has no business or purpose other than the provision of telephone communications service.

(b) Use. All persons served must be members and must own shares, stock, certificates, or other evidence of their interest.

(c) Value. The association's telephone property has a real market value of not more than \$2,500 as determined by the Department of Revenue.

(d) Operation. The association's telephone communication system operation is conducted without the ownership, operation or lease of telephonic switchboard exchange facilities, or direct or indirect ownership of stock in any telephone switchboard association, partnership or corporation.

(2) Eligible Property. Property that may qualify for exemption includes all property consisting of improvements, fixtures, equipment and supplies used exclusively in the construction, maintenance, and operation of a telephone communication system. Examples of property that may qualify for exemption include but are not restricted to:

(a) Poles, crossarms, guy stubs and guy wire;

(b) Aerial wire;

(c) Aerial or underground cable;

(d) Suspension strand;

(e) Insulators;

(f) Terminals;

(g) Drop and blockwire;

(h) Telephones.

(3) Ineligible Property. The following types of property that cannot qualify for exemption will be classified and assessed pursuant to ORS 308.505 to 308.660.

(a) Parcels of land and buildings owned, leased, rented, chartered or otherwise held for or used by an association in a telephone communication system.

(b) Any other property not owned by the association but used or held by it in a telephone communication system.

(c) Any property owned, leased, rented, chartered or otherwise held by an association and not used in providing telephone communication.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.230

Hist.: 6-61; 1-66; 3-70; 11-71; REV 10-2002, f. & cert. ef. 12-31-02

## 150-307.230-(B)

### Qualifications for Exemption for Privately Owned Telephone Systems

(1) Qualifying Conditions. Property as part of privately owned telephone systems is qualified for exemption if all the following conditions are satisfied:

(a) Ownership. The property must be owned by a person not engaged in public service operation.

(b) Use. The property is used exclusively in the construction, maintenance and operation of a telephone communication system serving exclusively property owned or operated by such person.

(c) Value. The person's telephone property has a real market value of not more than \$1,500 as determined by the Department of Revenue.

(d) Operation. The person's telephone communication system operation is conducted without ownership, operation or lease of telephone switchboard exchange facilities, or direct or indirect ownership of stock in any telephone switchboard association, partnership or corporation.

(2) Eligible Property. Property that may qualify for exemption includes all property owned consisting of improvements, fixtures, equipment and supplies, used exclusively in the construction, maintenance and operation of a telephone communication system. Property that may qualify for exemption includes but is not restricted to the examples listed in OAR 150-307.220-(B)(2).

(3) Ineligible Property. The following types of property which cannot qualify for exemption will be classified and assessed in accordance with provisions of ORS 308.505 to 308.660:

(a) Parcels of land and buildings owned, leased, rented, chartered or otherwise held for or used by a person in a telephone communication system.

(b) Any other property not owned by a person and used or held in a telephone communication system.

(c) Any property owned, leased, rented, chartered or otherwise held by a person and not used in providing telephone communication.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.230

Hist.: 6-61; 1-66; 3-70; 11-71; REV 10-2002, f. & cert. ef. 12-31-02

## 150-307.240-(B)

### Application for Exemption Under ORS 307.220 or 307.230

(1) The application for exemption must contain all data required on the form prescribed by the Department of Revenue. The application for the first year in which an exemption is requested must be filed on or before March 15, and the Department will act upon the application within 30 days after receipt of the application.

(2) The Department will examine all applications and determine:

(a) Whether or not the applicant constitutes the type and kind of organization or owner described in ORS 307.220 or 307.230;

(b) What properties are entitled to exemption; and

(c) The parcels of land which will be assessed by the Department and those which will be assessed by the county assessor.

(3) The Department may require supplementary information from the applicant and may make a field examination to substantiate eligibility of the property for exemption.

(4) Upon initial qualification by an association or person, the Department will prepare and mail to the association or person (with a copy to the assessor) an exemption order containing a general description of property exempt under ORS 307.220 or 307.230.

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

Stat. Auth.: ORS 305.100



# ADMINISTRATIVE RULES

Stats. Implemented: ORS 307.240  
Hist.: 6-61; 1-66; 3-70; 11-71; 12-31-77; TC 2-1978, f. & cert. ef. 3-16-78; REV 10-2002, f. & cert. ef. 12-31-02

## 150-308.290(4)(b)

### Industrial Property Returns — Incomplete Returns and Late Filing Penalties

(1) Industrial Property Returns are combined returns of real and personal property for principal and secondary industrial property. The Industrial Property Return forms and instructions specify the information to be included in the return and submitted to the department.

(2) A taxpayer must submit a substantially complete return by the due date of the return. A return is substantially complete if it contains sufficient information to allow the return to be processed by the department. A return is not substantially complete if:

(a) It is submitted with blank or missing schedules unless the schedules are appropriately left blank and are labeled with an identifying notation such as “no”, “none”, or “not applicable”; or

(b) It is submitted with attachments that do not include required information as specified on the schedule.

(3) For the purposes of the late filing penalty imposed by ORS 308.295, a return that is not substantially complete will not be considered “filed”.

(4) If a taxpayer submits a return that is not substantially complete, the department will send the return back to the taxpayer with a request that the return be filed with the required information. The taxpayer may be subject to a late filing penalty under ORS 308.295 if a substantially complete Industrial Property Return is not filed by the later of the due date or 14 days after the date the department mailed the return that did not contain the required information back to the taxpayer.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.290

Hist.: REV 4-1998, f. & cert. ef. 6-30-98; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 10-2002, f. & cert. ef. 12-31-02

## 150-308.290(7)-(B)

### Confidentiality of Property Tax Information for Centrally Assessed Companies; Exchange Under Reciprocal Agreements

(1) The following information must be held confidential by the department:

(a) Returns filed under ORS 308.290, 308.525, and 308.810;

(b) Appraisals containing information from returns filed under ORS 308.290, 308.525, and 308.810;

(c) Any data or information obtained during an inspection of the subject property or audit of a company subject to the filing requirements of ORS 308.290, 308.525, and 308.810;

(d) Trade secrets as defined in ORS 192.501(2).

(2) The following information will not be held confidential by the department:

(a) Information contained in the central assessment roll as defined in ORS 308.560;

(b) Appraisal conclusions developed or derived by the department for a company subject to the filing requirements of ORS 308.290, 308.525, and 308.810, including:

(A) Interstate allocation percentages;

(B) Capitalization rates;

(C) Value indicators;

(D) System values.

(3) For the purposes of exchange under reciprocal agreements authorized in ORS 308.290(7), subject to the limitations of section (4) of this rule, “property tax information” includes:

(a) Information contained in annual returns filed under ORS 308.290, 308.525, and 308.810;

(b) Appraisals conducted under ORS 308.290, 308.505 to 308.660, 308.705 to 308.730, and 308.805 to 308.820;

(c) Any information developed by the department in conjunction with such appraisals including, but not limited to, capitalization rates, market and sales studies, and cost and depreciation schedules;

(d) Any data or information obtained during an inspection of the subject property or audit of a company subject to the filing requirements of ORS 308.290, 308.525, and 308.810;

(e) Any other information regarding unitary valuation, allocation, or taxation.

(4) For the purposes of exchange under reciprocal agreements “property tax information” does not include:

(a) Trade secrets as defined in ORS 192.501(2);

(b) Information or data restricted by order of a court of competent jurisdiction.

(5) Any reciprocal agreement with the federal government or the several states entered into for the purposes of exchange of property tax information must require the reciprocating party to apply the confidentiality standards, limitations, and definitions contained in ORS 192.501, ORS 308.290, 308.413, and this rule to any exchanged Oregon property tax information.

(6) Confidential information must not be exchanged under a reciprocal agreement with another state unless the reciprocal agreement meets the standards specified in section (4) of this rule.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.290

Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 10-2002, f. & cert. ef. 12-31-02

## 150-308.560

### Contents of the Utility Assessment Roll

For each company assessed, the department will include on the assessment roll according to the best information available, the following information:

(1) The name of the company;

(2) The name of a company contact or authorized agent;

(3) The last known address of the company or authorized agent;

(4) A general property description;

(5) The assessed value (AV), real market value (RMV), AV exceptions, and the RMV of exceptions;

(6) The values apportioned to each county where the property is located, including code areas, locations, county reference number, miles of track, wire or pipe, and values per mile, as applicable;

(7) Any penalty assessed under ORS 308.030;

(8) Any other information the department deems necessary for the counties to perform their duties as it pertains to the value determined for utility companies.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.550

Hist.: REV 10-2002, f. & cert. ef. 12-31-02

## 150-308.704

### Qualification of Property for Special Assessment as Government Restricted Multiunit Rental Housing

(1) Definitions

(a) “Qualified income rental housing” means property subject to the occupancy by tenants who meet restricted incomes and rents as described in the government incentive program in which the owner of the property is participating.

(b) “Dwelling unit” means a structure or the part of a structure that is used as a home or residence.

(c) “Contiguous” means having a common boundary to some extent greater than a point. Tax lots are contiguous if separated by public or county roads, state highways, or non-navigable streams or rivers. Tax lots are not contiguous if they are separated by interstate freeways or navigable streams or rivers, except where there is direct connecting access, such as an underpass, for property separated by an interstate freeway.

(2) To qualify for special assessment as government restricted multiunit rental housing, all of the following criteria must be met:

(a) The owner must file an application with the assessor in the county where the property is located;

(b) The property must be subject to a government restriction, which limits the use of the housing to qualified income rental housing, as of January 1 of the assessment year.

(c) The property owner must receive a government incentive for agreeing to limit the use of the property to qualified income rental housing. These incentives may include, but are not limited to:

(A) A low-income housing tax credit under section 42 of the Internal Revenue Code;

(B) Financing derived from exempt facility bonds for qualified residential rental projects under section 142 of the Internal Revenue Code;

(C) Financing derived from non-hospital bonds issued by entities that are tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code;

(D) A low interest loan under section 235 or sec 236 of the National Housing Act (12 U.S.C. 1715Z or 1715Z-1) or under 42 U.S.C. 1485;

(E) A government rent subsidy;

(F) A government guaranteed loan; or

(G) A rural development 515 low interest multifamily loan.

(d) The property must be residential rental housing consisting of four or more dwelling units situated on the same or contiguous tax lots. If there

# ADMINISTRATIVE RULES

are multiple residential structures, at least 50 percent of the structures must contain two or more dwelling units; and

(c) The property must not be an assisted living facility. An assisted living facility is a physical structure in which a program of "assisted living" as defined in OAR 411-056-0005(6) takes place.

(3) Examples of properties that may qualify for special assessment as having four or more dwelling units include:

(a) Two duplexes on the same tax lot.

(b) Two tax lots each having one duplex and separated by a local street.

(c) Two duplexes plus two single family units, one of which may be a manager's unit, with each structure on a separate but contiguous tax lot.

(4) Examples of properties that do not qualify for special assessment as having four or more dwelling units include:

(a) A triplex.

(b) Scattered, non-contiguous sites with no more than three units per site.

(c) One duplex plus two single family units.

(d) Single family homes, regardless of how many, whether on a single or contiguous tax lots.

(e) Group homes.

(5) If a single housing project consists of some units that qualify under this rule, such as two duplexes on the same tax lot, plus some units that do not qualify, such as two more duplexes on non-contiguous tax lots, only those units which qualify under this rule may be subject to special assessment.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 205.320, ORS 308.205, ORS 308.027, ORS 308.156, ORS 308.234, ORS 308.704, ORS 308.709, ORS 308.205, ORS 308.712, ORS 308.714, ORS 309.200, ORS 311.806, ORS 309.200 & ORS 457.450

Hist.: REV 6-2001, f. & cert. ef. 12-31-01; REV 10-2002, f. & cert. ef. 12-31-02

## 150-308.709

### Application and Election Process for Government Restricted Multiunit Rental Housing

(1) To obtain a special assessment for government restricted multiunit rental housing, the property owner must file an application and election form with the county assessor. The application and election form must be filed on or before April 1 of the assessment year. The application and election form may be filed after April 1 and on or before December 31, if accompanied by a late filing fee equal to the greater of \$200 or one-tenth of one percent of the real market value (RMV) of the property described in the application filed. Any application and election form that is filed late must be accompanied with the late filing fee. If the fee is not paid, the special assessment will not be granted. If the special assessment is denied by the assessor, the late filing fee must be refunded to the applicant.

(2) At the time the application and election form is filed, the property owner must elect the method the assessor is to use to determine the specially assessed value (SAV) of the property.

(a) If the property owner elects the income approach method, the application and election form must be accompanied by income and expense documentation. The required documents are:

(A) The rent roll for the month of December immediately preceding the date of application. The rent roll must show the rents charged for each unit and which units, if any, are vacant; and

(B) Annual income and expense statements for at least the three most recent years. Audited statements should be submitted, but unaudited statements may be provided if audited statements are not available; or

(C) Pro forma income and expense statements, but only if the project is new and historical documents are not available; or

(D) A combination of actual and pro forma income and expense statements for at least three years, if the property is not more than three years old.

(E) For mixed-use property the applicant must provide income and expense statements only for the portion of the property used as government restricted multiunit rental housing. Mixed-use property is property that consists of both government restricted multiunit rental housing and property used for other purposes.

(b) If the property owner elects the ratio method, the application and election form must be accompanied by the rent roll for the month of December immediately preceding the date of application. The rent roll must show the rents charged for each unit and which units, if any, are vacant.

(3) After the initial application and election form has been approved, the owner must submit additional information to the assessor only when one of the following events occur:

(a) The property owner wishes to change the election of the method used to determine the SAV; or

(b) New property has been constructed at the site, or new improvements are made to the government restricted multiunit rental housing; or

(c) The county assessor requests current income and expense statements.

(4) The county assessor will review the application and election form and accompanying documentation and determine if the property qualifies for special assessment.

(a) The application and election form must contain the information required under ORS 308.709 for the assessor to approve the special assessment. If the application and election forms are incomplete, the assessor may request additional information from the applicant in writing, as necessary, for completion or clarification. The applicant must submit the requested information, in writing, to the assessor within 15 days of the date of the request or by the filing deadline, whichever is later, for the assessor to accept the application as a timely filing. If the applicant does not submit the requested information within the time required, the assessor may deny the application.

(b) The assessor must notify the applicant of the determination, in writing, within 120 days of the date the application was filed with the assessor's office. If the application is denied, the notice to the property owner must include the instructions for appealing a denial of the special assessment by the assessor.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 205.320, ORS 308.205, ORS 308.027, ORS 308.156, ORS 308.234, ORS 308.704, ORS 308.709, ORS 308.205, ORS 308.712, ORS 308.714, ORS 309.200, ORS 311.806, ORS 309.200 & ORS 457.450

Hist.: REV 6-2001, f. & cert. ef. 12-31-01; REV 10-2002, f. & cert. ef. 12-31-02; REV 10-2002, f. & cert. ef. 12-31-02

## 150-308.712

### Special Assessment of Government Restricted Multiunit Rental Housing Property

(1) The assessed value (AV) of government restricted multiunit rental housing property is the lower of:

(a) The specially assessed value (SAV);

(b) The maximum assessed value based on the special assessment (MSAV); or

(c) The real market value (RMV).

(2) An owner of government restricted multiunit rental housing property may elect to have the property specially assessed using:

(a) An income approach method using actual income and stabilized expenses; or

(b) A ratio method.

(3) The income approach method — For the initial year of special assessment, the assessor utilizes the property's actual income statements for at least the prior three years. Pro forma statements may be used for recently constructed properties. A combination of actual and pro forma statements may be used.

(a) The goal of the income approach is to determine the value of only the real property. No personal property value should be included. The assessor may remove personal property value by one of the following methods:

(A) Include revenues and expenses for both the real and personal property. After the net operating income has been capitalized, deduct the value of the personal property; or

(B) Remove all income and expense generated by the personal property assets prior to capitalization.

(b) In determining the SAV, no income should be included for government income tax credits or mortgage interest subsidies.

(c) The assessor must use actual income (revenues) and stabilized expenses.

(d) Actual revenues included are those which result from the operation of the property. They include the rent paid by tenants and any monthly rent subsidies. Also, rent for parking or other amenities must be included. Revenue not directly related to the property, such as interest income, should be excluded.

(e) Stabilized expenses are those that would be expected to be typical for the property; not those that reflect unusual or extraordinary circumstances. The assessor may use averages for the three years and may express expenses on a per-unit basis or as a percentage of revenue. Expenses for a

# ADMINISTRATIVE RULES

particular year should be adjusted if they are atypical. The goal is to find the typical level of expenses.

(f) Expenses to include are those directly related to the operation of the property including, but not limited to, repairs and maintenance, utilities, government required tenant services, management and insurance. Certain expenses such as depreciation, mortgage interest, payments to developers and property taxes must be excluded. Reserves for replacements should be included, but any expense in the repair and maintenance category should be disallowed if it comes from the reserve account.

(g) The net operating income is determined from the above steps by subtracting the stabilized annual expenses from the actual annual revenues.

(h) The capitalization rate is estimated as follows:

(A) Factors to be considered in selecting a rate include the risks associated with multiunit rental housing subject to government restriction. These include diminished ownership control, income generating potential and liquidity. The assessor must also consider any other factors or risks typically taken into account when estimating a capitalization rate.

(B) The selected capitalization rate must be equal to or greater than the rate used by the assessor for similar unrestricted properties.

(C) To the selected rate, add the effective property tax rate for the code area where the property is located. This is the overall rate to use for capitalization.

(D) The value determined from the income approach is calculated by dividing the overall capitalization rate into the net operating income. This is the SAV. Notwithstanding the result of the calculation, the SAV of the real property land and improvements may not be less than \$1,000 per dwelling unit.

(4) The ratio method — This method utilizes a ratio of restricted to market rents.

(a) The assessor estimates the RMV of the property as if unrestricted.

(b) The actual annual total rent, including subsidies, is determined.

(c) The annual market rent for the property, if unrestricted, is estimated. If insufficient county data is available, the assessor may look to regional data.

(d) The ratio of the actual rent to the market rent is calculated.

(e) The unrestricted value from step (a) is multiplied by the ratio from step (d). This is the SAV. Notwithstanding the result of the calculation, the SAV of the real property land and improvements may not be less than \$1,000 per dwelling unit.

(5) Other issues of value, including unusual physical or functional circumstances affecting the property, are not considered in determining the SAV. They are appropriately addressed in estimating the property's RMV.

(6) Certain properties may have a mixed use. For example, a portion of the property may be used as government restricted multiunit rental housing property, while another portion may be commercial or retail. The special assessment applies only to the portion that is used as government restricted multiunit rental housing property. The assessment of the remainder of the property is unaffected by this rule.

(a) For mixed-use properties, a portion of the land value may be subject to special assessment as government restricted multiunit rental housing property. The remainder of the land value is not subject to this special assessment.

(b) The portion of the total land value subject to special assessment equals the portion that the gross square footage of the real property improvements used for government restricted multiunit rental housing bears to the total gross square footage of all the real property improvements, both restricted and unrestricted.

(7) The SAV must be allocated between land and improvements.

(a) The portion of the SAV allocated to the land is equal to the RMV of the land at its highest and best use.

(b) The remaining SAV is allocated to the improvements.

(c) If the SAV is equal to or less than the RMV of the land, a minimum value will be placed on the improvements and the remaining value will be assigned to the land.

(8) For the initial year of application, the MAV of the specially assessed property (MSAV) is found by multiplying the SAV determined using the method chosen by the property owner by the changed property ratio (CPR). The assessor must use the same CPR that is used for similar unrestricted multiunit housing.

(9) Following the initial year, the SAV may be redetermined using the income approach method or the ratio method (whichever the property owner elected) as follows:

(a) The property owner may request a redetermination of the SAV. The owner must make a written request to the assessor by April 1 of the assessment year and must provide necessary income statements.

(b) The assessor may decide to redetermine the SAV. No later than April 1 of the assessment year, the assessor will notify the property owner in writing and request income statements for the three most recent years (if not already provided).

(c) If the SAV is not redetermined under (a) or (b), the assessor may leave the SAV unchanged or may use an appropriate trend or index. (10) For years after the initial year, the MSAV is 103% of the prior year's AV or 100% of the prior year's MSAV, whichever is greater.

(a) If omitted property is assessed or there is a lot line adjustment, the MSAV is calculated as provided in ORS 308.149 to 308.166.

(b) If new improvements are made to the property, and the owner applies for special assessment of the new improvements, the MSAV of the new improvements as determined by this rule is added to the existing MSAV.

(c) If the property is disqualified from special assessment, and the property is not requalified, a new MAV, based on RMV, will be determined under ORS 308.149 to 308.166.

(d) If the property is disqualified from special assessment, and the property is later requalified, the MSAV will be determined using the same method as prescribed in this rule for the initial application.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 205.320, ORS 308.205, ORS 308.027, ORS 308.156, ORS 308.234, ORS 308.704, ORS 308.709, ORS 308.205, ORS 308.712, ORS 308.714, ORS 309.200, ORS 311.806, ORS 309.200 & ORS 457.450

Hist.: REV 6-2001, f. & cert. ef. 12-31-01; REV 10-2002, f. & cert. ef. 12-31-02; REV 10-2002, f. & cert. ef. 12-31-02

## 150-309.022(1)

### Training for Board of Property Tax Appeals (BOPTA) Members

(1) Each person appointed as a member of a BOPTA pool must complete training approved by the department in the year they are first appointed and at least every other year thereafter. If there is a break in service for any member of any pool, the first year of the new appointment is considered the same as their original appointment year. Training must be specific to BOPTA.

(2) BOPTA pool members that have completed training approved by the department are eligible to sit on a board. However, if an untrained member is required to sit on a board in order to establish a quorum, the member must read the current BOPTA Manual prior to sitting on a board and sign an affidavit stating they have done so. The affidavit is to be made a part of the record of the board and a copy sent to the department.

(3) The department may approve various types of training for board members based upon educational effectiveness, cost and accessibility to members. Approved training may include but not be limited to the following: in-service training sponsored by the department; individual workbook with examination; EdNET; or interactive computer-based multimedia training.

(4) Notwithstanding Section (1) of this rule, for years in which no petitions are filed, board members are not subject to BOPTA training requirements for that year.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.022

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97; REV 10-2002, f. & cert. ef. 12-31-02

## 150-309.100(2)-(A)

### Filing Petitions With The Board of Property Tax Appeals (BOPTA)

(1) Only the county clerk or deputy clerk, acting as the clerk of BOPTA, has authority to accept petitions to BOPTA. No other county office can accept petitions.

(2) Petitions received prior to the filing dates must be returned to petitioner together with a notice of the proper filing dates. Petitions cannot be filed and clerks cannot accept petitions prior to the filing dates specified in ORS 309.100(2).

(3) Petitions to the board of property tax appeals filed under ORS 309.100 and transmitted electronically by facsimile (FAX) will be accepted as valid petitions to the board. If the FAX is unreadable with regard to any information required under OAR 150-309.100(3)-(A), the petition is deficient under OAR 150-309.100(3)-(B).

(4) A faxed petition will be considered timely filed if it is received in the office of the county clerk by midnight of the filing deadline as evidenced by the electronic acknowledgment of receipt produced by the county's FAX machine.

Stat. Auth.: ORS 305.100

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 309.100  
Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(A), REV 10-2002, f. & cert. ef. 12-31-02

## 150-309.100(2)-(B)

### Withdrawing Petitions

(1) Petitioners may withdraw appeals filed with the board of property tax appeals for any reason prior to the board's issuing an order. The petitioner shall submit a request for withdrawal in writing to the clerk of the board.

(2) The board must issue an order dismissing the petition for the reason that the petitioner withdrew the appeal from consideration.

(3) The clerk of the board will keep the request for withdrawal and the board's order in the permanent record of the board.

(4) There is no subsequent appeal from the board's order.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(1); REV 10-2002, f. & cert. ef. 12-31-02

## 150-309.100(3)-(A)

### Contents of Board of Property Tax Appeals (BOPTA) Petitions

(1) For purposes of this rule, "petitioner" is used as defined in OAR 150-309.100(3)-(C).

(2) The purpose of a petition is to inform BOPTA and the assessor of the nature of the claim for relief. For this reason, petitions must include the following information:

(a) Petitioner's name and address.

(b) Facts on which the appeal is based.

(c) The value of the property as requested by petitioner.

(d) The value on the current tax roll that is being appealed. If a copy of the tax statement is attached, the value being appealed need not be included on the petition.

(e) The assessor's account number for the property. The assessor's account number may be a unique identification number or a map and tax lot number. If a copy of the tax statement is attached, the account number need not be included on the petition.

(f) For personal property, a list of the individual items, or categories and schedules that identifies the property being appealed and the values requested.

(g) The name of petitioner's authorized representative (if applicable).

(h) The mailing address of the petitioner or the petitioner's authorized representative where the hearing notice and order are to be mailed.

(i) Notation of whether the petitioner or petitioner's authorized representative wishes to be present at the hearing.

(j) A written declaration that the contents of the petition are true and made subject to the statutory penalties for false swearing.

(k) The signature of petitioner or petitioner's authorized representative.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-309.100(2) to 150-309.100(3); RD 2-1992, f. 5-28-92, cert. ef. 6-1-92; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92, Renumbered from 150-309.100(3); RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; Renumbered from 150-309.100; REV 10-2002, f. & cert. ef. 12-31-02

## 150-309.100(3)-(B)

### Board of Property Tax Appeals (BOPTA) Deficient Petition Process

For purposes of this rule, "petitioner" is used as defined in OAR 150-309.100(3)-(C).

(1) The clerk of BOPTA will review the filed petitions for compliance with OAR 150-309.100(3)-(A).

(2) If it is determined that a petition is deficient, the clerk will notify the petitioner of the nature of the deficiency and advise the petitioner that failure to correct the petition will result in dismissal of the appeal.

(3) The board clerk will mail the notice to the mailing address appearing on the petition.

(4) The petitioner will be allowed 20 days or up until the time of the hearing, whichever is greater, to correct the deficiency in the petition. This applies whether the petitioner is or is not present at the hearing. Time is computed from the first day following the mailing date of the written notice and includes the last day unless the last day falls on a legal holiday, Saturday or Sunday. The time is then extended to the next working day.

(5) A petition to BOPTA may be amended up to and including the time of the hearing. Amendments to a petition may include correction of

deficiencies that were not corrected in response to notice by the board clerk. Other permitted changes to a petition include:

(a) Addition or deletion of land or improvements.

(b) Addition of a separate account which together with the original account appealed, creates a "parcel" within the meaning of OAR 150-308A.256(1)(a). Petitioner may not amend a petition to include a separate account which is not part of an identified parcel.

(c) Amendment of the value requested.

(d) Amendment of the signature of an authorized representative to comply with OAR 150-309.100(3)-(C).

(6) If the board clerk does not identify a petition as defective until less than 20 days remain of the board session:

(a) The board clerk must notify the petitioner of the defective petition and the time available to amend the petition by telephone, fax, or letter, whichever the clerk determines would be most effective.

(b) The petitioner has until 3:00 p.m. of the last working day of the session to correct the petition. However, if the petitioner appears at the hearing, all corrections must be made at that time.

(c) The board must dismiss the petition under ORS 309.100(5) as defective under ORS 309.100(3) if the petitioner does not appear at the hearing and has not amended the petition by 3:00 p.m. of the last working day of the session or if there is insufficient time to allow notice to be given to the petitioner.

(7) If, after the board has adjourned, the clerk discovers petitions that the board did not act upon, the clerk must notify the petitioners within 10 days. The notice must indicate the petitioner's right to appeal to the Magistrate Division of Tax Court.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(1)-(A); REV 10-2002, f. & cert. ef. 12-31-02

## 150-309.100(3)-(C)

### Those Authorized to Sign Petitions to the Board of Property Tax Appeals (BOPTA)

For purposes of appeals filed with BoPTA, "petitioner" means a person or persons listed under (1)(a) or (1)(b) of this rule.

(1) The following persons may sign a petition and present an appeal to BOPTA:

(a) The owner of the property or, if more than one owner, any of the owners. If the owner of the property is a business or other legal entity, the entity may designate one or more individuals to act as its agent(s). For example:

(A) For a corporation; Officers such as president, vice-president, secretary, treasurer, CEO, or managing officer.

(B) For a limited liability company (LLC); Any member may sign the petition if the LLC is member-managed. The manager qualifies to sign the petition if the LLC is manager-managed.

(C) For a church; Pastor, rector, deacon, president of the board, senior board member.

(D) For an association; President or managing officer.

(E) For a partnership; A general partner.

(F) For a sole proprietorship; The owner.

(G) For a trust; Trustee, managing member, managing agent.

(H) An employee regularly employed in the tax matters of a corporation or other business entity.

(b) Any person who holds an interest in the property that obligates the person to pay the taxes imposed on the property. An interest that obligates the person to pay the taxes includes a contract, lease, or other intervening instrumentality. Proof of the obligation must accompany the petition to the board. Other intervening instrumentality does not include mortgage agreements in which the mortgagee (the company that holds the mortgage) agrees to pay the taxes.

(c) An attorney at law who is acting on behalf of the person(s) in (1)(a) or (1)(b). The Oregon State Bar number assigned to the attorney is considered sufficient to verify the petition.

(2) The following persons may sign a petition and present an appeal to a BOPTA if they have written authorization from the petitioner or proper court appointment.

(a) A legal guardian or conservator who is acting on behalf of an owner of the property.

(b) Any relative of an owner of the property. For purposes of this rule, the term "relative" means any of the following:

(A) A spouse;

(B) A son, grandson, daughter, granddaughter, stepson or stepdaughter;

# ADMINISTRATIVE RULES

(C) A brother, brother-in-law, sister, sister-in-law, stepbrother, or step-sister;

(D) A father, mother, stepfather, stepmother, or grandparent;

(E) A son or daughter of a brother or sister;

(F) A son-in-law, daughter-in-law, father-in-law or mother-in-law.

(c) A real estate broker or principal real estate broker licensed under ORS 696.022, a state certified appraiser or state-licensed appraiser licensed under ORS 674.310, a registered appraiser under ORS 308.010, or the lessee of the property.

(d) A person duly qualified to practice as a certified public accountant or public accountant in the State of Oregon. The person signing the petition must include their individual Oregon certificate or license number on the petition.

(3) If the petition is not signed and verified by a person authorized under subsection (1)(a), (1)(b), or (1)(c) the petition must include a power of attorney, court appointment, or a signed authorization that specifically grants to such person the authority to represent the petitioner.

(4) Any petition received, signed by a person not authorized under ORS 309.100 or this rule will be dismissed by formal order of the board as provided in ORS 309.100(5).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-309.100(2)(c); RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 2-1992, f. 5-28-92, cert. ef. 6-1-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-309.100(2)-(C); REV 10-2002, f. & cert. ef. 12-31-02

## 150-310.110

### Joint District Apportionment Formula

(1) When a taxing district extends into more than one county and it levies a dollar amount ad valorem levy, the total of the levy must be apportioned among the counties in which it lies according to the assessed value to be used to compute the tax rate of the district in each county. The percentage of value in each county must be calculated to enough digits so that the tax rate for that levy will be the same in each county when truncated at the seventh (7th) digit.

(2) Separate apportionments must be done for each category of levy subject to the limits of Section 11b, Article XI of the Oregon Constitution.

(3) Example: The example district lies in two counties and has a levy subject to the School Operations limit. The levy is \$1,000. The example shows only one category of levy, if the district has more than one category, separate allocations would be done for each category of levy. [Example not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.110

Hist.: RD 12-1987, f. 12-18-87, cert. ef. 12-31-87, Renumbered from 150-310.105; RD 3-1991, f. 12-30-91, cert. ef. 12-31-91; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 10-2002, f. & cert. ef. 12-31-02

## 150-321.207(1)

### Forestland Valuation Rule

(1) Purpose: The purpose of this rule is to describe the modeling process used to annually develop preliminary forestland values and to clarify the role of the models in the establishment of the final certified forestland values (ORS 321.216).

(2) General concepts:

(a) Values to be developed by this rule are the values of bare forestland.

(b) Models will be developed to determine the statistical relationship between market sales of highest and best use forestland and reasonable indicators of value related to the forest industry in Oregon.

(c) The relationship between market sales and the indicator that best reflects the changes in forestland value over time will be used to establish the preliminary values.

(d) Separate models will be developed for eastern Oregon and western Oregon.

(3) Forestland Sales Data:

(a) The department will collect and verify forestland sales data. Only sales with the following characteristics will be considered:

(A) The current or immediate future use of the land is the growing and harvesting of timber;

(B) The improvement values and other non-forestland values can be accurately extracted from the sale price;

(C) The transaction is at arm's-length;

(D) The purchase consideration is cash or financing methods standard to the real estate market;

(E) The allocated bare land value is greater than \$0, except for the FX productivity class in western Oregon; and

(F) For western Oregon sales, the value relationship between acres of each productivity class occurring on the property and sales price is identifiable.

(b) The department will compile the sales data in a forestland sales database.

(c) The department will analyze fiscal year (July 1 to June 30) data to determine a bare land value for each productivity class in western Oregon and one value for eastern Oregon. In doing so, the department will:

(A) Exclude individual forestland sales data that indicates values more than two standard deviations from the arithmetic mean of the forestland values for each western Oregon productivity class or the arithmetic mean of all of the value of sales in eastern Oregon. The department will apply this exclusion only once, either to all sales data within a productivity class on a fiscal year basis or on all sales over all years (1993 to current).

(B) Calculate the fiscal year forestland value for each productivity class as the arithmetic mean of individual sales data occurring during the fiscal year for classes FA-FX in western Oregon and for eastern Oregon as a whole. Only those sales remaining after elimination of any outlying sales as provided in paragraph (3)(c)(A) of this rule will be used to create the average.

(C) Replace fiscal year forestland value data that is unavailable for any of the western Oregon classes or eastern Oregon values due to lack of sales or after the application of paragraph (3)(c)(A). The missing data will be replaced as follows:

(i) If the missing data occurs for the first or last fiscal years, then these values will be replaced by the arithmetic average of all the other available years for the same class.

(ii) If the missing data occurs in the intervening years, then the missing data will be replaced with the arithmetic average of the preceding and following years of the missing data for the same class.

(D) Develop acreage weighted average forestland value for western Oregon (WAVWOR) from sales data for the current appraisal year. The acreage weights used in the WAVWOR calculation are: [Table not included. See ED. NOTE.]

(E) Develop average forestland value for eastern Oregon.

(4) Forestland Models:

(a) Generally:

(A) The modeling process is intended to find statistical relationships between the WAVWORS for western Oregon or the average forestland value for eastern Oregon for the period 1993 to present and leading or coincident indicators of forestland value (such as log price trends, stumpage price trends, lumber price trends and other indicators to be determined by the Department of Revenue). The result of the statistical analysis of each indicator represents a different model.

(B) Indicators of forestland value suitable for use as inputs in the models to obtain forestland values must be:

(i) Developed based on calculation methods and assumptions that are consistent over time;

(ii) Commonly used by the forest industry as indicators of the economic potential for the production of forest products;

(iii) Readily available and verifiable; and

(iv) Relevant to the operation of the forest products industry in Oregon.

(C) The models will be based on statistically significant structural relationships between historical forestland values and leading or coincident indicators of forestland value. If such a structural model cannot be found, then appropriate time series models may be substituted for the structural models.

(D) The relationships between economic variables in the models may not be contradicted by generally accepted economic theories.

(E) The models may be amended and new models may be added in the future if a more statistically significant correlation becomes evident after the addition of subsequent years' sales data.

(F) The models will be re-estimated in each future year after the addition of the subsequent year's sales data. Re-estimation may include changes to the specification of the error or lag structure.

(G) Forecasts of forestland value will be based on a single model and not the average forecasts of several models.

(b) Model Selection Criteria:

(A) Tentative models will be estimated with stumpage, delivered log prices, dimension lumber prices, or other relevant market data at lags of

# ADMINISTRATIVE RULES

zero to four years to determine the best explanatory variable for inclusion in the final model.

(B) In determining the explanatory variables to be included in the final model, both in- and out-of-sample forecasts will be compared as well as the ability to forecast turning points in forestland values.

(C) The model that displays the best correlation between the WAVWORS or average forestland value for eastern Oregon over time and the trends in the indicators will be selected to determine the annual average forestland values (AAFV). "Best" means that the resulting statistical analysis shows major turning points in values while maintaining a close statistical relationship between the forestland values and the indicator.

(5) Determination of Preliminary Forestland Values:

(a) Western Oregon Model:

(A) The selected western Oregon model will determine AAFV to be used as the basis for the preliminary values.

(B) Western Forestland Class Spread (WFCS) is the percentage of initial value by productivity class, FA through FX, as it relates to the acreage weighted average of these values. This spread is shown below: [Table not included. See ED. NOTE.]

(C) The WFCS will be used to transform AAFV into preliminary forestland class, FA through FX, values. This will be accomplished by multiplying the AAFV by the WFCS percentage for each individual productivity class.

(b) Eastern Oregon Model: The selected eastern Oregon model will determine the AAFV to be used as the preliminary value for eastern Oregon.

(6) Response to Preliminary Values:

(a) Data pertinent to the forestland valuation process that was not evaluated previously may be collected during a review by the Forestland Value Advisory Committee (ORS 321.213) or through written comments submitted during the public hearing on proposed specially assessed forestland values (ORS 321.210). The pertinent data that meets the standards in subsection 3(a) of this rule will be added to the forestland sales database.

(b) The forestland database will be re-analyzed as in subsection 3(c). This includes screening of any outlying sales data as provided in paragraph 3(c)(A).

(c) Models will be re-evaluated considering the new forestland sales data and pertinent input on indicators that have met the standards of section (3).

(d) The process of sections (4) and (5) will be used to create revised preliminary values.

(7) Final values: The Department of Revenue will use the revised preliminary values and any other information provided by additional research by the agency, the Forestland Value Advisory Committee, submitted written comments, or the hearing process to determine the final values to be certified under ORS 321.216.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.257

Hist.: REV 10-2002, f. & cert. ef. 12-31-02

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## Department of Veterans' Affairs Chapter 274

**Adm. Order No.:** DVA 10-2002(Temp)

**Filed with Sec. of State:** 12-27-2002

**Certified to be Effective:** 1-1-03 thru 6-27-03

**Notice Publication Date:**

**Rules Amended:** 274-040-0030

**Subject:** The maximum monthly amount of assistance payable from the Covered Care Program account for the care received by any Oregon Veterans' Home (OVH) resident is being increased from \$300 to \$500.

**Rules Coordinator:** Charles E. Gehley—(503) 373-2142

**274-040-0030**

**Covered Care**

(1) It is the expressed policy of the Director of Veterans' Affairs (Director) to make the Oregon Veterans' Home (OVH) financially available to current or potential OVH resident by means of the Director's Covered Care Program described more fully below.

(2) Within the fund established by the Director pursuant to ORS 406.050, an account is designated for donations to be used by the Director consistent with this Covered Care Program. Funds held within this account will be used by the Director exclusively for the purpose of assisting OVH

residents who, as determined by the Director, do not have sufficient income, including assets, to meet the financial requirements necessary for the cost of OVH care.

(3) When determining to whom Covered Care Program assistance will be made available, the Director may take into consideration various factors, including but not limited to:

(a) The amount of funds in the Covered Care Program account available for this purpose;

(b) The anticipated future deposits into the Covered Care Program account;

(c) The amount of any present commitments from the Covered Care Program account;

(d) All available sources of revenue or income to a particular resident, including but not limited to US Department of Veterans Affairs (USDVA) payments, Social Security benefits, other pensions, annuities, savings and investments;

(e) The amount of funds available to a particular or potential resident from members of his/her family, or others who are willing to provide financial assistance and agree to be legally obligated to meet such financial obligations of the resident;

(f) Whether or not the available Covered Care Program assistance will satisfy the entire gap in necessary funding for OVH care on behalf of the resident or potential resident;

(g) Whether or not the intended beneficiary of the Covered Care Program assistance is a current OVH resident.

(4) The maximum monthly amount of assistance payable from the Covered Care Program account for the care received by any OVH resident shall be \$500.

(5) The payment of Covered Care Program assistance on behalf of any OVH resident is subject to the sole discretion of the Director. The Director may refuse, terminate, or suspend Covered Care Program assistance to any OVH resident at any time without notice. The Director shall be under no obligation to provide Covered Care Program assistance to any OVH resident or to solicit funds to meet the financial needs of the OVH resident, his/her family, or others.

(6) When determining to terminate or suspend Covered Care Program assistance to any current recipient, the Director may take into consideration various factors, including by not limited to:

(a) Any reported change in the financial status of the recipient or other OVH care payment provider;

(b) Any misrepresentation or omission of material facts in the application for the Covered Care Program assistance or otherwise;

(c) The behavior of the recipient while in the OVH;

(d) The feasibility of appropriate care for the recipient at the OVH;

(e) The availability of funds in the Covered Care Program account.

(7) If all of the funding of an OVH resident, or potential resident, cannot be met with allowable assistance from the Covered Care Program, no amounts will be committed by the Director or paid from the Covered Care Program account.

(8) Applications for assistance from the Covered Care Program account shall be made in such manner and detail, and on such forms, as the Director, in his sole discretion, shall determine.

(9) Applications generally will be prioritized for consideration based on the date of completed receipt by the Director. The Director may, however, consider applications in such other order and at such other times as by him is deemed reasonable.

Stat. Auth.: ORS 406.050, ORS 408.360, ORS 408.365 & ORS 408.368

Stats. Implemented: ORS 408.365 & ORS 408.368

Hist.: DVA 4-2002(Temp), f. & cert. ef. 4-5-02 thru 10-2-02; DVA 7-2002, f. & cert. ef. 9-24-02; DVA 10-2002(Temp), f. 12-27-02, cert. ef. 1-1-03 thru 6-27-03

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## Division of State Lands Chapter 141

**Adm. Order No.:** DSL 7-2002

**Filed with Sec. of State:** 12-23-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 8-1-02

**Rules Adopted:** 141-122-0105

**Rules Amended:** 141-122-0010, 141-122-0020, 141-122-0030, 141-122-0040, 141-122-0050, 141-122-0060, 141-122-0070, 141-122-0080, 141-122-0090, 141-122-0100, 141-122-0110, 141-122-0120

**Subject:** These rules govern the granting and renewal of easements on state-owned Trust and Non-Trust land. In August 2000, the Land Board adopted administrative rules governing the granting of ease-

# ADMINISTRATIVE RULES

ments and temporary use permits on state-owned Trust and Non-Trust Land (exclusive of that in the Territorial Sea). Since that time, Division staff and the public have identified three aspects of these rules that would benefit from amendment. These related to the:

- Types of uses that should be authorized by a temporary use permit;
- Granting of easements for pipes/pumps crossing state-owned land for the withdrawal of water; and
- Number of easements required for fiber-optic cables and associated conduits and/or innerducts.

**Rules Coordinator:** June LeTarte—(503) 378-3805, ext. 239

## 141-122-0010

### Purpose and Applicability

(1) These rules:

(a) Govern the granting and renewal of easements on state-owned Trust and Non-Trust land as specified herein.

(b) Supersede any provisions contained in OAR 141-065-0010 through 141-065-0600 (Granting Easements Across Common School Fund Lands and Other Board-Owned Uplands) and OAR 141-083-0010 through 141-083-0700 (Granting Easements And Rights-of-Way Across State-Owned Submerged and Submersible Lands).

(c) Do not apply to the granting of:

(A) Easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea, an activity governed by OAR 141-083-0800 through 141-083-0870 (Rules For Granting Easements For Fiber Optic And Other Cables On State-Owned Submerged and Submersible Land Within The Territorial Sea); or

(B) Authorizations for hydroelectric projects on state-owned Trust and Non-Trust Land.

(d) Require prior authorization for all uses described under OAR 141-122-0010(2) and (3) unless otherwise exempt from easement under the provisions of OAR 141-122-0010(4) of these rules.

(e) Contain specific provisions relating to the granting of easements by:

(A) The Division and the Oregon State Forester on Common School Forest Land, and

(B) The Division to persons who have or will place a pipeline and associated fixtures on state-owned Non-Trust Land to take water for which they have either a valid water use permit or certificate, or have applied for such a permit by June 30, 2003.

(2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) of these rules, developments and/or uses of state-owned land subject to easement include, but are not limited to the following:

(a) Gas, electric and communication lines (including fiber optic cables);

(b) Innerducts and conduits for cables (regardless of whether they contain a cable or are in use);

(c) Water supply pipelines, ditches, canals, and flumes;

(d) Drainage and irrigation works;

(e) Sewer, storm, and cooling water lines, including outfalls;

(f) Bridges, skylines, and logging lines;

(g) Railroad and light rail track, stations, depots, and other related facilities;

(h) Roads and trails of all types;

(i) Overhead transportation lines (for example, skylines, tramways, logging lines, etc.);

(j) Storage of materials (for example, sand, gravel, dredge spoils, etc.);

(k) Encroachments; and

(l) Other uses and developments which limit the full use or development of state-owned land.

(3) The Director may determine that other uses and developments similar to those specified in OAR 141-122-0010(2) are also subject to authorization by, or exemption from an easement and these rules.

(4) An easement is not required:

(a) For uses or developments on Non-Trust Land subject to these rules if the person owning the use or development has obtained:

(A) A valid lease, temporary use permit or public facility license from the Division pursuant to the provisions of OAR 141-082 (Leasing and Registration of Structures on, and Uses of State-Owned Submerged and Submersible Lands) and the use or development otherwise subject to easement is located within the authorized area; or

(B) A registration from the Division pursuant to the provisions of OAR 141-082 (Leasing and Registration of Structures on, and Uses of State-Owned Submerged and Submersible Lands) and the use or development otherwise subject to easement is physically attached to, or in any way part of the registered structure.

(b) For pipelines and associated fixtures crossing or situated on Non-Trust Land that are used to withdraw water from a waterway or lake for any use (except those associated with hydroelectric facilities) if:

(A) The withdrawal is authorized by a valid right to appropriate water issued by the Oregon Water Resources Department prior to June 30, 2003; or

(B) The owner of the pipeline and associated fixtures has applied to the Oregon Water Resources Department for a right to appropriate the water prior to June 30, 2003; or

(c) For pipelines and associated fixtures placed prior to June 30, 2003 that cross or are situated on Non-Trust Land that are used to circulate a fluid, usually water, for heating or cooling purposes.

(d) For uses or developments on either Trust or Non-Trust Land subject to these rules if the person owning the use or development has obtained a valid authorization from the Division for another use pursuant, for example, to the provisions of OAR 141-110 (Management and Leasing of Rangeland Forage) or OAR 141-125 (Authorizing Special Uses on State-Owned Land).

(5) A person who is exempt from obtaining an easement under the provisions of OAR 141-122-0010(4) may apply to obtain an easement, and the Division may authorize an easement even though none is required under these rules. The application shall be processed in accordance with OAR 141-122-0050.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03;

## 141-122-0020

### Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Division, has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

(2) In addition to the constitutional mandate stipulated in OAR 141-122-0020(1), the Division is required to manage its Trust Land to ensure that full market value is obtained from any use of this asset.

(3) The Division shall follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition an easement on state-owned land.

(4) The Division shall manage state-owned submerged and submersible land to ensure the collective rights of the public to fully use and enjoy this resource for commerce, navigation, fishing, recreation, and other related public purposes consistent with applicable federal and state laws.

(5) The Division shall:

(a) Recognize all valid easements of record on land acquired by the Division as disclosed at the time of acquisition, and

(b) Honor any renewal provisions contained in existing valid easements granted by the Division if the holder of the easement has complied with all terms and conditions of the easement and applies to the Division as prescribed in these rules.

(6) Unless otherwise exempt by these rules, each individual use of, or development placed on state-owned land shall constitute a separate discrete activity subject to:

(a) An easement specifically authorizing only that individual use or development, and

(b) Payment of compensation as required in these rules.

(7) Uses of, and developments placed on state-owned land subject to these rules shall conform to local (including local comprehensive land use planning and zoning ordinance requirements), state, and federal laws.

(8) The Division shall administer these rules to ensure to the greatest extent possible that persons applying for and holding an easement receive timely, consistent, predictable, and fair treatment.

(9) The Division shall not grant an easement if the Division determines that the proposed use or development substantively impairs uses or developments proposed or already in place within the requested area. Such a determination will be made by the Division after consulting with holders

# ADMINISTRATIVE RULES

of leases, easements, and permits in the requested area, and other interested persons.

(10) An easement cannot be established on Division-managed land by adverse possession regardless of the length of time the use or development has been in existence.

(11) Uses or developments shall not encroach on state-owned land regardless of their height above or below, or manner of crossing the state-owned land, unless specifically authorized by an easement or other form of authorization issued by the Division.

(12) The Division may:

(a) Conduct field inspections to determine if the uses and developments in place on state-owned land are authorized by, or conform with the terms and conditions of an easement, and, if not,

(b) Pursue whatever remedies are available under law to ensure that unauthorized uses subject to an easement on state-owned land are either brought into compliance with the requirements of these rules or removed.

(13) Pursuant to the provisions of ORS 530.490(2) and (3), the Oregon State Forester may issue temporary easements on Common School Forest Land in accordance with these rules (OAR 141-122-0100) and those adopted by the Oregon State Board of Forestry.

(14) The Division shall not grant an easement if the proposed use or development is inconsistent with any endangered species management plan adopted by the Division under the Oregon Endangered Species Act (ORS 496.171 to 496.192).

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0030

### Definitions

(1) "Cable" means a conductor of electricity or light with insulation, or a combination of conductors insulated from one another within a single jacket or sheath.

(2) "Circuit" means a system of conductors through which an electric current is intended to flow. A single pole or transmission tower may support one (1) or more circuits, each of which may consist of up to four (4) separate conductors.

(3) "City" means a city incorporated under ORS 221.020 through 221.100.

(4) "City Limits" refers to the boundaries of a city incorporated under ORS 221.020 through 221.100.

(5) "Common School Forest Land" is Trust Land that has been designated or "certified" by the State Land Board and the Oregon Board of Forestry for management by the Oregon Department of Forestry under contract between the State Forester and the State Land Board as allowed in ORS 530.450 through 530.520.

(6) "Communication Line" is any cable including fiber optic cable which transmits electronic information, telephone and/or television signals or other data.

(7) "Comparative Compensatory Payment" is the amount of money paid for an easement to the owners of similar land adjacent to, or in the vicinity of Division-managed parcels.

(8) "Compensatory Payment" is the amount of money paid on an annual or term-based schedule by an easement applicant or holder to the owners of the land encumbered by the easement.

(9) "Conduit" is a pipe that protects cables from damage. It may be buried or used in above-ground applications such as bridge crossings. Innerducts may be installed within a conduit to facilitate individual cable installation.

(10) "Development" is any structure or physical facility (for example, each cable, innerduct, innerduct and cable, conduit, conduit and cable, pipeline, electrical line, communication line, bridge, road, fence, ditch, reservoir, or easement-associated building) on state-owned land subject to, or authorized by an easement granted by the Division.

(11) "Director" means the Director of the Division of State Lands or designee.

(12) "Division" means the Division of State Lands.

(13) "Easement" is an authorization granted by the Division that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. The Division offers four (4) types of easements: temporary, term, permanent, and special. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.

(14) "Encroachment" is an unauthorized development or use, such as, but not limited to a structure, fill, or pile of aggregate, that overlaps on, or

otherwise occupies and/or restricts the full use of state-owned land. An encroachment may also occur when the holder of an easement granted by the Division extends their use outside of the area authorized by that easement or adds a use or development not authorized.

(15) "Fair Market Value" is the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts concerning the property.

(16) "Fiber Optic Cable" means an insulated and often armored cable used to transmit telecommunications through glass fibers using pulses of light.

(17) "Governmental Body" means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof as defined in ORS 271.005.

(18) "Individual Use" or "Individual Development" is each separate use of, or development placed on state-owned land

(19) "Innerduct" is tubing that not only protects fiber optic and other types of cables, but also facilitates their installation. It is often placed inside a conduit, or may be buried directly into the ground.

(20) "Non-Trust Land" is land managed by the Division other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.

(21) "Permanent Easement" is an easement issued in perpetuity.

(22) "Right To Appropriate Water" is either a permit or certificate granted by the Oregon Water Resources Department authorizing a person to take and use a specific quantity of water for a specific use or uses from a specific location under specific terms and conditions.

(23) "Person" is an individual at least eighteen (18) years old; a political subdivision or public agency; or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon.

(24) "Public Infrastructure" means streets, roads, bridges, light-rail tracks and water, sewer and drainage pipelines, irrigation and water control facilities, including outfalls and appurtenant facilities, constructed and maintained by a governmental body.

(25) "Special Easement" is an easement granted for water pipelines and fixtures associated with a right to appropriate water, and uses or developments subject to easement that are associated with facilities authorized by a license issued by the Federal Energy Regulatory Commission. The term of a special easement is determined by the Division.

(26) "State Land" or "State-Owned Land" is land owned and/or managed by the Division or its agents and includes Trust Land and Non-Trust Land.

(27) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(28) "Submersible Land" means land lying between the line of ordinary low water and the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(29) "Temporary Easement" is an easement which does not exceed a term of more than ten (10) years.

(30) "Term Easement" is an easement having an initial term of more than ten (10) but not more than thirty (30) years.

(31) "Trust Land" is land granted to the state upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

(32) "Use" means an activity on state-owned Trust and Non-Trust Land that requires an easement under these rules.

(33) "Water Pipelines and Associated Fixtures" are the pipelines and required stands, pumps, wiring, fish screens, etc. necessary to convey water from the point of diversion to the user.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0040

### Easement Application Requirements

(1) Except as provided by OAR 141-122-0010(4) (Purpose and Applicability) and 141-122-0100 (Easements Issued on Common School Forest Land), any person wanting to use state-owned land for any of the purposes described in OAR 141-122-0010(2) and (3) shall:

(a) Apply to the Division for the easement using a form provided by the Division; and



# ADMINISTRATIVE RULES

(b) Submit a non-refundable application processing fee payable to the Division to cover the administrative costs of processing the application and issuing the authorization. When applying for a special use easement, a person may submit to the Division a copy of their application to the Department of Water Resources for a right to appropriate water in lieu of using the Division's easement application form.

(2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) (Purpose and Applicability), each individual use of, or development placed on state-owned land shall be authorized by a separate easement specifically authorizing only that use or development. With regard to fiber optic cables, each single empty conduit, or single conduit containing one (1) fiber optic cable, or every fiber optic cable placed within a conduit after the first fiber optic cable has been installed is an individual use subject to authorization by an easement. With regard to electric power transmission lines, one (1) transmission line with one (1) or more circuits will constitute an individual use subject to authorization by an easement. Additional parallel transmission lines owned by the same entity with one (1) or more circuits may be included in the same individual use so long as such parallel lines are located within the designated boundaries of the easement.

(3) Except as provided by OAR 141-122-0105 (Special Easements For Water Pipelines and Associated Fixtures), the application processing fee for all easements shall be seven hundred and fifty dollars (\$750). The application fee for all water pipeline and associated fixture-related easements shall be one hundred and twenty-five dollars (\$125).

(4) A single easement application form may be used to request:

(a) Multiple easements required for a single pipeline, cable, or similar use or development which cross one (1) or more parcels of state-owned land, or

(b) An easement for one (1) or more identical uses or developments which cross the same parcel of state-owned land or state-owned waterway, for example, two (2) parallel pipelines.

(5) Unless otherwise allowed by the Director in writing, a fully completed application shall be submitted to the Division at least sixty (60) calendar days prior to the proposed use or placement of a development subject to easement on state-owned land.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0050

### Easement Application Review and Approval Process

(1) Upon receipt of an application the Division shall determine whether it is complete. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.

(2) If a rejected application is resubmitted within ninety (90) calendar days from the date the Division returned it to the applicant, no additional application fee will be assessed.

(3) If determined by the Division to be complete, the application will be circulated to affected various local, state, and federal agencies and other interested persons including tribal governments, lessees, and easement holders for review and comment. As a part of this review, the Division will specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species), and archeological and historic resources within the requested area which may be disturbed by the proposed use;

(b) Conformance with other local, state, and federal law and rules;

(c) Conformance with the local comprehensive land use plan and zoning ordinances; and the

(d) Conformance with the policies described in OAR 141-122-0020 of these rules.

(4) The Division may waive the circulation requirement described in OAR 141-122-0050(3) if:

(a) The use or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented in the easement application; or

(b) The application is for a special easement associated with the right to appropriate water and the Water Resources Department is conducting/has conducted a public interest review sufficient to make the determinations required by OAR 141-122-0050(3).

(5) An applicant for an easement may amend their application at any time to address issues, concerns, or information needs identified by the Division or other commentors.

(6) After receipt of agency and public comment concerning the proposed use, the Division shall determine, and advise the applicant in writing if:

(a) Changes to the requested easement area are necessary to respond to agency or public comment;

(b) Additional information is required from the applicant, including but not limited to a survey of:

(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and/or

(B) Archeological and historic resources within the requested area.

(c) The request is denied. Applicants will be given the opportunity to revise their proposed project if the Division denies the request;

(d) The easement will be granted with specified terms and conditions.

(7) If the Division decides to grant the easement, the written notification will also indicate:

(a) The amount of compensation pursuant to the requirements of OAR 141-122-0060 that the applicant shall remit to the Division to obtain the authorization;

(b) Any surety bond amount required by the Division pursuant to the provisions of OAR 141-122-0070(11); and

(c) The draft easement terms and conditions.

(8) The Division shall not grant an easement to an applicant until it has received all fees and compensation specified in these rules, and evidence of a surety bond (if required). However, the Division, at its discretion, may grant a provisional easement prior to receipt of compensation due for removal of timber, sand and gravel, or other natural resources in the easement area if determination of the fair market value of those resources is based on actual receipts from their sale occurring after placement of the use or development authorized by the easement.

(9) Except as provided in OAR 141-122-0105(7) for easements on Non-Trust Land that are associated with a right to appropriate water, the Division shall refer any request for an easement to the Land Board for approval if it is for a permanent easement.

(10) The Director may refer unusual or controversial easement applications or temporary use permits to the Land Board for review and approval.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0060

### Compensation

(1) The Division shall, prior to granting an easement, require an applicant not otherwise exempt under OAR 141-122-0060(2) to submit to the Division a compensatory payment for each individual crossing of state-owned land in the greater of:

(a) One-hundred percent (100%) of the fair market value of the area requested for the easement;

(b) Two-hundred and fifty dollars (\$250); or

(c) The highest comparative compensatory payment.

(2) The following types of easements located on Non-Trust Land are exempt from the mandatory compensatory payment to the Division specified in OAR 141-122-0060(1):

(a) All public infrastructure projects.

(b) Gas, electric and communications service line easements not within designated city limits up to a maximum width of twenty-five (25) feet on each side of the center line.

(c) Water ditches, pipes, and other methods of water conveyance up to a maximum width of twenty-five (25) feet on each side of the center line.

(d) All sewer and storm water pipes and outfalls up to a maximum width of twenty-five (25) feet on each side of the center line.

(3) The Division is limited to one dollar (\$1.00) per acre consideration for easements on Non-Trust Land for:

(A) Railroad track right of way (exclusive of bridges over state-owned submerged and submersible land) up to a maximum width of fifty (50) feet on each side of the center line of the road; and

(B) Railroad stations, depots, and other related facilities (exclusive of bridges over state-owned submerged and submersible land) up to a maximum of ten (10) acres in any one place.

(4) Compensatory payments shall be required at the rate stipulated in OAR 141-122-0060(1) for that part of an easement for the uses specified in OAR 141-122-0060(2) and (3) which exceeds the maximum widths or acreages indicated, and/or occurs on land not exempt from a mandatory compensatory payment.

# ADMINISTRATIVE RULES

(5) If required by the Division, applicants shall also submit to the Division a payment in an amount to be determined by the Division for the fair market value of any commercially valuable timber, sand and gravel, or other natural resources in the easement area which must be removed during or after placement of the proposed use, or which cannot be developed because of the easement use. Such payment shall be due at a date to be determined by the Division.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0070

### General Easement Terms And Conditions

(1) Four types of easements are available from the Division:

(a) Temporary easements which have a term not to exceed ten (10) years;

(b) Term easements which have an initial term of more than ten (10) but not more than thirty (30) years;

(c) Permanent easements; and

(d) Special easements:

(A) For water pipelines and associated fixtures have the same term as that of the associated right to appropriate water; or

(B) For uses or developments associated with a facility authorized by a license issued by the Federal Energy Regulatory Commission, the same term as that license. The length of the initial term of an easement shall be determined by the Division based upon the nature of the use; term requested by the applicant; and other possible uses of the easement area. The easement holder may apply to the Division for renewal of an easement issued under these rules for a term equal in length to that first granted.

(2) Easements shall be offered by the Division for the minimum amount of area determined by the Division to be required for the requested use. Unless otherwise authorized by the Director, the minimum width of an easement shall be no less than fifteen (15) feet.

(3) The Division may grant additional easements which, as determined by the Division, do not substantially interfere with other authorized easements within a given area.

(4) An easement granted by the Division will be to a specific person for a specific use, location, and term. Any easement holder wanting to:

(a) Change the type of use;

(b) Expand the number of authorized developments or uses;

(c) Change the authorized area; and/or

(d) Permit other persons to utilize the area authorized by the easement for uses and developments requiring separate authorization by the Division (for example, attachment of cables, conduits, or pipes under a bridge already authorized by an easement); shall apply to and obtain prior written approval from the Division as provided for in OAR 141-122-0040. Such changes may require a separate application and approval as determined by the Division.

(5) State-owned land authorized for a specific use by an easement shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or Division. An easement holder may request the Division to partially restrict or close an easement area to partial or total public use if it can be demonstrated to the Division that:

(a) Public entry on the area encumbered by the easement could cause damage to the use of, or development placed on the authorized area; or

(b) The use of the authorized area could cause harm to the public.

(6) The Division and/or its authorized representative(s) shall have the right to enter into and upon the authorized easement area at any time for the purposes of inspection or management.

(7) Except as expressly authorized in writing by the Division, an easement holder shall not:

(a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation within the authorized area; or

(b) Remove any sand, gravel, or other mineral or natural resources within the authorized area for commercial use or sale. Routine right-of-way maintenance including vegetation trimming shall be allowed as specified by the easement conditions.

(8) An applicant for an easement shall compensate the Division for the fair market value of any commercially valuable timber, sand and gravel, or other natural resources in the requested area that must be removed during or after placement of the proposed use, or cannot be developed because of the use.

(9) The holder of an easement shall conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; pro-

pects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, disturbed lands shall be reclaimed as specified by the Division.

(10) The holder of an easement shall maintain all buildings, pipelines, cables, and other developments or items placed in or on state-owned land in good working order.

(11) Applicants for an easement may be required to obtain a surety bond to ensure that they will perform in accordance with all terms and conditions of the authorization. The surety bond amount shall be determined by the Division. A cash deposit or certificate of deposit in an amount equal to the amount required for a surety bond which names the State of Oregon as co-owner may be substituted in lieu of a bond.

(12) Easement holders shall inspect the condition of the easement area and the developments placed on it on a frequency to be determined by the Division in consultation with the easement holder and other interested parties.

(13) The easement form contained in Exhibit A shall be the principal easement form used by the Division to authorize the use of state-owned land. However, the Division in its good faith discretion may determine that the size and/or nature of a proposed use or placement of a development, or the risks associated therewith, make it advisable to require an easement with terms other than those contained in **Exhibit A**. In such an event, the Division may condition acceptance of the proposed use or placement of a development upon acceptance of an easement form proposed by the Division and, if requested by the Division or otherwise required by law, approved by the Department of Justice.

[E.D. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0080

### Transfer of Easements

An easement in good standing is freely transferable. However, no transfer may increase the burden on the estate or detract from the value of the underlying state land.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0090

### Termination for Non-Use

(1) The right to use an easement shall automatically terminate:

(a) If the use or development within the easement area is not used within five (5) consecutive years of the date the easement was granted; or

(b) If the easement is for water pipeline and associated fixtures and the associated right to appropriate water is cancelled by the Oregon Water Resources Department or abandoned by the easement holder. Upon such termination, the Division shall notify the easement holder in writing using the last known address reported by the easement holder to the Division. This notification shall state that the easement has terminated, and that the easement holder will have thirty (30) calendar days from the date of the notice to respond in writing to the Director why the easement should be reinstated. The Director shall notify the easement holder in writing of his/her decision within sixty (60) calendar days of receipt of the request for reinstatement of the easement.

(2) Unless otherwise approved in writing by the Director, the easement holder shall remove all cables, pipes, fixtures, conduits, roads and other developments placed by them on the easement, and shall restore the surface of the easement area to a condition satisfactory to the Division within one (1) year following termination of use or expiration of an easement.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0100

### Easements Issued on Common School Forest Land

(1) The Oregon State Forester may issue temporary easements on Common School Forest Land in accordance with applicable statutes and administrative rules.

(2) Temporary easements may be issued by the Oregon State Forester for uses such as, but not limited to:

(a) Use of roads for forest management purposes;

(b) Constructing, improving and/or maintaining temporary roads, including spur roads;

# ADMINISTRATIVE RULES

- (c) Constructing landing sites to deck timber;
  - (d) Use of stumps and/or trees for guylines and tailholds;
  - (e) Extracting sand, gravel, or quarry rock for the improvement, construction or maintenance of state-owned roads; and
  - (f) Use of existing roads for forest management purposes.
- (3) Any person wanting to obtain a temporary easement on Common School Forest Land shall apply directly to the Oregon Department of Forestry.
- (4) Any person wanting to obtain a term or permanent easement on Common School Forest Land for uses described in OAR 141-122-0010(2) and (3), shall apply to the Division pursuant to these rules.

Stat. Auth.: ORS 273.045  
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010  
Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0105

### Special Easements For Water Pipelines And Associated Fixtures

(1) Unless otherwise exempt from easement under OAR 141-122-0010(4) or associated with a hydroelectric facility, all pipelines and associated fixtures that cross or are otherwise situated on state-owned Trust and Non-Trust Land managed by the Division that are used to withdraw water from a waterway, lake or other source shall be authorized by an easement from the Division.

(2) Persons who own, use, have placed, or have the legal authority to represent the owners or users of said pipelines and associated fixtures shall apply to the Division for an easement:

- (a) On a form provided by the agency or,
- (b) By submitting to the Division a completed Water Resources Department application for the right to appropriate the water to be conveyed by said pipeline and associated fixtures.

(3) A person applying for an easement for a water pipeline and associated fixtures associated with a right to appropriate water shall submit with the application a non-refundable application processing fee in the amount of one hundred and twenty-five dollars (\$125) payable to the Division to cover the administrative costs of processing the application and issuing the easement.

(4) An application received by the Division for an easement for a water pipeline and associated fixtures shall be processed pursuant to the provisions of OAR 141-122-0050 and 141-122-0060 (as applicable) of these rules.

(5) The Division shall allow a person to include up to three (3) water pipelines and associated fixtures per lot of record on their application for a special easement.

(6) A special easement issued by the Division under this section shall have the same term as that of the associated right to appropriate the water as determined by the Oregon Water Resources Department. Land Board approval shall not be required for an easement granted under this section.

(7) The Division may enter into an agreement with the Oregon Water Resources Department to consolidate the processing of special easements for water pipelines and associated fixtures with the processing of a right to appropriate water.

Stat. Auth.: ORS 273.045  
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010  
Hist.: DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0110

### Unauthorized Uses and Penalties

(1) Uses and developments not authorized by an easement issued by the Division, or by another agency as a valid existing right of record on land acquired by the Division, constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.

(2) In addition to any other penalties provided or permitted by law, the placement of any development on, or use of state-owned land without the required Division authorization as described in these rules, or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.

Stat. Auth.: ORS 273.045  
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010  
Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

## 141-122-0120

### Reconsideration of Decision

(1) An applicant or any person adversely affected by a decision regarding granting an easement by the Division may request the Division enter into an alternative dispute resolution process. The Director 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) An applicant for an easement, or any person adversely affected by the issuance or denial of an easement on state-owned land may request that the Director or the Land Board, depending upon which entity made the decision, reconsider the decision.

(a) Such a request shall be received by the Director no later than thirty (30) calendar days after the delivery of the decision.

(b) The Director shall review the request within sixty (60) calendar days after the date of delivery of the request.

(c) If the Director made the decision of concern, s/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(d) If the decision was made by the Land Board, the Director may recommend to the Land Board either that the easement issuance or denial be modified based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(3) If the Director recommends that the Land Board initiate a contested case proceeding, the Land Board shall select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 273.045  
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010  
Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

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**Adm. Order No.:** DSL 8-2002

**Filed with Sec. of State:** 12-24-2002

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**Rules Adopted:** 141-030-0040, 141-035-0013, 141-035-0048, 141-045-0015, 141-045-0021, 141-045-0121, 141-045-0122, 141-045-0123, 141-045-0124, 141-045-0126, 141-045-0185

**Rules Amended:** 141-030-0010, 141-030-0015, 141-030-0025, 141-030-0034, 141-030-0035, 141-030-0036, 141-030-0037, 141-030-0038, 141-030-0039, 141-035-0005, 141-035-0010, 141-035-0015, 141-035-0020, 141-035-0025, 141-035-0030, 141-035-0035, 141-035-0040, 141-035-0045, 141-035-0047, 141-035-0050, 141-035-0055, 141-035-0060, 141-035-0065, 141-035-0070, 141-040-0005, 141-040-0010, 141-040-0020, 141-040-0030, 141-040-0035, 141-040-0040, 141-040-0200, 141-040-0211, 141-040-0212, 141-040-0214, 141-040-0220, 141-045-0005, 141-045-0010, 141-045-0031, 141-045-0041, 141-045-0061, 141-045-0100, 141-045-0105, 141-045-0115, 141-045-0120, 141-045-0125, 141-045-0130, 141-045-0150, 141-045-0155, 141-045-0160, 141-045-0170, 141-045-0180

**Rules Repealed:** 141-035-0046, 141-040-0210, 141-045-0020, 141-045-0024

**Subject:** During the 2001 session of the Oregon Legislative Assembly, House Bill 2129 (Chapter 302, Oregon Laws 2001) was enacted. This bill provided changes be made in: (1) the time period for reporting certain types of unclaimed property; (2) and record retention requirements for all holders. It also directed the Division of State Lands to take specified actions to improve the agency's outreach and education efforts for holders.

In 2001, the Secretary of State conducted an audit at the Division's request to assess the agency's control over the collection, accounting and disposition of unclaimed assets managed by the Trust Property Section and to make recommendations for improvements for the Division to consider. The rule changes incorporate recommendations from the audit, statutory requirements of HB 2129 and ensure that program requirements are more clearly understood by the public.

**Rules Coordinator:** June LeTarte—(503) 378-3805, ext. 239

## 141-030-0010

### Purpose

The purpose of these rules is to prescribe uniform procedures for making claims to recover escheat property held by the Division of State Lands as provided for by ORS 112.055, 113.045, 116.193, 116.203, 116.253 and property received by the Division pursuant to ORS 179.540 - 179.550 prior to October 4, 1997.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119

# ADMINISTRATIVE RULES

Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0015

### Definitions

(1) "Affiant" means a person signing an affidavit for a small estate filed pursuant to ORS 114.505.

(2) "Agent" means a person who is filing a petition to recover escheat property on behalf of a claimant.

(3) "Claimant" means a person or entity claiming to be the rightful owner and legally entitled to escheat property held by the Division.

(4) "Claiming Successor" means the heir or devisee to a decedent, or any creditor of a small estate proceeding filed pursuant to ORS 114.505.

(5) "Decedent" means a person who has died.

(6) "Devisee" or "Distributee" means a person who is entitled to property of a decedent according to the will of a decedent.

(7) "Director" means the Director of the Division of State Lands or the designee of the director.

(8) "Division" means the Oregon Division of State Lands.

(9) "Escheat property" means:

(a) Property paid or delivered to the Division because the distributee, devisee or heir could not be found, or refused to accept the property;

(b) Funds paid or delivered to the State of Oregon prior to October 4, 1997 according to ORS 179.540 from a state institution where an inmate or patient has been released, paroled, escaped, or died, and one year after such occurrence, the inmate or patient has not claimed funds left behind.

(10) "Estate" means the real and/or personal property of a decedent.

(11) "Finder" means any person who independently searches for and finds the owners of unclaimed or escheat property for a fee paid by the owner.

(12) "Heir" means any person who is entitled under intestate succession to the property of a decedent who died wholly or partially intestate.

(13) "Intestate" means the circumstances of dying without leaving a valid will effectively disposing of all the estate.

(14) "Personal Representative" means a person who administers the estate of a deceased person under a full probate proceeding.

(15) "Testate" means the circumstances of dying with a legal, valid will which effectively disposes of all the estate.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 31, f. & cert. ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0025

### Petitions to Recover Estate Property

(1) Pursuant to ORS 116.253, a claimant or the agent of the claimant shall initiate a claim to recover escheat estate property by filing a petition with the Division within 10 years after the entry of an Order of Escheat to the Division or if there is no order, within 10 years and four months from the date of the small estate filing.

(2) A petition shall be considered filed upon its receipt by the Division.

(3) The petition shall be on forms provided by the Division or provide all information required on the form provided by the Division. The petition shall be notarized and state:

(a) The name, age, and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant is lawfully entitled to the property or proceeds, and a brief description of the property or proceeds;

(c) That at the time the property escheated to the Division, the claimant had no knowledge or notice thereof;

(d) That the claimant claims the property or proceeds as:

(A) (For escheat of an estate) An heir or heir's personal representative or claiming successor;

(B) (For escheat of a distributive share of an estate) The devisee/distributee, or the devisee/distributee's personal representative or claiming successor.

(e) That 10 years have not elapsed since the date of the escheat order or if there is no order, four months from the date of the small estate filing; and

(f) If the petition is filed on behalf of the claimant, the identity and authority of the claimant's agent.

(4) The petition to recover estates and distributive shares shall be supported by the following documents:

(a) Current photo identification of the claimant, or other satisfactory proof of identity.

(b) A notarized indemnification agreement signed by the claimant(s) and acceptable to the Division.

(c) If the petition is being filed by an attorney or agent for a claimant, a Power of Attorney or written, notarized authorization given by each heir to the attorney or agent to act on his or her behalf. The original Power of Attorney or authorization shall be filed with the petition. A finder who is acting as an agent for a claimant shall be licensed and comply with the requirements of ORS 703.401 to 703.470. The finder shall forward a copy of the finder's current license issued by the Oregon Board of Investigators with the initial Power of Attorney. Subsequent claims filed by a finder shall include the current license number on the Power of Attorney.

(d) A genealogical chart showing the relationship of all heirs of the decedent. If the line has lapsed, a statement shall be included that no issue exists and proof that the line lapsed by death.

(e) Certified copies of birth, death, and/or marriage certificates, that show the family relationships of the heirs to the decedent.

(5) In addition to the documents required by subsection (4) of this rule, a petition may also include the following records to verify and establish the relationship of the heirs to the decedent:

(a) Bureau of Census Records;

(b) Funeral Notices;

(c) Wills of deceased family members which show the relationship of heirs to each other;

(d) Church records showing birth, death, baptism, or marriages;

(e) Applications for Social Security cards, naturalization records, employee pension plans or any records containing the signature of the applicant/claimant and listing any designated beneficiaries, other family members or parents;

(f) Court records and duly authenticated records of proceedings conducted before domestic and foreign courts to show the heirs of the decedent and/or the entitlement of the claimant to the escheat funds.

(6) At the Division's discretion, a person who is claiming as a distributee to an estate may be exempted from providing all of the documents listed in subsections (4) and (5) of this rule if enough evidence is otherwise provided to link the claimant to the asset.

(7) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the application.

(8) In order to assist the Division in determining the rightful owner of an account, a claimant may voluntarily include the claimant's Social Security number on the petition.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0034

### Recovery of Costs

The Division shall recover its actual costs of reviewing a petition, including those of the Attorney General. The actual costs shall be deducted from the proceeds before payment is made to the claimant.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0035

### Contested Case Procedures

(1) If the Division is unable to determine legal entitlement from information provided in the petition, and any supporting documentation received or provided by supplemental filings, the Division shall give written notice of denial.

(2) The notice of denial shall include the specific reason(s) for denial and shall provide an opportunity for a contested case hearing.

(3) Within 60 days after the date the Division provides written notice of denial, the claimant may request a hearing on the matter.

(a) A request for hearing shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted.

(b) Within 30 days after the Division receives a written request, the Division shall contact the claimant to schedule a hearing date by mutual agreement. The Division shall confirm the hearing date by providing written notice to the claimant.

(c) The Director or a hearings officer appointed by the Director shall conduct the hearing.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

# ADMINISTRATIVE RULES

Hist.: LB 31, f. & ef. 10-3-75; LB 37, f. & ef. 9-1-76; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0036

### Petitions to Recover Institutional Escheat Property

(1) A claimant or an agent of a claimant shall initiate a claim to recover institutional escheat property received prior to October 4, 1997 pursuant to ORS 179.540 by submitting a claim to the Division within 10 years after the date the Division receives the property.

(2) A claim shall be considered filed upon its receipt by the Division. The claim shall be supported by the following documents:

(a) A notarized claim form furnished by or acceptable to the Division, signed by the owner, or the owner's heir, personal representative or claiming successor;

(b) Current photo identification of the claimant, or other satisfactory proof of identity;

(c) In order to substantiate information when sufficient supporting documentation is not available to prove entitlement, the Division may require an affidavit by the claimant.

(3) In order to assist the Division in determining the rightful owner of an account, a claimant may voluntarily include the claimant's Social Security number on the petition.

(4) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the application.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0037

### Review by the Division

(1) The Division shall review the petition and the sufficiency of the supporting documents. If a preponderance of the evidence indicates that the claimant is legally entitled to the property, the Division shall satisfy charges due, if any, to the Department of Human Resources, and prepare the necessary administrative deeds and assignment of contracts for property that is part of the estate. The Division may require the Department of Justice to review the petition or claim and supporting documents for accounts with a value of \$1,000 or more.

(2) Upon completion of the requirements of subsection (1) of this section, the Division shall request a warrant from the State Treasurer and make payment to the claimant, agent, or attorney for the claimant.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0038

### Special Standard for Claims for Escheat Estates

(1) When evidence is provided to support a claim for only one side of a family (paternal or maternal) as heirs to a decedent, the claimant is entitled to only one-half of the estate (maternal/paternal) unless the claimant proves that there are no other surviving heirs.

(2) When evidence is provided to support a claim for only one or more of the heirs, but it is likely there are other entitled heirs who cannot be found, the Division may pay the claimant only the percentage of the estate to which the claimant is entitled, unless the claimant proves that there are no other surviving heirs.

(3) If an heir or heirs are paid a portion of an estate pursuant to subsection (1) or (2) of this rule, the Division shall retain the balance of the estate for the remainder of the statutory 10 year claim period, during which time it may be claimed if sufficient evidence is provided to support a claim to the Division:

(a) By the previous claimant, upon proof that there are no surviving heirs on the other side of the family; or

(b) By other heirs who come forward.

(4) Alternately, where a claimant has been paid a portion of an estate pursuant to subsection (1) and (2) of this rule, the Division may pay the balance of the estate to that heir upon submission of a properly executed indemnity bond from the proven heir for the amount of the balance of the estate. In this event, if other heirs file a claim and prove entitlement to these funds prior to the 10 year period, the Division may collect on the bond.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0039

### Expiration of Recovery Period

(1) In accordance with OAR 141-030-0038, in certain circumstances the Division shall retain a portion of an estate until the end of the statutory 10 year claim period. If at the end of that period the Division has not paid out the balance of the estate as per that section, then the Division may, upon written request and receipt of appropriate documentation, identification, and agent authorization if applicable, pay the remaining estate to the previous claimants. Such requests must be filed no later than 60 days before the expiration of the ten-year claim period.

(2) If evidence supporting ownership to an estate, or other written contact is not received by the Division, the Division may summarily close the file and escheat the remainder of the estate to the Common School Fund at the end of the 10 year period.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-030-0040

### Interest Derived From Escheated Property

(1) All interest derived from escheated property before the date a claimant's right to the property is established belongs to the State of Oregon.

(2) A claimant's right to the property is established at the time the claimant negotiates the warrant.

Stat. Auth.: ORS 273.045, ORS 111 - ORS 119

Stats. Implemented: ORS 111 - ORS 119

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0005

### Purpose

The purpose of these rules is to provide a uniform procedure for the administration of estates of deceased persons who die intestate without known heirs in accordance with Oregon Revised Statutes 111 through 119. These rules shall be liberally construed to secure just, speedy determination of the assets, liabilities, net worth and disposition of the decedents' estates.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0010

### Definitions

(1) "Administration" means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.

(2) "Affiant" means a person signing an affidavit for small estates filed pursuant to ORS 114.505 to 114.560.

(3) "Assets" includes real, personal and intangible property.

(4) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

(5) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes and proceedings is vested as provided in ORS 111.075.

(6) "Decedent" means a person who has died leaving property that is subject to administration.

(7) "Devisee" or "Distributee" includes "legatee" and "beneficiary" and means a person entitled to any property of a decedent under the will of the decedent or under intestate succession.

(8) "Director" means the Director of the Division of State Lands or the designee of the director.

(9) "Division" means the Division of State Lands.

(10) "Domicile" means the place of abode of a person, where the person intends to remain and to which, if absent, the person intends to return.

(11) "Estate" means the real and personal property of a decedent.

(12) "Estate Administrator" means an employee of the Division acting to protect the assets of the decedent and administer the estate on behalf of the Director.

(13) "Funeral" includes burial, cremation or other disposition of the remains of a decedent, including the plot or tomb and other necessary incidents to the disposition of the remains.

(14) "Heir" means any person who is entitled under intestate succession, pursuant to ORS 112.025 to 112.055, to the property of a decedent who died wholly or partially intestate "Heir" includes:

(a) Spouse;

(b) Issue;

(c) Parents;

(d) Brothers or sisters;

# ADMINISTRATIVE RULES

- (e) Grandparents;
- (f) Uncles or aunts; and
- (g) Issue of the deceased uncles and aunts.

(15) "Interested Person" includes heirs, devisees, children, spouses, creditors and any others having a property right or claim against the estate of a decedent that may be affected by the proceeding. It also includes fiduciaries representing interested persons.

(16) "Intestate" means one who dies without leaving a valid will, or the circumstances of dying without leaving a valid will, effectively disposing of all of the decedent's estate.

(17) "Intestate Succession" means succession to property of a decedent who dies intestate or partially intestate.

(18) "Issue" means biological children and legally adopted children and their issue and, when used to refer to persons who take by intestate succession, includes all lineal descendants, except those who are the lineal descendants of living lineal descendants.

(19) "Personal Property" includes all property other than real property.

(20) "Personal Representative" means a person who administers the estate of a deceased person under a full probate proceeding. "Personal Representative" includes executor, administrator, administrator with will annexed, and administrator de bonis non, but does not include special administrator.

(21) "Property" means both real and personal property.

(22) "Probate" means the court procedure that encompasses all matters and proceedings pertaining to administration of estates as described in ORS 111.085, including but not limited to appointment and qualification of personal representatives, determination of heirships, construction of wills, and the administration, settlement and distribution of estates of decedents.

(23) "Real Property" means all legal and equitable interests in land, in fee and for life.

(24) "Settlement" means, as to the estate of a decedent, the full process of administration, distribution and closing.

(25) "Small Estates Affidavit" means an affidavit filed pursuant to ORS 114.515 by an heir or devisee of the decedent, a creditor of the estate who is entitled to payment or reimbursement from the estate under ORS 114.545(1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent's death or, if it appears that the decedent died wholly intestate without heirs, the Director of the Division of State Lands.

(26) "Testate" means the circumstances of dying with a legal, valid will which effectively disposes of all the estate.

(27) "Will" means the legal, valid, written document which disposes of the estate. "Will" includes a codicil or a testamentary instrument that merely appoints an executor or that merely revokes or revives another will.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0013

### Delivery of Information to Division

A personal representative who files a report under ORS 116.203 that shows that payment or delivery of property cannot be made to a distributee entitled to the property shall provide to the Division of State Lands:

- (1) A copy of the order of escheat; or small estates affidavit.
- (2) The property;
- (3) The name of the person entitled to the property; and
- (4) The relationship of the devisee or heir to the decedent.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0015

### Master Index

The Division shall maintain in its office an index of the names of persons who die intestate without heirs. The index shall contain the number assigned to the file, name of the deceased, county of probate, and estimated estate value. Upon notification of a new probate case, the Division shall add the decedent's name and file number to the index. When the Director has been appointed as personal representative or when the Division files a Small Estates Affidavit, the Division shall include the county of probate and estimated value of the estate.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0020

### Initial Proceedings

(1) Pursuant to ORS 113.085, if it appears that the decedent died wholly intestate and without heirs, the Court shall appoint the Director personal representative or small estates affiant. The Department of Justice shall represent the Director in the administration of the estate.

(2) A creditor of an estate shall give written notice to the Division informing the Director that the creditor intends to file a Small Estates Affidavit. The Division shall investigate the assets and liabilities of the estate, and within 30 days after receipt of the notice, either:

(a) Give written authorization to the creditor to file the Small Estates Affidavit; or

(b) Inform the creditor that the Division will file a Small Estates Affidavit, and include the creditor as an interested person.

(3) Any person who has knowledge of a person who has died without apparent known heirs or a valid will shall immediately notify the Division. As used in this subsection, "person" includes, but is not limited to friends, neighbors, care centers, nursing homes, hospitals, banking institutions, attorneys, guardians and conservators, and funeral homes. No person may dispose of or diminish any assets of the estate without prior written approval of the Division.

(4) When the Division receives notice of a person who has died and for whom it appears there are no known heirs to inherit and no known will, the Estate Administrator shall immediately take steps to ensure the protection of assets of the deceased. The Estate Administrator shall complete a discovery form which shall include, but need not be limited to, the following information:

(a) Name of deceased, address, Social Security number, date of death, place of death, and date of birth, if known;

(b) Source of information, for example, friend, funeral director, sheriff's office, county coroner, medical examiner;

(c) Funeral home where the body has been taken, name of the director or principal;

(d) Information relative to assets belonging to the deceased, for example, real property, personal and household property, stocks, savings accounts, bank accounts, cash; and

(e) Names, addresses and phone numbers of friends and neighbors who can lend assistance in trying to establish identity of nearest of kin.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0025

### Funeral Arrangements

(1) If the body is delivered to a funeral home and it appears the deceased has died intestate and without known heirs, the funeral director shall contact the Estate Administrator within two working days after receipt of the body. The Division must approve all funeral arrangements.

(2) Either the funeral director or the Estate Administrator after consultation with the funeral director shall complete applications for Social Security, Veterans Administration, and other available death benefits.

(3) The Estate Administrator and the funeral director shall negotiate appropriate funeral services and their cost subject to the following guidelines:

(a) The decedent shall receive a funeral and disposition of remains in a manner suitable to the decedent's circumstances in life within the reasonable limits of the financial condition of the estate and in consideration of other available death benefits.

(b) In most cases, the body shall be preserved for burial. However, the Director may authorize cremation if all of the following conditions are met:

(A) The body is in a deteriorated condition;

(B) It is apparent that there are no heirs or a properly executed disclaimer of heirs is on file pursuant to OAR 141-035-0046;

(C) The estate has no assets to cover burial; and

(D) The decedent's apparent religion permits cremation.

(4) The nature and cost of funeral services may be limited to those of a "plain and decent funeral," which may include:

(a) Professional services;

(b) First call reception of the remains;

(c) Preparation of the remains as required by law;

(d) Use of funeral home facilities and personnel for viewing and funeral services;

(e) Delivery of the remains to a local cemetery;

(f) The least expensive casket shown by the funeral home;

(g) Additional essential items, which may include:

# ADMINISTRATIVE RULES

- (A) Newspaper notices;
- (B) Minister's honorarium;
- (C) Cemetery costs.
- (h) Incidental items available as appropriate, which may include:
  - (A) Music;
  - (B) Flowers;
  - (C) Clothing;
  - (D) Extra transportation;
  - (E) Other requested items.

(5) In determining the nature and amount of services to be rendered for a "plain and decent funeral," the Estate Administrator shall consider the amount of assets available in the estate, the expressed desires of the decedent's friends and associates concerning appropriate funeral services, the number of persons expected to attend any funeral services offered, and the prominence of the decedent in the local community.

(6) Burial and cemetery costs are considered separate from funeral costs and the amount payable is contingent upon the amount of funds available in the estate. The funeral director shall notify the Estate Administrator of the proposed cemetery and the cost estimate for burial expenses. Expenses are limited to the available resources in the estate.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0030

### Protection of Assets

(1) As soon as possible but not more than five working days after the Division receives notification under OAR 141-35-0020(3), the Estate Administrator shall travel to the decedent's residence to:

(a) Inventory and, if possible, take custody of and secure all tangible and intangible assets.

(b) Gather and secure all papers and records of the deceased to provide a source of information that may be reviewed to determine whether or not a will exists, and whether there are existing heirs as defined in ORS Chapter 111, and ORS 112.015 to 112.055, 112.065, 112.075, 112.095, 112.105 and 112.115.

(c) Contact local banks, savings and loan associations, credit unions, and other financial institutions to freeze accounts pending delivery of appropriate documents to withdraw the accounts and to obtain balances of accounts and information regarding safe deposit boxes.

(d) Contact utilities, delivery services, and postal authorities to forward billings and statements to the Division and to arrange for the termination of services if in the best interest of the estate to protect the property.

(2) The Estate Administrator may request assistance from available law enforcement personnel to provide for the security of real property, personal property, and household goods.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0035

### Inventory

(1) Within five working days after verifying that the deceased person apparently has no legal will nor known heirs, the Estate Administrator shall compile a full and complete inventory of the assets of the deceased.

(2) The Estate Administrator shall assign an estimated value to each item of inventory. The value of investment-type assets shall be recorded at the value of the asset as of the date of death.

(3) The Estate Administrator may box miscellaneous household items or other incidental property in unit categories and inventory as a box.

(4) The Estate Administrator shall note individually on the inventory all items with commercial value including major household appliances, antiques, jewelry, vehicles, trailers, recreational vehicles, shop equipment, and real property.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0040

### Administration of the Estate

(1) If the value of the estate does not exceed the amounts stated in ORS 114.515 for a Small Estates Affidavit, the Director as a claiming successor of the decedent, may file an affidavit for a proceeding with the appropriate court as described in ORS 114.505 to 114.560. If the value of the estate exceeds the limits authorized under the procedure for a Small

Estate, the Director shall file a petition with the appropriate court to be appointed personal representative and administer the estate according to ORS 111.005 through 117.095.

(2) Any claim against the estate must be filed within four (4) months after the first publication to interested persons or Small Estates Affidavit filing date as established in ORS Chapter 115.

(3) The Estate Administrator may pay funeral and cemetery costs as soon as the Estate Administrator determines that enough funds will remain to pay administrative costs.

(4) A formal claim against the estate may be allowed, contingent on the availability of funds. If it appears there are insufficient funds to pay all claims in full, the Estate Administrator shall follow the order of payment of expenses and claims as set forth in ORS 115.125.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 3-1982, f. & ef. 6-10-82; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0045

### Search for Heirs

(1) The Estate Administrator shall conduct a search of records to locate any heirs that may have a legal right to inherit. The search shall include but not be limited to the following:

(a) Papers, records, albums, newspaper clippings, letters, personal telephone books, etc., included in the personal effects of the deceased;

(b) Friends and neighbors;

(c) Employee unions, businesses or places of employment, retirement funds, insurance companies or any other association of which the deceased may have been a member;

(d) Banks, savings and loan associations, mortgage and investment funds with which the deceased may have conducted financial affairs; and

(e) Public agencies.

(2) If the Estate Administrator finds a valid will before filing a full probate or Small Estates Affidavit, the Estate Administrator shall immediately contact the personal representative named in the will. If the Estate Administrator cannot locate the personal representative, the Estate Administrator shall notify the primary beneficiary. The Division shall then make arrangements to turn over all assets, less the Division's personal representative expenses of administration, to the appropriate individual upon proof of identity.

(3) The probate file is a public record under Oregon's public meetings and records laws. Researching firms or heir finders must make an appointment with the Estate Administrator to view the Division files after the Division has filed the records with the probate court.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0047

### When Heirs Are Discovered

(1) If a person claims to be an heir of the deceased during the administration of a full probate or Small Estates Affidavit, the person must submit acceptable proof to substantiate kinship to the Estate Administrator. Acceptable proof includes, but is not limited to, certified copies of death and birth certificates, genealogical search records, obituaries, funeral notices, Baptism records, and family Bibles. The Division may continue to administer the estate until the Estate Administrator determines that evidence submitted is sufficient to prove that the person is legally entitled to the decedent's assets.

(2) If the Division has filed a probate, and an heir is subsequently found, the heir shall file a substitution of personal representative with the probate court, and a court certified copy of the order of substitution with the Division.

(3) Upon receipt of the order of substitution of personal representative the Director shall file an accounting with the court, including the Division's personal representative expenses and information about bills and claims still owing, and forward a copy to the successor personal representative. If the accounting is in order, the successor personal representative may sign a waiver of hearing and consent to an immediate entry of decree of distribution.

(4) Upon notification of the order approving distribution of assets to the successor personal representative, the Estate Administrator shall turn over all assets to the successor personal representative, including all bills and claims still owing, and obtain receipts for them.

# ADMINISTRATIVE RULES

(5) If the administration is by a Small Estates Affidavit, the heir shall file an amended Small Estates Affidavit with the court which shows that the heir is taking over control and responsibility of the estate from the Division, and submit a court certified copy to the Director.

(6) Upon receipt of the court certified copy of the amended Small Estates Affidavit, the Estate Administrator shall turn over the assets, less the Division's personal representative costs of administration, to the claiming successor, including all bills and claims against the estate.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0048

### Disclaimer Of Interest In Estate

(1) In accordance with ORS 105.623 to 105.649, any heir or devisee to an estate may disclaim all interest in an estate by delivering the disclaimer to the Division as personal representative of the estate, or if the Division is not serving at the time the disclaimer is made, by delivering the disclaimer:

(a) If a personal representative other than the Division is presently serving, to that personal representative; or

(b) If a personal representative is not serving at the time the disclaimer is made the disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

(2) Upon notification to the Division of any heir or devisee who refuses to act as personal representative of the estate of a decedent, and who refuses an interest in the estate, the Division may forward a disclaimer to the disclaimant.

(3) The disclaimer shall:

(a) Be in writing or otherwise recorded by inscription on a tangible medium or by storage in an electronic or other medium in a manner that allows the disclaimer to be retrieved in perceivable form;

(b) Declare that the person disclaims the interest in the property or in the power of appointment;

(c) Describe the interest in property or power over property that is disclaimed;

(d) Be signed by the person making the disclaimer; and

(e) Be delivered in the manner provided in ORS 105.642.

(4) Upon receipt of the properly executed disclaimer by the Division, the decedent shall be treated as though he or she died wholly intestate and without heirs with respect to the disclaimant, and the Director shall petition the court to be appointed as personal representative or Small Estates Affiant to administer the estate in the usual manner.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0050

### Sale of Real Property and Personal Effects

(1) When serving as affiant or personal representative for an estate, the Division shall obtain the greatest cash value for all property and personal effects belonging to the deceased at the time of death.

(2) In order to obtain the greatest value for all property and personal effects belonging to the deceased at the time of death, the Estate Administrator shall dispose of such property in accordance with OAR 141-045-0185.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0055

### Accounting for Funds

(1) There is created within the Common School Fund a separate trust account for estate administration.

(2) All funds received by the Director in the Director's capacity of personal representative shall be deposited daily into the trust account, and credited to the appropriate subsidiary account established for each separate estate.

(3) The Estate Administrator may pay just, proper, and approved claims from an estate subsidiary account established pursuant to subsection (2) of this rule within the limits of the estate's resources in accordance with ORS 115.125 and OAR 141-035-0040(2)(c).

(4) At the end of each fiscal year, the Estate Administrator shall file a report setting forth the value of non-cash assets of each estate.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0060

### Income and Inheritance Taxes

The personal representative shall file and pay all taxes due on the estate. The Estate Administrator may obtain the services of a tax consultant when necessary to prepare appropriate and necessary tax returns.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0065

### Closing the Estate and Escheat of Assets

(1) The Division shall make every effort to close full estates admitted to probate within one year after the court appointment date. If the full probate cannot be closed within one year the Estate Administrator shall file an annual accounting with the appropriate probate court.

(2) Prior to closing, the Estate Administrator shall compute the administrative and Department of Justice expenses. If the estate was admitted to full probate, fees shall be computed in accordance with ORS 116.173. Extraordinary expenses such as special trips by the Estate Administrator, additional manpower required to inventory, transport or dispose of personal property shall be computed and included as administrative expenses in the final account submitted to the court.

(3) If the estate was filed under the Small Estates procedure, the Estate Administrator shall:

(a) Complete administration and processing of claims and expenses within four months after the affidavit is filed with the probate court; and

(b) Compute administrative and legal expenses as actual costs incurred in accordance with ORS 116.183.

(4) The amount remaining after payment of expenses shall be placed in a trust fund of the Division and held on behalf of heirs for ten years from the distribution date. If heirs claim the estate during that period, Division shall apply the procedures of OAR 141-030-0025 and ORS 116.253. If an heir does not present a claim within ten years after the final distribution date, the Division shall deposit the total amount credited to the estate subsidiary account in the Common School Fund.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-035-0070

### Appeal

Any person aggrieved by a decision of the Division as personal representative or the designated Estate Administrator may request a hearing before the Director of the Division of State Lands in accordance with the applicable provisions of ORS 183.310 to 183.550 or file an objection or petition with the probate court.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0005

### Administrative Fees

The Division may deduct a maximum charge of ten percent of the proceeds of each unclaimed property claim with a value of \$100 or more that the Division approves and for which the Division expended efforts to locate the owner under ORS 98.356(4).

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 16, f. 4-4-74, ef. 4-25-74; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0010

### Purpose

The purpose of these rules is to establish a uniform procedure for responding to requests for information about unclaimed and escheat property reported or remitted to the Division.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03



# ADMINISTRATIVE RULES

## 141-040-0020

### Definitions

As used in OAR 141-040-0010 to 141-040-0220:

(1) "Agent" means a person who is filing a claim to recover unclaimed property on behalf of a claimant.

(2) "Division" means the Division of State Lands.

(3) "Claimant" means a person or entity claiming to be the rightful owner and legally entitled to unclaimed property held by the Division.

(4) "Escheat property" means:

(a) Property paid or delivered to the Division because the distributee, devisee, or heir could not be found, or refused to accept the property;

(b) Funds paid or delivered to the State of Oregon prior to October 4, 1997 according to ORS 179.540 from state a state institution where an inmate or patient has been released, paroled, escaped, or died, and one year after such occurrence, the inmate or patient has not claimed funds left behind.

(5) "Finder" means any person who independently searches for and finds the owners of unclaimed or escheat property for a fee paid by the owner.

(6) "Finder's Report of Unclaimed and Escheat Property" means a report that lists the names of owners of unclaimed and escheat property in the custody of the Division, and may include additional information that would assist in finding the owners.

(7) "Holder" means any person or entity in possession of property belonging to another.

(8) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, or payee in case of other intangible property, or a person, or the person's legal representative, having a legal or equitable interest in property.

(9) "Subscription Report of Claimed Property" means a report that details unclaimed or escheat property that has been refunded to owners or their heirs by the Division.

(10) "Unclaimed Property" means any asset that is paid or delivered to the Division pursuant to ORS 98.352 because the owner cannot be found by the company or person holding the asset.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0030

### Finder's Report

(1) The Division may compile information and produce a Finder's Report of Unclaimed and Escheat Property in a format chosen by the Division.

(2) To obtain a Finder's Report, a person shall submit a written request to the Division along with the appropriate fee. The Division may require a waiting period of up to 20 days if payment is made by other than cashier's check or money order.

(3) The fee for the Finder's Report shall be a minimum of \$100 per release.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0035

### In-House Review of Owner Records

(1) The Division shall allow a member of the public a reasonable opportunity to inspect records in the Division's custody that are not exempt from public review under ORS 98.352(4).

(2) A person wishing to review records under subsection (1) of this rule shall make an appointment with the Division and specify which records will be reviewed. To review records, the person shall make the appointment at least two working days in advance.

(3) The Division shall not schedule more than two people to review records at any single time.

(4) Copies of records shall be secured in the manner and at the cost determined by the Division in accordance with OAR chapter 141, division 91.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0040

### Subscription Report of Claimed Property

(1) In addition to the Finder's Report described in OAR 141-040-0030, the Division may prepare a Subscription Report of unclaimed and escheat property that is claimed from the Division during the current reporting year.

(2) Each report shall be prepared monthly, reflecting cumulative claims paid from July 1 through June 30. Subscribers of the service will receive monthly reports from the subscription date to June 30.

(3) Each monthly report shall be mailed by the 15th of the following month to all persons subscribing by the 25th of the preceding month.

(4) The annual fee for a monthly subscription report shall be \$50. Fees shall not be pro-rated.

(5) To subscribe, a person shall submit a written request to the Division along with the annual fee set forth in subsection (4) of this rule. The Division may require a waiting period of up to 20 days if payment is made by other than cashier's check or money order.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0200

### Purpose

The purpose of OAR 141-040-0200 to 141-040-0220 is to establish a uniform procedure for making claims to recover unclaimed money and property reported or remitted to the Division pursuant to ORS 98.352.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0211

### Claim Format

(1) Pursuant to ORS 98.392, a person claiming interest in unclaimed property reported or remitted to the Division may file a claim for the property or proceeds from the sale of the property at any time.

(2) A person shall file a claim with the Division on forms provided by the Division, or in a format acceptable by the Division.

(3) A complete claim shall be considered filed upon its receipt by the Division.

(4) In order to be complete, each claim shall include:

(a) The name and current photo identification or other satisfactory proof of identity of the claimant, such as a driver's license or passport;

(b) Current mailing address of the claimant and satisfactory documentation to prove current residence;

(c) A description of the claimant's interest in the property;

(d) Evidence of the claimant's Business Tax ID, or Federal Tax ID number for business entity claims;

(e) Evidence of ownership satisfactory to establish the validity of the claim; and

(f) A notarized indemnification agreement signed by the claimant that is provided by, or acceptable to the Division.

(5) In addition to the information required under subsection (4) of this section, if the claimant is the original owner, a description of the nature of the property.

(6) In addition to the information required under subsection (4) of this section, if the claimant is other than the original owner, a description of the relationship of the claimant to the original owner, and documentation of the basis on which the claimant has a legal interest in the property. If the original owner of the unclaimed property is deceased and the claimant is an heir, then the claimant must describe the claimant's relationship to the deceased owner and include documentation to support that heirship to the decedent. If the owner is a minor or is incapacitated, then the claimant must provide proof of guardianship or conservatorship. Proof of guardianship or conservatorship must be no more than 60 days old at the time the claim is submitted.

(7) In addition to the information required under subsection (4) of this section, if the claim is being filed by a finder:

(a) The claim shall include an original Power of Attorney or written notarized statement provided by each claimant to the finder authorizing the finder to act on behalf of the claimant.

(b) The finder shall be licensed and comply with the requirements of ORS 703.401 to 703.470. The finder shall include a copy of this license issued by the Oregon Board of Investigators with the initial Power of Attorney.

(c) An indemnification agreement affidavit signed by the claimant.

# ADMINISTRATIVE RULES

(8) In addition to the information required under subsections (4) to (7) of this section, in order to expedite the determination of the rightful owner, a claimant may include the claimant's Social Security number on the claim form.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99, Renumbered from 141-040-0215; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0212

### Proof of Ownership

(1) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim.

(2) Name similarity alone is not sufficient to prove entitlement to unclaimed property.

(3) Documents submitted to establish ownership may include, but are not limited to:

(a) Copies of any documents showing addresses, including but not limited to utility bills, tax records, or original correspondence addressed to the owner at the address shown on the Division's records;

(b) Passbooks, statements of accounts, canceled checks, deposit slips;

(c) Copy of, or original stock certificate in the owner's name, copy of prior dividend payment or statement, stock transmittal receipt, brokerage firm statement;

(d) Original insurance policies, premium or dividend statements;

(e) Original deposit slips or receipts;

(f) Safe deposit box rental receipt or statement regarding the box;

(g) Original certified or photo copies of court documents;

(h) Newspaper articles including marriage announcements, birth or obituary notices;

(i) Family or church records, baptismal certificates, or personal correspondence;

(j) Public or business records;

(k) Signature verification cards from financial institutions;

(l) Testimonial evidence, including properly notarized affidavits; or

(m) Any other forms of evidence the Division may consider sufficient to satisfy a reasonable and prudent person under the circumstances of the particular claim.

(4) When a claimant submits a claim on behalf of the original owner of unclaimed property, the claimant shall provide evidence to link the claimant with the property.

(5) When a claimant submits a claim on behalf of a successor to the original owner of the property, the claimant shall provide:

(a) Evidence to link the original owner with the property; and

(b) Evidence establishing the legal relationship between the original owner and the claimant, including but not limited to certified copies of probate documents, small estate affidavit, Final Decree of Distribution, wills, death certificates, Letters Testamentary or Guardianship or Conservatorship, or other appropriate heirship documentation.

(6) If the claim is on behalf of a business entity, the claimant shall provide documentation showing the claimant's authority to claim on behalf of the company.

(7) If the claim is for a negotiable instrument, (cashier's check, money order, certified check, traveler's check) the payee shall be considered to be the owner unless the purchaser possesses the instrument or provides evidence of payment satisfying the obligation to the payee.

(8) If the claim is for securities, claimants are entitled to receive either the securities that the holder delivered to the Division if they still remain with the Division, or the proceeds received from the sale, less any amounts deducted pursuant to ORS 98.386.

(9) If the claim is for securities or negotiable instruments, the claimant shall surrender to the Division with the claim the certificate or the original instrument, if the claimant possesses it. If the claimant does not surrender the original certificate, the Division may require the claimant to provide a lost instrument bond.

(10) If a claim is made on behalf of a creditor through a garnishment, the creditor shall provide evidence linking the original owner to the property. The Division shall review the claim in the order received with other claims.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0214

### Review Criteria/Time

(1) The Division shall review claims in the order of receipt, unless the claimant provides evidence of extenuating circumstances warranting early review. After reviewing any such request, the Division will make a determination whether to advance the claim ahead of others.

(2) In determining if there is sufficient evidence to support a claim, the Division shall consider:

(a) The age and likelihood of the existence of direct evidence to support the claim;

(b) The existence of any competing claims for the property; and

(c) Any other related evidence the Division determines appropriate under the circumstances of the particular claim.

(3) The Division shall determine whether a preponderance of the evidence proves the claimant is legally entitled to the unclaimed property.

(4) If the Division approves a claim, the Division shall request a warrant from the Oregon State Treasury. If the claim is allowed for funds deposited in the General Fund, the Division shall pay the claim and file a request for reimbursement from the State Treasurer, who shall reimburse the Division within five working days from the fund against which the warrant represented in the claim was issued.

(5) A holder may make payment to, or delivery of property to an owner and file a claim with the Division for reimbursement. The Division shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Division may not assess any fee or other service charge to the holder. Upon receiving the funds from the Division, the holder shall assume liability for the claimed asset and hold the Division harmless from all future claims to the property.

(6) If the property is being recovered by a finder who has submitted a Power of Attorney that authorizes disbursement to the finder, the Division shall issue a warrant payable to both the claimant and Finder and mail the warrant to the finder.

(7) When a claim is for the benefit of the heirs of a deceased owner:

(a) If the amount of the claim is less than \$500, the Division shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)).

(b) If the amount of the claim is \$500 or more, but less than \$1000, the Division shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)) and require the claimant to complete an Affidavit in Lieu of Probate.

(c) If the amount of the claim is more than \$1000, the Division shall require the estate of the decedent to be probated prior to payment.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-040-0220

### Claim Denial/Closure

(1) If the Division requests additional information from the claimant to substantiate a claim, and there is no response from the claimant within 90 days of the request, the Division shall close the file.

(2) If the Division is unable to determine legal entitlement from the evidence submitted and any supporting documentation received or provided by supplemental filings, the Division shall give written notice of denial.

(a) The notice of denial shall include the specific reason for denial and shall provide an opportunity for a contested case hearing to be held before the Division hearings officer.

(b) Within 60 days after the date of written notice of denial provided under paragraph (a) of this subsection, the claimant may resubmit the claim with additional information or request a contested case hearing on the matter.

(c) A request for a contested case hearing shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted.

(d) Within 30 days after the Division receives a request for a contested case hearing submitted under paragraph (c) of this section, the Division shall contact the claimant to schedule a hearing date by mutual agreement. The Division shall confirm the hearing date by written notice to the claimant.

(e) The contested case hearing shall be conducted by a hearings officer appointed by the Director.

(f) Additional evidence shall not be admissible at the hearing, except by mutual consent of the hearing's officer, the claimant and any other parties to the proceeding. If such additional evidence is not admitted, the hearings officer shall terminate the hearing and allow the claimant to resubmit the claim with the new evidence.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 98  
Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 36, f. & ef. 9-1-76; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0005

### Purpose

The purpose of these rules is to provide consistent procedures for the administration of the Uniform Disposition of Unclaimed Property Act, Oregon Revised Statutes (ORS) 98.302 to 98.436, 98.991 and 98.992, and to ensure that all unclaimed money and property held in safekeeping are reported and paid over to the Division of State Lands in an accurate and timely manner.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: LB 2-1984, f. & ef. 3-13-84; LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0010

### Definitions

(1) "Capital Gain" means gain or profit realized on the sale or exchange of a capital asset, or the excess of proceeds over cost, or other basis, from the sale of a capital asset.

(2) "Credit Memorandum" or "Credit Memo" means a transaction posted to a customer account which reduced the account balance and is related to a previously posted invoice or charge, correcting and reducing the amount originally charged.

(3) "Dividend" means cash which accrues by the earnings of a company and which is paid to the owner of securities issued by that company.

(4) "Dividend Reinvestment Plan" means additional securities of the same company which are credited to an owner's account in lieu of cash.

(5) "Division" means the Division of State Lands.

(6) "Dormant" means without activity or owner contact for a prescribed time.

(7) "Due Diligence" means the degree of effort required by statute that holders of unclaimed property must take to find the rightful owner of property before the property is remitted to the state.

(8) "Financial Institution" means a financial institution, or a trust company, as those terms are defined in ORS 706.008, an investment company, a safe deposit company, a private banker, a savings and loan association, or a building and loan association.

(9) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of, or responsible for, property belonging to another;

(b) A trustee; or

(c) Indebted to another on an obligation.

(10) "Inactive" means a lack of activity or owner contact for a prescribed time.

(11) "Insurance Company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including, but not limited to, accident, burial, casualty, workers' compensation, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(12) "Intangible Property" includes but is not limited to:

(a) Credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(b) Stocks and other intangible ownership interests in business associations;

(c) Money deposited to redeem stock, bonds, coupons, and other securities, or to make distributions;

(d) Amounts due and payable under the terms of insurance policies;

(e) Amounts distributed from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits; and

(f) Money, checks, drafts, deposits, interest, dividends, and income.

(13) "Last-known Address" means a description of the location of the apparent owner sufficient for the purpose of delivery of mail.

(14) "Negative Report" means a report showing the holder had no inactive accounts or other unclaimed assets to report for a particular reporting period.

(15) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in

case of other intangible property, or a person, or the person's legal representative, having a legal or equitable interest in property.

(16) "Person" means an individual, business association, state or other governmental or political subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(17) "Positive Owner Contact" means documented contact by an owner to the holder either generated or initiated by the owner or in response to the holder.

(18) "Property" includes tangible and intangible property.

(19) "Reportable" means the appropriate dormancy period as set forth in OAR 141-045-026 after which time an owner has not claimed his or her asset from a holding company, and the holder has taken appropriate steps to find the owner, as described in OAR 141-045-0061.

(20) "Safekeeping Depository" means any leased or rented depository which is used as a deposit for safekeeping of tangible or intangible property.

(21) "Tangible Property" means:

(a) Property actually being held in a safekeeping depository and includes, but is not limited to:

(A) Contents of safe deposit boxes in financial organizations;

(B) Contents of safekeeping repositories located in hospitals, health-care facilities, motels, hotels, jewelry stores, department stores, professional offices, or any other site where the holder is acting as a safekeeping custodian for the rightful owner.

(b) Property held for the owner by a court, state or other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority (for instance unclaimed court exhibits).

(22) "Third Party Administrator" is a person contracted by the holder to manage and process account records.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1984, f. & ef. 3-13-84; LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0015

### Who Must File Reports

(1) Every holder shall annually review all accounts that appear to be dormant or unclaimed according to ORS 98.302 to 98.436 and report to the Division of State Lands in accordance with the schedule established in OAR 141-045-0021. Any person that manages account records or serves as a registrar, paying agent or third party administrator for a holder shall notify the holder annually of any unclaimed amounts reportable according to ORS 98.302 to 98.436. Such entities include but are not limited to persons that provide payroll record-keeping services.

(2) The holder is responsible for the accuracy of the reports and retention of all records associated with the reports as defined in ORS 98.354 whether the report is filed by the holder or another person on behalf of the holder.

Stat. Auth.: ORS 98.302 - ORS 98.436, ORS 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0021

### Dormancy Periods

(1) Except as provided in this rule, the dormancy period for all tangible and intangible property is three years. After the expiration of the dormancy period, the property is presumed abandoned and subject to the provisions of these rules pertaining to unclaimed property.

(2) The dormancy period for the following deposits or refunds held by a utility is one year if unclaimed by the apparent owner after the date of termination of services or when the funds otherwise become payable or distributable:

(a) A deposit to secure payment, or a sum paid in advance for utility services, less lawful deductions; and

(b) A sum received for utility services, which the utility has been ordered to refund, including interest on the sum, less lawful deductions.

(3) The dormancy period for the following property is two years:

(a) Tangible and intangible property held in a safe deposit box or other safekeeping repository;

(b) Assets of dissolved cooperatives, business associations or financial institutions;

(c) Stale dated government checks or warrants including unrepresented payroll checks;

(d) Tangible and intangible property held by a court, state, or other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority; and

# ADMINISTRATIVE RULES

(e) Life or endowment insurance policies where the insured would have attained the limiting age under the mortality table of an existing policy.

(4) The dormancy period for the following property is five years:

(a) Any demand, savings or matured time deposit with a financial institution and any funds paid toward the purchase of a share, mutual investment certificate or any other interest in a financial institution;

(b) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated except those described under paragraph (e) of subsection (3) of this rule;

(c) Stock, certificates of ownership or other intangible equity ownership interests in a business association, except as provided in ORS 98.322(4);

(d) Any dividend, profit distribution, interest, payment on principal or other sum held or owing by a business association; and

(e) All intangible personal property and any income or increment on such property held in a fiduciary capacity.

(5) The dormancy period for money orders is seven years.

(6) The dormancy period for traveler's checks is 15 years.

Stat. Auth.: ORS 98.302 - ORS 98.436, ORS 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0031

### Examples of Unclaimed Property

(1) The following types of property are considered unclaimed and reportable to the Division after five years without positive owner contact:

(a) Any account deposited in a financial institution and any accrued interest and dividends;

(b) Any account including shares, dividends, deposit accounts, and interest held by credit unions as defined in ORS 723.006 that are due or standing in the name of a member, beneficiary or other person who cannot be contacted by first class mail at the last address shown on the records of the credit union;

(c) All intangible personal property and any accrued interest held in a fiduciary capacity, including but not limited to property management security deposits, attorney trust accounts, escrow accounts and trust accounts;

(d) Any sums payable for which a financial institution is directly liable, including checks, drafts, cashier's checks, certified checks, or similar instruments;

(e) Any stock, mutual fund, or other certificate of ownership, dividend, profit, distribution interest, payment on principal or other sum held or owing by a business association for a shareholder, certificate holder, member, bondholder or the actual instrument or book entry shares which shows ownership or interest in stocks, bonds, or mutual funds;

(f) Any certificate of deposit. If the account is in the form of a dividend reinvestment plan, the dormancy period shall begin at the first maturity date after the holder determines that the owner cannot be located;

(g) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated and has become due and payable as established from the records of the insurance company.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or a similar account or plan established according to the Internal Revenue laws of the United States of America are considered unclaimed and payable to the Division five (5) years after the account holder reaches age 70-1/2. If the account is in the form of a time certificate or certificate of deposit dividend reinvestment plan (DRP), the dormancy period shall begin at the first maturity date after the account holder reaches age 70-1/2.

(3) The following types of property are considered unclaimed and payable to the Division after three years without positive owner contact:

(a) Credit memos issued in the ordinary course of the holder's business;

(b) Except as provided in OAR 141-045-0031(3)(c), unpaid wages, including commissions and wages represented by uncashed payroll checks owing in the ordinary course of the holder's business;

(c) Any other disbursements generated during the ordinary course of the holder's business; and

(d) All intangible personal property not otherwise covered by ORS 98.302 through 98.436 that is held or owing in the ordinary course of the holder's business after it becomes due and payable.

(4) The following types of property are considered unclaimed and payable to the Division after two years without owner contact:

(a) A life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the insurance company, pursuant to ORS 98.314(3);

(b) All tangible and intangible property held in a safe deposit box or any other safekeeping depository in the ordinary course of the holder's business after the lease or rental period has expired. This category of property does not include personal property that has been willfully abandoned by the owner, such as automobiles, furniture, household goods, or property covered by other statutes;

(c) All intangible property held for the owner by any court, state or other government, governmental subdivision or agency, county fiscal officer, public corporation, public authority, quasi-governmental agency, public officer of this state, political subdivision of this state, or Public Employees' Retirement System, except those with a court order prohibiting the withdrawal of same, including, but not limited to:

(A) Fines;

(B) Bail;

(C) Restitution;

(D) Child support;

(E) Condemnation payments;

(F) Judgment proceeds;

(G) Unclaimed municipal bonds and the interest thereon.

(d) Tangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation or public authority; law enforcement agency, other than property seized by a law enforcement agency as defined by ORS 98.245(1)(b);

(e) Property held by a dissolved cooperative;

(f) All unclaimed intangible personal property distributable in the course of a dissolution of a business association, or financial institution.

(5) The following types of property are considered unclaimed and reportable to the Division after one year without positive owner contact:

(a) Deposits made by a subscriber with a utility to secure payment or any sum paid in advance for utility services;

(b) Sums received for utility services which a utility has been ordered to refund.

(6) Any sums payable on a money order or similar written instrument, other than a third party bank check that has been outstanding for more than seven years after its issuance is considered unclaimed and reportable to the Division.

(7) Any sum payable on a traveler's check that has been outstanding for more than 15 years is considered unclaimed and reportable to the Division.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 2-1995, f. & cert. ef. 6-15-95; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0041

### Report Forms

(1) A holder may request a report form from the Division.

(2) A holder may submit a report electronically or may download a report form from the Division's website.

(3) The Division shall provide printed report forms or post the same on the Division's website and instructions no later than August 31st of each year to all holders.

(4) The Division may provide a separate reporting form to holders of any safekeeping repository, for a detailed listing of all contents and owners.

(5) The Division may, at its discretion, require holders to file negative reports. As used in this rule, "negative report" means a report showing the holder had no inactive accounts or other unclaimed assets to report for a particular reporting period.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0061

### Actions Required of Holders Before Reporting

(1) As soon as it appears that an account with a value of \$100 or more is inactive, but not later than August 31 of the report year, each holder shall exercise due diligence in making a reasonable, good faith effort to:

(a) Confirm that an account is in fact inactive;

(b) Notify the owner that the holder will report the account to the Division as unclaimed property; and

(c) Locate the owner.

(2) In exercising due diligence under subsection (1) of this section, a holder may:

(a) Verify that the owner has not communicated in writing with the holder concerning the asset;

# ADMINISTRATIVE RULES

(b) Verify that the owner has not otherwise indicated an interest in the asset as evidenced by a memorandum or other record on file prepared by an employee of the holder;

(c) Verify that the owner does not own other accounts in the holder's organization about which the owner has communicated with the holder (for example, the Trust Department of a financial institution could contact other departments of that institution): or

(d) Where the account is that of a credit union member, verify that the member has participated in voting during a regularly scheduled credit union meeting.

(3) If a holder is unable to locate an owner, the holder may exercise due diligence under subsection (1) of this section by:

(a) Verifying that the owner is not a current employee of the holder;

(b) Reviewing telephone books to verify address and telephone number;

(c) Verifying that the owner is not a well-known individual or organization (for example, Department of Treasury, IRS); or

(d) Any other effort the holder may take to find an owner.

(4) A holder shall retain records or documentation of its compliance with the requirements of this section for three years and make the records or documentation available for inspection by the Division upon request.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0100

### Report and Delivery of Unclaimed Property to Division

(1) Every person holding funds or other tangible or intangible property, presumed abandoned according to ORS 98.302 to 98.352 shall report and pay or deliver all such property to the Division, except that funds transferred to the General Fund by governmental agencies pursuant to ORS 293.455(1)(a) shall only be reported to the Division.

(2) Each holder shall be responsible for the content, accuracy, and timeliness of the holder's report, regardless of whether the report is prepared by the holder or its agent. The holder shall designate a staff contact person responsible for the report.

(3) For accounts dormant as of June 30, the holder shall file the report after October 1, but not later than November 1.

(4) The Division may, at its discretion, postpone the reporting date, or allow early reporting and payment or delivery upon written request by any person required to file a report.

(5) A holder shall report property having a value of \$50 or more per account or owner of record, individually, and shall include the following information, if known:

(a) The complete name, address of record, Social Security number, previous names, and any previous addresses of each listed owner; and

(b) The type of account, identification number, reference number, and any specific description of the unclaimed property according to the records of the holder.

(6) A holder may report all property having a value of \$49.99 or less per account or owner of record, as a lump sum representing various accounts without breaking the amount down by account or by owner. However, the holder shall report separately the total amount held for any one owner who has several small accounts that individually total \$49.99 or less, but collectively equal or exceed \$50 dollars. In order to assist the Division in locating owners of record, the holder may report the information required under subsection (5) of this rule for property having a value of \$49.99 or less per account or owner of record.

(7) In addition to the information required above, a life insurance company shall also report the following information, if known:

(a) The full name of each insured or annuitant, or if a class of beneficiaries is named, the full name of each current beneficiary in the class, and last known address according to the holder's records;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured.

(8) A holder of safekeeping depositories shall comply with the following additional requirements:

(a) The holder shall complete the specific report form for safekeeping contents or include the required information in the holder's computer-generated format.

(b) In addition to the information required in subsection (5) of this section, list each item left in a safekeeping depository, and the identity of the owner. The holder shall include information about the original box if the holder moved items to a safekeeping area.

(c) In accordance with directions from the Division, the holder shall deliver the package of safekeeping depository contents marked "to be delivered unopened," to the Division by certified mail, return receipt requested or hand carried by a courier. The Division shall sign a receipt for the unopened package upon delivery to the Division, and forward the receipt to the holder within five working days.

(d) The holder shall clearly identify on the package the holder's complete name and return address.

(e) The holder shall forward the complete contents of safekeeping depositories to the Division intact. The holder may not convert, substitute or exchange any coins and currency found in the box.

(f) The holder may include information about safekeeping depository costs in its report to the Division. When the owner files a claim for the property, the Division shall require the owner to furnish a paid receipt or waiver for these costs from the holder before the claim will be approved.

(9) Any holder, business association, transfer agent, registrar or other person acting on behalf of the holder of an intangible equity ownership interest deemed unclaimed according to ORS 98.322 shall, in addition to supplying the information required in OAR 141-045-0100(5) above:

(a) Where the original certificate is being held by the holder for the owner (i.e., stock or other certificate of ownership of a business association which has been returned to the holder, who cannot find the owner), cancel that certificate and issue a replacement certificate of ownership to the Division; or

(b) When the holder does not hold the original certificate, issue a replacement certificate i.e., a duplicate certificate of ownership or other distribution or stock or other certificates of ownership of a business association issued in the name of the Division of State Lands as custodian of unclaimed property. The original certificate of ownership is presumed to be in the possession of the missing owner to the Division.

(c) In either case, the holder shall report and forward to the Division all outstanding accrued dividends, along with the certificate.

(d) When stock is reported and transferred to the Division's assigned stock broker or transfer agent in book entry form, the holder shall immediately forward a confirmation of stock transfer to the Division at the time of transfer.

(10) In addition to the information a holder reporting mutual funds in book entry form shall:

(a) Forward a confirmation of account transfer to the Division along with the report; and

(b) Forward future income in the form of cash (for example, dividends, capital gains, etc.) payable to the Division from mutual fund accounts with dividend reinvestment plans.

(11) If the holder is a dissolved agricultural cooperative, the holder shall forward the original reports detailing unclaimed dissolved agricultural cooperative accounts to the Division along with the funds, and file a copy of the report with the State Board of Higher Education. The Division shall reconcile the report to the delivered funds, deduct the costs as provided for in ORS 62.720 and forward the funds to the State Board of Higher Education within 14 working days after receiving the funds.

(12) The receiver or other liquidating agent for a dissolved corporation shall prepare a report containing the names and last-known addresses of the persons entitled to such funds.

(13) Before October 1 each year, each state agency shall prepare a report of all checks, warrants, and orders drawn by it which have been outstanding for a period of more than two years prior to July 1, and that have not been paid by the State Treasurer. The report shall not include checks or orders that have already been paid pursuant to indemnity bonds. The agency shall forward the report to the Division before November 1.

(14) After October 1, the State Treasurer may refuse payment of the unrepresented checks or orders included in the report, and upon instructions by the issuing agency shall:

(a) Transfer and credit the amounts of the unrepresented checks or orders dedicated for general funding to the General Fund;

(b) Except for federal funds governed by federal laws and rules as provided in ORS 291.003 and 409.040(2), transfer all other funds to the Division; and

(c) Report information about any payment made to an owner subsequent to filing the report, but before transferring the funds to the Division.

(15) If the holder of the unclaimed account is a successor to other persons who previously held the property, or if the holder has had a name change, the holder shall include in the initial report prior known names and addresses of the original or previous holder.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

# ADMINISTRATIVE RULES

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0105

### Confidentiality of Records

(1) All records of dormant accounts shall be exempt from public review as follows:

(a) The holders shall withhold dormant account information for 12 months from the time the property becomes reportable to the Division.

(b) The Division shall withhold unclaimed account information for 24 months after receipt of the report and property.

(c) All lists of uncashed warrants or stale dated checks issued by a government or public authority pursuant to ORS 98.336 shall be exempt from public review from the issued date until 24 months after the property is remitted to the Division.

(2) The Division may not disclose to any other state or any person any confidential information provided by the Department of Revenue from taxpayer returns.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0115

### Requirements of the Division of State Lands to Locate Owners

(1) Within one year after receipt of reports, payment, and delivery of accounts as required by OAR 141-045-0100, the Division shall provide public notice that the names of owners of unclaimed property have been added to the Division's unclaimed property Website by publishing notice at least twice in a newspaper or other generally circulated periodical published in this state.

(2) The Division also shall make reasonable efforts to locate the owners of unclaimed property reported and received by the Division. The Division's efforts shall include, but need not be limited to the following:

(a) Contracted services with established firms, credit bureaus, telephone networking companies; or

(b) Interagency agreements with other governmental agencies, such as Social Security Administration, Insurance Commission, Motor Vehicles Division, Corporation Commission; or

(c) Use of the internet, reverse directories, telephone books, or other such publications.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0120

### Examination of Holder Accounts

(1) In accordance with ORS 98.412, the Division may examine the records and other accounts of any holder to determine whether the holder has complied with the provisions of ORS 98.302 to 98.436.

(2) The Division may conduct an examination whether or not the holder believes it is in possession of reportable property.

(3) The examination may be performed by personnel employed by the Division of State Lands, employees of the Department of Consumer and Business Services, Division of Audits of the Office of the Secretary of State, or any other designated person under contract with the Division of State Lands.

(4) To the extent possible, the Division shall enter into agreements with other state or federal entities who regularly examine the records of financial institutions. Under the agreements, the state and federal agencies shall examine the records of the financial institutions to determine compliance with ORS 98.352. If the state or federal agency does not enter into an agreement with the Division, the Division shall conduct the examination.

(5) The types of records and accounts subject to examination include, but are not limited to:

(a) Contractual agreements between depositors and the financial institution regarding the deduction of service charges authorized according to ORS 708.500, account increases or decreases, and the cessation of interest payments;

(b) Records of current accounts, dormant accounts, and accounts that may have been closed and archived;

(c) The holder's procedures for administering dormant accounts, including searching for and notifying owners to ensure compliance with OAR 141-045-0030;

(d) Bank reconciliations, outstanding checklists and bank statements;

(e) Aged accounts receivable reports;

(f) Reports from transfer agents showing last date of positive contact with stockholders;

(g) Uncashed checks that have been returned by the United States Post Office as undeliverable;

(h) Uncashed payroll checks that have been returned by a company plant or office;

(i) Journal entries that specifically write off stale dated checks;

(j) Third party administrators' contracts, records and reconciliations; and

(k) Holder trial balance of accounts.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; Renumbered from 141-045-0120(5) & (6) to 141-045-0125(1) & (2); DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0121

### Procedure for Examination of Holder

(1) The Division shall give written notice to the holder at least ten days prior to an examination of all records and accounts subject to the Unclaimed Property Act.

(2) The Division may conduct an examination opening conference with a holder before beginning an examination. At the opening conference, the Division shall identify the examination period, describe the general examination methods that will be used, and provide the initial request for records.

(3) The Division shall issue a report of preliminary findings reflecting the potential liability for unclaimed property. The Division shall allow not less than 30 days for the holder to respond to the preliminary findings report.

(4) Upon completion of an examination, the Division shall provide a written report reflecting the total unclaimed property reporting liability and any interest due on amounts due and owing for failure to report and deliver property due and payable for prior years. The Division may hold a conference with the holder to provide the written report. The written report shall include information to the holder that includes:

(a) Recommendations for maintaining ongoing compliance, and

(b) Explaining the availability of an appeal of the findings as described in OAR 141-045-0126.

(5) Within 30 days after the Division delivers a final report of examination findings, the holder shall deliver to the Division any unclaimed property and interest due to the Division based on the examination findings. Upon request of the holder, the Division may establish a payment schedule or extend the payment period.

Stat. Auth.: ORS 98.302 - ORS 98.436, ORS 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0122

### Entering into Contract with Contract Auditor

The Division may enter into a contract with a person for the sole purpose of examining the records of holders to determine compliance with ORS 98.302 to 98.436. The Division may consider any factors the Division deems relevant when entering into a contract for services requested in the performance of an unclaimed property examination.

Stat. Auth.: ORS 98.302 - ORS 98.436, ORS 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0123

### General Conditions and Requirements of Contract with Contract Auditor

(1) A contract auditor shall comply with all terms and conditions specified in the contract with the Division.

(2) A contract auditor may not subcontract any work without the prior written authorization from the Division. The contract auditor is responsible for ensuring that any subcontractors used during an examination possess sufficient training and experience to adequately perform the unclaimed property examination and agree to comply with all terms and conditions of the contract auditor's contract with the Division.

(3) A contract auditor shall possess an ability to examine the records of entities holding various types of unclaimed property.

(4) A contract auditor shall have security procedures in place to ensure that all unclaimed property examination reports and working papers are secure.

(5) A contract auditor shall have the ability to evaluate and comment on the holder's procedures and accounting systems related to capturing unclaimed property for present and future reporting period.

# ADMINISTRATIVE RULES

(6) A contract auditor shall maintain independence in mental attitude in all matters relating to an examination assignment.

(7) A contract auditor may not engage or present itself as representing the Division in any examination without the prior written consent from the Division.

Stat. Auth.: ORS 98.302 - ORS 98.436, ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0124

### Contract Auditor Guidelines

A contract auditor shall adhere to the following guidelines:

(1) A contract auditor shall not participate in examinations in which the contract auditor's participation could be construed or perceived as a conflict of interest. If either the Division or the contract auditor believes that the auditor cannot conduct an assigned examination due to a conflict of interest or for any other reason, the Division shall determine whether recusal of the contract auditor from the assignment is appropriate or necessary. If the contract auditor is recused from conducting the examination of a holder, the Division may authorize another contract auditor to complete the examination.

(2) A contract auditor shall maintain strict confidentiality of any non-public records or documents gathered during the course of an examination in accordance with the contract between the Division and the contract auditor.

(3) A contract auditor shall properly document the review and make the auditor's working papers gathered during examinations available on demand for review by the Division and the Department of Justice.

(4) Upon request of the Division or the holder, the contract auditor shall provide the holder with relevant copies of working papers supporting any calculation made of unclaimed property reportable and deliverable to the Division.

(5) A contract auditor shall maintain working papers for a minimum of five years following the completion of an examination assignment, the delivery of unclaimed property, the resolution of any appeal or the finality of judgment in any litigation, whichever is later.

(6) A contract auditor shall conduct examinations consistent with ORS 98.302 to 98.436, OAR 141-045-0121 (Procedures For Examination Of Holder) and other applicable statutes and rules, policies of the State Land Board and the Division of State Lands, generally accepted accounting principles, generally accepted auditing standards and any relevant rules related by examinations adopted pursuant to ORS 98.302 to 98.436 as such rules relate to the reporting and delivery of unclaimed property from holders.

Stat. Auth.: ORS 98.302 - ORS 98.436, ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0125

### Owner Identification Information

(1) Every holder shall maintain a record of the name and last-known address of the owner, any signature cards, or other evidence which would assist in the identification of the owner for three years after the holder has remitted the property to the Division.

(2) Any holder that sells traveler's checks, cashier's checks, credit memos, money orders, or other similar written negotiable instruments, other than third party bank checks for which the business is directly liable, or that provides such instruments to others for sale, shall maintain a record of those instruments while they remain outstanding, including the state and date of issue, for three years after the date the holder has remitted the property to the Division.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94, Renumbered from 141-045-0120(5) & (6); LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0126

### Appeal of Examination Findings

(1) Alternative Dispute Resolution Process. Any holder who disputes the findings set forth in a final written report delivered, as required under OAR 141-045-0121(4), may request the Division enter into an alternative dispute resolution process. The Division and the holder shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The holder may retain the right of formal appeal as described in these rules.

(2) Any holder who disputes the findings set forth in a final written report delivered as required under OAR 141-045-0121(4), may request a

hearing in accordance with the provisions of ORS 183.413 to 183.470 related to contested case proceedings.

Stat. Auth.: ORS 98.302 - ORS 98.436, ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0130

### Service Charges and Payments of Interest on Deposit Accounts

(1) With respect to any demand, savings or matured time deposit with a financial institution, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, mutual investment certificate or any other interest in a financial institution, a holder may not impose any charge or cease payment of interest due to dormancy or inactivity unless:

(a) There is a written contractual agreement between the holder and the owner of the account clearly and prominently setting forth the conditions under which a service charge may be imposed or the payment of interest terminated;

(b) The establishment of a service charge, the change of an existing service charge or the change of a policy pertaining to the payment of interest is uniformly applied to all dormant or inactive accounts;

(c) The holder shall give written notice to the owner at the owner's last-known address whenever an account becomes dormant or inactive; and;

(d) Three months written notice is given by certified mail to the last-known address of the owner of a dormant or inactive account before the holder may apply a service charge to the account or stop paying interest on that account.

(2) A signature card is not a written contractual agreement for the purposes of subsection (1)(a) of this section, however, the signature card and the written contractual agreement may be contained in one instrument.

(3) A holder may not deduct from the amount of any instrument subject to ORS 98.308(5) or (6) any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(4) Notwithstanding the provisions in subsections (1) to (3) of this section, a holder may not deduct a service charge or fee or otherwise reduce an owner's unclaimed account unless:

(a) There is a valid written contract between the holder and the owner that allows the holder to impose a charge;

(b) The service charge or fee is imposed uniformly on all accounts; and

(c) Three months' written notice is given by certified mail to the last-known address of all owners before the charge or fee is levied.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0150

### Disposition of Unclaimed Property

The Division shall dispose of all tangible property presumed abandoned and delivered to the Division in accordance with OAR 141-045-0185.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045  
Stats. Implemented: ORS 98  
Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0155

### Relief From Liability

(1) Upon delivery or payment of reportable unclaimed property to the Division in compliance with ORS 98.302 to 98.436, the state shall assume custody of the property and the holder is relieved of all liability for any claim which then exists or which thereafter may arise or be made in respect to the property, to the extent of the value of the property so paid or delivered.

(2) The Division shall indemnify the holder of securities presumed abandoned according to ORS 98.322 to the extent allowed under the Oregon Constitution.

(3) No person shall have any claim against the state, the holder, any transfer agent, registrar or other person acting for or on behalf of a holder for any change in market value of the property occurring after delivery by the holder to the Division, or after sale of the property by the Division.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045  
Stats. Implemented: ORS 98

# ADMINISTRATIVE RULES

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0160

### Deposit of Funds

(1) All funds received pursuant to ORS 98.302 to 98.436, including the proceeds from the sale of unclaimed property, shall be deposited by the Division of State Lands in the Common School Fund Account with the State Treasurer.

(2) Before making a deposit, the Division shall record the name and last-known address of each person reported by the holder to be entitled to the unclaimed property, the amount due the owner, the name of the holder, and any identifying account, policy or contract number.

(3) Before making a deposit, the Division may deduct:

(a) Any costs in connection with the sale of unclaimed property;

(b) Any costs of mailing, publication, or other efforts to locate owners of unclaimed property as set forth in OAR 141-045-0115; and

(c) Reasonable service charges.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0170

### Claims for Recovery of Unclaimed Property

(1) Any person may submit a claim for recovery of unclaimed property reported to the Division in accordance with ORS 98.302 to 98.436 and OAR 141-040-0200 through 141-040-0220.

(2) If the claim allowed is for property deposited in the Common School Fund Account, the Division shall return the property or make payment of the proceeds of the sale of the property to the claimant.

(3) If the claim allowed is for funds deposited in the General Fund, the Division shall pay the claim and file a request for reimbursement with the State Treasurer. The State Treasurer shall reimburse the Division within five working days from the fund against which the check or order represented in the claim was issued.

(4) A holder, subsequent to payment or delivery of accounts to the Division may make payment to the apparent owner, and file a claim with the Division. The Division shall reimburse the holder within 60 days after receiving proof from the holder that the owner was paid. The Division shall not assess any fee or other service charge. Upon receiving the funds from the Division, the holder shall assume liability for the claimed asset, and hold the Division harmless from all future claims to the account.

(5) A person making a claim pursuant to ORS 98.392 for securities is entitled to receive either the securities delivered to the Division by the holder, if they still remain with the Division, or the proceeds received from sale, less any amounts deducted pursuant to ORS 98.386. The Division may require claimants to provide a lost instrument bond if the original certificate is not surrendered to the Division.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0180

### Penalties

Penalty for failure to report, pay or deliver property under ORS 98.302 to 98.436. A person who willfully fails to render any report, to pay or deliver property or to perform other duties required by ORS 98.302 to 98.436 and 98.992 may be required to forfeit and pay to the State Treasurer to be deposited in the Common School Fund Account, an amount determined by the Division of State Lands pursuant to ORS 183.090 of not more than \$1,000 for individuals and \$50,000 for corporations. This penalty shall be assessed only after at least one reporting cycle, and only after the Division has provided the person with written instructions, including copies of applicable laws and policies. The Division may waive any penalty due under this section with appropriate justification.

Stat. Auth.: ORS 98.302 - ORS 98.436 & ORS 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

## 141-045-0185

### Disposition of Unclaimed Property, Real Property and Personal Effects

(1) Except as otherwise provided in subsections (2), (3), (7) and (8) of this rule, the Division shall sell all property and personal effects belonging to a deceased person and all other property presumed abandoned and deliv-

ered to the Division at such time and place, and in such manner as the Division determines will bring the highest return.

(2) Contents of safe deposit boxes received from banks or credit unions or other safekeeping repository may be sold after one year unless the Division considers it in the best interest of the state to do otherwise. Unclaimed property sold under this subsection shall be sold by the Division to the highest bidder at public sale.

(3) Securities shall be sold on the exchange at prices prevailing at the time of the sale or by any other method the Division considers advisable.

(4) In disposing of property received as part of an escheated estate, the Division of State Lands may:

(a) Obtain the services of a qualified appraiser to assist with the determination of values;

(b) Employ a qualified investment advisor to assist with the custody and sale of securities;

(c) Employ an auctioneer to conduct a public, oral auction or estate sale to dispose of property;

(d) Offer the property through electronic commerce; or

(e) Contract with a real estate broker to sell real property.

(5) Sales shall be conducted by a contractor hired through a process conducted in accordance with the requirements of ORS 279.310 to 279.323. The contractor may not be an employee or relative of an employee of the Division.

(6) Public sales and auctions conducted pursuant to subsections (2) or (4) of this rule shall be preceded by at least one publication of notice of the sale at least 10 days before the sale, in a newspaper of general circulation in the county where the property will be sold.

(7) If the Division determines after investigation that any item delivered has insubstantial commercial value, the Division may:

(a) Destroy or otherwise dispose of the property at any time, pursuant to ORS 98.384 including personal papers obtained by escheat under ORS 112.055.

(b) Donate items with little or no commercial value including used clothing, worn-out or broken furniture, and common houseplants to charitable service organizations or other persons such as friends or neighbors of the decedent.

(8) The Division may donate, sell or dispose of food on site.

(9) If the cost of a public auction would exceed the value of a particular item, the Division need not offer the property for sale. The Division may dispose of the item by obtaining at least three oral bids or request sealed bids from interested parties, selling the item to the highest bidder. Examples are old vehicles, trailers, and extremely heavy or awkward items that would require special handling.

(10) No donations, sales, or other disposition of any unclaimed property or property belonging to estates may be made to employees of the Division or the State Land Board or members of their immediate household, parents, or children not living at home.

(11) The Division may decline the highest bid and re-offer the property for sale if the Division considers the bid price insufficient.

(12) The purchaser of property at any sale conducted by the Division takes the property free of all claims of the owner or previous holder, and of all persons claiming through or under them. The Division shall execute any documents necessary to complete the transfer of ownership.

Stat. Auth.: ORS 98.302 - ORS 98.436, ORS 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03

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## Health Licensing Office Chapter 331

**Adm. Order No.:** HDLP 2-2002

**Filed with Sec. of State:** 12-20-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 12-1-02

**Rules Amended:** 331-705-0060

**Subject:** Twenty-five percent (25%) fee reduction for original issuance and renewal of license for respiratory care therapists. The negative balance incurred from transition of the board in 1997 from the BME to HLO has been neutralized and the program has achieved fiscal stability. Current funding is ample to maintain service levels with a reduction in the initial license and renewal fees from \$100 to \$75.

**Rules Coordinator:** Patricia C. Allbritton—(503) 378-8667, ext. 4322



# ADMINISTRATIVE RULES

331-705-0060

## Fees

(1) Payment of fees to the Board must be made for the exact amount due. Fees are non-refundable.

(2) Transactions submitted to the Board where either the payment or required documentation is incomplete or incorrect shall be returned to the payor for correction before being processed by the Board.

(3) Fees will be applied as directed by the payor. Fees misapplied may be corrected by written request specifying the license number(s) affected and the action requested, subject to conditions set forth in subsection (6) of this rule.

(4) Fees paid to the Board are not transferable between licenses or from person-to-person.

(5) The Board shall not refund fees, civil penalties or other moneys overpaid by an amount of \$10 or less unless such refund is requested in writing by the payor within three years after the date of the overpayment.

(6) Payments made by a licensee or applicant without explanation or as an overpayment shall be applied to any outstanding balance owed by licensee or applicant.

(7) Fees are as follows:

(a) Application: \$50;

(b) Original license: \$75 for one year initial cycle;

(c) Renewal of license: \$75 for one year renewal cycle;

(d) Temporary license (one year, non-renewable): \$100;

(e) Delinquency or late renewal of license: \$50;

(f) Restoration of license: \$100;

(g) Replacement of license including name change: \$25;

(h) Duplicate license: \$25;

(i) In the event a NSF check is received for payment of fees, an additional \$25 administrative processing fee will be assessed.

Stat. Auth.: ORS 688.830(9)

Stats. Implemented: ORS 688.830(9)

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 1-1998(Temp), f. & cert. ef. 3-20-98 thru 4-1-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HDLP 2-2002, f. 12-20-02 cert. ef. 1-1-03

## Landscapers Contractors Board Chapter 808

**Adm. Order No.:** LCB 6-2002

**Filed with Sec. of State:** 12-18-2002

**Certified to be Effective:** 12-18-02

**Notice Publication Date:** 11-1-02

**Rules Amended:** 808-009-0140

**Subject:** 808-009-0140: Provides for an order adverse to a defaulting party must be based upon a prima facie case made on the record.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 986-6561

**808-009-0140**

### Failure to Appear

(1) "Order" as used in this rule means a proposed and final order a hearing officer is authorized to issue under OAR 808-009-00160.

(2) If the hearing officer notified the parties to a claim of the time and place of a hearing on the claim, and a party failed to appear at the hearing, the hearing officer may enter an order by default under OAR 137-003-0670(1)(c) that:

(a) Is adverse to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3); or

(b) Dismisses the claim based on a lack of evidence in the record supporting claimant's claim, but only if:

(A) The agency did not designate the agency file as the record for purposes of an order by default in the contested case notice issued under OAR 808-004-0560; and

(B) The claimant failed to appear at the hearing.

Authorized for use by Attorney General order dated December 13, 2002. (Section (1) based on former OAR 808-004-0030(13) (1999); section (2) based on former OAR 808-004-0030(14) (1999))

Stat. Auth.: ORS 183, 670, 670.310 & 671

Stats. Implemented: ORS 183, 670 & 671

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 6-2002, f. & cert. ef. 12-18-02

## Office of Energy Chapter 330

**Adm. Order No.:** DOE 1-2003

**Filed with Sec. of State:** 1-10-2003

**Certified to be Effective:** 1-10-03

**Notice Publication Date:** 12-1-02

**Rules Amended:** 330-130-0030, 330-130-0040, 330-130-0050, 330-130-0060, 330-130-0080

**Subject:** This rule change consists of 21 amendments to OAR 330-130-0030, 00040, 0050, 0060, and 0080. Fifteen (15) amendments correct typos in the original language of the rule. The other six amendments are needed mainly to clarify intent or revise language to more accurately reflect current practices.

**Rules Coordinator:** Michael Grainey—(503) 378-5489

### 330-130-0030

#### Notification

When the building class has been determined during the pre-design or programming phase of a building project, the following procedures shall be followed:

(1) Class 1 Buildings. Before the Design Team is selected, the Agency and the Oregon Office of Energy may enter into an interagency agreement which outlines the procedures as shown in 330-130-0040, the hourly rates to be charged by the Oregon Office of Energy and the related statement of work. The Agency Contact shall coordinate with the Oregon Office of Energy the set-up of the Initial Meeting early in the pre-design or programming phase of a building project. The interagency agreement may include Expanded Services, which are beyond the scope of this rule. See 330-130-0040 section (8) below.

(2) Class 2 Buildings. The Agency shall contact the Oregon Office of Energy for consultation and request a list of recommended ECMs and services applicable to the building.

Stat. Auth.: ORS 276.900 - ORS 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03

### 330-130-0040

#### Procedures for Class 1 Buildings

The SEED process as outlined below follows some typical steps in the design process as the organizing principle. In case the Agency is accustomed to using different phases or terminology, or if the project does not fit the suggested steps, an alternative plan shall be developed between the Oregon Office of Energy and the Agency.

(1) Pre-Design or Programming phase. The purpose of the SEED process is to ensure early involvement so energy efficiency is an integral part of the building design.

(a) Initial Meeting. Early in the Pre-Design or Programming phase, the Agency and the Oregon Office of Energy shall meet to

(A) Discuss the scope of the project.

(B) Define the role of the Oregon Office of Energy, including but not limited to the level of involvement, decision authority on behalf of the owner, and relationship with contractors. The Oregon Office of Energy shall be notified of all meetings where significant review of or final decisions about energy systems are anticipated.

(b) Request for proposal and contract. The request for proposal (RFP) and the contract's Statement of Work shall include a reference to the goal of 20 percent or better than the state building code, to the SEED process and to the "model of energy efficiency". The Oregon Office of Energy shall develop language the Agency may use to include energy efficient design in the request for proposals and the contract for architectural and engineering services. Upon request, the Oregon Office of Energy will review or comment on the RFP, Contract or energy qualifications of proposals as an Expanded Service (see section (8) below).

(c) Energy Analyst. The Agency shall hire the Energy Analyst who meets the requirements indicated in the SEED Program Guidelines.

(2) Schematic Design Phase:

(a) Energy Planning Session. Early in the Schematic Design Phase, the Agency, Design Team, Oregon Office of Energy and Energy Analyst shall meet to further define the project design, construction schedule, energy goals of the project, the design criteria, the integrated energy design approach, the Energy Systems Performance Verification Plan and the modeling approach. The Energy Analyst shall regularly update these items during the design process.

# ADMINISTRATIVE RULES

(b) Preliminary Investigation. Working with the Agency and the Design Team, the Energy Analyst shall prepare a comprehensive list of ECMs to capture significant opportunities for building energy savings. Two weeks before the Scoping Process (see step (c) below), the Agency shall deliver to the Oregon Office of Energy the following items:

(A) Description of the Baseline Building and its energy-using systems;

(B) List of proposed ECMs

(C) Approach and tools for modeling;

(D) Initial plans;

(E) Design intent;

(F) Description of operating criteria; and

(G) Results of preliminary modeling effort, if any.

(c) Scoping Process. The Oregon Office of Energy, the Agency, the Design Team, and the Energy Analyst shall select the ECMs for analysis. If needed, further refinement of the modeling effort will be discussed and decided upon.

(3) Design Development Phase:

(a) Baseline and Individual ECM Analysis. The Energy Analyst shall use the Building Model for Baseline Building analysis and individual ECMs analysis. The Energy Analyst may use fully documented manual calculations for simple, non-interactive ECMs and may eliminate potential ECMs with preliminary estimates of costs and savings if the Simple Payback is greater than the equipment life.

(b) Metering Plan. The Agency, in consultation with the Energy Analyst, the Design Team and the Oregon Office of Energy, shall specify what types of utility meters are to be installed and what system is to be used to monitor the building's energy use. Where desirable, sub-metering shall be provided on major energy using equipment or systems. This Metering Plan shall be incorporated in the Energy Systems Performance Verification Plan.

(c) Interim Submittal and Review. Two weeks before the ECM Review Meeting, the Agency shall submit to the Oregon Office of Energy the Preliminary Energy Analysis Report. The Oregon Office of Energy shall review the Preliminary Energy Analysis Report and provide its written or verbal comments and recommendations to the Agency prior to the ECM Review Meeting. The following items shall be submitted as part of the Preliminary Energy Analysis Report:

(A) Narrative describing the Baseline Building and the proposed ECMs.

(B) Tables showing energy use for the Baseline Building and the building with proposed ECMs;

(C) The Baseline Building Model input and output;

(D) A list of eliminated ECMs and calculations;

(E) Analysis results for individual ECMs; and

(F) The Metering Plan.

(d) ECM Review Meeting. The Oregon Office of Energy, the Agency, the Design Team, and the Energy Analyst shall meet to review and agree on the results in the Preliminary Energy Analysis Report.

(e) Final Report Submittal. The Agency shall deliver the final Energy Analysis Report containing the Optimum ECM Package and projected energy use to the Oregon Office of Energy for review.

(f) Delivery of the Oregon Office of Energy Findings. The Oregon Office of Energy shall review the report and forward its written findings and recommendations to the Agency within ten working days after receiving the report, if practicable.

(4) Construction Documents Phase:

(a) Implementation of Cost-Effective Measures. The Agency shall incorporate the Optimum ECM Package into the final building design.

(b) Submittal of Construction Documents. The Agency shall provide the Oregon Office of Energy with construction documents in sufficient detail to verify that the ECMs will be included in the final construction documents and specifications or no later than at 90 percent design completion, which ever comes first. This submittal shall also include the Preliminary Energy Systems Performance Verification Plan.

(c) The Oregon Office of Energy shall review this submittal and forward its written findings and recommendations to the Agency within ten working days after receiving the report, if practicable.

(5) Construction Phase:

(a) Contractor Submittals and Substitutions. The design firm shall ensure that contractor equipment submittals, requests for substitutions and change orders adhere to the ECM design intent. If requested, the Oregon Office of Energy will be available to review such documents.

(b) Site Inspections. To verify that ECMs are installed correctly and operating efficiently, the Oregon Office of Energy or its representative may make walk-through site inspections during the installations of ECMs.

(c) Performance verification. The Energy Systems Performance Verification Plan shall be carried out and Oregon Office of Energy shall receive a copy of the test reports.

(d) Training. It is recommended that instruction on the design intent and operation of the building as a system be offered to the owners and operators of the new facility. This may be part of the Energy Systems Performance Verification Plan. The training should parallel the operations manual prepared for the owner.

(6) Occupancy Phase:

(a) Monitoring. During the first 18 months into occupancy, energy use by the building systems shall be monitored and compared with the modeling results. In case significant differences between those two results are discovered during this period, the Agency shall investigate to find the cause, so that:

(A) An adjustment can be made to the operation of the building; or

(B) An explanation for the difference can be found that is acceptable to the Agency and the Oregon Office of Energy. The Agency shall send its finding to the Oregon Office of Energy for inclusion in the Biennial Report to the Legislature.

(b) Non-compliance. If, after monitoring the building for 18 months, the building's performance does not exceed the energy conservation provisions of the state building code by 20 percent or more because of reasons reported under (6)(a), the Agency shall submit an energy conservation plan to the Oregon Office of Energy within 90 days after reporting the non-compliance. This plan will outline the modifications to be made until monitoring shows that the goal of 20 percent or better is met, or all reasonable attempts to reduce the energy use have been made. These remedial actions shall be reported and sent to the Oregon Office of Energy for inclusion in the Biennial Report to the Legislature.

(c) SEED Award. The Oregon Office of Energy shall give the SEED Award to the Agency if the building complies with these SEED rules and is a "model of energy efficiency". These reports and the SEED Award will also be used for educational or marketing purposes to show what works and help convince agencies that the return on energy efficient design is well worth the possible extra cost in the planning and construction phases.

(7) Waiver. Under certain circumstances, part of these rules that describe specific activities may be waived.

(8) Expanded Services. Expanded services are services provided by the Oregon Office of Energy that are outside the scope of OAR 330-130-0010 through 0080. Such services may include but are not limited to acting as the owner's agent on energy issues, modeling during various phases of the design process and when the building is occupied, building commissioning, and providing resource conservation management assistance. The Agency may include Expanded Services as part of the interagency agreement with the Oregon Office of Energy for work required under these Administrative Rules.

Stat. Auth.: ORS 276.900 - ORS 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03

## 330-130-0050

### Procedures for Class 2 Buildings

The following procedures shall apply to every Class 2 project.

(1) Role of the Agency. The Agency shall determine that the design incorporates all required prescriptive ECMs or all reasonable cost-effective ECMs. ECMs or ECM packages with a Simple Payback shorter than equipment life shall be considered cost-effective for Class 2 Buildings.

(2) Role of the Oregon Office of Energy. The Oregon Office of Energy shall provide a list of prescriptive groups of measures or packages in excess of code that are deemed to result in energy usage that is at least 20 percent less than required by code. The Oregon Office of Energy shall also be available to the Agency to advise or suggest potential energy saving measures.

(3) Project Reporting. The Agency shall provide the Oregon Office of Energy with the list of all measures or packages installed in the building. This information will be used in preparation of the Biennial Report to the legislature.

Stat. Auth.: ORS 276.900 - ORS 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03

# ADMINISTRATIVE RULES

## 330-130-0060

### Service Charges

Charges to the Agency by the Oregon Office of Energy for services shall be as follows:

(1) Class 1 Buildings:

(a) The charges by the Oregon Office of Energy to the Agency will be based on an hourly rate for the actual hours worked on the project. Hourly rates charged by the Oregon Office of Energy and invoiced to the Agency will include salary, other payroll expenses, the federally allowed indirect rate for the Oregon Office of Energy, staff travel expenses, other service or supply costs, and administrative costs. Invoices may be submitted to the Agency by the Oregon Office of Energy monthly commencing one month after notification. Invoices will provide the hours of service and the hourly rate. The maximum charge shall be calculated at \$0.002 for each dollar of construction cost unless otherwise agreed to in writing by the Agency and the Oregon Office of Energy.

(b) The Oregon Office of Energy will invoice the Agency for all final charges within sixty (60) days following the completion of its work as described in 330-130-0040. To ensure the Agency receives the final invoice prior to closing their construction accounts, the Oregon Office of Energy may invoice in advance for final building inspections.

(2) Class 2 Buildings. No charge unless the Agency chooses to enter into an interagency agreement with the Oregon Office of Energy.

(3) Charges do not include Design Team or Energy Analyst services. The Agency shall obtain these services directly. Charges include all services provided by the Oregon Office of Energy or their representative in fulfilling the requirements described in 330-130-0040. Charges do not include services such as described in section 330-130-0040(8) "Expanded Services" provided by the Oregon Office of Energy.

(4) Charges may be waived for special circumstances including but not limited to demonstration or pilot projects.

(5) All charges are subject to review and adjustment by the Administrator of the Oregon Office of Energy.

Stat. Auth.: ORS 276.900 - ORS 276.915

Stats. Implemented: ORS 469

Hist.: DOE 1-1990, f. & cert. ef. 4-2-90; DOE 1-1998, f. & cert. ef. 3-26-98; DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2002, f. 5-8-02, cert. ef. 5-13-02; DOE 1-2003, f. & cert. ef. 1-10-03

## 330-130-0080

### Procedures for Monitoring the Reduction in Energy Use by State Agencies

In order to review whether an Agency meets the requirement to reduce the amount of use of nonrenewable energy by at least 10 percent from the amount used by the Agency in the 2000 calendar year, the following rules for tracking energy use apply.

(1) Energy use shall be tracked on a monthly basis using billing data. Electricity and heating fuels shall be tracked separately.

(2) The use of standard commercially available software for uniform tracking is recommended.

(3) Energy use per square foot of conditioned space shall be tracked, where applicable.

(4) Weather adjustments relative to the base year 2000 are allowed if they follow a standard process developed by the Oregon Office of Energy through the SEED Program Guidelines and that both the raw and revised usage is reported.

(5) When significant changes of facility size or use takes place, adjustments to the baseline energy consumption may be made.

(6) It is recommended that sub-metering of buildings and/or major energy consuming equipment is added where advisable and feasible in order to get better data on energy use and facilitate better energy management of the facilities.

(7) If an Agency fails to achieve and maintain a 10 percent reduction on and after June 2003, the following rules apply:

(a) The Agency shall notify the Oregon Office of Energy that it failed to maintain the 10 percent energy savings.

(b) Within 90 days of such notification, the Agency shall submit to the Oregon Office of Energy a corrective plan to reduce energy use by 10 percent. The plan shall outline all modifications, procedures, and changes that need to be introduced until the target is met and maintained. The plan shall be in a format approved by the Oregon Office of Energy.

(c) The Agency may request the Oregon Office of Energy to provide technical assistance in developing this corrective plan. In the event that the Agency requests assistance, the Agency shall compensate the Oregon Office of Energy's costs for assistance in preparation or review of the plan.

(d) The Agency shall implement the corrective plan within six months from the date of approval by the Oregon Office of Energy. The Agency

shall monitor progress, report to the Oregon Office of Energy, and modify the plan as necessary every six months, until the target reduction is achieved.

(e) This conservation plan and the results of remedial action(s) shall be included in the Biennial Report to the legislature, to be jointly prepared by the Oregon Office of Energy, the Oregon Department of Administrative Services and the Oregon University System.

Stat. Auth.: ORS 276.900 - ORS 276.915

Stats. Implemented: ORS 469

Hist.: DOE 4-2001, f. 11-5-01, cert. ef. 11-15-01; DOE 1-2003, f. & cert. ef. 1-10-03

## Oregon Liquor Control Commission Chapter 845

**Adm. Order No.:** OLCC 15-2002

**Filed with Sec. of State:** 12-19-2002

**Certified to be Effective:** 1-1-03

**Notice Publication Date:** 6-1-02

**Rules Amended:** 845-006-0450

**Subject:** This rule sets the Commission's standards for tastings on licensed premises: sample sizes, identified tasting areas, record keeping, etc.

The Commission has received a request to repeal section (9) of OAR 845-006-0450. The language in (9) prohibits tastings of malt beverages and wine at locations with Off-Premises Sales licenses which also have gasoline pumps. The Commission amended the rule to allow large retailers (over 200,000 square feet) to continue tastings, even if there are gasoline pumps on the property.

**Rules Coordinator:** Katie Hilton—(503) 872-5004

### 845-006-0450

#### Retail On-Premises Malt Beverage or Wine Sampling: Operating Requirements and Limits

The Commission allows certain other Oregon licensees to conduct or participate in malt beverage or wine sample tasting on Full On-Premises Sales, Limited On-Premises Sales, and Off-Premises Sales licensed premises as specified in OAR 845-005-0427, subject to the following requirements and limits:

(1) Sample Sizes. The size of each sample must not exceed one and a half ounces for wine and three ounces for malt beverages.

(2) Identified Tasting Area. Any Off-Premises Sales retailer who conducts tastings or who allows manufacturers to conduct tastings on the retail premises must identify a specific tasting area or areas. The area/s must be of a size and design such that the person/s conducting the tasting can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area or areas until they have finished consuming the sample. The retailer must keep on file at the premises a floor plan identifying the tasting area/s. If a retailer does not have an identified tasting area or areas, the Commission may require prior approval of an area or areas before the retailer conducts any more tastings or allows any more manufacturer-conducted tastings on the premises.

(3) Number of In-Store Tastings.

(a) A manufacturer may be in each retail premises no more than eight times per calendar year for the purpose of tastings, including both manufacturer-conducted tastings and retail-conducted tastings where the manufacturer assists.

(b) There is no limit on the number of tastings a retailer may conduct, but the retailer must not allow a manufacturer on the retailer's premises more than eight times per calendar year for the purpose of tastings.

(4) Manufacturer-Conducted Tastings. A manufacturer may hold tastings on consecutive days in one premises, but the tastings must not exceed two consecutive days. Tastings must be conducted at least four weeks apart. If a manufacturer holds tastings on two consecutive days, they must not hold another tasting on that retail premises for at least four weeks.

(5) Server Requirements. Alcohol servers must have service permits.

(6) Record Keeping. The manufacturer or wholesaler must keep a record of each tasting they conduct, including the date and location of each event, the products served and the names of the servers.

(7) Manufacturer-conducted sample tastings: Oregon law allows Oregon Winery, Grower Sales Privilege, Brewery, Brewery-Public House and Warehouse licensees and Oregon Certificate of Approval holders, for the product for which they hold their certificate, to conduct tastings if they:

(a) Provide the product to be tasted, and remove any remaining product at the end of the tasting;

# ADMINISTRATIVE RULES

(b) Provide or pay for a person to serve the wine or malt beverages. The server must be the manufacturer's employee or agent. The manufacturer may not compensate any employee or agent of the retail licensee to participate in the tasting; and

(c) Do not advertise the tasting. The retailer may advertise the tasting only inside the licensed premises.

(8) Retailer-Conducted Tastings. Retailers with Full On-Premises Sales, Limited On-Premises Sales and Off-Premises Sales licenses may conduct tastings on their licensed premises and may:

(a) Accept assistance from manufacturers, wholesalers and warehouse licensees, and from certificate of approval holders if:

(A) The only assistance provided is an employee to assist. "Assist" includes pouring if the person meets the requirements in subsection (5);

(B) The retailer pays for the wine or malt beverages; and

(C) The retailer is responsible for any advertising.

(b) Sponsor an unlimited number of tastings if there is no manufacturer, wholesaler, warehouse or certificate holder involved. The retailer may advertise these events.

(9) Prohibitions. Off-Premises Sales licensees at locations where petroleum products are sold shall not conduct or allow sample tasting on the licensed premises or otherwise at the licensed location, unless the licensee operates a fully enclosed retail area encompassing at least 20,000 square feet and tastings take place within that retail area.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.398 & ORS 471.402

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 15-2002, f. 12-19-02, cert. ef. 1-1-03

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## Oregon Public Employees Retirement System Chapter 459

**Adm. Order No.:** PERS 1-2003

**Filed with Sec. of State:** 1-15-2003

**Certified to be Effective:** 1-15-03

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 459-009-0350

**Subject:** This new rule pertains to the allocation of PERS employer actuarial assets and liabilities in the event of a transfer of employees or the dissolution of an employer. The language provides guidance to the Board in determining the allocation of employer assets and liabilities if allocation is not acceptably addressed in a transfer agreement between employers. The rule states that if there is not transfer agreement or if an agreement is unacceptable, the PERS employer actuarial assets and liabilities of the transferred employees shall remain the responsibility of the transferring employer. The rule also addresses the amortization of employer actuarial assets and liabilities.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

### 459-009-0350

#### Purpose

The purpose of this rule is to provide guidance in the drafting of agreements by employers involved in transfers of PERS-covered employees regarding the allocation of PERS employer actuarial assets and liabilities; to provide guidance to the Board in determining the allocation of such assets and liabilities when such allocation is not acceptably addressed based on the criteria of this rule in agreements between the employers involved in the transfers; to provide guidance to the Board in determining the allocation of PERS employer actuarial assets and liabilities if dissolution of an employer occurs and the allocation of these assets and liabilities is not otherwise acceptably addressed according to this rule in the dissolution; and to provide guidance to the Board when an employer is unable to amortize its PERS employer actuarial assets and liabilities as directed by the Board. All the provisions of this rule shall be applied at the discretion of the PERS Board to achieve sound actuarial funding of the system as well as full funding of the individual benefits accrued by members. This rule does not address whether or not PERS is required to pay benefits that are unfunded.

(1) **Definitions.** For the purposes of this rule:

(a) "Actuarial Funded Percentage" means the ratio, expressed as a percentage, of actuarial liabilities to actuarial assets as determined by a PERS-approved actuary.

(b) "Actuarial Surplus" means the excess of the actuarial value of assets over the actuarial liability.

(c) "Actuarial Valuation" means the determination by the PERS-approved actuary, as of an actuarial valuation date, of the normal cost, actu-

arial liability, actuarial value of assets, and related actuarial present values for a pension plan.

(d) "Actuarial Valuation Date" is the date approved by the Board for which demographic and economic data has been captured and used in an actuarial valuation.

(e) "Dissolution" means voluntary or involuntary corporate dissolution, extinguishment, or termination of the existence of an employer.

(f) "PERS-Approved Actuary" means an actuary employed by PERS for ongoing actuarial advice or any other actuary approved in writing by the PERS executive director or designee.

(g) "PERS Employer Actuarial Assets" means the assets contributed to PERS by an employer and by employees for service to that employer plus attributed earnings as determined by a PERS-approved actuary. Such assets include Benefits in Force reserve assets as determined by a PERS-approved actuary.

(h) "PERS Employer Actuarial Liabilities" means the liabilities of a particular employer determined by a PERS-approved actuary that represent the actuarially determined amounts necessary to fund benefits due PERS-covered members and their beneficiaries.

(i) "Receiving Employer" means an employer to which PERS-covered employees are transferred from a participating employer.

(j) "Transfer" means the movement of one or more PERS-covered employees and their designated position(s) from the payroll of one employer to the payroll of another employer as the result of an agreement between the two employers.

(k) "Transferring Employer" includes the following:

(A) A participating employer from which PERS-covered employees are transferred;

(B) A participating employer that forms one or more separate governmental entities that employ PERS-covered employees transferred from the participating employer.

(l) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(2) **Documented and Acceptable Transfer Agreements.** Transferring employers that transfer PERS-covered employees to receiving employers may address the allocation of PERS employer actuarial assets and liabilities associated with the transferring employees in a written transfer agreement. The allocation of PERS employer actuarial assets and liabilities under such an agreement must be acceptable to PERS. To be acceptable to PERS, the allocation must meet the following standards or be approved by the PERS Board:

(a) Actuarial Funded Percentage. The transfer may not result in the transferring or receiving employer having an actuarial funded percentage after the transfer that is lower than the lesser of either:

(A) The lowest actuarial funded percentage as determined by a PERS-approved actuary of such transferring or receiving employer as of the valuation date of the most recent PERS-adopted actuarial valuation for that employer promulgated prior to the effective date of the transfer; or

(B) The PERS system-wide actuarial funded percentage as of the valuation date of the most recent PERS-adopted actuarial valuation promulgated prior to the effective date of the transfer.

(b) Effective Date. The effective date of the allocation of the PERS employer actuarial assets and liabilities shall be the date of the transfer.

(c) Upon petition of either the transferring or receiving employer, the Board may grant an exception to these standards if the employer can demonstrate that the transfer agreement will achieve full funding of the individual benefits accrued by the transferring employees without undue administrative burden.

(d) Review of staff determination. If the transfer agreement does not meet the standards in paragraphs (2)(a) and (2)(b) above, a review of the staff determination of acceptability may be requested pursuant to OAR 459-001-0030.

(3) **Undocumented Transfers or Unacceptable Transfer Agreements.** If an allocation of PERS employer actuarial assets and liabilities associated with the transferring employees is not documented among the transferring and receiving employers or if a transfer agreement is found by PERS to be unacceptable under the provisions of this rule, the PERS employer actuarial assets and liabilities of the transferred employees shall remain the responsibility of the transferring employer and shall be amortized under section (9) of this rule.

(4) **Effective Date of Allocation of PERS Employer Actuarial Assets and Liabilities in the Transfer of Employees.** PERS shall allocate assets and liabilities for transferred employees as of the date of the transfer. The transferring and receiving employer's accounts will be adjusted to reflect the effective date of the allocation of assets and liabilities.

# ADMINISTRATIVE RULES

Contributions received, including earnings on those contributions, before and after the effective date will be credited to the appropriate employer and member accounts in accordance with PERS policy, statutes and rules.

(5) **Pooled Employers.** If a participating employer participates in either of the actuarial pools described in OAR 459-009-0070(2) or OAR 459-009-0070(4) and transfers PERS-covered employees to a receiving employer that participates in either of these pools, this rule will apply only to the unfunded liabilities or surpluses accrued prior to entry into these pools.

(6) **Non-Participating Employer.** A change in an employer's status, whether prior to or following the effective date of this rule, from a participating to a non-participating employer, will not exempt the employer from the provisions of this rule.

(7) **Dissolution of an Employer.** If dissolution of an employer has occurred and there is no acceptable transfer agreement for any transferred employees, the dissolved employer's PERS actuarial assets and liabilities will be amortized under section (9) of this rule.

(8) **Mergers and Consolidations.** Any employer that is a succeeding, surviving, or successor employer following a combining of entities, regardless of the name given to that combination, including but not limited to mergers and consolidations, shall, to the extent permitted by law, be required to assume all PERS actuarial assets and liabilities from the other affected entities that took part in the combination which are related to the employees whose positions are part of the new combined entity.

(9) **Amortization of All PERS Employer Actuarial Liabilities and Assets.**

(a) **Amortization of Employer Actuarial Liabilities.** To amortize the PERS unfunded actuarial liabilities of any employer, PERS may take one or more of the following actions as directed by the Board, until the amortization is complete. They include but are not limited to the following:

(A) PERS will adjust the contribution rate of the employer as necessary either at the next date of adjustment for all PERS-covered employers or, if approved by the PERS Board, at an earlier or later date.

(B) PERS will seek to obtain and recover assets of the employer other than PERS Employer Actuarial Assets, as a creditor, through a mutual agreement with the employer, or, if an agreement cannot be reached, through other legal means, as approved by the PERS Board.

(C) PERS will allocate the employer actuarial liabilities:

(i) Consistent with any applicable law; and

(ii) Consistent with any acceptable agreement between the receiving employer and transferring employer whose employee's service generated the liability; or

(iii) Consistent with any acceptable agreement among employers which through such agreement formed the employer under which the liability was created.

(D) PERS will allocate the employer actuarial liabilities to the Contingency Fund as established by ORS 238.670(1).

(b) **Amortization of Employer Actuarial Assets.** To amortize the PERS employer actuarial surplus of an employer, the following steps will be taken, in order, until the amortization is complete or the final step has been concluded:

(A) PERS will allocate the employer actuarial surplus:

(i) Consistent with any applicable law; and

(ii) Consistent with any acceptable agreement between the receiving employer and transferring employer whose employee's service generated the surplus; or

(iii) Consistent with any acceptable agreement among employers which through such agreement formed the employer under which the surplus was created.

(B) PERS will adjust the contribution rate of the employer either at the next date of adjustment for all other employers of the system or, if so approved by the board, at an earlier or later date.

(C) PERS will allocate the employer actuarial assets as general assets of the Fund.

(10) **Retroactive Application.** The provisions in this rule will apply to all transfers, regardless of whether they occur prior to or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225, 238.605, 238.670, 238.705

Hist.: PERS 1-2003, f. & cert. ef. 1-15-03

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**Oregon State Fair and Exposition Center**  
**Chapter 622**

**Adm. Order No.:** SFEC 1-2003

**Filed with Sec. of State:** 1-15-2003

**Certified to be Effective:** 1-16-03

**Notice Publication Date:** 11-1-02

**Rules Adopted:** 622-055-0003, 622-055-0010, 622-055-0015, 622-055-0020, 622-055-0025

**Rules Amended:** 622-001-0000, 622-001-0005, 622-010-0000, 622-010-0006, 622-010-0011, 622-020-0001, 622-020-0140, 622-020-0141, 622-020-0142, 622-020-0144, 622-020-0145, 622-020-0147, 622-020-0149, 622-020-0153, 622-030-0005, 622-030-0010, 622-045-0000, 622-045-0005, 622-045-0010, 622-045-0015, 622-045-0019, 622-055-0005, 622-065-0001, 622-065-0002, 622-065-0003, 622-065-0010, 622-065-0011

**Rules Repealed:** 622-001-0010, 622-020-0151, 622-050-0000, 622-050-0010, 622-050-0020, 622-050-0030, 622-050-0040, 622-050-0050, 622-050-0060, 622-065-0004, 622-065-0012

**Subject:** The proposed amendments, adoptions, and repeals are necessary to clarify the agency's processes, conditions, and fees as follows:

**Division 001** — Identifies notice to be given prior to adoption, amendment, or repeal of administrative rules; adopts the current version of the Attorney General's Model Rules of Procedure; and repeals the agency's adoption of an outdated version of the Attorney General's Public Contracting Rules.

**Division 010** — Amends procedures for distribution of Exhibitor Handbooks (previously known as "Premium Books") and establishment of entry fees.

**Division 020** — Amends procedures, requirements, and fees for rental of Oregon State Fair & Expo Center buildings, facilities, and equipment. Clarifies how rental information is made available, how Permits are used, how dates are offered and denied, how rental rates are established and publicized, and clarifies conditions for rental such as payment, food concessions, catering, security, and set-up. Repeals rule regarding long-term contracts.

**Division 030** — Amends procedures for advertising, canvassing, or soliciting during Fairtime and non-Fairtime.

**Division 045** — Amends procedures and fees for paid exhibit space during the State Fair including how information is made available, how exhibit spaces are assigned or denied, how fees are established, and clarifies compliance and protest procedures.

**Division 055** — Amends items and activities prohibited on the fairgrounds and adopts procedures for inspecting for prohibited items.

**Division 65** — amends fees for returned checks, credit card returns, late payments, photocopying, and facsimile machine usage; repeals fees for illegal parking and vehicle access.

**Rules Coordinator:** Alesia Gadach—(503) 947-3204

## 622-001-0000

### Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, except temporary rules adopted under ORS 183.335(5), the Oregon State Fair and Exposition Center shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least fifteen (15) days prior to the effective date;

(2) By mailing a copy of the notice to persons on the Administrator's mailing list established pursuant to ORS 183.335(7);

(3) By mailing a copy of the notice to the following persons, organizations, or publications:

(a) Western Fairs Association;

(b) Oregon Fairs Association;

(c) Amusement Business;

(d) Associated Press;

(e) Statesman-Journal;

(f) The Oregonian;

(g) Capital Press;

(h) Department of Agriculture;

(i) Agri-Business Council of Oregon;

(j) Oregon State Grange;

(k) Oregon Farm Bureau Federation;

(l) Oregon State Fair Commission.

Stat. Auth.: ORS 183 & ORS 565.060

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 565.080  
Hist.: 2FC 88, f. & ef. 12-23-76; FEC 1-1991, f. & cert. ef. 5-15-91; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-001-0005

### Model Rules of Procedure

Pursuant to ORS 183.341, the Oregon State Fair and Exposition Center adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective October 3, 2001.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 183

Hist.: 2FC 59, f. 1-27-72, ef. 2-15-72; 2FC 70, f. 11-21-73, ef. 12-11-73; 2FC 88, f. & ef. 12-23-76; 2FC 3-1978, f. & ef. 3-8-78; 2FC 3-1981, f. & ef. 11-25-81; FEC 1-1991, f. & cert. ef. 5-15-91; FEC 1-1996, f. & cert. ef. 8-22-96; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-010-0000

### Definitions

(1) The Oregon State Fair and Exposition Center (OSFEC) offers the opportunity during each annual State Fair for individuals to participate in certain activities and enter certain competitions. These activities and competitions are described in an annual publication called the "Exhibitor Handbook" for each Department and collectively called "Exhibitor Handbooks." The Exhibitor Handbooks list the rules, procedures, conditions, provisions, information, and fees for participation in these certain activities and competitions as well as the awards offered.

(2) "Department(s)" are various sections of activity that are divided by subject area. Departments include but are not limited to the subject areas listed below. OSFEC may add or delete Departments as necessary to reflect the interests of its participants.

- (a) Agriculture, Horticulture, Floriculture;
- (b) All Oregon Art Annual and Calligraphy Exhibit;
- (c) International Exhibition of Photography;
- (d) 4-H;
- (e) FFA;
- (f) Home Economics/Hobby Show, Special Contests;
- (g) Horse Show;
- (h) Livestock;
- (i) Small Animals - Poultry, Pigeons, Rabbits and Cavies;
- (j) Oregon Salon of Photography;
- (k) Amateur Beer;
- (l) Professional Wine;
- (m) Amateur Wine

(3) "OSFEC" is an acronym for Oregon State Fair and Exposition Center.

(4) "State Fair" is the State Fair event held annually at Oregon State Fairgrounds in Salem, Oregon.

(5) "Entry Fee" is the fee that participants pay to participate in certain Department activities and/or competitions.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: 2FC 1-1979, f. & ef. 8-16-79; 2FC 1-1980, f. & ef. 7-16-80; 2FC 2-1981, f. & ef. 8-17-81; 2FC 1-1982, f. & ef. 8-2-82; 2FC 1-1983, f. & ef. 8-15-83; 2FC 1-1984, f. & ef. 8-16-84; FEC 1-1985, f. & ef. 7-16-85; FEC 2-1986, f. & ef. 8-19-86; FEC 1-1987, f. & ef. 8-14-87; FEC 4-1988(Temp), f. 8-22-88, cert. ef. 8-20-88; FEC 2-1989, f. 8-3-89, cert. ef. 8-4-89; FEC 1-1990, f. & cert. ef. 8-20-90; FEC 4-1991, f. & cert. ef. 8-27-91; FEC 2-1992, f. & cert. ef. 7-17-92; FEC 2-1993, f. & cert. ef. 7-22-93; FEC 1-1995, f. & cert. ef. 8-10-95; FEC 2-1996, f. & cert. ef. 8-22-96; FEC 3-1997, f. & cert. ef. 6-25-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-010-0006

### Procedures for Obtaining Exhibitor Handbooks

(1) Parties interested in participating in Department activities and/or competitions may contact the administrative office of the Oregon State Fair & Exposition Center at 2330-17th Street NE, Salem OR 97303, PH: (503) 947-3247, FAX: (503) 947-3206, in person or by phone, mail, email, or fax to make an inquiry.

(2) Prior to the commencement of each annual State Fair, OSFEC shall make Exhibitor Handbooks available on the OSFEC web site for personal download or by mail upon request.

(3) Participants shall follow the instructions in the Exhibitor Handbooks in order to enter a particular activity or competition.

Stat. Auth.: ORS 565.060

Stat. Implemented: ORS 565.080

Hist.: FEC 3-1997, f. & cert. ef. 6-25-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-010-0011

### Entry Fees

(1) Entry Fees for participation in some Department activities and/or competitions shall be established in the Exhibitor Handbook for each particular Department and shall be based on the following factors:

(a) Comparison with fees charged at similar state and county fairs and/or other similar events,

(b) Operational costs including, but not limited to, utilities, production, labor, facilities, equipment, and administration.

(2) Entry Fees published in the Exhibitor Handbooks cover most ordinary situations involving participation in State Fair Departments. OSFEC shall have authority to establish fees that are not specifically listed in the Exhibitor Handbooks.

(3) Entry fees shall be deposited in the Oregon State Fair & Exposition Center Account established in ORS 565.107.

Stat. Auth.: ORS 565.060

Stat. Implemented: ORS 565.080

Hist.: FEC 3-1997, f. & cert. ef. 6-25-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0001

### Definitions

(1) "Permittee" — Individual, group or organization entering into a written agreement with the Oregon State Fair and Exposition Center (OSFEC) for use of buildings, facilities, services and/or equipment rental costs.

(2) "OSFEC" — An acronym for Oregon State Fair and Exposition Center.

(3) "Director" — The Director of the Oregon State Fair and Exposition Center as appointed under ORS 565.015(2).

(4) "Schedule of Rates and Fees" — An annual publication listing rental rates and charges for buildings, facilities, services and/or equipment rented from the OSFEC by a Permittee.

(5) "Event" — An activity, meeting, attraction or other occurrence in OSFEC with specific opening and closing dates and specific operating hours.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0140

### Facilities Available for Rent and Schedule of Rates and Fees

(1) Certain facilities located on the OSFEC grounds are available for lease by Permittees throughout the calendar year, other than during the days of the annual Oregon State Fair. Permittees also have the option of renting accessory equipment owned and maintained by OSFEC to augment an Event in these facilities.

(2) Parties interested in use of OSFEC facilities may contact the OSFEC administrative office at 2330-17th Street NE, Salem OR 97303, PH: (503) 947-3247. OSFEC provides information about facilities and dates available, rental rates, and terms and conditions of use by telephone, on OSFEC's website and/or in writing. If an agreement is reached for use of a facility, OSFEC issues a Permit, which must be signed by the party and OSFEC. The Permit contains the terms and conditions of the Permit and describes the facilities being used, type of use, date of use, cost for use, and payment requirements. Permit may include an attachment which stipulates the policies and required procedures for use of the facility. A Permit must be fully executed before it is a binding reservation of a date.

(3) OSFEC offers the use of facilities, buildings, services, and/or equipment to interested parties based on one or more of the following factors:

(a) Reoccurring annual Events.

(b) Availability of facilities that are appropriate to meet the needs of the party.

(c) Ability to generate net profit to OSFEC.

(d) Agreement, and ability, to fulfill the requirements established by OSFEC for use of facilities.

(4) OSFEC may deny use of facilities, buildings, services, and/or equipment to interested parties based on one or more of the following factors:

(a) Nature of Event is not compatible with facilities available.

(b) Party has been unable to demonstrate adequate financial capability to pay required fees and charges, has a history of late payments or failure to pay, or is unable to acquire required insurance.

(c) Party has demonstrated inability to adhere to rules stipulated in Permit.

(d) A particular use may have a negative financial impact on OSFEC.

# ADMINISTRATIVE RULES

(e) A particular use may have a negative impact on another use or Event, or on OSFEC facilities or operations.

(5) Fees and charges for facilities, buildings, services, and/or equipment rental shall be charged according to OSFEC's current Schedule of Rates and Fees. The Schedule of Rates and Fees shall be published each July to be effective July 1 of the following year. The Schedule of Rates and Fees shall be mailed in July to all persons and organizations that have leased OSFEC facilities within the past twelve (12) months and to all interested persons requesting the information.

(6) Rates published in the Schedule of Rates and Fees shall be established based on one or more of the following factors:

(a) Comparison with similar facilities, events, and/or rental companies.

(b) Operational costs for utilities, labor, and facilities and grounds upkeep.

(c) Costs for equipment.

(d) Potential Event gross revenue (pertains only to Events that are primarily concerts and/or concert/dances).

(7) Director may waive, vary or increase, in whole or in part, the rates and fees established on the Schedule of Rates and Fees when it is determined that:

(a) Marketing opportunities exist to encourage use and increase revenues.

(b) Time frame for use varies from that specified on Schedule of Rates and Fees.

(c) Rate change would attract business when otherwise there would be none.

(8) OSFEC reserves the right to add a surcharge to fees and charges for facilities, buildings, services, and/or equipment rental for unusual and/or unexpected direct costs to OSFEC.

(9) Rates and fees published in the Schedule of Rates and Fees cover most ordinary situations involving use of buildings, facilities, services, and/or equipment. Director shall have authority to establish rates and fees at any time for buildings, facilities, services, activities and/or equipment that are not specifically listed in the annual Schedule of Rates and Fees.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: 2FC 2-1983, f. & ef. 11-22-83; FEC 3-1986, f. & ef. 12-18-86; FEC 1-1989, f. & cert. ef. 1-18-89; FEC 2-1991, f. 5-15-91, cert. ef. 9-1-91; FEC 4-1992, f. & cert. ef. 12-17-92; FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0141

### Payment

(1) New Permittees will be required to make deposit not to exceed 50% of the estimated facility rental fee upon signing the Permit. The balance of the facility rental fee may be due no later than two weeks prior to Event move-in. Additional charges incurred during Event must be paid on the last day of the Event. A fee of one and one-half percent (1-1/2%) per month, or portion thereof, may be assessed for late payments or the maximum permitted by law whichever is less.

(2) Returning Permittees may receive an alternative payment schedule.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: 2FC 2-1983, f. & ef. 11-22-83; FEC 1-1989, f. & cert. ef. 1-18-89; FEC 2-1991, f. 5-15-91, cert. ef. 9-1-91; FEC 4-1992, f. & cert. ef. 12-17-92; FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0142

### Insurance

A Certificate of Insurance may be required prior to each Event. Permittee will be provided with detailed insurance requirements.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: 2FC 2-1983, f. & ef. 11-22-83; FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0144

### Food Concessions

(1) All food and beverage items provided for sale to the general public must be sold by OSFEC's food contractor. Food contractor does not charge Permittee for this service, nor does Permittee receive revenue from food and beverage sales.

(2) Events that are food oriented may request an exemption to provide own food and beverage sales but shall pay a concession fee according to the Schedule of Rates and Fees for such privilege. Permittees requesting an exemption shall be required to put such proposal in writing, which will be evaluated by the Director. Director's decision shall be final. Evaluation shall be based on whether or not food is an integral part of Event, type of

food proposed (must be different from that served by OSFEC's food contractor) and OSFEC's food contractor's ability to provide same service.

(3) Director may, at his/her discretion, grant an exemption to any Event to provide food and/or beverage sales.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: 2FC 2-1983, f. & ef. 11-22-83; FEC 2-1991, f. 5-15-91, cert. ef. 9-1-91; FEC 4-1992, f. & cert. ef. 12-17-92; FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0145

### Catered Events

(1) All Permittees must use the primary food and/or alcohol caterer designated and licensed by OSFEC. All labor and equipment required specifically for a catered Event will be charged to Permittee at established rates.

(2) Director may, at his/her discretion, grant an exemption to any Event to provide food and/or beverage catering.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: 2FC 2-1983, f. & ef. 11-22-83; FEC 4-1992, f. & cert. ef. 12-17-92; FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0147

### Security

Permittee may be required to hire a specified number of security personnel from OSFEC's approved security contractor(s) at the contractor's established rate.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: 2FC 2-1983, f. & ef. 11-22-83; FEC 2-1991, f. 5-15-91, cert. ef. 9-1-91; FEC 4-1992, f. & cert. ef. 12-17-92; FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0149

### Submission of Event Set-Up Requirements

Permittee is required to submit floor plans, equipment orders, electrical orders, and any other instructions to the OSFEC program manager assigned to the Event in writing no later than ten (10) working days prior to Event move-in. Any changes to above instructions must be provided in writing no later than five (5) days prior to Event move-in. Failure to do so may result in penalty fees. If changes must be made after set-up has already been completed, Permittee may be billed for labor according to the Schedule of Rates and Fees.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 2-1991, f. 5-15-91, cert. ef. 9-1-91; FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-020-0153

### Protests

(1) Any protest of OSFEC actions regarding Chapter 622 Division 20 must be in writing, delivered in person or by certified mail, to OSFEC's Event Manager within ten (10) business days of occurrence of protested action, and must make specific citation to the law, rule, regulation, or practice upon which the appeal is based. Event Manager will respond in writing within ten (10) business days of receipt of protest.

(2) If satisfaction is not achieved then written protest may be delivered in person or by certified mail to OSFEC's Director of Marketing and Sales within ten (10) business days of receipt of response from Event Manager, and must make specific citation to the law, rule, regulation, or practice upon which the appeal is based. Director of Marketing and Sales will respond in writing within ten (10) business days from receipt of protest.

(3) If satisfaction is not achieved then written protest may be delivered in person or by certified mail to OSFEC's Director within ten (10) business days from receipt of response from the Director of Marketing and Sales, and must make specific citation to the law, rule, regulation, or practice upon which the appeal is based. Director will respond, in writing, within ten (10) business days of receipt of protest. The decision of Director shall be final.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 2-1997, f. 2-28-97, cert. ef. 3-3-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-030-0005

### Advertising, Canvassing, or Soliciting — Fairtime

(1) No advertising, canvassing or soliciting, and no dissemination of written materials is permitted within the fenced-in portions of the Oregon State Fair & Exposition Center property, and the air space above, except by

# ADMINISTRATIVE RULES

persons exhibiting as lessees under exhibit space or sponsorship agreements signed by the Oregon State Fair and Exposition Center.

(2) No person or group shall use the properties of the Oregon State Fair and Exposition Center to advertise products, goods, or services of a commercial nature, or solicit funds without the expressed written consent of the Oregon State Fair & Exposition Center. Canvassing, soliciting, and dissemination of written materials of a non-commercial nature is permitted on the Fair parking lot and on other property of the Oregon State Fair outside the fenced-in portions of the Oregon State Fairgrounds. Such activities must be conducted in accordance with the following conditions:

(a) Parking lot entrances, exits, and travel lanes must not be obstructed. Interference with traffic flow and with the duties of traffic attendants is prohibited.

(b) The use of land vehicles, including but not limited to cars, trucks, and other motorized vehicles, bicycles, scooters, skateboards, and skates is prohibited. Use of air vehicles is prohibited. Use of land vehicles as platforms or other temporary or permanent structures or platforms is prohibited.

(c) A person conducting such activity shall not place pamphlets, leaflets, or other material in or on any vehicles in the parking lots. Such activity must be conducted with pedestrians only, after their vehicles have been parked and they have exited.

(d) Loudspeakers and other sound devices are prohibited.

(e) Activity causing a crowd to gather is prohibited if pedestrian or vehicular traffic is obstructed or impeded.

(f) Activity conducted within twenty feet of an admission gate or ticket booth is prohibited.

(g) Active obstruction of a Fair employee, contractor, subcontractor, agent or visitor's line of travel or active detention of a Fair employee, contractor, subcontractor, agent or visitor against his will is prohibited.

(h) Abusive language and actual or threatened physical harm directed against a Fair employee, contractor, subcontractor, agent or visitor is prohibited.

(3) Any person or group canvassing, soliciting or disseminating materials covered by this administrative rule must fill out a registration form and submit it along with a copy of each item to be distributed, petition to be signed, or any other materials to be used to the Oregon State Fair & Exposition Center, 2330 17th Street NE, Salem, Oregon, 97303, at least 24 hours prior to such canvassing, soliciting or dissemination of material. Materials not submitted at least 24 hours in advance shall not be used.

(4) Any person or group who places, or allows the placement of pamphlets, leaflets, or other material in or on vehicles or advertises or solicits funds without the expressed written consent of the Oregon State Fair & Exposition Center, will be subject to a \$100 fine for each occurrence.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: 2FC 86(Temp), f. & ef. 8-31-76; 2FC 87(Temp), f. & ef. 9-2-76 thru 12-30-76; 2FC 89, f. & ef. 4-22-77; 2FC 4-1978, f. & ef. 7-18-78; FEC 3-1989, f. 8-3-89, cert. ef. 8-4-89; FEC 5-1992, f. & cert. ef. 12-17-92; FEC 2-1993, f. & cert. ef. 7-22-93; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-030-0010

### Advertising, Canvassing, or Soliciting — Non-Fairtime

(1) No advertising, canvassing or soliciting, and no dissemination of written material is permitted on the property of the Oregon State Fair & Exposition Center, except in areas under the control, and rented by, a permittee(s). All such activity must be approved by the permittee(s) and confined to the areas within and/or adjacent to the facilities under the permittee's control. These areas include, but are not limited to, exhibit halls, barns, entrances, walkways and areas adjacent to such areas, such as parking lots.

(2) Persons or groups are not prohibited from advertising, canvassing or soliciting on public sidewalks located on 17th Street, Silverton Road, Evergreen Avenue, or Sunnyview Avenue, however, their activities may be restricted by city ordinance if such activities disturb the public peace, impede pedestrian or vehicular traffic, or create a public disturbance.

(3) Persons or groups are not prohibited from renting space in available facilities, outside the control of other permittee(s), for the purpose of advertising, canvassing or soliciting. Available facilities do not include public parking lots used or available for use during other activities or events.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 5-1992, f. & cert. ef. 12-17-92; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-045-0000

### Definitions

(1) The Oregon State Fair and Exposition Center offers the privilege of occupying certain locations on the Oregon State Fairgrounds during each annual State Fair for the purpose of sales and/or displays of goods and services or the dissemination of information under certain conditions and for certain fees. Such locations are called "Paid Exhibit Space."

(2) Individuals, organizations, companies, or associations occupying such locations are called "Commercial Exhibitors" or "Exhibitors."

(3) "OSFEC" is an acronym for Oregon State Fair and Exposition Center.

(4) "Director" is the Director of the Oregon State Fair and Exposition Center as appointed under ORS 565.015(2).

(5) "State Fair" is the State Fair event held annually at Oregon State Fairgrounds in Salem, Oregon.

(6) "Handbook" is the publication created annually which lists the rules, conditions, provisions, information, and fees for occupation of Paid Exhibit Space.

(7) "Exhibit Areas" are various areas or zones on the fairgrounds that are characterized by the type of Exhibitors occupying paid exhibit space there. Such exhibit areas include but are not limited to Commercial Exhibit Areas, Artisan's Village, and other commercial-style attractions.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 3-1991, f. & cert. ef. 5-15-91; FEC 1-1997, f. & cert. ef. 2-10-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-045-0005

### Procedures for Obtaining Paid Exhibit Space

(1) Parties interested in the use of Paid Exhibit Space may contact the administrative office of the Oregon State Fair & Exposition Center at 2330-17th Street NE, Salem OR 97303, PH: (503) 947-3247 in person or by phone, mail, email, or fax to make an inquiry.

(2) Procedures for obtaining exhibit space in a particular Exhibit Area along with fees, conditions, rules, and other information about exhibiting in that area shall be specified in the Handbook for each Exhibit Area.

(3) Prior to the commencement of each annual State Fair, OSFEC shall make the Handbook available on the OSFEC web site for personal download or by mail upon request.

(4) OSFEC shall select Exhibitors for participation in each annual State Fair, and the locations where such exhibits may be presented, based on the factors listed below. Exhibitors may be denied exhibit space based on the lack of one or more of these factors.

(a) Number of years exhibitor has participated in past State Fairs,

(b) Quality, uniqueness, and appeal of product, service, or information to be promoted as assessed by OSFEC's knowledge of current market interest and demand,

(c) Timeliness of application submission,

(d) Compatibility of exhibit with other exhibits,

(e) Appropriateness of exhibit for State Fair audience,

(f) Ability, and/or experience, providing adequate customer service,

(g) References from other similar venues,

(h) Layout options and space availability,

(i) Balance of product with others being offered,

(j) For returning applicants, a satisfactory history of exhibiting at State Fair including satisfactory compliance with applicable rules, policies, and procedures.

(5) OSFEC's acceptance of an Exhibitor and assignment of specific space location will be evidenced by presentation to Exhibitor of a License to do Business, which shall pertain to the period stipulated on the license and shall not give Exhibitor any rights nor create the expectation or assurance that the license or privileges granted therein shall be extended for any other period. Such license shall be effective upon signature of Exhibitor and OSFEC and payment of required deposits.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 3-1991, f. & cert. ef. 5-15-91; FEC 1-1992, f. 4-21-92, cert. ef. 4-22-92; FEC 1-1997, f. & cert. ef. 2-10-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-045-0010

### Exhibit Space Fees

(1) Fees for the use of exhibit space and costs for associated services such as, but not limited to electricity, production, admission, and parking shall be established in the Handbook for each particular Exhibit Area and shall be based on the following factors:

(a) Comparison with fees charged at similar large fairs and/or other similar events,



# ADMINISTRATIVE RULES

(b) Operational costs for utilities, labor, facilities, equipment, and administration.

(2) The Director may waive or vary, in whole or in part, the rates and fees established in the Handbook when it is determined that:

- (a) Marketing opportunities exist to encourage use,
- (b) Time frame for use varies from that specified in Handbook,
- (c) Configuration of space layout varies from that specified in Handbook,
- (d) Rate change would attract business when otherwise there would be none.

(3) Fees, conditions, rules, and other information about exhibiting in a particular Exhibit Area published in the Handbook cover most ordinary situations involving exhibit space at the State Fair. The Director shall have authority to establish fees, conditions, rules, and other information about exhibiting in a particular Exhibit Area that are not specifically listed in the Handbook.

Stat. Auth.: ORS 565.060  
Stats. Implemented: ORS 565.080  
Hist.: FEC 3-1991, f. & cert. ef. 5-15-91; FEC 1-1992, f. 4-21-92, cert. ef. 4-22-92; FEC 1-1993, f. 3-25-93, cert. ef. 3-26-93; FEC 1-1997, f. & cert. ef. 2-10-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-045-0015

### Compliance Procedures

During the annual State Fair, in the event an Exhibitor refuses to comply with fees, conditions, rules, or other information as outlined in the Handbook or License to do Business, OSFEC will take the following action:

(1) Upon first observance of Exhibitor noncompliance, OSFEC staff will talk with Exhibitor on an informal basis to inform Exhibitor of infraction and request compliance.

(2) If Exhibitor noncompliance reoccurs, OSFEC will issue to Exhibitor written notice of noncompliance, stipulating that Exhibitor comply within a specified period of time.

(3) If Exhibitor fails to comply with first written notice within the specified period of time, OSFEC will require Exhibitor to meet with OSFEC regarding the infraction at a specified date and time. Failure of Exhibitor to attend meeting will result in exhibit space being revoked and Exhibitor required to remove booth furnishings immediately, or OSFEC will remove furnishings and store them at a fee of \$100 per day or portion thereof. OSFEC reserves the right to lease the booth to a new Exhibitor the remaining dates and times of the State Fair.

(4) If Exhibitor continues noncompliance, or fails to comply with agreements reached during above meeting within the specified period of time, exhibit space will be revoked and Exhibitor will be required to remove booth furnishings immediately, or OSFEC will remove furnishings and store them at a fee of \$100 per day or portion thereof. OSFEC reserves the right to lease the booth to a new Exhibitor the remaining dates and times of the State Fair.

(5) Due to the annual State Fair occurring during a specified time-frame, time is of the essence with regard to these proceedings. "Specified period of time" as referred to in 622-045-0015 may be measured in hours or days.

(6) If Exhibitor noncompliance occurs on the last day of the State Fair when it is not feasible to invoke compliance procedures, Exhibitor will be notified of noncompliance in writing within 30 days of occurrence.

Stat. Auth.: ORS 565.060  
Stats. Implemented: ORS 565.080  
Hist.: FEC 1-1997, f. & cert. ef. 2-10-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-045-0019

### Protest Procedures

(1) Any protest of OSFEC actions regarding chapter 622 division 45 must be in writing and delivered in person or by certified mail to the OSFEC Event and Sales Manager within three (3) business days of occurrence, and must make specific citation to the law, rule, regulation, or practice upon which the appeal is based. The Event and Sales Manager will respond in writing within two (2) business days of receipt of protest.

(2) If satisfaction is not achieved then written protest may be delivered in person or by certified mail to the OSFEC Director of Marketing within three (3) business days of receipt of response from Event and Sales Manager, and must make specific citation to the law, rule, regulation, or practice upon which the appeal is based. Director of Marketing will respond in writing within two (2) business days of receipt of protest.

(3) If satisfaction is not achieved then written protest may be delivered in person or by certified mail to the Director within three (3) business days of receipt of response from Director of Marketing, and must make

specific citation to the law, rule, regulation, or practice upon which the appeal is based. Director will respond in writing within two (2) business days of receipt of protest. The decision of the Director shall be final.

(4) If protest occurs during the operation of the annual State Fair, or within one week prior to commencement of the annual State Fair, time is of the essence. In that instance, written protests received within three (3) calendar days of occurrence will go directly to the Director, who will respond within two (2) calendar days of receipt of protest. The decision of the Director shall be final.

Stat. Auth.: ORS 565.060  
Stats. Implemented: ORS 565.080  
Hist.: FEC 1-1997, f. & cert. ef. 2-10-97; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-055-0003

### Definitions

(1) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon.

(2) "Weapon" includes, but is not limited to, any firearm; any destructive device; any dirk or dagger; any knife with a blade of three inches or more in length, and any snap-blade or spring-blade knife, regardless of the length of the blade; any ice pick or similar sharp stabbing tool; any straight-edge razor or any razor blade fitted to a handle; any device by whatever name known, which is designed to expel a projectile by the action of compressed air, gas, compressed spring or by any chemical action; any dangerous or deadly weapon within the meaning of any law of this state restricting the use thereof; any cutting, stabbing or bludgeoning weapon or any other device capable of inflicting grievous bodily harm.

(3) "Destructive Device" means:

(a) A projectile containing an explosive or incendiary material or any other chemical substance;

(b) Ammunition, ammunition components including, but not limited to, smokeless powder, black powder, primers and percussion caps;

(c) A bomb, grenade, missile, or similar device or any launching device therefore; or

(d) Any weapon of mass destruction including any device capable of producing injury, death or property damage by way of release or discharge of chemical or biological agents, disease or radiation.

Stat. Auth.: ORS 565.060  
Stats. Implemented: ORS 565.080  
Hist.: SFEC 1-2002(Temp), f. 7-10-02 cert. ef. 8-1-02 thru 1-15-03; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-055-0005

### Items Prohibited On Fairgrounds

(1) The following items are prohibited on the property owned or controlled ("fairgrounds") by the Oregon State Fair and Exposition Center ("OSFEC") unless specifically authorized in this rule:

- (a) Bicycles, skateboards, roller blades, scooters;
- (b) Unauthorized vehicles;
- (c) Unauthorized animals, reptiles, insects, arachnids and other pets;
- (d) Weapons;
- (e) Fireworks, explosives or explosive devices, and inflammables;
- (f) Alcohol or alcoholic beverages;
- (g) Controlled substances; or
- (h) Any other object or objects which in the opinion of the Director or his/her designee may affect the safety and well-being of persons attending events at the fairgrounds.

(2) Exceptions to the above prohibitions are limited to:

(a) Weapons of law enforcement officials and those carried by persons authorized by law to carry them when carried in a manner authorized by law;

(b) Alcoholic beverages and alcoholic beverage containers belonging to OSFEC, licensed concessionaires or catering services contracting with OSFEC;

(c) Prohibited items that have been permitted by OSFEC by virtue of a signed agreement;

(d) Fireworks in the custody of any group operating or presenting an officially sanctioned fireworks display;

(e) Bicycles, skateboards, roller blades, scooters are permitted on the property outside the fenced areas;

(f) Prescription medications;

(g) Prohibited items in the possession of employees of OSFEC and its licensees and contractors that are required in the performance of their official duties. Employees of OSFEC and its licensees and contractors may not carry personal prohibited items that are not necessary for the performance of their official duties;

# ADMINISTRATIVE RULES

(h) Prohibited items in the possession of exhibitors that are necessary for daily care and/or preparation of animals and/or for showing and are used only for preparation and showing purposes; and

(i) Such prohibited items expressly permitted in writing by the Director or his/her designee.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 3-1992(Temp), f. 8-26-92, cert. ef. 8-27-92; FEC 6-1992, f. & cert. ef. 12-17-92; SFEC 1-2002(Temp), f. 7-10-02 cert. ef. 8-1-02 thru 1-15-03; SFEC 2-2002(Temp), f. 7-26-02, cert. ef. 8-1-02 thru 1-15-03; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-055-0010

### Inspections During State Fair and Other OSFEC-Controlled Events

(1) OSFEC employees or agents may request, as a condition of the license to enter, that persons about to enter allow them to look inside all purses, backpacks, briefcases, suitcases, athletic bags, packages, duffel bags, coolers, ice chests, picnic baskets, diaper bags, strollers, carts and other similar items capable of concealing prohibited items ("containers").

(2) OSFEC staff or agents requesting such an inspection shall do so outside the fairgrounds' gates or such other reasonable places as designated by the Director or his/her designee. The person(s) entering the facility will be asked by OSFEC staff or agents to reveal the items in the container. They shall inform person(s) in possession of containers to which the inspection request pertains that they are free to decline the inspection and may receive a refund of the price of the ticket and parking (if admission or parking fees were incurred) upon surrender of their tickets or, in the alternative, the persons may discard the container or prohibited items in the container or return them to a vehicle without inspection and then enter without such items.

(3) Most searches are visual. At the option of OSFEC staff, agents or law enforcement officers, other search measures may be employed, including but not limited to electronic, chemical or physical inspections such as "pat downs."

(4) If prohibited items are discovered during an inspection, the possessor of such items shall be offered the choice of discarding them in a public trash receptacle or of returning them to a vehicle. Possession of Weapons or controlled substances may also be reported to law enforcement officials.

(5) If prohibited items are possessed by a person inside the facility, that person shall be considered to have violated the license to enter. The license is then revoked and the person(s) shall be requested to leave immediately. A refusal or failure to leave following such a request can cause the person to be treated as a trespasser.

(6) If a refund is requested under the provisions of section (2) of this rule, a bearer coupon shall be completed and delivered promptly by OSFEC officials. Such a coupon shall specify the location, date, and refund to be made. This bearer coupon may be redeemed immediately at the nearest admission booth or mailed within 30 days to the OSFEC business office, along with parking and/or admission tickets to be reimbursed, for a full refund.

(7) Prohibited items which may be seen without inspection are subject to the same consequences as specified in section (4) of this rule.

(8) Signs shall be prominently displayed at entrances to the facilities generally identifying prohibited items, and providing notification of the request for inspection.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-055-0015

### Inspections During Other Than OSFEC-Controlled Events

(1) OSFEC may require, as a condition of license or permit for use of fairgrounds' facilities during non-Fairtime periods, that facility users provide a certain level of security for the sole purpose of protecting OSFEC facilities.

(2) Facility users are solely responsible to determine, enhance, and institute security levels beyond those required, if any, by OSFEC based on the nature of the event to protect the facilities and any property contained therein as well as their guests, employees, customers, clients, contractors, and other individuals attending or associated with an event held in OSFEC facilities.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-055-0020

### Activities Prohibited On Fairgrounds

No person or group shall participate in loud, rude and/or unreasonable behavior; disturb the public peace; make threatening comments, actions or

gestures towards others; obstruct the use and enjoyment of any facility, area or event; act in a disorderly manner; or participate in any behavior or activity which in the opinion of the Director or his/her designee may affect the safety and well-being of persons attending events at the fairgrounds.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-055-0025

### Sanctions

Any person or group violating the above-referenced rules shall be the basis for revocation of the person's or group's license and as such subject to being requested to promptly leave the fairgrounds. Failure to promptly leave the fairgrounds upon request of OSFEC personnel, agents or law enforcement officials shall be considered trespass.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-065-0001

### Returned Checks

The Oregon State Fair and Exposition Center may assess a fee of \$15.00 for each personal or business check returned by our bank. The fee may be assessed in addition to any legal remedies the Oregon State Fair and Exposition Center may pursue to effect collection of the returned items.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 1-1991, f. & cert. ef. 5-15-91; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-065-0002

### Credit Card Returns

The Oregon State Fair and Exposition Center may assess a fee of \$15.00 for each VISA or MasterCard charge returned by our bank. The fee may be assessed in addition to any legal remedies the Oregon State Fair and Exposition Center may pursue to effect collection of the returned items.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 1-1991, f. & cert. ef. 5-15-91; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-065-0003

### Late Payments

The Oregon State Fair and Exposition Center may assess a fee of 1.5% per month or portion thereof on any unpaid balances due the agency if not paid within 30 days of billing. The fee may be assessed in addition to any legal remedies the Oregon State Fair and Exposition Center may pursue to effect collection of the late payments.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 1-1991, f. & cert. ef. 5-15-91; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-065-0010

### Photocopying Charges

The Oregon State Fair and Exposition Center may provide photocopies of the agency's public records for a copying fee of \$.05 per single sided letter-sized copy or \$.10 per double-sided copy. Legal size copies are \$.20 and \$.30 respectively. Ledger-sized copies (11" x 14") are \$.50, single sided only, per page. Oregon State Fair & Exposition Center reserves the right to set a minimum number of copies allowed per person.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 1-1991, f. & cert. ef. 5-15-91; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

## 622-065-0011

### Facsimile Machine Usage

The Oregon State Fair and Exposition Center may make its facsimile machine available for public usage at rates not to exceed the following:

(1) To Send: For local numbers \$.50 for first page, \$.10 per page thereafter. For long distance numbers (not including international) \$1.00 for first page, \$.25 per page thereafter. Faxes may not be sent to international numbers. Oregon State Fair & Exposition Center reserves the right to set a minimum number of pages to be faxed per person.

(2) To Receive: \$.10 per page.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565.080

Hist.: FEC 1-1991, f. & cert. ef. 5-15-91; FEC 2-1993, f. & cert. ef. 7-22-93; SFEC 1-2003, f. 1-15-03, cert. ef. 1-16-03

# ADMINISTRATIVE RULES

## Oregon State Marine Board Chapter 250

**Adm. Order No.:** OSMB 1-2003  
**Filed with Sec. of State:** 1-14-2003  
**Certified to be Effective:** 1-14-03  
**Notice Publication Date:** 11-1-02  
**Rules Amended:** 250-001-0020

**Subject:** The Board receives requests for information in the boat registration files from members of the public, boat dealers and others. The Board proposes a housekeeping amendment to allow recovery of actual costs involved in providing the information in electronic format and computer generated media.

**Rules Coordinator:** Jill E. Andrick—(503) 373-1405, ext. 243

### 250-001-0020

#### Fees for Furnishing Information

The Marine Board may charge reasonable fees to cover those costs resulting from requests for reproduction of agency records.

(1) Individuals or firms requesting an alphabetical or numerical listing of boat owners, and information concerning their boats, will be charged a fee as follows:

(a) Labels or printouts are \$250 for up to 1,000 names printed on labels and/or print-out, plus \$25 for each 1,000 additional names or portion thereof. This fee includes the cost of data processing, labels, administrative expense and shipping;

(b) Electronic format — \$165 including actual cost of computer generated media, electronic files, staff time involved in research, file review, compiling and duplication, and shipping costs;

(c) An advance deposit to cover the anticipated cost will be required.

(2) The Board may recover actual costs for supplies and staff time for research, file review, compiling and duplication required to provide copies of material, whether printed, computerized or in other media, that was produced by Marine Board or by a vendor under contract to the Marine Board and which is not intended for general distribution. That includes but is not limited to items such as internal reports, studies, engineering drawings, CAD files, maps, computer diskettes, tapes, computer generated media, electronic files, transcripts, or mailing lists. Generally, information is available only in the means (paper, computer program or otherwise) it was created.

**Exempt:** Brochures, booklets and other mass-produced items intended for general distribution are not included as "documents" under this rule.

(a) The standard charge for single page reproduction shall not exceed \$.25 per standard 8-1/2 x 11" page, \$.35 per 11x17" page, \$1.00 per 24x36" drawing sheet (blueprint), \$2.50 per 24x36" drawing sheet (bond paper). Double-sided copies count as two pages. Mailing costs include postage fees and actual cost of special mailers required.

(b) The standard charge for duplication of audio and/or video tapes shall be the actual cost of the tapes, staff time involved in research, file review, compiling and duplication, and shipping costs;

(c) The charge for computer diskettes will be actual cost plus staff time required for copying requested files, the actual cost of special mailers and postage;

(d) There will be no charge for an individual request of five or fewer copies of a single 8-1/2 X 11" page;

(e) An advance deposit of up to 50 percent of the estimated total charge may be required for those people or organizations who require a considerable number of reproduced copies.

(3) The Director may reduce or waive the fee for non-profit organizations and government agencies requesting lists or documents in the interest of boating access, safety programs or law enforcement purposes.

(4) For outfitter/guide listings the fees shall be as follows:

(a) Machine reproductions — \$.25 per standard 8-1/2 x 11" page. There will be no charge for an individual request of five or fewer copies of a single page;

(b) Machine generated labels or listings — \$50 for up to 1,000 names plus \$10 for each 1,000 additional names or portion thereof;

(c) Machine generated labels, listings or printouts in other than the standard format — Actual cost of programming, processing and administrative expenses, but not less than \$75 for up to 1,000 names, plus \$20 for each 1,000 additional names or portion thereof;

(d) The fees charged will be actual cost of electronic media or files, computer diskettes, cost of staff time required for copying requested files, plus actual cost of special mailers and postage.

Stat. Auth.: ORS 195, ORS 283 & ORS 830

Stats. Implemented: ORS 830.110

Hist.: MB 12, f. 3-27-62; MB 8-1978(Temp), f. & ef. 10-5-78; MB 10-1978, f. & ef. 12-21-78; Renumbered from 250-010-0165; MB 16-1984, f. & ef. 12-3-84; MB 2-1986, f. & ef. 1-30-86; MB 1-1997, f. & cert. ef. 4-4-97; OSMB 1-2003, f. & cert. ef. 1-14-03

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**Adm. Order No.:** OSMB 2-2003  
**Filed with Sec. of State:** 1-14-2003  
**Certified to be Effective:** 1-14-03  
**Notice Publication Date:** 12-1-02  
**Rules Repealed:** 250-020-0380

**Subject:** Yamhill County Sheriff and Board of Commissioners have requested that the Board consider repealing the current rule for slow no-wake within 150 feet of the Newberg Launching Ramp on the Willamette River. The facility has been rebuilt at a wider spot of the river. The location of the improved facility (now called Rogers Landing) allows a 200-foot no-wake zone which would make it consistent with the majority of other dock/launch facilities throughout the state (OAR 250-010-0025).

**Rules Coordinator:** Jill E. Andrick—(503) 373-1405, ext. 243

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## Oregon University System, Southern Oregon University Chapter 573

**Adm. Order No.:** SOU 3-2002  
**Filed with Sec. of State:** 12-30-2002  
**Certified to be Effective:** 12-30-02  
**Notice Publication Date:**

**Rules Amended:** 573-070-0011

**Subject:** Amends the criteria required for petition for release from Residence Hall Room and Board Agreement.

**Rules Coordinator:** Deborah S. Drost—(541) 552-8550

### 573-070-0011

#### Residence Hall Room and Board Agreement

(1) Each applicant for residence hall accommodations shall be required to sign a Room and Board Agreement before occupying a room. The Room and Board Agreement specifies all contractual obligations for resident students. All rules and regulations in the Room and Board Agreement are binding.

(2) Copies of the current Room and Board Agreement will be available in the Student Housing Office.

(3) If a student is evicted from, moves from, or otherwise leaves a residence hall, but does not withdraw from the institution, the student is assessed a per day fee for the remaining days of the agreement period.

(4) If a student changes rooms anytime during the contract period, the student will be assessed a \$10.00 moving fee for each move.

(5) If a student fails to follow procedures when completing a room change, the student is subject to a \$20.00 improper moving fee.

(6) With an approved petition a student may be released from their Residence Hall Room and Board Agreement without the per day penalty. The main criteria used in approving such a petition are as follows:

(a) Health reasons, verified by a licensed physician, preferably local, who is acceptable to the Housing Policy Committee;

(b) Student teaching or academic programs requiring the student to live in another community;

(c) If a student is a non-freshman and finds a suitable replacement to take over the agreement, i.e., someone not required by University policies to live in residence halls and someone who has not previously contacted the Housing Office;

(d) Being dropped from SOU for academic reasons.

(e) Officially withdrawing effective the current academic term.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: SOSC 6-1980(Temp), f. & ef. 9-23-80; SOSC 10-1980, f. & ef. 11-19-80; SOSC 4-1994, f. & cert. ef. 7-29-94; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 3-2002, f. & cert. ef. 12-30-02

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## Public Utility Commission Chapter 860

**Adm. Order No.:** PUC 24-2002  
**Filed with Sec. of State:** 12-20-2002  
**Certified to be Effective:** 12-20-02

# ADMINISTRATIVE RULES

**Notice Publication Date:** 5-1-02

**Rules Amended:** 860-027-0052, 860-034-0394, 860-034-0740

**Subject:** This rulemaking adopts FCC changes, addresses issues about allocation of costs for telecommunications utilities and cooperatives, and updates the Uniform system of Accounts. It does not apply to competitive telecommunications providers.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

## 860-027-0052

### Allocation of Costs by a Large Telecommunications Utility

(1) As used in this rule:

(a) "Affiliate Transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a large telecommunications utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the large telecommunications utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single large telecommunications utility;

(b) "Asset" means any tangible or intangible property of a large telecommunications utility or other right, entitlement, business opportunity, or other thing of value to which a large telecommunications utility holds claim;

(c) "Cost" means fully distributed cost, including the large telecommunications utility's authorized rate of return and all overheads;

(d) "Fair Market Value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(e) "Market Rate" means the lowest price that is available from non-affiliated suppliers for comparable services or supplies;

(f) "Net Book Value" means original cost less accumulated depreciation; and

(g) "Nonregulated Service" means a service that is not a telecommunications service as defined by ORS 759.005(2)(g), or a service that the Commission has determined to be exempt from regulation.

(2) A large telecommunications utility that provides both regulated and nonregulated intrastate service shall:

(a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule;

(b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission on October 11, 2001, is hereby adopted and prescribed.

(3) A large telecommunications utility, which is subject to price caps under ORS 759.405, may account for its regulated and nonregulated intrastate activities in accordance with FCC Part 32, Section 32.27. For all other large telecommunications utilities, Section 32.27 is replaced as follows for intrastate purposes:

(a) When an asset is transferred to regulated accounts from nonregulated accounts:

(A) If the asset has an original cost of more than \$100,000, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value.

(B) If the asset has an original cost of \$100,000 or less, the transfer shall be recorded in compliance with Section 32.27.

(b) When an asset is transferred from regulated accounts to nonregulated accounts:

(A) If the asset has an original cost of more than \$100,000, the transfer shall be recorded in regulated accounts at the tariff or price-listed rate if an appropriate tariff or price list is on file with the Commission. If no tariff or price list is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value.

(B) If the asset has an original cost of \$100,000 or less, the transfer shall be recorded in compliance with Section 32.27.

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The large telecommunications utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a regulated activity to a nonregulated activity:

(A) If the annual value exceeds \$100,000, sales shall be recorded in regulated revenue accounts at tariffed or price-listed rates if an applicable tariff or price list is on file with the Commission. Tariffed or price-listed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff or price list, sales shall be recorded in regulated revenue accounts at the large telecommunications utility's cost.

(B) If the annual value is \$100,000 or less, the sales shall be recorded in compliance with Section 32.27.

(e) When services or supplies are sold to a regulated activity by a nonregulated activity:

(A) If the annual value exceeds \$100,000, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the large telecommunications utility's most recently authorized rate of return.

(B) If the annual value is \$100,000 or less, the sales shall be recorded in compliance with Section 32.27.

(f) Income taxes shall be allocated among the regulated activities of the large telecommunications utility, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the large telecommunications utility shall record income tax expense as if it were determined for the large telecommunications utility separately for all time periods.

(4) If a large telecommunications utility:

(a) Is subject to ORS 759.100 through 759.115 and provides both regulated and nonregulated intrastate service, the utility shall maintain a current intrastate cost allocation manual on file with the Commission. If the FCC requires the large telecommunications utility to file an interstate cost allocation manual, the utility shall also maintain a current copy of its interstate manual with the Commission.

(b) Is subject to price caps under ORS 759.405, the large telecommunications utility is not required to file an intrastate cost allocation manual with the Commission. A large telecommunications utility that is subject to price caps must file a copy of its annual 254(k) compliance filing and make information available to the Commission as needed to review the utility's intrastate cost allocations to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

(5) An intrastate cost allocation manual, if required under subsection (4) of this rule, shall contain the following:

(a) A description of each of the large telecommunications utility's nonregulated intrastate activities;

(b) A list of all intrastate activities to which the large telecommunications utility now accords incidental accounting treatment, and the justification for treating each as incidental;

(c) A chart showing the large telecommunications utility's affiliates;

(d) A statement identifying affiliates that engage in or will engage in transactions with the large telecommunications utility for the purpose of providing nonregulated intrastate service and describing the nature, terms, and frequency of such transactions; and

(e) A detailed specification of the cost categories to which amounts in each account and subaccount of Part 32 will be assigned, and a detailed specification of the basis on which each cost category will be apportioned between regulated and nonregulated activities.

(6) Unless specifically allowed by the Commission, a cost allocation manual cannot be used to satisfy any other reporting requirement established by the Commission.

(7) The initial cost allocation manual filed by a large telecommunications utility pursuant to this rule must be filed with the Commission no less than 90 days before the manual's effective date. The manual shall go into effect unless rejected by the Commission before the manual's effective date.

(8) When a large telecommunications utility proposes any change to a cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 45 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.

(9) After the Commission has issued an order to exempt from regulation a telecommunications service provided by a large telecommunications utility that is subject to ORS 759.100 through 759.115, the affected utility shall file with the Commission either an initial cost allocation manual or a change to its previously filed manual.

(10) A large telecommunications utility that is required to file annual independent cost allocation audits with the FCC shall at the same time file copies of the annual audits with the Commission.

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

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 183, ORS 756 & ORS 759  
Stats. Implemented: ORS 756.105, ORS 759.120, ORS 759.125 & ORS 759.130  
Hist.: PUC 24-1985, f. & ef. 12-12-85 (Order No. 85-1172); PUC 15-1988, f. & cert. ef. 9-7-88 (Order No. 88-954); PUC 8-1995, f. & cert. ef. 8-30-95 (Order No. 95-858); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 10-2000, f. & cert. ef. 5-26-00; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 24-2002, f. & cert. ef. 12-20-02

## 860-034-0394

### Allocation of Costs by Small Telecommunications Utilities

- (1) As used in this rule:
  - (a) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a small telecommunications utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single small telecommunications utility;
  - (b) "Asset" means any tangible or intangible property of a small telecommunications utility or other right, entitlement, business opportunity, or other thing of value to which a utility holds claim;
  - (c) "Cost" means fully distributed cost, including the small telecommunications utility's authorized rate of return and all overheads;
  - (d) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;
  - (e) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;
  - (f) "Net book value" means original cost less accumulated depreciation; and
  - (g) "Nonregulated service" means a service that is not a telecommunications service as defined by ORS 759.005(2)(g), or a service that the Commission has determined to be exempt from regulation.
- (2) A small telecommunications utility that provides both regulated and nonregulated intrastate service shall:
  - (a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule;
  - (b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission on October 11, 2001, is hereby adopted and prescribed.
- (3) For intrastate purposes, FCC rules governing affiliate transactions (Section 32.27) are replaced as follows:
  - (a) When an asset is transferred to regulated accounts from nonregulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;
  - (b) When an asset is transferred from regulated accounts to nonregulated accounts, the transfer shall be recorded in regulated accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value;
  - (c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The small telecommunications utility shall the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding;
  - (d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in regulated revenue accounts at the small telecommunications utility's cost;
  - (e) When services or supplies are sold to a regulated activity by a nonregulated activity, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the small telecommunications utility's most recently authorized rate of return; and
  - (f) Income taxes shall be allocated among the regulated activities of the small telecommunications utility, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the small telecommunications utility shall record income tax expense as if it were determined for the small telecommunications utility separately for all time periods.

(4) If a small telecommunications utility is subject to ORS 759.120 through 759.130 and provides both regulated and nonregulated intrastate service, the utility shall maintain a current intrastate cost allocation manual on file with the Commission. If the FCC requires the small telecommunications utility to file an interstate cost allocation manual, the utility shall also maintain a current copy of its interstate manual with the Commission.

- (5) An intrastate cost allocation manual shall contain the following:
  - (a) A description of each of the small telecommunications utility's nonregulated intrastate activities;
  - (b) A list of all intrastate activities to which the small telecommunications utility now accords incidental accounting treatment, and the justification for treating each as incidental;
  - (c) A chart showing the small telecommunications utility's affiliates;
  - (d) A statement identifying affiliates that engage in or will engage in transactions with the small telecommunications utility for the purpose of providing nonregulated intrastate service and describing the nature, terms, and frequency of such transactions; and
  - (e) A detailed specification of the cost categories to which amounts in each account and subaccount of Part 32 will be assigned, and a detailed specification of the basis on which each cost category will be apportioned between regulated and nonregulated activities.
- (6) A cost allocation manual cannot be used to satisfy any other reporting requirement established by the Commission.
- (7) The initial cost allocation manual filed by a small telecommunications utility pursuant to this rule must be filed with the Commission no less than 90 days before the manual's effective date. The manual shall go into effect unless rejected by the Commission before the manual's effective date.
- (8) When a small telecommunications utility proposes any change to a cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 60 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.
- (9) After the Commission has issued an order to exempt from regulation a telecommunications service provided by a small telecommunications utility that is subject to ORS 759.120 through 759.130, the affected utility shall file with the Commission either an initial cost allocation manual or a change to its previously filed manual.
- (10) A small telecommunications utility that is required to file annual independent cost allocation audits with the FCC shall at the same time file copies of the annual audits with the Commission.

Stat. Auth.: ORS 183, ORS 756 & ORS 759  
Stats. Implemented: ORS 756.040 & ORS 759.045  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0520; PUC 10-2000, f. & cert. ef. 5-26-00; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 24-2002, f. & cert. ef. 12-20-02

## 860-034-0740

### Allocation of Costs by Type 2 Cooperatives

- (1) As used in this rule:
  - (a) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for services for which a joint rate is charged or for through services offered by a Type 2 cooperative and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the Type 2 cooperative owns a controlling interest;
  - (b) "Asset" means any tangible or intangible property of a Type 2 cooperative or other right, entitlement, business opportunity, or other thing of value to which a Type 2 cooperative holds claim;
  - (c) "Cost" means fully distributed cost, including all overheads and rate of return as defined in section (1)(h) of this rule;
  - (d) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;
  - (e) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;
  - (f) "Net book value" means original cost less accumulated depreciation;
  - (g) "Nonregulated service" means a service that is neither a through service nor a service for which a joint rate is charged, as defined by OAR 860-034-0015; and
  - (h) "Rate of return" means the rate or return established by the Commission for the calculation of a rate for a through service or for which a joint rate is charged.
- (2) A Type 2 cooperative that provides both regulated and nonregulated intrastate service shall:

# ADMINISTRATIVE RULES

(a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule.

(b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission on October 11, 2001, is hereby adopted and prescribed.

(3) For intrastate purposes, FCC rules governing affiliate transactions (Section 32.27) are replaced as follows:

(a) When an asset is transferred to regulated accounts from nonregulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from regulated accounts to nonregulated accounts, the proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The Type 2 cooperative shall record the gain in a manner that will enable the Commission to determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue accounts at the Type 2 cooperative's cost; and

(e) When services or supplies are sold to a regulated activity by a nonregulated activity, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the Type 2 cooperative's most recently authorized rate of return.

(f) Income taxes shall be allocated among the regulated activities of the Type 2 cooperative, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the Type 2 cooperative shall record income tax expense as if it were determined for the Type 2 cooperative separately for all time periods.

Stat. Auth.: ORS 183, ORS 756 & ORS 759

Stats. Implemented: ORS 756.040, ORS 759.220 & ORS 759.225

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 10-2000, f. & cert. ef. 5-26-00; PUC 24-2002, f. & cert. ef. 12-20-02

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## Teacher Standards and Practices Commission Chapter 584

**Adm. Order No.:** TSPC 1-2003

**Filed with Sec. of State:** 1-13-2003

**Certified to be Effective:** 1-13-03

**Notice Publication Date:** 12-1-02

**Rules Adopted:** 584-065-0050

**Rules Amended:** 584-017-0170, 584-036-0055, 584-060-0061

**Subject:** Revises the reading endorsement content area and competencies and amends rules to require completion of a reading program. Increases fees for the following: initial licensure for Oregon-prepared applicants; renewing licenses; adding endorsements; reinstating licenses; reinstating a suspended license; and reinstating a revoked license.

**Rules Coordinator:** Janet Madland—(503) 373-1060

### 584-017-0170

#### Adding Endorsements to Existing Initial and Continuing Teaching Licenses

The unit makes provisions for adding subject matter and specialty area endorsements levels to Initial and Continuing Teaching Licenses.

(1) Application for evaluation to add a subject matter or specialty endorsement to an existing Initial or Continuing Teaching License shall be made in one of the following ways:

(a) The applicant may submit transcripts showing completion of the academic requirements for the endorsement from an approved institution together with documentation indicating five years of successful, appropriately assigned teaching in the new endorsement on a license valid for the assignment.

(b) The applicant may submit a Preparation for Teaching Report, Form C-2, from an approved teacher education institution documenting the successful completion of a practicum of at least two semester hours and

submit a passing score as determined by the Commission on the Praxis specialty area test for which the endorsement is being requested.

(c) The applicant may submit a passing score as determined by the Commission on the Praxis specialty area test for which the endorsement is being requested and document one year of one-half time or more successful teaching experience in the endorsement; or complete a practicum experience of at least two semester hours at an approved teacher education institution; or document experience on an approved misassignment if teaching in Oregon. The employing district shall assign a mentor teacher for the first year of this misassignment.

(2) Candidates who wish to add endorsements in special education, communication disorders, hearing impaired, visual impaired, or reading, in addition to the requirements stated in section (1) of this rule, must complete an approved institution program including content and methods.

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

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147, 342.165

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2003, f. & cert. ef. 1-13-03

### 584-036-0055

#### Fees, Forfeiture, and Expedited Service

All fees are assessed for evaluation of the application and are not refundable. The Commission issues the appropriate license at no additional cost if the applicant qualifies for it within 90 days following evaluation of the application. After 90 days, the applicant may attempt to satisfy the same requirements without paying another fee but must file a new application form. After one year, the applicant must pay another fee, file a new application, and satisfy all license requirements in effect at the time of filing.

(1) The fee for evaluating an application for a license based upon completion of an Oregon approved program is \$75.

(2) The fee for evaluating an application for a license not based upon completion of an Oregon approved program is \$90.

(3) The fee for evaluating an application for renewal of a license is \$75.

(4) The fee for each duplicate license is \$10.

(5) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is \$75. No additional fee is required to add an endorsement in conjunction with an application for renewal or reinstatement of a license.

(6) The fee to evaluate an application for reinstatement of an expired license is \$75 plus a late application fee of \$15 for each month or portion of a month that the license has been expired to a maximum of \$135 total.

(7) The fee for evaluating an application for reinstatement of a suspended license is \$75.

(8) The fee for evaluating an application for reinstatement of a revoked license is \$150 in addition to the \$75 application fee.

(9) Forfeiture for a check which the applicant's bank will not honor is \$25, unrelated to any evaluation fees. The total amount due shall be paid in cash at the Commission's office or by a Money Order.

(10) There is no fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries.

(11) The fee for alternative assessment in lieu of the test of educational specialty is \$200.

(12) The fee for assessment of competence through the Beginning Teacher Assessment Program is \$400.

(13) An employer and an applicant jointly may submit any license application with a request for expedited service accompanied by an additional service fee of \$100. Qualified applicants will be authorized to perform all duties of the position requested within two working days of such application. The Commission may limit the number of applications from an employing district to a maximum of 100 in any two-day period.

(14) The fee for registration of a charter school teacher is \$50, which includes the \$42 for required criminal records and fingerprinting costs.

(15) The fee for renewal of a charter school registration is \$15.

(16) The fee for a criminal records check including fingerprinting is \$42.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - ORS 342.200, ORS 342.400 & ORS 342.985

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03

# ADMINISTRATIVE RULES

## 584-060-0061

### Endorsement of Specialties

At any authorization level, a teaching license may be endorsed for specialization in an academic subject or subject cluster, or in methods used for teaching students with special needs or disabilities. At early childhood, elementary, and middle levels, a license must include the general multiple-subject endorsement that is required for teaching in any self-contained or interdisciplinary classroom.

(1) Specialization is required for some early childhood, elementary school, and middle school teaching assignments, and for most high school assignments. Early childhood and elementary school teachers must obtain endorsements other than multiple-subject only when their specialization requires an endorsement under OAR 584-060-0071. In addition to obtaining multiple-subject endorsement, middle level teachers must demonstrate at least one specialty, which may or may not lead to a license endorsement, but any other specialization is optional unless it requires an endorsement under OAR 584-060-0071. High school teachers must obtain an actual endorsement in every endorsable subject or cluster of subjects taught, except when a misassignment is approved by the commission.

(2) The commission endorses for one or more specialties the applicant's first regular teaching license on the basis of specialized academic preparation, previous licensure, experience, and test scores. If it is a Transitional Teaching License not restricted to a co-applicant employer, an endorsement requires corresponding teacher education, similar endorsement under prior licensure, or a passing score as currently specified by the commission on a test of subject mastery. Endorsement of the Initial Teaching License requires the test score, unless the commission instead accepts five years of experience teaching a specialty in a public school or regionally accredited private school within a U.S. jurisdiction before holding any Oregon license.

(3) Subsequently, a new endorsement will be added on the first license or on a more advanced license upon documentation of a passing score as currently specified by the commission on a designated test of subject mastery, together with completion of either of the following practical experiences:

(a) A practicum of 2 semester hours or 3 quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the specialty, in an institution approved to prepare teachers for that endorsement; or

(b) One year of experience teaching the new specialty at least one hour each day in an elementary school or middle school on an approved misassignment or on optional assignment for other specialties, or in a high school on an approved misassignment that is required for any endorsable specialty.

(4) In addition to the requirements described in subsection 3 above, an approved institutional program including content and methods courses is

always required as preparation for added endorsement in special education, communication disorders, hearing impairment, visual impairment, or reading. Also, a program or approved courses are required in subjects for which no subject mastery test is available.

(5) Subjects in which the commission does not offer endorsement may be taught by anyone whose transitional, initial, or continuing license authorizes teaching at the level of the course. A person holding the Limited Teaching License may teach at any level but only what is precisely described on the license.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - ORS 342.143, ORS 342.153, ORS 342.165 & ORS 342.223 - ORS 342.232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 1-2003, f. & cert. ef. 1-13-03

## 584-065-0050

### Reading Specialist — Early Childhood and Elementary, OR Elementary and Middle Level OR Middle and High School

The following requirements must be met:

(1) Demonstrated competence in each of the following:

(a) Knowledge and beliefs about reading:

(A) Theoretical base;

(B) Knowledge base;

(C) Individual differences;

(D) Reading difficulties.

(b) Instruction and assessment:

(A) Creating a literate environment for all students;

(B) Word identification, vocabulary and spelling;

(C) Comprehension/fluency;

(D) Study strategies;

(E) Written expression;

(F) Assessments, evaluation and formal and informal diagnosis;

(G) Methods of teaching reading to English language learners.

(c) Organizing and enhancing reading programs:

(A) Communicating information about reading;

(B) Curriculum development;

(C) Professional development;

(D) Research;

(E) Supervision of paraprofessionals;

(F) Professionalism.

(2) A candidate must also complete student teaching, an internship or a supervised practicum with students in Early Childhood and Elementary, OR Elementary and Middle Level OR Middle Level and High School.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - ORS 342.143, ORS 342.153, ORS 342.165, & ORS 342.223 - ORS 342.232

Hist.: TSPC 1-2003, f. & cert. ef. 1-13-03

## OAR REVISION CUMULATIVE INDEX

<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>
104-080-0000	1-15-03	Amend	2-1-03	125-500-0005	12-27-02	Amend	2-1-03
104-080-0010	1-15-03	Amend	2-1-03	125-500-0010	12-27-02	Amend	2-1-03
104-080-0020	1-15-03	Amend	2-1-03	137-009-0000	12-12-02	Amend(T)	1-1-03
104-080-0021	1-15-03	Amend	2-1-03	137-009-0005	12-12-02	Amend(T)	1-1-03
104-080-0022	1-15-03	Amend	2-1-03	137-009-0010	12-12-02	Amend(T)	1-1-03
104-080-0023	1-15-03	Amend	2-1-03	137-009-0015	12-12-02	Suspend	1-1-03
104-080-0024	1-15-03	Amend	2-1-03	137-009-0020	12-12-02	Suspend	1-1-03
104-080-0025	1-15-03	Amend	2-1-03	137-009-0025	12-12-02	Suspend	1-1-03
104-080-0026	1-15-03	Amend	2-1-03	137-009-0030	12-12-02	Suspend	1-1-03
104-080-0027	1-15-03	Amend	2-1-03	137-009-0035	12-12-02	Suspend	1-1-03
104-080-0028	1-15-03	Amend	2-1-03	137-009-0040	12-12-02	Suspend	1-1-03
104-080-0030	1-15-03	Amend	2-1-03	137-009-0045	12-12-02	Amend(T)	1-1-03
104-080-0040	1-15-03	Amend	2-1-03	137-009-0055	12-12-02	Suspend	1-1-03
104-080-0050	1-15-03	Amend	2-1-03	137-009-0060	12-12-02	Adopt(T)	1-1-03
104-080-0060	1-15-03	Amend	2-1-03	137-009-0065	12-12-02	Adopt(T)	1-1-03
104-080-0070	1-15-03	Amend	2-1-03	137-009-0100	12-12-02	Adopt(T)	1-1-03
105-040-0020	1-13-03	Amend(T)	2-1-03	137-009-0120	12-12-02	Adopt(T)	1-1-03
105-040-0040	1-13-03	Amend(T)	2-1-03	141-030-0010	1-1-03	Amend	2-1-03
122-065-0030	1-2-03	Adopt(T)	2-1-03	141-030-0015	1-1-03	Amend	2-1-03
123-135-0000	12-10-02	Amend	1-1-03	141-030-0025	1-1-03	Amend	2-1-03
123-135-0010	12-10-02	Amend	1-1-03	141-030-0034	1-1-03	Amend	2-1-03
123-135-0020	12-10-02	Amend	1-1-03	141-030-0035	1-1-03	Amend	2-1-03
123-135-0030	12-10-02	Amend	1-1-03	141-030-0036	1-1-03	Amend	2-1-03
123-135-0040	12-10-02	Amend	1-1-03	141-030-0037	1-1-03	Amend	2-1-03
123-135-0050	12-10-02	Amend	1-1-03	141-030-0038	1-1-03	Amend	2-1-03
123-135-0060	12-10-02	Amend	1-1-03	141-030-0039	1-1-03	Amend	2-1-03
123-135-0070	12-10-02	Amend	1-1-03	141-030-0040	1-1-03	Adopt	2-1-03
123-135-0080	12-10-02	Amend	1-1-03	141-035-0005	1-1-03	Amend	2-1-03
123-135-0087	12-10-02	Adopt	1-1-03	141-035-0010	1-1-03	Amend	2-1-03
123-135-0090	12-10-02	Amend	1-1-03	141-035-0013	1-1-03	Adopt	2-1-03
123-135-0100	12-10-02	Amend	1-1-03	141-035-0015	1-1-03	Amend	2-1-03
123-135-0110	12-10-02	Amend	1-1-03	141-035-0020	1-1-03	Amend	2-1-03
123-155-0000	12-2-02	Adopt	1-1-03	141-035-0025	1-1-03	Amend	2-1-03
123-155-0100	12-2-02	Adopt	1-1-03	141-035-0030	1-1-03	Amend	2-1-03
123-155-0150	12-2-02	Adopt	1-1-03	141-035-0035	1-1-03	Amend	2-1-03
123-155-0200	12-2-02	Adopt	1-1-03	141-035-0040	1-1-03	Amend	2-1-03
123-155-0250	12-2-02	Adopt	1-1-03	141-035-0045	1-1-03	Amend	2-1-03
123-155-0270	12-2-02	Adopt	1-1-03	141-035-0046	1-1-03	Repeal	2-1-03
123-155-0300	12-2-02	Adopt	1-1-03	141-035-0047	1-1-03	Amend	2-1-03
123-155-0400	12-2-02	Adopt	1-1-03	141-035-0048	1-1-03	Adopt	2-1-03
125-045-0100	12-27-02	Amend	2-1-03	141-035-0050	1-1-03	Amend	2-1-03
125-045-0105	12-27-02	Amend	2-1-03	141-035-0055	1-1-03	Amend	2-1-03
125-045-0110	12-27-02	Amend	2-1-03	141-035-0060	1-1-03	Amend	2-1-03
125-045-0120	12-27-02	Amend	2-1-03	141-035-0065	1-1-03	Amend	2-1-03
125-045-0130	12-27-02	Amend	2-1-03	141-035-0070	1-1-03	Amend	2-1-03
125-045-0140	12-27-02	Amend	2-1-03	141-040-0005	1-1-03	Amend	2-1-03
125-045-0150	12-27-02	Amend	2-1-03	141-040-0010	1-1-03	Amend	2-1-03
125-045-0160	12-27-02	Amend	2-1-03	141-040-0020	1-1-03	Amend	2-1-03
125-055-0100	12-31-02	Adopt(T)	2-1-03	141-040-0030	1-1-03	Amend	2-1-03
125-055-0105	12-31-02	Adopt(T)	2-1-03	141-040-0035	1-1-03	Amend	2-1-03
125-055-0110	12-31-02	Adopt(T)	2-1-03	141-040-0040	1-1-03	Amend	2-1-03
125-055-0115	12-31-02	Adopt(T)	2-1-03	141-040-0200	1-1-03	Amend	2-1-03
125-055-0120	12-31-02	Adopt(T)	2-1-03	141-040-0210	1-1-03	Repeal	2-1-03
125-055-0125	12-31-02	Adopt(T)	2-1-03	141-040-0211	1-1-03	Amend	2-1-03
125-055-0130	12-31-02	Adopt(T)	2-1-03	141-040-0212	1-1-03	Amend	2-1-03
125-500-0000	12-27-02	Amend	2-1-03	141-040-0214	1-1-03	Amend	2-1-03



## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
141-040-0220	1-1-03	Amend	2-1-03	141-085-0085	1-15-03	Amend	1-1-03
141-045-0005	1-1-03	Amend	2-1-03	141-085-0090	1-15-03	Amend	1-1-03
141-045-0010	1-1-03	Amend	2-1-03	141-085-0095	1-15-03	Adopt	1-1-03
141-045-0015	1-1-03	Adopt	2-1-03	141-085-0096	1-15-03	Adopt	1-1-03
141-045-0020	1-1-03	Repeal	2-1-03	141-085-0101	1-15-03	Repeal	1-1-03
141-045-0021	1-1-03	Adopt	2-1-03	141-085-0110	1-15-03	Repeal	1-1-03
141-045-0024	1-1-03	Repeal	2-1-03	141-085-0115	1-15-03	Amend	1-1-03
141-045-0031	1-1-03	Amend	2-1-03	141-085-0120	1-15-03	Repeal	1-1-03
141-045-0041	1-1-03	Amend	2-1-03	141-085-0121	1-15-03	Adopt	1-1-03
141-045-0061	1-1-03	Amend	2-1-03	141-085-0125	1-15-03	Repeal	1-1-03
141-045-0100	1-1-03	Amend	2-1-03	141-085-0126	1-15-03	Adopt	1-1-03
141-045-0105	1-1-03	Amend	2-1-03	141-085-0130	1-15-03	Repeal	1-1-03
141-045-0115	1-1-03	Amend	2-1-03	141-085-0131	1-15-03	Adopt	1-1-03
141-045-0120	1-1-03	Amend	2-1-03	141-085-0135	1-15-03	Repeal	1-1-03
141-045-0121	1-1-03	Adopt	2-1-03	141-085-0136	1-15-03	Adopt	1-1-03
141-045-0122	1-1-03	Adopt	2-1-03	141-085-0140	1-15-03	Repeal	1-1-03
141-045-0123	1-1-03	Adopt	2-1-03	141-085-0141	1-15-03	Adopt	1-1-03
141-045-0124	1-1-03	Adopt	2-1-03	141-085-0145	1-15-03	Repeal	1-1-03
141-045-0125	1-1-03	Amend	2-1-03	141-085-0146	1-15-03	Adopt	1-1-03
141-045-0126	1-1-03	Adopt	2-1-03	141-085-0150	1-15-03	Repeal	1-1-03
141-045-0130	1-1-03	Amend	2-1-03	141-085-0151	1-15-03	Adopt	1-1-03
141-045-0150	1-1-03	Amend	2-1-03	141-085-0155	1-15-03	Repeal	1-1-03
141-045-0155	1-1-03	Amend	2-1-03	141-085-0156	1-15-03	Adopt	1-1-03
141-045-0160	1-1-03	Amend	2-1-03	141-085-0160	1-15-03	Repeal	1-1-03
141-045-0170	1-1-03	Amend	2-1-03	141-085-0161	1-15-03	Adopt	1-1-03
141-045-0180	1-1-03	Amend	2-1-03	141-085-0165	1-15-03	Repeal	1-1-03
141-045-0185	1-1-03	Adopt	2-1-03	141-085-0166	1-15-03	Adopt	1-1-03
141-085-0005	1-15-03	Amend	1-1-03	141-085-0170	1-15-03	Repeal	1-1-03
141-085-0006	1-15-03	Adopt	1-1-03	141-085-0171	1-15-03	Adopt	1-1-03
141-085-0010	1-15-03	Amend	1-1-03	141-085-0175	1-15-03	Repeal	1-1-03
141-085-0015	1-15-03	Amend	1-1-03	141-085-0176	1-15-03	Adopt	1-1-03
141-085-0018	1-15-03	Adopt	1-1-03	141-085-0180	1-15-03	Repeal	1-1-03
141-085-0020	1-15-03	Amend	1-1-03	141-085-0240	1-15-03	Amend	1-1-03
141-085-0022	1-15-03	Adopt	1-1-03	141-085-0242	1-15-03	Repeal	1-1-03
141-085-0024	1-15-03	Adopt	1-1-03	141-085-0244	1-15-03	Amend	1-1-03
141-085-0025	1-15-03	Amend	1-1-03	141-085-0246	1-15-03	Amend	1-1-03
141-085-0027	1-15-03	Adopt	1-1-03	141-085-0248	1-15-03	Amend	1-1-03
141-085-0028	1-15-03	Adopt	1-1-03	141-085-0250	1-15-03	Amend	1-1-03
141-085-0029	1-15-03	Adopt	1-1-03	141-085-0252	1-15-03	Amend	1-1-03
141-085-0030	1-15-03	Repeal	1-1-03	141-085-0254	1-15-03	Amend	1-1-03
141-085-0031	1-15-03	Adopt	1-1-03	141-085-0256	1-15-03	Amend	1-1-03
141-085-0032	1-15-03	Repeal	1-1-03	141-085-0257	1-15-03	Adopt	1-1-03
141-085-0034	1-15-03	Adopt	1-1-03	141-085-0258	1-15-03	Repeal	1-1-03
141-085-0035	1-15-03	Repeal	1-1-03	141-085-0260	1-15-03	Repeal	1-1-03
141-085-0036	1-15-03	Adopt	1-1-03	141-085-0262	1-15-03	Amend	1-1-03
141-085-0040	1-15-03	Repeal	1-1-03	141-085-0263	1-15-03	Adopt	1-1-03
141-085-0050	1-15-03	Repeal	1-1-03	141-085-0264	1-15-03	Amend	1-1-03
141-085-0055	1-15-03	Repeal	1-1-03	141-085-0266	1-15-03	Amend	1-1-03
141-085-0060	1-15-03	Repeal	1-1-03	141-085-0300	1-15-03	Repeal	1-1-03
141-085-0064	1-15-03	Adopt	1-1-03	141-085-0306	1-15-03	Repeal	1-1-03
141-085-0065	1-15-03	Repeal	1-1-03	141-085-0310	1-15-03	Repeal	1-1-03
141-085-0066	1-15-03	Adopt	1-1-03	141-085-0315	1-15-03	Repeal	1-1-03
141-085-0070	1-15-03	Amend	1-1-03	141-085-0320	1-15-03	Repeal	1-1-03
141-085-0075	1-15-03	Amend	1-1-03	141-085-0325	1-15-03	Repeal	1-1-03
141-085-0079	1-15-03	Adopt	1-1-03	141-085-0330	1-15-03	Repeal	1-1-03
141-085-0080	1-15-03	Amend	1-1-03	141-085-0335	1-15-03	Repeal	1-1-03

## OAR REVISION CUMULATIVE INDEX

<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>
141-085-0340	1-15-03	Repeal	1-1-03	141-089-0200	1-15-03	Adopt	1-1-03
141-085-0345	1-15-03	Repeal	1-1-03	141-089-0205	1-15-03	Adopt	1-1-03
141-085-0350	1-15-03	Repeal	1-1-03	141-089-0210	1-15-03	Adopt	1-1-03
141-085-0355	1-15-03	Repeal	1-1-03	141-089-0215	1-15-03	Adopt	1-1-03
141-085-0360	1-15-03	Repeal	1-1-03	141-089-0220	1-15-03	Adopt	1-1-03
141-085-0365	1-15-03	Repeal	1-1-03	141-089-0225	1-15-03	Adopt	1-1-03
141-085-0400	1-15-03	Amend	1-1-03	141-089-0230	1-15-03	Adopt	1-1-03
141-085-0406	1-15-03	Amend	1-1-03	141-089-0235	1-15-03	Adopt	1-1-03
141-085-0410	1-15-03	Amend	1-1-03	141-089-0240	1-15-03	Adopt	1-1-03
141-085-0415	1-15-03	Repeal	1-1-03	141-089-0245	1-15-03	Adopt	1-1-03
141-085-0421	1-15-03	Amend	1-1-03	141-089-0250	1-15-03	Adopt	1-1-03
141-085-0425	1-15-03	Amend	1-1-03	141-089-0255	1-15-03	Adopt	1-1-03
141-085-0430	1-15-03	Amend	1-1-03	141-089-0260	1-15-03	Adopt	1-1-03
141-085-0436	1-15-03	Amend	1-1-03	141-089-0265	1-15-03	Adopt	1-1-03
141-085-0440	1-15-03	Amend	1-1-03	141-089-0270	1-15-03	Adopt	1-1-03
141-085-0445	1-15-03	Amend	1-1-03	141-089-0275	1-15-03	Adopt	1-1-03
141-085-0610	1-15-03	Amend	1-1-03	141-089-0280	1-15-03	Adopt	1-1-03
141-085-0620	1-15-03	Amend	1-1-03	141-089-0285	1-15-03	Adopt	1-1-03
141-085-0630	1-15-03	Amend	1-1-03	141-089-0290	1-15-03	Adopt	1-1-03
141-085-0640	1-15-03	Amend	1-1-03	141-089-0295	1-15-03	Adopt	1-1-03
141-085-0650	1-15-03	Amend	1-1-03	141-089-0300	1-15-03	Adopt	1-1-03
141-085-0660	1-15-03	Amend	1-1-03	141-089-0305	1-15-03	Adopt	1-1-03
141-089-0005	1-15-03	Repeal	1-1-03	141-089-0310	1-15-03	Adopt	1-1-03
141-089-0010	1-15-03	Repeal	1-1-03	141-122-0010	1-1-03	Amend	2-1-03
141-089-0015	1-15-03	Repeal	1-1-03	141-122-0020	1-1-03	Amend	2-1-03
141-089-0020	1-15-03	Repeal	1-1-03	141-122-0030	1-1-03	Amend	2-1-03
141-089-0030	1-15-03	Repeal	1-1-03	141-122-0040	1-1-03	Amend	2-1-03
141-089-0040	1-15-03	Repeal	1-1-03	141-122-0050	1-1-03	Amend	2-1-03
141-089-0050	1-15-03	Repeal	1-1-03	141-122-0060	1-1-03	Amend	2-1-03
141-089-0060	1-15-03	Repeal	1-1-03	141-122-0070	1-1-03	Amend	2-1-03
141-089-0065	1-15-03	Repeal	1-1-03	141-122-0080	1-1-03	Amend	2-1-03
141-089-0070	1-15-03	Repeal	1-1-03	141-122-0090	1-1-03	Amend	2-1-03
141-089-0075	1-15-03	Repeal	1-1-03	141-122-0100	1-1-03	Amend	2-1-03
141-089-0081	1-15-03	Repeal	1-1-03	141-122-0105	1-1-03	Adopt	2-1-03
141-089-0086	1-15-03	Repeal	1-1-03	141-122-0110	1-1-03	Amend	2-1-03
141-089-0091	1-15-03	Repeal	1-1-03	141-122-0120	1-1-03	Amend	2-1-03
141-089-0100	1-15-03	Adopt	1-1-03	150-18.902(5)	12-31-02	Adopt	2-1-03
141-089-0105	1-15-03	Adopt	1-1-03	150-23.185	12-31-02	Am. & Ren.	2-1-03
141-089-0110	1-15-03	Adopt	1-1-03	150-23.185-(A)	12-31-02	Am. & Ren.	2-1-03
141-089-0115	1-15-03	Adopt	1-1-03	150-29.375	12-31-02	Repeal	2-1-03
141-089-0120	1-15-03	Adopt	1-1-03	150-305.145(2)	12-31-02	Amend	2-1-03
141-089-0125	1-15-03	Adopt	1-1-03	150-305.220(1)	1-31-03	Amend	2-1-03
141-089-0130	1-15-03	Adopt	1-1-03	150-305.220(2)	1-31-03	Amend	2-1-03
141-089-0135	1-15-03	Adopt	1-1-03	150-305.220(3)	1-31-03	Amend	2-1-03
141-089-0140	1-15-03	Adopt	1-1-03	150-305.222	12-31-02	Adopt	2-1-03
141-089-0145	1-15-03	Adopt	1-1-03	150-305.612	12-31-02	Adopt	2-1-03
141-089-0150	1-15-03	Adopt	1-1-03	150-305.612(T)	12-31-02	Repeal	2-1-03
141-089-0155	1-15-03	Adopt	1-1-03	150-306.115(J)	12-31-02	Repeal	2-1-03
141-089-0160	1-15-03	Adopt	1-1-03	150-306.265	12-31-02	Adopt	2-1-03
141-089-0165	1-15-03	Adopt	1-1-03	150-307.175	12-31-02	Amend	2-1-03
141-089-0170	1-15-03	Adopt	1-1-03	150-307.220-(B)	12-31-02	Amend	2-1-03
141-089-0175	1-15-03	Adopt	1-1-03	150-307.230-(B)	12-31-02	Amend	2-1-03
141-089-0180	1-15-03	Adopt	1-1-03	150-307.240-(B)	12-31-02	Amend	2-1-03
141-089-0185	1-15-03	Adopt	1-1-03	150-308.290(4)(b)	12-31-02	Amend	2-1-03
141-089-0190	1-15-03	Adopt	1-1-03	150-308.290(7)-(B)	12-31-02	Amend	2-1-03
141-089-0195	1-15-03	Adopt	1-1-03	150-308.560	12-31-02	Adopt	2-1-03

## OAR REVISION CUMULATIVE INDEX

<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>
150-308.704	12-31-02	Amend	2-1-03	177-040-0025	11-25-02	Amend	1-1-03
150-308.709	12-31-02	Amend	2-1-03	177-040-0040	11-25-02	Amend	1-1-03
150-308.712	12-31-02	Amend	2-1-03	177-040-0050	11-25-02	Amend	1-1-03
150-309.022(1)	12-31-02	Amend	2-1-03	177-040-0051	11-25-02	Adopt	1-1-03
150-309.024-(B)	12-31-02	Repeal	2-1-03	177-040-0052	11-25-02	Adopt	1-1-03
150-309.100	12-31-02	Am. & Ren.	2-1-03	177-040-0055	11-25-02	Amend	1-1-03
150-309.100(1)	12-31-02	Am. & Ren.	2-1-03	177-040-0105	11-25-02	Amend	1-1-03
150-309.100(1)-(A)	12-31-02	Am. & Ren.	2-1-03	177-046-0010	11-25-02	Adopt	1-1-03
150-309.100(2)-(C)	12-31-02	Am. & Ren.	2-1-03	177-046-0020	11-25-02	Adopt	1-1-03
150-309.100-(A)	12-31-02	Am. & Ren.	2-1-03	177-046-0030	11-25-02	Adopt	1-1-03
150-310.110	12-31-02	Amend	2-1-03	177-046-0040	11-25-02	Adopt	1-1-03
150-314.260	12-31-02	Amend	2-1-03	177-046-0050	11-25-02	Adopt	1-1-03
150-314.280(3)	12-31-02	Adopt	2-1-03	177-046-0060	11-25-02	Adopt	1-1-03
150-314.280-(N)	12-31-02	Amend	2-1-03	177-046-0070	11-25-02	Adopt	1-1-03
150-314.385(1)-(B)	12-31-02	Amend	2-1-03	177-046-0080	11-25-02	Adopt	1-1-03
150-314.525(1)-(A)	12-31-02	Amend	2-1-03	177-046-0090	11-25-02	Adopt	1-1-03
150-314.610(4)-(A)	12-31-02	Repeal	2-1-03	177-046-0100	11-25-02	Adopt	1-1-03
150-314.840	12-31-02	Amend	2-1-03	177-046-0110	11-25-02	Adopt	1-1-03
150-314.840(T)	12-31-02	Repeal	2-1-03	177-046-0120	11-25-02	Adopt	1-1-03
150-315.164	12-31-02	Amend	2-1-03	177-046-0130	11-25-02	Adopt	1-1-03
150-321.207(1)	12-31-02	Adopt	2-1-03	177-046-0140	11-25-02	Adopt	1-1-03
150-323.140	12-31-02	Adopt	2-1-03	177-046-0150	11-25-02	Adopt	1-1-03
150-323.160(2)	12-31-02	Adopt	2-1-03	177-046-0160	11-25-02	Adopt	1-1-03
150-465.517(3)	12-20-02	Renumber	2-1-03	177-046-0170	11-25-02	Adopt	1-1-03
150-465.517(3)	12-31-02	Adopt	2-1-03	177-050-0000	11-25-02	Repeal	1-1-03
161-006-0025	1-14-03	Amend(T)	2-1-03	177-050-0002	11-25-02	Amend	1-1-03
165-014-0005	12-5-02	Amend(T)	1-1-03	177-050-0010	11-25-02	Repeal	1-1-03
165-020-0005	12-5-02	Amend(T)	1-1-03	177-050-0020	11-25-02	Amend	1-1-03
177-005-0000	11-25-02	Repeal	1-1-03	177-050-0021	11-25-02	Repeal	1-1-03
177-010-0000	11-25-02	Amend	1-1-03	177-050-0023	11-25-02	Repeal	1-1-03
177-010-0003	11-25-02	Adopt	1-1-03	177-050-0025	11-25-02	Amend	1-1-03
177-010-0005	11-25-02	Repeal	1-1-03	177-050-0027	11-25-02	Amend	1-1-03
177-010-0007	11-25-02	Amend	1-1-03	177-050-0037	11-25-02	Amend	1-1-03
177-010-0009	11-25-02	Amend	1-1-03	177-050-0045	11-25-02	Repeal	1-1-03
177-010-0020	11-25-02	Repeal	1-1-03	177-050-0051	11-25-02	Repeal	1-1-03
177-010-0025	11-25-02	Amend	1-1-03	177-050-0055	11-25-02	Repeal	1-1-03
177-010-0040	11-25-02	Repeal	1-1-03	177-050-0065	11-25-02	Repeal	1-1-03
177-010-0045	11-25-02	Amend	1-1-03	177-050-0075	11-25-02	Repeal	1-1-03
177-010-0050	11-25-02	Amend	1-1-03	177-065-0000	11-25-02	Repeal	1-1-03
177-010-0055	11-25-02	Repeal	1-1-03	177-065-0005	11-25-02	Amend	1-1-03
177-010-0060	11-25-02	Repeal	1-1-03	177-065-0015	11-25-02	Amend	1-1-03
177-010-0065	11-25-02	Repeal	1-1-03	177-065-0020	11-25-02	Amend	1-1-03
177-010-0070	11-25-02	Repeal	1-1-03	177-065-0025	11-25-02	Amend	1-1-03
177-010-0080	11-25-02	Amend	1-1-03	177-065-0030	11-25-02	Amend	1-1-03
177-010-0085	11-25-02	Amend	1-1-03	177-065-0035	11-25-02	Amend	1-1-03
177-010-0096	11-25-02	Repeal	1-1-03	177-065-0040	11-25-02	Amend	1-1-03
177-010-0100	11-25-02	Amend	1-1-03	177-065-0045	11-25-02	Amend	1-1-03
177-010-0110	11-25-02	Amend	1-1-03	177-065-0055	11-25-02	Amend	1-1-03
177-010-0120	11-25-02	Amend	1-1-03	177-065-0065	11-25-02	Amend	1-1-03
177-010-0300	11-25-02	Repeal	1-1-03	177-065-0075	11-25-02	Amend	1-1-03
177-040-0000	11-25-02	Amend	1-1-03	177-065-0080	11-25-02	Amend	1-1-03
177-040-0001	11-25-02	Amend	1-1-03	177-065-0100	11-25-02	Repeal	1-1-03
177-040-0003	11-25-02	Amend	1-1-03	177-070-0000	11-25-02	Repeal	1-1-03
177-040-0005	11-25-02	Amend	1-1-03	177-070-0005	11-25-02	Amend	1-1-03
177-040-0010	11-25-02	Amend	1-1-03	177-070-0010	11-25-02	Repeal	1-1-03
177-040-0012	11-25-02	Repeal	1-1-03	177-070-0015	11-25-02	Repeal	1-1-03

## OAR REVISION CUMULATIVE INDEX

<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>
177-070-0025	11-25-02	Amend	1-1-03	259-008-0010	11-21-02	Amend	1-1-03
177-070-0035	11-25-02	Amend	1-1-03	259-008-0020	11-18-02	Amend	1-1-03
177-070-0055	11-25-02	Repeal	1-1-03	259-008-0035	11-18-02	Amend	1-1-03
177-070-0060	11-25-02	Repeal	1-1-03	259-008-0060	11-21-02	Amend	1-1-03
177-070-0065	11-25-02	Repeal	1-1-03	259-008-0062	11-18-02	Repeal	1-1-03
177-070-0070	11-25-02	Repeal	1-1-03	259-008-0063	11-18-02	Repeal	1-1-03
177-070-0075	11-25-02	Repeal	1-1-03	259-008-0065	11-18-02	Amend	1-1-03
177-070-0080	11-25-02	Amend	1-1-03	259-008-0070	11-18-02	Amend	1-1-03
177-075-0000	11-25-02	Amend	1-1-03	259-008-0080	11-18-02	Amend	1-1-03
177-075-0005	11-25-02	Amend	1-1-03	259-008-0085	11-18-02	Amend	1-1-03
177-075-0010	11-25-02	Amend	1-1-03	259-008-0087	11-18-02	Repeal	1-1-03
177-075-0015	11-25-02	Amend	1-1-03	259-009-0000	11-18-02	Adopt	1-1-03
177-075-0020	11-25-02	Amend	1-1-03	259-009-0005	11-18-02	Adopt	1-1-03
177-075-0027	11-25-02	Amend	1-1-03	259-009-0010	11-18-02	Adopt	1-1-03
177-075-0030	11-25-02	Amend	1-1-03	259-009-0020	11-18-02	Adopt	1-1-03
177-075-0035	11-25-02	Amend	1-1-03	259-009-0025	11-18-02	Adopt	1-1-03
177-075-0045	11-25-02	Repeal	1-1-03	259-009-0030	11-18-02	Adopt	1-1-03
177-075-0050	11-25-02	Repeal	1-1-03	259-009-0035	11-18-02	Adopt	1-1-03
177-081-0000	11-25-02	Amend	1-1-03	259-009-0062	11-18-02	Adopt	1-1-03
177-081-0010	11-25-02	Amend	1-1-03	259-009-0063	11-18-02	Adopt	1-1-03
177-081-0020	11-25-02	Amend	1-1-03	259-009-0067	11-18-02	Adopt	1-1-03
177-081-0030	11-25-02	Amend	1-1-03	259-009-0070	11-18-02	Adopt	1-1-03
177-081-0035	11-25-02	Repeal	1-1-03	259-009-0072	11-18-02	Adopt	1-1-03
177-081-0040	11-25-02	Amend	1-1-03	259-009-0080	11-18-02	Adopt	1-1-03
177-081-0050	11-25-02	Amend	1-1-03	259-009-0085	11-18-02	Adopt	1-1-03
177-081-0060	11-25-02	Amend	1-1-03	259-009-0087	11-18-02	Adopt	1-1-03
177-081-0080	11-25-02	Amend	1-1-03	259-009-0090	11-18-02	Adopt	1-1-03
177-081-0090	11-25-02	Repeal	1-1-03	259-009-0100	11-18-02	Adopt	1-1-03
177-094-0000	11-25-02	Amend	1-1-03	259-025-0000	11-21-02	Amend	1-1-03
177-094-0010	11-25-02	Amend	1-1-03	274-040-0030	1-1-03	Amend(T)	2-1-03
177-094-0020	11-25-02	Amend	1-1-03	330-130-0030	1-10-03	Amend	2-1-03
177-094-0030	11-25-02	Amend	1-1-03	330-130-0040	1-10-03	Amend	2-1-03
177-094-0035	11-25-02	Repeal	1-1-03	330-130-0050	1-10-03	Amend	2-1-03
177-094-0040	11-25-02	Amend	1-1-03	330-130-0060	1-10-03	Amend	2-1-03
177-094-0050	11-25-02	Amend	1-1-03	330-130-0080	1-10-03	Amend	2-1-03
177-094-0060	11-25-02	Amend	1-1-03	331-705-0060	1-1-03	Amend	2-1-03
177-094-0085	11-25-02	Amend	1-1-03	333-050-0010	12-13-02	Amend	1-1-03
177-094-0090	11-25-02	Repeal	1-1-03	333-050-0020	12-13-02	Amend	1-1-03
177-094-0095	11-25-02	Repeal	1-1-03	333-050-0030	12-13-02	Amend	1-1-03
177-099-0000	11-25-02	Amend	1-1-03	333-050-0040	12-13-02	Amend	1-1-03
177-099-0010	11-25-02	Amend	1-1-03	333-050-0050	12-13-02	Amend	1-1-03
177-099-0020	11-25-02	Amend	1-1-03	333-050-0060	12-13-02	Amend	1-1-03
177-099-0030	11-25-02	Amend	1-1-03	333-050-0080	12-13-02	Amend	1-1-03
177-099-0035	11-25-02	Repeal	1-1-03	333-050-0090	12-13-02	Amend	1-1-03
177-099-0040	11-25-02	Amend	1-1-03	333-050-0100	12-13-02	Amend	1-1-03
177-099-0050	11-25-02	Amend	1-1-03	333-050-0130	12-13-02	Amend	1-1-03
177-099-0060	11-25-02	Amend	1-1-03	333-050-0140	12-13-02	Amend	1-1-03
177-099-0080	11-25-02	Amend	1-1-03	333-054-0000	12-24-02	Amend	2-1-03
177-099-0090	11-25-02	Amend	1-1-03	333-054-0010	12-24-02	Amend	2-1-03
177-099-0100	11-25-02	Amend	1-1-03	333-054-0020	12-24-02	Amend	2-1-03
177-099-0110	11-25-02	Repeal	1-1-03	333-054-0030	12-24-02	Amend	2-1-03
220-005-0010	1-1-03	Amend	1-1-03	333-054-0040	12-24-02	Amend	2-1-03
250-001-0020	1-14-03	Amend	2-1-03	333-054-0050	12-24-02	Amend	2-1-03
250-020-0380	1-14-03	Repeal	2-1-03	333-054-0060	12-24-02	Amend	2-1-03
259-008-0000	11-18-02	Amend	1-1-03	333-054-0070	12-24-02	Amend	2-1-03
259-008-0005	11-18-02	Amend	1-1-03	333-054-0090	12-24-02	Repeal	2-1-03

## OAR REVISION CUMULATIVE INDEX

<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>
333-157-0045	1-1-03	Amend	1-1-03	340-248-0280	12-23-02	Amend	2-1-03
333-162-1005	1-1-03	Adopt	1-1-03	340-248-0290	12-23-02	Amend	2-1-03
333-500-0010	12-10-02	Amend	1-1-03	345-026-0390	12-3-02	Amend	1-1-03
333-500-0050	12-10-02	Amend	1-1-03	410-001-0030	11-22-02	Adopt	1-1-03
333-500-0056	12-10-02	Adopt	1-1-03	410-120-1230	1-1-03	Adopt	2-1-03
333-500-0057	12-10-02	Adopt	1-1-03	410-120-1280	1-1-03	Amend	2-1-03
333-505-0005	12-10-02	Amend	1-1-03	410-121-0146	1-1-03	Amend	2-1-03
333-510-0045	12-10-02	Amend	1-1-03	410-121-0154	1-1-03	Adopt	2-1-03
333-515-0060	12-10-02	Amend	1-1-03	410-121-0300	12-1-02	Amend(T)	1-1-03
333-536-0000	2-1-03	Adopt	1-1-03	410-121-0300(T)	12-1-02	Suspend	1-1-03
333-536-0005	2-1-03	Adopt	1-1-03	410-122-0020	12-24-02	Amend(T)	2-1-03
333-536-0010	2-1-03	Adopt	1-1-03	410-123-1085	1-1-03	Adopt	2-1-03
333-536-0015	2-1-03	Adopt	1-1-03	410-123-1240	1-1-03	Amend	2-1-03
333-536-0020	2-1-03	Adopt	1-1-03	410-125-0050	1-1-03	Adopt	2-1-03
333-536-0025	2-1-03	Adopt	1-1-03	410-125-0680	1-1-03	Amend	2-1-03
333-536-0030	2-1-03	Adopt	1-1-03	410-125-0700	1-1-03	Amend	2-1-03
333-536-0035	2-1-03	Adopt	1-1-03	410-127-0050	1-1-03	Adopt	2-1-03
333-536-0040	2-1-03	Adopt	1-1-03	410-127-0120	1-1-03	Amend	2-1-03
333-536-0045	2-1-03	Adopt	1-1-03	410-129-0120	1-1-03	Amend	2-1-03
333-536-0050	2-1-03	Adopt	1-1-03	410-129-0140	1-1-03	Amend	2-1-03
333-536-0055	2-1-03	Adopt	1-1-03	410-129-0190	1-1-03	Adopt	2-1-03
333-536-0060	2-1-03	Adopt	1-1-03	410-130-0010	1-1-03	Amend	2-1-03
333-536-0065	2-1-03	Adopt	1-1-03	410-130-0040	1-1-03	Amend	2-1-03
333-536-0070	2-1-03	Adopt	1-1-03	410-130-0960	1-1-03	Adopt	2-1-03
333-536-0075	2-1-03	Adopt	1-1-03	410-131-0220	1-1-03	Amend	2-1-03
333-536-0080	2-1-03	Adopt	1-1-03	410-131-0240	1-1-03	Amend	2-1-03
333-536-0085	2-1-03	Adopt	1-1-03	410-131-0270	1-1-03	Adopt	2-1-03
333-536-0090	2-1-03	Adopt	1-1-03	410-132-0050	1-1-03	Adopt	2-1-03
333-536-0095	2-1-03	Adopt	1-1-03	410-132-0140	1-1-03	Amend	2-1-03
337-010-0030	11-18-02	Amend	1-1-03	410-140-0060	1-1-03	Amend	2-1-03
337-010-0060	11-18-02	Amend	1-1-03	410-140-0110	1-1-03	Adopt	2-1-03
337-021-0040	11-18-02	Amend	1-1-03	410-141-0480	1-1-03	Amend	2-1-03
337-021-0070	11-18-02	Adopt	1-1-03	410-141-0500	1-1-03	Amend	2-1-03
337-021-0080	11-18-02	Adopt	1-1-03	410-141-0520	1-1-03	Amend	2-1-03
340-042-0025	12-20-02	Adopt	2-1-03	410-141-0520(T)	1-1-03	Repeal	2-1-03
340-042-0030	12-20-02	Adopt	2-1-03	410-146-0075	1-1-03	Adopt	2-1-03
340-042-0040	12-20-02	Adopt	2-1-03	410-146-0320	1-1-03	Amend	2-1-03
340-042-0050	12-20-02	Adopt	2-1-03	410-147-0085	1-1-03	Adopt	2-1-03
340-042-0060	12-20-02	Adopt	2-1-03	410-147-0600	1-1-03	Amend	2-1-03
340-042-0070	12-20-02	Adopt	2-1-03	410-148-0095	1-1-03	Adopt	2-1-03
340-042-0080	12-20-02	Adopt	2-1-03	410-148-0180	1-1-03	Amend	2-1-03
340-248-0010	12-23-02	Amend	2-1-03	410-148-0200	1-1-03	Amend	2-1-03
340-248-0100	12-23-02	Amend	2-1-03	411-015-0000	12-6-02	Amend(T)	1-1-03
340-248-0120	12-23-02	Amend	2-1-03	411-015-0005	12-6-02	Amend(T)	1-1-03
340-248-0130	12-23-02	Amend	2-1-03	411-015-0010	12-6-02	Amend(T)	1-1-03
340-248-0140	12-23-02	Amend	2-1-03	411-015-0015	12-6-02	Amend(T)	1-1-03
340-248-0150	12-23-02	Amend	2-1-03	411-015-0015	2-1-03	Amend	2-1-03
340-248-0180	12-23-02	Amend	2-1-03	411-015-0100	12-6-02	Amend(T)	1-1-03
340-248-0205	12-23-02	Amend	2-1-03	411-015-0100	2-1-03	Amend	2-1-03
340-248-0210	12-23-02	Amend	2-1-03	411-300-0100	12-28-02	Adopt	2-1-03
340-248-0220	12-23-02	Amend	2-1-03	411-300-0110	12-28-02	Adopt	2-1-03
340-248-0240	12-23-02	Amend	2-1-03	411-300-0120	12-28-02	Adopt	2-1-03
340-248-0250	12-23-02	Amend	2-1-03	411-300-0130	12-28-02	Adopt	2-1-03
340-248-0260	12-23-02	Amend	2-1-03	411-300-0140	12-28-02	Adopt	2-1-03
340-248-0270	12-23-02	Amend	2-1-03	411-300-0150	12-28-02	Adopt	2-1-03
340-248-0275	12-23-02	Amend	2-1-03	411-300-0160	12-28-02	Adopt	2-1-03

## OAR REVISION CUMULATIVE INDEX

<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>
411-300-0170	12-28-02	Adopt	2-1-03	413-040-0430	1-7-03	Amend	2-1-03
411-300-0180	12-28-02	Adopt	2-1-03	413-040-0440	1-7-03	Amend	2-1-03
411-300-0190	12-28-02	Adopt	2-1-03	413-040-0450	1-7-03	Amend	2-1-03
411-300-0200	12-28-02	Adopt	2-1-03	413-050-0000	1-7-03	Amend	2-1-03
411-300-0210	12-28-02	Adopt	2-1-03	413-050-0005	1-7-03	Adopt	2-1-03
411-300-0220	12-28-02	Adopt	2-1-03	413-050-0010	1-7-03	Amend	2-1-03
413-010-0700	1-7-03	Amend	2-1-03	413-050-0020	1-7-03	Amend	2-1-03
413-010-0705	1-7-03	Amend	2-1-03	413-050-0030	1-7-03	Amend	2-1-03
413-010-0712	1-7-03	Amend	2-1-03	413-050-0040	1-7-03	Amend	2-1-03
413-010-0714	1-7-03	Amend	2-1-03	413-050-0050	1-7-03	Amend	2-1-03
413-010-0715	1-7-03	Amend	2-1-03	413-050-0200	12-19-02	Amend(T)	2-1-03
413-010-0716	1-7-03	Amend	2-1-03	413-050-0210	12-19-02	Amend(T)	2-1-03
413-010-0717	1-7-03	Amend	2-1-03	413-050-0220	12-19-02	Amend(T)	2-1-03
413-010-0718	1-7-03	Amend	2-1-03	413-050-0230	12-19-02	Amend(T)	2-1-03
413-010-0719	1-7-03	Amend	2-1-03	413-050-0240	12-19-02	Amend(T)	2-1-03
413-010-0720	1-7-03	Amend	2-1-03	413-050-0250	12-19-02	Amend(T)	2-1-03
413-010-0721	1-7-03	Amend	2-1-03	413-050-0260	12-19-02	Amend(T)	2-1-03
413-010-0722	1-7-03	Amend	2-1-03	413-050-0261	12-19-02	Adopt(T)	2-1-03
413-010-0723	1-7-03	Amend	2-1-03	413-050-0270	12-19-02	Amend(T)	2-1-03
413-010-0732	1-7-03	Amend	2-1-03	413-050-0280	12-19-02	Amend(T)	2-1-03
413-010-0735	1-7-03	Amend	2-1-03	413-050-0290	12-19-02	Amend(T)	2-1-03
413-010-0738	1-7-03	Amend	2-1-03	413-050-0300	12-19-02	Amend(T)	2-1-03
413-010-0740	1-7-03	Amend	2-1-03	413-050-0301	12-19-02	Adopt(T)	2-1-03
413-010-0743	1-7-03	Amend	2-1-03	413-050-0430	1-9-03	Amend	2-1-03
413-010-0745	1-7-03	Amend	2-1-03	413-050-0440	1-9-03	Amend	2-1-03
413-010-0746	1-7-03	Amend	2-1-03	413-050-0500	1-7-03	Amend	2-1-03
413-010-0750	1-7-03	Amend	2-1-03	413-050-0510	1-7-03	Amend	2-1-03
413-020-0000	1-7-03	Amend	2-1-03	413-050-0515	1-7-03	Amend	2-1-03
413-020-0005	1-7-03	Amend	2-1-03	413-050-0530	1-7-03	Amend	2-1-03
413-020-0010	1-7-03	Amend	2-1-03	413-050-0535	1-7-03	Amend	2-1-03
413-020-0020	1-7-03	Amend	2-1-03	413-050-0540	1-7-03	Amend	2-1-03
413-020-0040	1-7-03	Amend	2-1-03	413-050-0545	1-7-03	Amend	2-1-03
413-020-0050	1-7-03	Amend	2-1-03	413-050-0550	1-7-03	Amend	2-1-03
413-020-0100	1-9-03	Amend	2-1-03	413-050-0560	1-7-03	Amend	2-1-03
413-020-0110	1-9-03	Amend	2-1-03	413-050-0565	1-7-03	Amend	2-1-03
413-020-0120	1-9-03	Amend	2-1-03	413-050-0575	1-7-03	Amend	2-1-03
413-020-0130	1-9-03	Amend	2-1-03	413-050-0580	1-7-03	Amend	2-1-03
413-020-0140	1-9-03	Amend	2-1-03	413-050-0585	1-7-03	Amend	2-1-03
413-020-0150	1-9-03	Amend	2-1-03	413-070-0905	1-9-03	Amend	2-1-03
413-020-0160	1-9-03	Amend	2-1-03	413-070-0915	1-9-03	Amend	2-1-03
413-020-0170	1-9-03	Amend	2-1-03	413-070-0920	1-9-03	Amend	2-1-03
413-020-0200	1-7-03	Amend	2-1-03	413-070-0930	1-9-03	Amend	2-1-03
413-020-0210	1-7-03	Amend	2-1-03	413-070-0940	1-9-03	Amend	2-1-03
413-020-0220	1-7-03	Amend	2-1-03	413-070-0945	1-9-03	Amend	2-1-03
413-020-0230	1-7-03	Amend	2-1-03	413-070-0950	1-9-03	Amend	2-1-03
413-020-0240	1-7-03	Amend	2-1-03	413-080-0000	1-7-03	Amend	2-1-03
413-020-0250	1-7-03	Amend	2-1-03	413-080-0010	1-7-03	Amend	2-1-03
413-020-0260	1-7-03	Amend	2-1-03	413-080-0020	1-7-03	Amend	2-1-03
413-020-0270	1-7-03	Amend	2-1-03	413-080-0030	1-7-03	Amend	2-1-03
413-030-0200	1-7-03	Amend	2-1-03	413-080-0200	1-9-03	Amend	2-1-03
413-030-0205	1-7-03	Adopt	2-1-03	413-080-0205	1-9-03	Adopt	2-1-03
413-030-0210	1-7-03	Amend	2-1-03	413-080-0210	1-9-03	Amend	2-1-03
413-030-0220	1-7-03	Amend	2-1-03	413-080-0240	1-9-03	Amend	2-1-03
413-040-0400	1-7-03	Amend	2-1-03	413-080-0250	1-9-03	Amend	2-1-03
413-040-0410	1-7-03	Amend	2-1-03	413-080-0260	1-9-03	Amend	2-1-03
413-040-0420	1-7-03	Amend	2-1-03	413-080-0270	1-9-03	Amend	2-1-03

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
413-090-0000	1-7-03	Amend	2-1-03	436-035-0280	2-1-03	Amend	2-1-03
413-090-0005	1-7-03	Amend	2-1-03	436-035-0300	2-1-03	Amend	2-1-03
413-090-0010	1-7-03	Amend	2-1-03	436-035-0310	2-1-03	Amend	2-1-03
413-090-0030	1-7-03	Amend	2-1-03	436-035-0320	2-1-03	Amend	2-1-03
413-090-0040	1-7-03	Amend	2-1-03	436-035-0330	2-1-03	Amend	2-1-03
413-090-0050	1-7-03	Amend	2-1-03	436-035-0340	2-1-03	Amend	2-1-03
413-090-0300	1-7-03	Amend	2-1-03	436-035-0360	2-1-03	Amend	2-1-03
413-090-0310	1-7-03	Amend	2-1-03	436-035-0370	2-1-03	Amend	2-1-03
413-090-0320	1-7-03	Amend	2-1-03	436-035-0390	2-1-03	Amend	2-1-03
413-090-0330	1-7-03	Amend	2-1-03	436-035-0395	2-1-03	Amend	2-1-03
413-090-0340	1-7-03	Amend	2-1-03	436-035-0420	2-1-03	Amend	2-1-03
413-090-0355	1-7-03	Amend	2-1-03	436-035-0430	2-1-03	Amend	2-1-03
413-090-0365	1-7-03	Amend	2-1-03	436-035-0440	2-1-03	Amend	2-1-03
413-090-0370	1-7-03	Amend	2-1-03	436-035-0500	1-15-03	Amend(T)	2-1-03
413-090-0380	1-7-03	Amend	2-1-03	436-035-0500	2-1-03	Amend	2-1-03
413-090-0400	1-7-03	Amend	2-1-03	436-105-0003	12-11-02	Amend(T)	1-1-03
413-090-0405	1-7-03	Adopt	2-1-03	436-105-0500	12-11-02	Amend(T)	1-1-03
413-090-0410	1-7-03	Amend	2-1-03	436-105-0510	12-11-02	Amend(T)	1-1-03
413-090-0420	1-7-03	Amend	2-1-03	442-004-0010	12-6-02	Amend(T)	1-1-03
413-090-0430	1-7-03	Amend	2-1-03	459-009-0350	1-15-03	Adopt	2-1-03
413-200-0371	12-19-02	Amend(T)	2-1-03	459-035-0000	11-18-02	Amend	1-1-03
414-600-0000	11-24-02	Adopt	1-1-03	459-035-0001	11-18-02	Amend	1-1-03
414-600-0010	11-24-02	Adopt	1-1-03	459-035-0010	11-18-02	Amend	1-1-03
414-600-0020	11-24-02	Adopt	1-1-03	459-035-0020	11-18-02	Amend	1-1-03
414-600-0030	11-24-02	Adopt	1-1-03	459-035-0030	11-18-02	Amend	1-1-03
414-600-0040	11-24-02	Adopt	1-1-03	459-035-0040	11-18-02	Amend	1-1-03
414-600-0050	11-24-02	Adopt	1-1-03	459-035-0050	11-18-02	Amend	1-1-03
414-600-0060	11-24-02	Adopt	1-1-03	459-035-0070	11-18-02	Amend	1-1-03
414-600-0070	11-24-02	Adopt	1-1-03	459-035-0080	11-18-02	Amend	1-1-03
414-600-0080	11-24-02	Adopt	1-1-03	459-035-0090	11-18-02	Amend	1-1-03
414-600-0090	11-24-02	Adopt	1-1-03	459-035-0200	11-18-02	Amend	1-1-03
414-600-0100	11-24-02	Adopt	1-1-03	459-035-0210	11-18-02	Repeal	1-1-03
436-035-0001	2-1-03	Amend	2-1-03	459-035-0220	11-18-02	Adopt	1-1-03
436-035-0003	2-1-03	Amend	2-1-03	461-006-0452	1-1-03	Amend	2-1-03
436-035-0005	2-1-03	Amend	2-1-03	461-025-0310	1-1-03	Amend(T)	2-1-03
436-035-0007	2-1-03	Amend	2-1-03	461-025-0315	1-1-03	Amend	2-1-03
436-035-0010	2-1-03	Amend	2-1-03	461-025-0315	1-1-03	Amend(T)	2-1-03
436-035-0030	2-1-03	Amend	2-1-03	461-110-0115	1-1-03	Amend	2-1-03
436-035-0040	2-1-03	Amend	2-1-03	461-120-0120	1-1-03	Amend	2-1-03
436-035-0050	2-1-03	Amend	2-1-03	461-125-0600	1-1-03	Amend	2-1-03
436-035-0060	2-1-03	Amend	2-1-03	461-135-0301	1-1-03	Adopt(T)	2-1-03
436-035-0070	2-1-03	Amend	2-1-03	461-135-0401	1-1-03	Adopt	2-1-03
436-035-0075	2-1-03	Amend	2-1-03	461-135-0401(T)	1-1-03	Repeal	2-1-03
436-035-0080	2-1-03	Amend	2-1-03	461-135-0701	12-30-02	Adopt(T)	2-1-03
436-035-0100	2-1-03	Amend	2-1-03	461-135-0721	1-1-03	Adopt(T)	2-1-03
436-035-0110	2-1-03	Amend	2-1-03	461-135-0730	1-1-03	Amend	2-1-03
436-035-0150	2-1-03	Amend	2-1-03	461-135-0730	1-1-03	Amend(T)	1-1-03
436-035-0160	2-1-03	Amend	2-1-03	461-135-0730(T)	1-1-03	Repeal	2-1-03
436-035-0170	2-1-03	Amend	2-1-03	461-135-0900	1-1-03	Amend	2-1-03
436-035-0190	2-1-03	Amend	2-1-03	461-145-0255	1-1-03	Amend	2-1-03
436-035-0200	2-1-03	Amend	2-1-03	461-145-0540	11-19-02	Amend(T)	1-1-03
436-035-0220	2-1-03	Amend	2-1-03	461-155-0035	1-1-03	Amend(T)	2-1-03
436-035-0230	2-1-03	Amend	2-1-03	461-155-0150	1-1-03	Amend(T)	2-1-03
436-035-0250	2-1-03	Amend	2-1-03	461-155-0250	1-1-03	Amend	2-1-03
436-035-0260	2-1-03	Amend	2-1-03	461-155-0270	1-1-03	Amend	2-1-03
436-035-0270	2-1-03	Amend	2-1-03	461-155-0295	1-1-03	Amend	2-1-03

## OAR REVISION CUMULATIVE INDEX

<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>
461-155-0295	1-1-03	Amend(T)	1-1-03	589-005-0300	1-9-03	Amend	2-1-03
461-155-0295(T)	1-1-03	Repeal	2-1-03	589-005-0400	1-9-03	Amend	2-1-03
461-155-0300	1-1-03	Amend	2-1-03	589-005-0500	1-9-03	Amend	2-1-03
461-155-0680	1-1-03	Amend	2-1-03	589-006-0050	1-9-03	Adopt	2-1-03
461-160-0580	1-1-03	Amend	2-1-03	589-006-0100	1-9-03	Amend	2-1-03
461-160-0620	1-1-03	Amend	2-1-03	589-006-0150	1-9-03	Adopt	2-1-03
461-160-0810	1-1-03	Amend	2-1-03	589-006-0200	1-9-03	Amend	2-1-03
461-165-0180	1-1-03	Amend	2-1-03	589-006-0300	1-9-03	Amend	2-1-03
461-170-0015	1-1-03	Amend(T)	2-1-03	589-006-0350	1-9-03	Adopt	2-1-03
461-170-0020	1-1-03	Amend(T)	2-1-03	589-006-0400	1-9-03	Amend	2-1-03
461-170-0030	1-1-03	Amend(T)	2-1-03	589-007-0200	1-9-03	Amend	2-1-03
461-175-0010	1-1-03	Amend(T)	2-1-03	589-007-0300	1-9-03	Amend	2-1-03
461-193-0560	1-1-02	Amend(T)	2-1-03	589-008-0100	1-9-03	Amend	2-1-03
461-195-0521	1-1-03	Amend	2-1-03	589-008-0200	1-9-03	Amend	2-1-03
461-200-1070	1-1-03	Adopt	2-1-03	589-009-0100	1-9-03	Amend	2-1-03
462-110-0010	1-1-03	Amend	1-1-03	589-020-0270	12-4-02	Adopt(T)	1-1-03
462-110-0020	1-1-03	Amend	1-1-03	603-001-0005	1-7-03	Amend	2-1-03
462-120-0020	1-1-03	Amend	1-1-03	603-014-0095	1-15-03	Amend	2-1-03
462-120-0040	1-1-03	Amend	1-1-03	603-025-0010	1-1-03	Amend	2-1-03
462-120-0050	1-1-03	Amend	1-1-03	603-025-0020	1-1-03	Amend	2-1-03
462-120-0100	1-1-03	Amend	1-1-03	603-025-0030	1-1-03	Amend	2-1-03
462-130-0010	1-1-03	Amend	1-1-03	603-025-0180	1-1-03	Amend	2-1-03
462-130-0050	1-1-03	Amend	1-1-03	603-025-0190	1-1-03	Amend	2-1-03
462-140-0030	1-1-03	Amend	1-1-03	603-025-0220	1-1-03	Repeal	2-1-03
462-140-0040	1-1-03	Amend	1-1-03	603-052-1150	1-14-03	Adopt	2-1-03
462-140-0100	1-1-03	Amend	1-1-03	603-052-1200	12-10-02	Amend	1-1-03
462-140-0130	1-1-03	Amend	1-1-03	603-053-0200	12-23-02	Amend	2-1-03
462-140-0250	1-1-03	Amend	1-1-03	603-054-0016	1-7-03	Amend	2-1-03
462-140-0370	1-1-03	Amend	1-1-03	603-054-0017	1-7-03	Amend	2-1-03
462-150-0010	1-1-03	Amend	1-1-03	603-054-0018	1-7-03	Amend	2-1-03
462-150-0050	1-1-03	Amend	1-1-03	603-054-0020	1-7-03	Adopt	2-1-03
462-150-0070	1-1-03	Amend	1-1-03	603-054-0024	1-7-03	Adopt	2-1-03
462-150-0080	1-1-03	Amend	1-1-03	603-054-0030	1-7-03	Amend	2-1-03
462-160-0010	1-1-03	Amend	1-1-03	603-054-0080	1-7-03	Adopt	2-1-03
462-160-0020	1-1-03	Amend	1-1-03	603-056-0165	1-14-03	Amend	2-1-03
462-160-0030	1-1-03	Amend	1-1-03	603-057-0410	12-4-02	Amend(T)	1-1-03
471-010-0054	12-1-02	Amend(T)	1-1-03	603-059-0055	1-1-03	Adopt	1-1-03
471-030-0080	11-24-02	Amend	1-1-03	603-059-0070	1-1-03	Adopt	1-1-03
543-040-0040	12-16-02	Amend(T)	1-1-03	603-059-0080	1-1-03	Adopt	1-1-03
573-070-0011	12-30-02	Amend	2-1-03	603-059-0100	1-1-03	Adopt	1-1-03
584-017-0170	1-13-03	Amend	2-1-03	603-095-0200	1-7-03	Amend	2-1-03
584-036-0055	1-13-03	Amend	2-1-03	603-095-0220	1-7-03	Amend	2-1-03
584-060-0061	1-13-03	Amend	2-1-03	603-095-0240	1-7-03	Amend	2-1-03
584-065-0050	1-13-03	Adopt	2-1-03	603-095-0280	1-7-03	Amend	2-1-03
589-001-0000	1-9-03	Amend	2-1-03	603-095-0600	1-7-03	Amend	2-1-03
589-002-0100	12-16-02	Amend(T)	2-1-03	603-095-0640	1-7-03	Amend	2-1-03
589-002-0200	1-9-03	Amend	2-1-03	603-095-0660	1-7-03	Amend	2-1-03
589-002-0300	1-9-03	Amend	2-1-03	603-095-2000	1-7-03	Adopt	2-1-03
589-002-0400	1-9-03	Repeal	2-1-03	603-095-2020	1-7-03	Adopt	2-1-03
589-002-0500	1-9-03	Amend	2-1-03	603-095-2040	1-7-03	Adopt	2-1-03
589-002-0600	1-9-03	Amend	2-1-03	603-095-2060	1-7-03	Adopt	2-1-03
589-002-0700	1-9-03	Amend	2-1-03	603-095-2300	1-7-03	Adopt	2-1-03
589-002-0800	1-9-03	Amend	2-1-03	603-095-2320	1-7-03	Adopt	2-1-03
589-003-0100	1-9-03	Amend	2-1-03	603-095-2340	1-7-03	Adopt	2-1-03
589-005-0100	1-9-03	Amend	2-1-03	603-095-2360	1-7-03	Adopt	2-1-03
589-005-0200	1-9-03	Amend	2-1-03	603-095-2400	1-7-03	Adopt	2-1-03



## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
603-095-2420	1-7-03	Adopt	2-1-03	629-623-0300	1-1-03	Adopt	1-1-03
603-095-2440	1-7-03	Adopt	2-1-03	629-623-0400	1-1-03	Adopt	1-1-03
603-095-2460	1-7-03	Adopt	2-1-03	629-623-0450	1-1-03	Adopt	1-1-03
603-105-0010	12-23-02	Adopt	2-1-03	629-623-0500	1-1-03	Adopt	1-1-03
621-001-0005	2-1-03	Adopt	2-1-03	629-623-0550	1-1-03	Adopt	1-1-03
621-001-0010	2-1-03	Adopt	2-1-03	629-623-0600	1-1-03	Adopt	1-1-03
622-001-0000	1-16-03	Amend	2-1-03	629-623-0700	1-1-03	Adopt	1-1-03
622-001-0005	1-16-03	Amend	2-1-03	629-623-0800	1-1-03	Adopt	1-1-03
622-001-0010	1-16-03	Repeal	2-1-03	629-625-0100	1-1-03	Amend	1-1-03
622-010-0000	1-16-03	Amend	2-1-03	629-625-0200	1-1-03	Amend	1-1-03
622-010-0006	1-16-03	Amend	2-1-03	629-625-0310	1-1-03	Amend	1-1-03
622-010-0011	1-16-03	Amend	2-1-03	629-625-0330	1-1-03	Amend	1-1-03
622-020-0001	1-16-03	Amend	2-1-03	629-625-0600	1-1-03	Amend	1-1-03
622-020-0140	1-16-03	Amend	2-1-03	629-625-0700	1-1-03	Adopt	1-1-03
622-020-0141	1-16-03	Amend	2-1-03	629-630-0100	1-1-03	Amend	1-1-03
622-020-0142	1-16-03	Amend	2-1-03	629-630-0150	1-1-03	Adopt	1-1-03
622-020-0144	1-16-03	Amend	2-1-03	629-630-0500	1-1-03	Amend	1-1-03
622-020-0145	1-16-03	Amend	2-1-03	632-007-0000	1-1-03	Adopt	2-1-03
622-020-0147	1-16-03	Amend	2-1-03	632-007-0000	1-1-03	Suspend	2-1-03
622-020-0149	1-16-03	Amend	2-1-03	632-007-0010	1-1-03	Adopt	2-1-03
622-020-0151	1-16-03	Repeal	2-1-03	632-007-0010	1-1-03	Suspend	2-1-03
622-020-0153	1-16-03	Amend	2-1-03	632-007-0020	1-1-03	Adopt	2-1-03
622-030-0005	1-16-03	Amend	2-1-03	632-007-0020	1-1-03	Suspend	2-1-03
622-030-0010	1-16-03	Amend	2-1-03	632-007-0030	1-1-03	Adopt	2-1-03
622-045-0000	1-16-03	Amend	2-1-03	632-007-0030	1-1-03	Suspend	2-1-03
622-045-0005	1-16-03	Amend	2-1-03	635-004-0005	1-1-03	Amend	2-1-03
622-045-0010	1-16-03	Amend	2-1-03	635-004-0018	1-1-03	Amend	2-1-03
622-045-0015	1-16-03	Amend	2-1-03	635-004-0025	1-1-03	Amend	2-1-03
622-045-0019	1-16-03	Amend	2-1-03	635-004-0029	1-1-03	Amend	2-1-03
622-050-0000	1-16-03	Repeal	2-1-03	635-004-0033	1-1-03	Amend	2-1-03
622-050-0010	1-16-03	Repeal	2-1-03	635-004-0050	1-1-03	Amend	2-1-03
622-050-0020	1-16-03	Repeal	2-1-03	635-005-0045	11-20-02	Amend(T)	1-1-03
622-050-0030	1-16-03	Repeal	2-1-03	635-005-0045	11-25-02	Amend(T)	1-1-03
622-050-0040	1-16-03	Repeal	2-1-03	635-005-0045	12-6-02	Amend(T)	1-1-03
622-050-0050	1-16-03	Repeal	2-1-03	635-005-0045(T)	12-6-02	Suspend	1-1-03
622-050-0060	1-16-03	Repeal	2-1-03	635-006-0850	1-1-03	Amend	2-1-03
622-055-0003	1-16-03	Adopt	2-1-03	635-007-0501	11-22-02	Amend	1-1-03
622-055-0005	1-16-03	Amend	2-1-03	635-007-0502	11-22-02	Adopt	1-1-03
622-055-0010	1-16-03	Adopt	2-1-03	635-007-0503	11-22-02	Adopt	1-1-03
622-055-0015	1-16-03	Adopt	2-1-03	635-007-0504	11-22-02	Adopt	1-1-03
622-055-0020	1-16-03	Adopt	2-1-03	635-007-0505	11-22-02	Adopt	1-1-03
622-055-0025	1-16-03	Adopt	2-1-03	635-007-0506	11-22-02	Adopt	1-1-03
622-065-0001	1-16-03	Amend	2-1-03	635-011-0101	1-1-03	Amend	1-1-03
622-065-0002	1-16-03	Amend	2-1-03	635-013-0003	1-1-03	Amend	1-1-03
622-065-0003	1-16-03	Amend	2-1-03	635-013-0004	1-1-03	Amend	1-1-03
622-065-0004	1-16-03	Repeal	2-1-03	635-014-0080	1-1-03	Amend	1-1-03
622-065-0010	1-16-03	Amend	2-1-03	635-014-0090	1-1-03	Amend	1-1-03
622-065-0011	1-16-03	Amend	2-1-03	635-016-0080	1-1-03	Amend	1-1-03
622-065-0012	1-16-03	Repeal	2-1-03	635-016-0090	1-1-03	Amend	1-1-03
629-600-0100	1-1-03	Amend	1-1-03	635-017-0080	1-1-03	Amend	1-1-03
629-606-0200	1-1-03	Amend	1-1-03	635-017-0090	1-1-03	Amend	1-1-03
629-606-0600	1-1-03	Amend	1-1-03	635-018-0080	1-1-03	Amend	1-1-03
629-623-0000	1-1-03	Adopt	1-1-03	635-018-0090	1-1-03	Amend	1-1-03
629-623-0100	1-1-03	Adopt	1-1-03	635-019-0080	1-1-03	Amend	1-1-03
629-623-0200	1-1-03	Adopt	1-1-03	635-019-0090	1-1-03	Amend	1-1-03
629-623-0250	1-1-03	Adopt	1-1-03	635-021-0080	1-1-03	Amend	1-1-03

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
635-021-0090	1-1-03	Amend	1-1-03	738-070-0010	12-1-02	Amend	1-1-03
635-021-0100	1-1-03	Repeal	1-1-03	738-070-0020	12-1-02	Amend	1-1-03
635-023-0080	1-1-03	Amend	1-1-03	738-070-0040	12-1-02	Amend	1-1-03
635-023-0090	1-1-03	Amend	1-1-03	738-070-0060	12-1-02	Amend	1-1-03
635-039-0080	1-1-03	Amend	1-1-03	738-070-0070	12-1-02	Amend	1-1-03
635-039-0090	1-1-03	Amend	1-1-03	738-070-0080	12-1-02	Amend	1-1-03
635-041-0065	12-19-02	Amend(T)	2-1-03	738-070-0100	12-1-02	Amend	1-1-03
635-042-0130	12-19-02	Amend(T)	2-1-03	738-070-0160	12-1-02	Amend	1-1-03
635-042-0135	12-19-02	Amend(T)	2-1-03	738-070-0170	12-1-02	Amend	1-1-03
635-043-0056	1-14-03	Adopt(T)	2-1-03	738-070-0180	12-1-02	Amend	1-1-03
644-001-0000	1-6-03	Amend	2-1-03	738-070-0210	12-1-02	Amend	1-1-03
644-001-0005	1-6-03	Repeal	2-1-03	738-070-0230	12-1-02	Amend	1-1-03
644-001-0010	1-6-03	Repeal	2-1-03	738-080-0030	12-1-02	Amend	1-1-03
644-010-0015	1-6-03	Amend	2-1-03	738-090-0030	12-1-02	Amend	1-1-03
678-010-0040	12-30-02	Amend	2-1-03	738-090-0040	12-1-02	Amend	1-1-03
734-070-0020	12-13-02	Adopt	1-1-03	738-090-0050	12-1-02	Amend	1-1-03
734-070-0020(T)	12-13-02	Repeal	1-1-03	738-100-0010	12-1-02	Amend	1-1-03
734-071-0010	12-13-02	Amend	1-1-03	738-100-0035	12-1-02	Amend	1-1-03
735-010-0045	11-18-02	Amend	1-1-03	740-035-0200	11-18-02	Amend	1-1-03
735-050-0110	1-1-03	Amend	1-1-03	740-035-0210	11-18-02	Repeal	1-1-03
735-050-0115	1-1-03	Adopt	1-1-03	740-035-0220	11-18-02	Repeal	1-1-03
735-050-0120	1-1-03	Amend	1-1-03	740-035-0230	11-18-02	Repeal	1-1-03
735-074-0005	1-1-03	Adopt	1-1-03	740-035-0240	11-18-02	Repeal	1-1-03
735-074-0010	1-1-03	Amend	1-1-03	740-035-0250	11-18-02	Amend	1-1-03
735-074-0020	1-1-03	Amend	1-1-03	740-035-0260	11-18-02	Amend	1-1-03
735-090-0000	11-18-02	Amend	1-1-03	740-200-0010	11-18-02	Amend	1-1-03
735-090-0010	11-18-02	Repeal	1-1-03	740-200-0020	11-18-02	Amend	1-1-03
735-090-0020	11-18-02	Amend	1-1-03	740-200-0040	11-18-02	Adopt	1-1-03
735-090-0030	11-18-02	Repeal	1-1-03	801-001-0000	1-1-03	Amend	2-1-03
735-090-0040	11-18-02	Amend	1-1-03	801-001-0005	1-1-03	Amend	2-1-03
735-090-0050	11-18-02	Repeal	1-1-03	801-001-0010	1-1-03	Amend	2-1-03
735-090-0060	11-18-02	Repeal	1-1-03	801-001-0020	1-1-03	Amend	2-1-03
735-090-0070	11-18-02	Repeal	1-1-03	801-001-0030	1-1-03	Adopt	2-1-03
735-090-0080	11-18-02	Repeal	1-1-03	801-005-0010	1-1-03	Amend	2-1-03
735-090-0090	11-18-02	Repeal	1-1-03	801-010-0010	1-1-03	Amend	2-1-03
735-090-0100	11-18-02	Repeal	1-1-03	801-010-0045	1-1-03	Amend	2-1-03
735-090-0110	11-18-02	Amend	1-1-03	801-010-0050	1-1-03	Amend	2-1-03
735-150-0060	11-18-02	Amend	1-1-03	801-010-0060	1-1-03	Amend	2-1-03
738-001-0035	12-1-02	Amend	1-1-03	801-010-0065	1-1-03	Amend	2-1-03
738-010-0025	12-1-02	Amend	1-1-03	801-010-0075	1-1-03	Amend	2-1-03
738-020-0020	12-1-02	Amend	1-1-03	801-010-0078	1-1-03	Amend	2-1-03
738-020-0025	12-1-02	Amend	1-1-03	801-010-0079	1-1-03	Amend	2-1-03
738-020-0030	12-1-02	Amend	1-1-03	801-010-0080	1-1-03	Amend	2-1-03
738-020-0040	12-1-02	Amend	1-1-03	801-010-0085	1-1-03	Amend	2-1-03
738-020-0045	12-1-02	Amend	1-1-03	801-010-0100	1-1-03	Amend	2-1-03
738-030-0015	12-1-02	Amend	1-1-03	801-010-0110	1-1-03	Amend	2-1-03
738-030-0020	12-1-02	Amend	1-1-03	801-010-0115	1-1-03	Amend	2-1-03
738-030-0025	12-1-02	Amend	1-1-03	801-010-0340	1-1-03	Amend	2-1-03
738-040-0010	12-1-02	Amend	1-1-03	801-020-0620	1-1-03	Amend	2-1-03
738-040-0020	12-1-02	Amend	1-1-03	801-020-0690	1-1-03	Amend	2-1-03
738-040-0040	12-1-02	Amend	1-1-03	801-020-0710	1-1-03	Amend	2-1-03
738-050-0020	12-1-02	Amend	1-1-03	801-020-0720	1-1-03	Amend	2-1-03
738-050-0060	12-1-02	Amend	1-1-03	801-030-0020	1-1-03	Amend	2-1-03
738-050-0070	12-1-02	Amend	1-1-03	801-040-0010	1-1-03	Amend	2-1-03
738-050-0090	12-1-02	Amend	1-1-03	801-040-0030	1-1-03	Amend	2-1-03
738-060-0050	12-1-02	Amend	1-1-03	801-040-0050	1-1-03	Amend	2-1-03

## OAR REVISION CUMULATIVE INDEX

<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>
806-010-0090	1-15-03	Amend	2-1-03	812-008-0110	1-14-03	Amend(T)	2-1-03
806-010-0095	12-12-02	Amend	1-1-03	812-009-0020	11-20-02	Amend	1-1-03
806-010-0105	1-15-03	Amend	2-1-03	812-009-0160	11-20-02	Amend	1-1-03
806-010-0145	1-15-03	Amend	2-1-03	812-010-0100	11-20-02	Amend	1-1-03
808-001-0020	12-4-02	Amend	1-1-03	812-010-0100(T)	11-20-02	Repeal	1-1-03
808-001-0030	12-4-02	Amend	1-1-03	812-010-0110	11-20-02	Amend	1-1-03
808-002-0220	12-4-02	Amend	1-1-03	812-010-0110(T)	11-20-02	Repeal	1-1-03
808-002-0290	12-4-02	Adopt	1-1-03	812-010-0120	11-20-02	Amend	1-1-03
808-002-0670	12-4-02	Amend	1-1-03	812-010-0120(T)	11-20-02	Repeal	1-1-03
808-002-0670	12-4-02	Renumber	1-1-03	812-010-0220	11-20-02	Amend	1-1-03
808-002-0680	12-4-02	Amend	1-1-03	812-010-0420	11-20-02	Amend	1-1-03
808-003-0025	12-4-02	Amend	1-1-03	812-010-0440	11-20-02	Amend	1-1-03
808-003-0055	12-4-02	Amend	1-1-03	812-010-0440(T)	11-20-02	Repeal	1-1-03
808-003-0070	12-4-02	Amend	1-1-03	813-008-0005	12-5-02	Amend	1-1-03
808-003-0075	12-4-02	Amend	1-1-03	813-008-0010	12-5-02	Amend	1-1-03
808-003-0081	12-4-02	Adopt	1-1-03	813-008-0015	12-5-02	Amend	1-1-03
808-003-0085	12-4-02	Adopt	1-1-03	813-008-0020	12-5-02	Amend	1-1-03
808-003-0100	12-4-02	Amend	1-1-03	813-008-0025	12-5-02	Amend	1-1-03
808-004-0120	12-4-02	Adopt	1-1-03	813-008-0030	12-5-02	Amend	1-1-03
808-004-0180	12-4-02	Amend	1-1-03	813-008-0030	12-5-02	Amend	1-1-03
808-004-0200	12-4-02	Am. & Ren.	1-1-03	813-008-0040	12-5-02	Adopt	1-1-03
808-004-0250	12-4-02	Amend	1-1-03	813-047-0001	11-20-02	Amend(T)	1-1-03
808-004-0260	12-4-02	Adopt	1-1-03	813-047-0005	11-20-02	Amend(T)	1-1-03
808-004-0320	12-4-02	Amend	1-1-03	813-047-0006	11-20-02	Adopt(T)	1-1-03
808-004-0340	12-4-02	Amend	1-1-03	813-047-0010	11-20-02	Amend(T)	1-1-03
808-004-0440	12-4-02	Amend	1-1-03	813-047-0015	11-20-02	Amend(T)	1-1-03
808-004-0450	12-4-02	Adopt	1-1-03	813-047-0020	11-20-02	Amend(T)	1-1-03
808-004-0460	12-4-02	Amend	1-1-03	813-047-0025	11-20-02	Amend(T)	1-1-03
808-004-0480	12-4-02	Amend	1-1-03	813-140-0000	11-25-02	Adopt	1-1-03
808-004-0500	12-4-02	Amend	1-1-03	813-140-0000(T)	11-25-02	Repeal	1-1-03
808-004-0520	12-4-02	Amend	1-1-03	813-140-0010	11-25-02	Adopt	1-1-03
808-004-0540	12-4-02	Amend	1-1-03	813-140-0010(T)	11-25-02	Repeal	1-1-03
808-004-0550	12-4-02	Amend	1-1-03	813-140-0020	11-25-02	Adopt	1-1-03
808-004-0560	12-4-02	Amend	1-1-03	813-140-0020(T)	11-25-02	Repeal	1-1-03
808-004-0580	12-4-02	Am. & Ren.	1-1-03	813-140-0030	11-25-02	Adopt	1-1-03
808-004-0600	12-4-02	Amend	1-1-03	813-140-0030(T)	11-25-02	Repeal	1-1-03
808-005-0020	12-4-02	Amend	1-1-03	813-140-0040	11-25-02	Adopt	1-1-03
808-005-0030	12-4-02	Amend	1-1-03	813-140-0040(T)	11-25-02	Repeal	1-1-03
808-009-0020	12-4-02	Amend	1-1-03	813-140-0050	11-25-02	Adopt	1-1-03
808-009-0070	12-4-02	Amend	1-1-03	813-140-0050(T)	11-25-02	Repeal	1-1-03
808-009-0100	12-4-02	Amend	1-1-03	813-140-0060	11-25-02	Adopt	1-1-03
808-009-0120	12-4-02	Amend	1-1-03	813-140-0060(T)	11-25-02	Repeal	1-1-03
808-009-0140	12-18-02	Amend	2-1-03	813-140-0070	11-25-02	Adopt	1-1-03
808-009-0160	12-4-02	Amend	1-1-03	813-140-0070(T)	11-25-02	Repeal	1-1-03
808-009-0220	12-4-02	Amend	1-1-03	813-140-0080	11-25-02	Adopt	1-1-03
808-009-0400	12-4-02	Amend	1-1-03	813-140-0080(T)	11-25-02	Repeal	1-1-03
808-009-0420	12-4-02	Amend	1-1-03	813-140-0090	11-25-02	Adopt	1-1-03
808-009-0430	12-4-02	Adopt	1-1-03	813-140-0090(T)	11-25-02	Repeal	1-1-03
808-009-0440	12-4-02	Amend	1-1-03	813-140-0100	11-25-02	Adopt	1-1-03
809-050-0030	12-2-02	Suspend	1-1-03	813-140-0100(T)	11-25-02	Repeal	1-1-03
812-001-0020	12-23-02	Amend	2-1-03	813-140-0110	11-25-02	Adopt	1-1-03
812-004-0360	11-20-02	Amend	1-1-03	813-140-0110(T)	11-25-02	Repeal	1-1-03
812-004-0540	11-20-02	Amend	1-1-03	813-200-0000	11-20-02	Am. & Ren.(T)	1-1-03
812-004-0560	11-20-02	Amend	1-1-03	813-200-0001	11-20-02	Adopt(T)	1-1-03
812-004-0560(T)	11-20-02	Repeal	1-1-03	813-200-0010	11-20-02	Amend(T)	1-1-03
812-008-0072	11-20-02	Amend	1-1-03	813-200-0020	11-20-02	Amend(T)	1-1-03
				813-200-0030	11-20-02	Amend(T)	1-1-03

## OAR REVISION CUMULATIVE INDEX

<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>
813-200-0040	11-20-02	Amend(T)	1-1-03	836-011-0140	11-27-02	Amend	1-1-03
813-200-0050	11-20-02	Amend(T)	1-1-03	836-011-0150	11-27-02	Amend	1-1-03
813-200-0060	11-20-02	Amend(T)	1-1-03	836-011-0160	11-27-02	Amend	1-1-03
813-205-0000	12-13-02	Adopt	1-1-03	836-011-0170	11-27-02	Amend	1-1-03
813-205-0000(T)	12-13-02	Repeal	1-1-03	836-011-0180	11-27-02	Amend	1-1-03
813-205-0010	12-13-02	Adopt	1-1-03	836-011-0190	11-27-02	Amend	1-1-03
813-205-0010(T)	12-13-02	Repeal	1-1-03	836-011-0200	11-27-02	Amend	1-1-03
813-205-0020	12-13-02	Adopt	1-1-03	836-011-0210	11-27-02	Amend	1-1-03
813-205-0020(T)	12-13-02	Repeal	1-1-03	836-011-0220	11-27-02	Amend	1-1-03
813-205-0030	12-13-02	Adopt	1-1-03	836-011-0230	11-27-02	Amend	1-1-03
813-205-0030(T)	12-13-02	Repeal	1-1-03	836-011-0500	11-27-02	Adopt	1-1-03
813-205-0040	12-13-02	Adopt	1-1-03	836-011-0505	11-27-02	Adopt	1-1-03
813-205-0040(T)	12-13-02	Repeal	1-1-03	836-011-0510	11-27-02	Adopt	1-1-03
813-205-0050	12-13-02	Adopt	1-1-03	836-011-0515	11-27-02	Adopt	1-1-03
813-205-0050(T)	12-13-02	Repeal	1-1-03	836-011-0520	11-27-02	Adopt	1-1-03
813-205-0051	12-13-02	Adopt	1-1-03	836-011-0525	11-27-02	Adopt	1-1-03
813-205-0060	12-13-02	Adopt	1-1-03	836-011-0530	11-27-02	Adopt	1-1-03
813-205-0060(T)	12-13-02	Repeal	1-1-03	836-011-0535	11-27-02	Adopt	1-1-03
813-205-0070	12-13-02	Adopt	1-1-03	836-011-0540	11-27-02	Adopt	1-1-03
813-205-0070(T)	12-13-02	Repeal	1-1-03	836-011-0545	11-27-02	Adopt	1-1-03
813-205-0080	12-13-02	Adopt	1-1-03	836-011-0550	11-27-02	Adopt	1-1-03
813-205-0080(T)	12-13-02	Repeal	1-1-03	836-012-0000	11-27-02	Amend	1-1-03
813-205-0090	12-13-02	Adopt	1-1-03	836-012-0011	11-27-02	Amend	1-1-03
813-205-0090(T)	12-13-02	Repeal	1-1-03	836-012-0021	11-27-02	Amend	1-1-03
813-280-0000	12-13-02	Adopt	1-1-03	836-012-0031	11-27-02	Amend	1-1-03
813-280-0000(T)	12-13-02	Repeal	1-1-03	836-012-0041	11-27-02	Amend	1-1-03
813-280-0010	12-13-02	Adopt	1-1-03	836-012-0051	11-27-02	Amend	1-1-03
813-280-0010(T)	12-13-02	Repeal	1-1-03	836-012-0060	11-27-02	Amend	1-1-03
813-280-0020	12-13-02	Adopt	1-1-03	836-012-0070	11-27-02	Amend	1-1-03
813-280-0020(T)	12-13-02	Repeal	1-1-03	836-012-0080	11-27-02	Amend	1-1-03
813-280-0030	12-13-02	Adopt	1-1-03	836-012-0090	11-27-02	Amend	1-1-03
813-280-0030(T)	12-13-02	Repeal	1-1-03	836-012-0100	11-27-02	Amend	1-1-03
813-280-0040	12-13-02	Adopt	1-1-03	836-020-0900	11-27-02	Am. & Ren.	1-1-03
813-280-0040(T)	12-13-02	Repeal	1-1-03	836-052-0142	12-13-02	Amend	1-1-03
813-280-0050	12-13-02	Adopt	1-1-03	836-053-0021	11-27-02	Amend	1-1-03
813-280-0050(T)	12-13-02	Repeal	1-1-03	836-053-0430	11-27-02	Amend	1-1-03
813-280-0060	12-13-02	Adopt	1-1-03	836-053-0440	11-27-02	Amend	1-1-03
813-280-0060(T)	12-13-02	Repeal	1-1-03	836-054-0300	11-27-02	Amend	1-1-03
813-280-0070	12-13-02	Adopt	1-1-03	836-080-0425	6-1-03	Adopt	2-1-03
813-280-0070(T)	12-13-02	Repeal	1-1-03	836-080-0430	6-1-03	Adopt	2-1-03
820-010-0305	12-3-02	Amend	1-1-03	836-080-0432	6-1-03	Adopt	2-1-03
833-020-0015	12-16-02	Amend(T)	1-1-03	836-080-0435	6-1-03	Adopt	2-1-03
833-020-0040	12-16-02	Amend(T)	1-1-03	836-080-0440	6-1-03	Adopt	2-1-03
833-020-0060	12-16-02	Amend(T)	1-1-03	837-020-0040	12-6-02	Amend	1-1-03
833-020-0090	12-16-02	Amend(T)	1-1-03	837-020-0050	12-6-02	Amend	1-1-03
833-020-0111	12-16-02	Amend(T)	1-1-03	837-020-0060	12-6-02	Amend	1-1-03
833-020-0130	12-16-02	Suspend	1-1-03	837-020-0080	12-6-02	Amend	1-1-03
833-025-0001	12-16-02	Amend(T)	1-1-03	837-020-0125	12-6-02	Amend	1-1-03
833-025-0005	12-16-02	Amend(T)	1-1-03	837-110-0007	2-1-03	Adopt	2-1-03
833-025-0006	12-16-02	Amend(T)	1-1-03	837-110-0060	2-1-03	Amend	2-1-03
833-040-0001	12-16-02	Amend(T)	1-1-03	837-110-0070	2-1-03	Amend	2-1-03
833-040-0010	12-16-02	Amend(T)	1-1-03	837-110-0075	2-1-03	Adopt	2-1-03
836-011-0100	11-27-02	Amend	1-1-03	837-110-0140	2-1-03	Amend	2-1-03
836-011-0110	11-27-02	Amend	1-1-03	837-110-0150	2-1-03	Amend	2-1-03
836-011-0120	11-27-02	Amend	1-1-03	837-110-0155	2-1-03	Adopt	2-1-03
836-011-0130	11-27-02	Amend	1-1-03	839-016-0700	1-1-03	Amend	2-1-03

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
845-006-0450	1-1-03	Amend	2-1-03	918-282-0290(T)	1-1-03	Repeal	2-1-03
850-010-0055	12-6-02	Adopt(T)	1-1-03	918-307-0000	1-1-03	Repeal	2-1-03
850-010-0210	12-10-02	Amend	1-1-03	918-308-0020	1-1-03	Amend	2-1-03
851-001-0020	12-17-02	Adopt	2-1-03	918-308-0020(T)	1-1-03	Repeal	2-1-03
851-050-0131	12-17-02	Amend	2-1-03	918-308-0060	1-1-03	Amend	2-1-03
852-010-0027	12-18-02	Amend	2-1-03	918-308-0060(T)	1-1-03	Repeal	2-1-03
852-010-0051	12-18-02	Amend	2-1-03	918-308-0200	1-1-03	Amend	2-1-03
852-050-0005	12-18-02	Amend	2-1-03	918-308-0200(T)	1-1-03	Repeal	2-1-03
852-050-0018	12-18-02	Adopt	2-1-03	918-308-0210	1-1-03	Amend	2-1-03
855-041-0065	1-14-03	Amend	2-1-03	918-308-0210(T)	1-1-03	Repeal	2-1-03
855-041-0205	3-1-03	Amend	2-1-03	918-400-0280	1-1-03	Amend	2-1-03
855-080-0021	1-14-03	Amend	2-1-03	918-400-0280(T)	1-1-03	Repeal	2-1-03
855-110-0005	1-14-03	Amend	2-1-03	918-400-0333	1-1-03	Adopt	2-1-03
860-012-0010	12-9-02	Amend	1-1-03	918-400-0333(T)	1-1-03	Repeal	2-1-03
860-014-0023	12-6-02	Adopt(T)	1-1-03	918-400-0335	1-1-03	Repeal	2-1-03
860-016-0050	12-9-02	Amend	1-1-03	918-400-0340	1-1-03	Amend	2-1-03
860-021-0335	12-9-02	Amend	1-1-03	918-400-0340(T)	1-1-03	Repeal	2-1-03
860-027-0052	12-20-02	Amend	2-1-03	918-400-0345	1-1-03	Repeal	2-1-03
860-032-0610	12-9-02	Adopt	1-1-03	918-400-0350	1-1-03	Repeal	2-1-03
860-032-0620	12-9-02	Adopt	1-1-03	918-400-0355	1-1-03	Repeal	2-1-03
860-032-0630	12-9-02	Adopt	1-1-03	918-400-0360	1-1-03	Repeal	2-1-03
860-032-0640	12-9-02	Adopt	1-1-03	918-400-0365	1-1-03	Repeal	2-1-03
860-032-0650	12-9-02	Adopt	1-1-03	918-400-0370	1-1-03	Repeal	2-1-03
860-032-0660	12-9-02	Adopt	1-1-03	918-400-0375	1-1-03	Repeal	2-1-03
860-034-0250	12-9-02	Amend	1-1-03	918-400-0380	1-1-03	Adopt	2-1-03
860-034-0394	12-20-02	Amend	2-1-03	918-400-0380(T)	1-1-03	Repeal	2-1-03
860-034-0740	12-20-02	Amend	2-1-03	918-400-0385	1-1-03	Adopt	2-1-03
860-036-0080	12-9-02	Amend	1-1-03	918-400-0385(T)	1-1-03	Repeal	2-1-03
860-037-0075	12-9-02	Amend	1-1-03	918-400-0390	1-1-03	Adopt	2-1-03
918-001-0010	1-1-03	Amend	2-1-03	918-400-0390(T)	1-1-03	Repeal	2-1-03
918-001-0036	1-1-03	Adopt	2-1-03	918-400-0395	1-1-03	Adopt	2-1-03
918-008-0100	1-1-03	Repeal	2-1-03	918-400-0395(T)	1-1-03	Repeal	2-1-03
918-090-0900	1-1-03	Repeal	2-1-03	918-400-0780	1-1-03	Repeal	2-1-03
918-225-0610	1-1-03	Amend	2-1-03	918-400-0800	1-1-03	Amend	2-1-03
918-225-0610(T)	1-1-03	Repeal	2-1-03	918-400-0800(T)	1-1-03	Repeal	2-1-03
918-225-0760	1-1-03	Repeal	2-1-03	918-480-0005	4-1-03	Amend	2-1-03
918-251-0090	1-1-03	Amend	2-1-03	918-480-0010	1-1-03	Amend	1-1-03
918-251-0090(T)	1-1-03	Repeal	2-1-03	918-480-0010	1-10-03	Amend(T)	2-1-03
918-282-0017	1-1-03	Adopt	2-1-03	918-480-0010	4-1-03	Amend	2-1-03
918-282-0017(T)	1-1-03	Repeal	2-1-03	918-480-0010(T)	1-1-03	Repeal	1-1-03
918-282-0185	1-1-03	Adopt	2-1-03	918-480-0020	4-1-03	Amend	2-1-03
918-282-0185(T)	1-1-03	Repeal	2-1-03	918-650-0085	1-1-03	Repeal	2-1-03
918-282-0290	1-1-03	Amend	2-1-03	918-785-0030	1-1-03	Repeal	2-1-03